

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86256; File No. SR-FINRA-2019-008)

July 1, 2019

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service

I. Introduction

On March 27, 2019, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a new issue reference data service for corporate bonds. The Commission published notice of filing of the proposed rule change in the Federal Register on April 8, 2019.³ On May 22, 2019, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.⁴ The Commission has received thirteen comment

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85488 (April 2, 2019), 84 FR 13977 (“Notice”).

⁴ See Securities Exchange Act Release No. 85911, 83 FR 24839 (May 29, 2019).

The Commission designated July 7, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

letters on the proposal.⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposed Rule Change

As described in more detail in the Notice, FINRA proposes to establish a new issue reference data service for corporate bonds. FINRA states that its proposal is in line with a recommendation from the SEC Fixed Income Market Structure Advisory Committee, which recommended that FINRA establish a new issue data service which would contain specified data elements on TRACE-eligible corporate bond new issues.⁷

⁵ See Letters from: (1) Cathy Scott, Director, Fixed Income Forum, on behalf of The Credit Roundtable, dated April 29, 2019 (“Credit Roundtable Letter”); (2) Salman Banaei, Executive Director, IHS Markit, dated April 29, 2019 (“IHS Markit Letter”); (3) David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated April 29, 2019 (“Heritage Foundation Letter”); (4) Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated April 29, 2019 (“Chamber Letter”); (5) Lynn Martin, President and COO, ICE Data Services, dated April 29, 2019 (“ICE Data Letter”); (6) Tyler Gellasch, Executive Director, Healthy Markets Association, dated April 29, 2019 (“Healthy Markets Letter”); (7) Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P. dated April 29, 2019 (“Bloomberg Letter”); (8) Marshall Nicholson and Thomas S. Vales, ICE Bonds dated April 29, 2019 (“ICE Bonds Letter”); (9) Christopher B. Killian, Managing Director, SIFMA, dated April 29, 2019 (“SIFMA Letter”); (10) Larry Tabb, TABB Group, dated May 15, 2019 (“Tabb Letter”); (11) Larry Harris, Fred V. Keenan Chair in Finance, USC Marshall School of Business, dated May 17, 2019 (“Harris Letter”); (12) John Plansky, Executive Vice President and Chief Executive Officer, Charles River Development, dated May 24, 2019 (“Charles River Letter”); and (13) SEC Fixed Income Market Structure Advisory Committee, dated June 11, 2019 (“FIMSAC Letter”). All comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008.htm>.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Fixed Income Market Structure Advisory Committee Recommendation (October 29, 2018) available at: <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-corporate-bond-new-issue-reference-data-recommendation.pdf>.

Specifically, FINRA is proposing to amend Rule 6760 to require that underwriters subject to Rule 6760⁸ report to FINRA a number of data elements, including some already specified by the rule, for new issues in corporate debt securities.⁹ FINRA proposes to require underwriters to report all these data fields prior to the first transaction in the security.

FINRA would disseminate the corporate bond new issue reference data collected under Rule 6760 upon receipt.¹⁰ That data would be provided to subscribers for fees that FINRA states are determined on a commercially reasonable basis. In particular, FINRA proposes to make the corporate bond new issue reference data available to any person or organization for a fee of \$250

⁸ As part of the proposal, FINRA would amend Rule 6760(a)(1) to clarify that underwriters subject to the Rule must report required information for the purpose of providing market participants in the corporate debt security markets with reliable and timely new issue reference data to facilitate the trading and settling of these securities, in addition to the current purpose of facilitating trade reporting and dissemination in TRACE-Eligible Securities.

⁹ In connection with the proposal, FINRA also would make two technical, non-substantive, clarifying edits to the definition of corporate debt security that is currently located in FINRA Rule 2232 (Customer Confirmations). First, FINRA would clarify that the definition of corporate debt security is limited to TRACE-Eligible Securities.

Second, FINRA would update the definition of corporate debt security to exclude the class of assets defined as Securitized Products in Rule 6710(m), rather than Asset-Backed Securities, defined in Rule 6710(cc).

FINRA also proposes to relocate the revised definition of corporate debt security into the TRACE Rule Series. FINRA believes it makes sense to include the definition in Rule 6710 where it would sit alongside a number of other TRACE definitions for fixed income asset types. FINRA would make corresponding technical edits to Rule 2232 to refer to the relocated definition in Rule 6710.

¹⁰ FINRA states that under proposed Rule 6760(d), there may be some information collected under the Rule for security classification or other purposes that would not be disseminated. This may include, for example, information about ratings that is restricted by agreement. In addition, CUSIP Global Services' ("CGS") information would not be disseminated to subscribers that do not have a valid license regarding use of CGS data.

per month if used for internal purposes only, and for a fee of \$6,000 per month where the subscriber retransmits or repackages the data for delivery and dissemination outside the organization. FINRA notes that because the charge includes unlimited redistribution rights, FINRA would assess it only once on the party that subscribes to receive the data from FINRA. Accordingly, FINRA would not assess any charge on firms that receive the data from data vendors or other market participants that have subscribed for redistribution rights, nor would FINRA increase the amount charged to the subscriber based on how often it redistributes the data. FINRA states that it anticipates that many market participants, including clearing firms and correspondent firms, are likely to receive the data from data vendors to which they currently subscribe in lieu of developing processes to receive the data directly from FINRA.

If the Commission approves the filing, FINRA proposes to announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following publication of the Regulatory Notice. The effective date will be no later than 270 days following Commission approval.

