

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87656; File No. SR-FINRA-2019-008)

December 4, 2019

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, 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 On July 1, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or

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.

⁵ 15 U.S.C. 78s(b)(2)(B).

disapprove the proposed rule change.⁶ On October 3, 2019, FINRA filed partial Amendment No. 2 to the proposed rule change.⁷ On October 4, 2019, the Commission published notice of Amendment No. 2 to the proposed rule change and designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the proposed rule change.⁸ The Commission received comments on the proposal and one response to comments from FINRA.⁹ This order approves the proposed rule change, as modified by Amendment No. 2.

II. Summary of the Proposed Rule Change, as Modified by Amendment No. 2

As described in more detail in the Notice and Amendment No. 2,¹⁰ 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

⁶ See Securities Exchange Act Release No. 86256, 84 FR 32506 (July 8, 2019).

⁷ Partial Amendment No. 1 was also filed on October 3, 2019 and subsequently withdrawn on the same day due to a non-substantive administrative error and replaced with Amendment No. 2. In Amendment No. 2, the Exchange: (i) withdrew the proposed fees for receipt of corporate new issue reference data in the proposal and stated that a separate proposed rule change would be filed to establish fees related to the corporate bond new issue reference data service at a future date prior to implementing the service; (ii) revised the list of data fields to be collected under the proposal to clarify certain proposed data fields and to add six new data fields; and (iii) included additional rationale for the data fields proposed to be collected. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6252424-192827.pdf>.

⁸ See Securities Exchange Act Release No. 87232, 84 FR 54712 (October 10, 2019). The Commission extended the date by which the Commission shall approve or disapprove the proposed rule change to December 4, 2019.

⁹ All comments on the proposed rule change, including FINRA's response to comments, are available at: <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008.htm>.

¹⁰ See supra notes 3 and 7.

Committee (“FIMSAC”).¹¹ On October 29, 2018, the FIMSAC unanimously approved a recommendation from its Technology and Electronic Trading Subcommittee (“Subcommittee”) that the Commission, in conjunction with FINRA, establish a reference data service for corporate bonds which would contain specified data elements on TRACE-eligible corporate bond new issues.¹² FINRA’s proposal would implement that recommendation, and in doing so, FINRA

¹¹ The FIMSAC is a federal advisory committee formed in November 2017 to provide the Commission with diverse perspectives on the structure and operations of the U.S. fixed income markets, as well as advice and recommendations on matters related to fixed income market structure. The FIMSAC’s charter is available at: <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-charter-nov-2019.pdf>. The committee comprises 23 members. The membership includes individuals representing a range of perspectives on the fixed income markets including retail and institutional investors, corporate and municipal issuers, trading venues, institutional dealers, a retail dealer, a regional municipal securities dealer, a proprietary trading firm, a data provider, academics, and self-regulatory organizations (“SROs”). For a list of FIMSAC members, see <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fixed-income-market-structure-advisory-committee-subcommittees.htm>.

¹² 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> (“Recommendation”). In particular, the FIMSAC recommended that the Commission, in conjunction with FINRA, establish a new issue data service with the following elements: (i) the managing underwriter of all TRACE-eligible corporate bond new issues, including registered offerings and unregistered Rule 144A offerings, would be required to send specified new issue information, as well any follow-up adjustments, electronically to a central database managed by FINRA; (ii) the managing underwriter would be required to submit the new issue information to FINRA no later than distribution of the information to any reference data vendor or other third party not involved in the offering; (iii) once the central database has all the required reporting information, FINRA will make the data available in a real-time electronic format to reference data vendors and other market participants as determined by FINRA; and (iv) FINRA shall provide subscribers with access to the service on an impartial basis at fees determined on a commercially reasonable basis, subject to applicable regulation. The FIMSAC recommended that such data service provide the following new issue reference data fields: (a) issuer; (b) coupon; (c) ISIN number; (d) CUSIP number; (e) currency; (f) issue date/first settle date; (g) interest accrual date; (h) day count description; (i) coupon frequency; (j) first coupon

would establish a central depository for public dissemination of new issue corporate bond reference data.

Specifically, FINRA is proposing to amend Rule 6760 (Obligation to Provide Notice)¹³ to require that underwriters subject to Rule 6760¹⁴ report to FINRA a number of data elements, including some already specified by the rule, for new issues in Corporate Debt Securities.¹⁵

Proposed Rule 6760(b)(2) would require that, in addition to the information required by Rule 6760(b)(1),¹⁶ for a new issue in a Corporate Debt Security, excluding bonds issued by religious

payment date; (k) maturity; (l) calculation types; (m) 144A eligible indicator; (n) Regulation S indicator; and (o) security type.