III. Summary of the Comments

Seven commenters expressly supported the proposal.¹¹ Several of these commenters stated that currently there is no uniform, universally available mechanism for providing market participants with consistent and timely access to reference data about corporate bonds on the day a newly issued corporate bond commences trading.¹² These commenters added that access to

¹¹ See IHS Markit Letter; ICE Data Letter; SIFMA Letter; ICE Bonds Letter; Harris Letter; Charles River Letter; FIMSAC Letter.

¹² See ICE Data Letter, at 1-2; ICE Bonds Letter, at 1-2; Charles River Letter, at 2; FIMSAC Letter, at 1-2.

reference data is necessary for valuing, as well as trading and settling corporate bonds.¹³ As access to this reference data is not available to all market participants prior to the beginning of trading in a new issue, commenters assert that certain market participants are currently at a competitive disadvantage.¹⁴

Notwithstanding their support for the proposal, several of these commenters requested that FINRA make various modifications or clarifications to its proposal. One commenter noted that the reference data “would allow for efficient functioning of trading” but stated that it could be challenging for underwriters to provide all of the data elements prior to the first trade and instead requested that underwriters only be required to report certain information prior to the first trade and that the remaining information should be reported within 60 minutes of the first trade.¹⁵ Two commenters requested that FINRA clarify the meaning of the “prior to the first transaction” deadline for reporting reference data to FINRA.¹⁶ Another commenter requested FINRA clarify the process for underwriters to correct erroneously reported reference data.¹⁷ Several commenters requested FINRA provide further clarity regarding the definitions of certain data fields so as to better understand what would be required to be reported.¹⁸ One commenter stated that while it did not disagree with FINRA’s proposed data fields, FINRA should provide

¹³ See ICE Data Letter, at 2; Charles River Letter, at 2; FIMSAC Letter, at 1-2.

¹⁴ See ICE Data Letter, at 2; ICE Bonds Letter, at 2; FIMSAC Letter, at 2.

¹⁵ See SIFMA Letter, at 1-2. See also Credit Roundtable Letter, at 1 (cautioning that any data provision requirements on underwriters not impede their ability to make markets in the new issue as soon as possible).

¹⁶ See ICE Data Letter, at 2; ICE Bonds Letter, at 2.

¹⁷ See IHS Markit Letter, at 2-3.

¹⁸ See ICE Data Letter, at 2-3; SIFMA Letter, at 3; FIMSAC Letter, at 14.

information to support its selections of each of the proposed data fields.¹⁹ In addition, one commenter recommended FINRA combine certain proposed data fields as well as include six additional data fields.²⁰

Four commenters asserted that FINRA did not provide sufficient justification to support the need for the creation of the new issue reference data service.²¹ Three of those commenters further asserted that the proposal would diminish competition among private sector reference data providers, which could ultimately impede the quality of data available to market participants.²² In contrast, one commenter asserted that because of the limited set of data proposed to be captured by FINRA, the proposal would not supplant private sector market data providers.²³ Another commenter asserted that providing reference data in a manner similar to that proposed by FINRA promotes competition by reducing barriers to entry for new entrants in the reference data provider market.²⁴

Five commenters asserted that in order to meet its obligations under the Act, FINRA must provide more information to justify the fees it proposed to charge subscribers of the new

¹⁹ See Healthy Markets Letter, at 6.

²⁰ See FIMSAC Letter, at 7-8, 10, 12-13.

²¹ See Heritage Foundation Letter, at 1; Chamber Letter, at 2; Healthy Markets Letter, at 4-5; Bloomberg Letter, at 9-10.

²² See Heritage Foundation Letter, at 1; Chamber Letter, at 2; Bloomberg Letter, at 2-3. See also Tabb Letter, at 2-3.

²³ See FIMSAC Letter, at 3.

²⁴ See Harris Letter, at 4.

issue reference data service.²⁵ One of these commenters further stated that the data should either be available for free, or at a “truly low cost.”²⁶ Another commenter asserted that the \$6,000 per month fee for redistribution could be “a considerable additional expense” for its members.²⁷

IV. Proceedings to Determine Whether to Approve or Disapprove the FINRA Proposal

The Commission is instituting proceedings pursuant to Section 19(b)(2) of the Act²⁸ to determine whether the proposed rule change should be approved or disapproved. Further, pursuant to Section 19(b)(2)(B) of the Act,²⁹ the Commission is hereby providing notice of the grounds for disapproval under consideration. The Commission believes it is appropriate to institute proceedings at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate, however, that the Commission has reached any conclusions with respect to any of the issues involved.

In particular, the Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with: (1) Section 15A(b)(5) of the Act, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues,

²⁵ See Chamber Letter, at 3-4; Healthy Markets Letter, at 5-6; SIFMA Letter, at 3-4; Bloomberg Letter, at 6-9; Harris Letter, at 7.

²⁶ See Harris Letter, at 7.

²⁷ See Credit Roundtable Letter, at 1.

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See id. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the self-regulatory organization consents to the longer period. See id.

fees and other charges among members and issuers and other persons using any facility or system which FINRA operates or controls;³⁰ (2) Section 15A(b)(6) of the Act, which requires, among other things, that FINRA rules promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest;³¹ and (3) Section 15A(b)(9) of the Act, which requires that FINRA rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.³²

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues raised by the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 15A(b)(5), 15A(b)(6) and 15A(b)(9) of the Act, or any other provision of the Act or rule or regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.³³

³⁰ 15 U.S.C. 78o-3(b)(5).

³¹ 15 U.S.C. 78o-3(b)(6).

³² 15 U.S.C. 78o-3(b)(9).

³³ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of

Such comments should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2019-008 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2019-008. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-FINRA-2019-008 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Eduardo A. Aleman
Deputy Secretary

³⁴ 17 CFR 200.30-3(a)(57).