¹³ As part of the proposal, FINRA would amend the title of the Rule to “Obligation to Provide Notice and Dissemination of Corporate Debt Security New Issue Reference Data.”

¹⁴ 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, as that term is defined in Rule 6710(a).

¹⁵ In connection with the proposal, FINRA proposes to move the definition of “Corporate Debt Security,” which is currently located in FINRA Rule 2232 (Customer Confirmations), into the TRACE Rule Series (specifically Rule 6710 (Definitions)) and to make corresponding technical edits to Rule 2232 to refer to the relocated definition in Rule 6710. In addition, FINRA proposes to make two changes to the definition of “Corporate Debt Security,” which FINRA states are technical, non-substantive edits that reflect the original intent of the definition and are consistent with current FINRA guidance. See Notice, at 13978, n.6. Specifically, FINRA proposes to revise the current definition of Corporate Debt Security to (i) clarify that the definition is limited to TRACE-Eligible Securities, and (ii) update the definition to exclude Securitized Products (defined in Rule 6710(m)), rather than Asset-Backed Securities (defined in Rule 6710(cc)).

¹⁶ Rule 6760(b), proposed to be renumbered as Rule 6760(b)(1), currently requires the following information to be reported to FINRA: (A) the CUSIP number or if a CUSIP number is not available, a similar numeric identifier (e.g., a mortgage pool number); (B)

organizations or for religious purposes, the following information must be reported, if applicable:

(A) the International Securities Identification Number (ISIN); (B) the currency; (C) the issue date; (D) the first settle date; (E) the interest accrual date; (F) the day count description; (G) the coupon frequency; (H) the first coupon payment date; (I) a Regulation S indicator; (J) the security type; (K) the bond type; (L) the first coupon period type; (M) a convertible indicator; (N) a call indicator; (O) the first call date; (P) a put indicator; (Q) the first put date; (R) the minimum increment; (S) the minimum piece/denomination; (T) the issuance amount; (U) the first call price; (V) the first put price; (W) the coupon type; (X) rating (TRACE Grade); (Y) a perpetual maturity indicator; (Z) a Payment-In-Kind (PIK) indicator; (AA) first conversion date; (BB) first conversion ratio; (CC) spread; (DD) reference rate; (EE) floor; and (FF) underlying entity ticker.

FINRA proposes to require underwriters to report all data fields for Corporate Debt Securities prior to the first transaction in the security. FINRA would disseminate the corporate bond new issue reference data collected under Rule 6760 upon receipt.¹⁷ FINRA states that it

the issuer name, or, for a Securitized Product, the names of the Securitizers; (C) the coupon rate; (D) the maturity; (E) whether Securities Act Rule 144A applies; (F) the time that the new issue is priced, and, if different, the time that the first transaction in the offering is executed; (G) a brief description of the issue (e.g., senior subordinated note, senior note); and (H) such other information FINRA deems necessary to properly implement the reporting and dissemination of a TRACE-Eligible Security, or if any of items (B) through (H) has not been determined or a CUSIP number (or a similar numeric identifier) is not assigned or is not available when notice must be given, such other information that FINRA deems necessary and is sufficient to identify the security accurately.

¹⁷ 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

will submit a separate filing to establish fees related to the new issue reference data service at a future date and will implement the service after those fees are adopted.¹⁸

FINRA proposes to announce the effective date of the proposed rule change in a Regulatory Notice. The effective date will be no later than 270 days following Commission approval.

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.

¹⁸ See Amendment No. 2, at 4. FINRA originally proposed to make the corporate bond new issue reference data available to any person or organization for a fee of \$250 per month for internal purposes only, and for a fee of \$6,000 per month where the data is retransmitted or repackaged for delivery and dissemination to any outside person or organization. See Notice, at 13979. FINRA withdrew these proposed fees in Amendment No. 2. See supra note 7.

III. Summary of Comments and Response Letter¹⁹

A number of commenters generally supported the proposal,²⁰ while other commenters generally opposed the proposal.²¹

¹⁹ Certain comments are not discussed below because they do not bear on the basis for the Commission’s decision to approve the proposed rule. See, e.g., Letter from Christopher B. Killian, Managing Director, SIFMA, dated July 29, 2019 (“SIFMA Letter II”), at 2 (stating that if the proposal is approved, the Commission or FINRA should provide guidance that providing reference data information to FINRA’s data service will not constitute an offer, an offer to sell, or a solicitation of an offer to buy for purposes of the Securities Act of 1933); Letter from Lynn Martin, President and COO, ICE Data Services, dated April 29, 2019 (“ICE Data Letter”), at 2 (stating that the final rule should specify that entities who are third parties involved in the offering are prohibited from sharing data with affiliated corporate entities).

²⁰ See ICE Data Letter; Letter from Cathy Scott, Director, Fixed Income Forum, on behalf of The Credit Roundtable, dated April 29, 2019 (“Credit Roundtable Letter”); Letter from Salman Banaei, Executive Director, IHS Markit, dated April 29, 2019 (“IHS Markit Letter”); Letter from Marshall Nicholson and Thomas S. Vales, ICE Bonds dated April 29, 2019 (“ICE Bonds Letter”); Letter from Christopher B. Killian, Managing Director, SIFMA, dated April 29, 2019 (“SIFMA Letter”); Letter from Larry Harris, Fred V. Keenan Chair in Finance, USC Marshall School of Business, dated May 17, 2019 (“Harris Letter”); Letter from John Plansky, Executive Vice President and Chief Executive Officer, Charles River Development, dated May 24, 2019 (“Charles River Letter”); and Letter from SEC Fixed Income Market Structure Advisory Committee, dated June 11, 2019 (“FIMSAC Letter”). One of these commenters stated that it supports the goals and conceptual basis of the proposed service but also stated that several complications and ambiguities in the proposal prevent it from “expressly supporting the proposal,” and it remains concerned about several aspects of the proposal (as discussed below). See SIFMA Letter II, at 1; Letter from Christopher B. Killian, Managing Director, SIFMA, dated October 24, 2019 (“SIFMA Letter III”).

²¹ See Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated April 29, 2019 (“Heritage Letter”); Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated April 29, 2019 (“Chamber Letter”); Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, dated April 29, 2019 (“Healthy Markets Letter”); Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P. dated April 29, 2019 (“Bloomberg Letter”); Letter from Larry Tabb, TABB Group, dated May 15, 2019 (“Tabb Letter”); and Letter from John Thornton, Co-Chair, et al., Committee on Capital Markets Regulation, dated July 27, 2019 (“Committee Letter”). See also Letter from Greg Babyak, Global Head of

A. Justification for the Creation of the New Issue Reference Data Service

Several of the 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.²² These commenters stated that access to reference data is necessary for valuing, as well as trading and settling corporate bonds.²³ As access to this reference data is not available to all market participants prior to the beginning of trading in a new issue, commenters asserted that certain

Regulatory Affairs, Bloomberg L.P., dated July 1, 2019 (“Bloomberg Letter II”); Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated July 29, 2019 (“Bloomberg Letter III”); Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated October 24, 2019 (“Bloomberg Letter IV”); Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, dated July 29, 2019 (“Healthy Markets Letter II”); Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, dated October 25, 2019 (“Healthy Markets Letter III”); Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated July 29, 2019 (“Heritage Letter II”); Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated October 23, 2019 (“Heritage Letter III”); Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated July 29, 2019 (“Chamber Letter II”); Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated October 24, 2019 (“Chamber Letter III”); Letter from John Thornton, Co-Chair, et al., Committee on Capital Markets Regulation, dated October 22, 2019 (“Committee Letter II”); and Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated November 27, 2019 (“Bloomberg Letter V”). One of these commenters was generally supportive of the objective of providing market participants with greater data to facilitate the trading of corporate bonds, but opposed the proposal because of what it believed was insufficient justification. See Healthy Markets Letter, at 4, 7.

²² See ICE Data Letter, at 1-2; ICE Bonds Letter, at 1-2; Charles River Letter, at 2; FIMSAC Letter, at 1-2.

²³ See ICE Data Letter, at 2; Harris Letter, at 2-3; Charles River Letter, at 2; FIMSAC Letter, at 1-2.

market participants are currently at a competitive disadvantage.²⁴ In addition, commenters asserted that a centralized data reporting requirement for new corporate bond issues would increase the efficiency of the corporate bond market and reduce trading and research costs.²⁵

On the other hand, many of the commenters asserted that FINRA did not provide sufficient justification to support the need for the creation of the new issue reference data service as required under Section 15A(b)(6)²⁶ of the Act.²⁷ In particular, one commenter argued that FINRA provided no evidence that (i) the proposal would provide market participants with more complete, accurate, and timely data about new issues;²⁸ (ii) the proposal would reduce broken trades and errors;²⁹ (iii) there is a market structure problem that requires regulatory

²⁴ See ICE Data Letter, at 2; ICE Bonds Letter, at 2; FIMSAC Letter, at 2.

²⁵ See ICE Data Letter, at 2; Harris Letter, at 2-3; Charles River Letter, at 2.

²⁶ Section 15A(b)(6) of the Act requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not to permit unfair discrimination between customers, issuers, brokers, or dealers. 15 U.S.C. 78o-3(b)(6).

²⁷ See Heritage Letter, at 1-2; Chamber Letter, at 2; Healthy Markets Letter, at 4-5; Bloomberg Letter, at 9-10. See also Healthy Markets Letter II, at 4-6; Healthy Markets Letter III; Heritage Letter II, at 2; Heritage Letter III, at 2; Chamber Letter II, at 3-4; Bloomberg Letter II, at 4-7; Bloomberg Letter III, at 5-8; Bloomberg Letter IV, at 4; Bloomberg Letter V, at 3-4.

²⁸ The commenter stated that “it is questionable whether a single SRO would provide more accurate, complete and timely service than competing private sector providers.” See Bloomberg Letter, at 9. In addition, the commenter stated that the impact of any errors in a centralized system would be magnified. See id., at 10.

²⁹ The commenter stated that “there appears to be plenty of time to correct errors before

intervention;³⁰ and (iv) the proposal would reduce costs or duplicated efforts.³¹ One commenter argued that the proposal would increase regulatory and liability burdens for underwriters without any clear benefit,³² and another commenter argued that the proposed rule’s compliance burden would disproportionately impact smaller underwriters.³³

they enter the settlement and clearing process” and presented evidence that over 91% of new issues settle three days or more after a new issue is priced and 66% settle four days or more after a new issue is priced. See Bloomberg Letter, at 10-11.

³⁰ See Bloomberg Letter, at 12-13; Bloomberg Letter II at 4-6; Bloomberg Letter III at 6-7; Bloomberg Letter V, at 3. This commenter presented data regarding alternative trading system (“ATS”) trading on pricing day to argue that electronic trading platforms can readily access new issue bond reference data, and that the market for new issue corporate bonds is healthy and already evolving in the manner that the FIMSAC desires. For example, this commenter provided data (for new issues from March 12, 2019 to April 11, 2019) demonstrating that ATSS arranged a trade in 43% of the new Jumbo-sized issues, 28% of the new Benchmark-sized issues, and 11% of medium-sized issues on the day the bond was free to trade. See Bloomberg Letter, at 12-13. In addition, this commenter presented evidence that over the past year, the number of Jumbo-sized new issues that traded electronically on the day they were priced more than doubled to 30%. See Bloomberg Letter II, at 4-6; Bloomberg Letter III, at 6; and Bloomberg Letter IV, at 4-5. This commenter further stated that since FINRA proposed its effort to standardize and centralize bond-reference data reporting, competition in this area has only increased, citing a recent effort by various financial institutions to streamline communications and data among market participants by connecting underwriters and investors. See Bloomberg Letter IV, at 6.

³¹ See Bloomberg Letter, at 9-14; Bloomberg Letter II, at 4-7; Bloomberg Letter III, at 5-8. This commenter stated that market participants currently demand more reference data fields than FINRA is proposing to collect; thus the proposal will not avoid “duplicative efforts” and may fragment the market. See Bloomberg Letter, at 13-14. In addition, this commenter stated that FINRA will have no market incentive to improve its technology for collecting or distributing bond data, and that in the existing TRACE system, 20% of entries have errors. See Bloomberg Letter III, at 5-6.

³² See Chamber Letter, at 4; Chamber Letter III, at 2.

³³ See Bloomberg Letter IV, at 5. See also Chamber Letter III, at 3.

In its response, FINRA stated that it believes the record provides sufficient support for the proposal, which is based on evidence FINRA received from market participants and analyzed in its filing.³⁴ FINRA pointed to the economic impact assessment included in its filing and reiterated that the proposal “was informed by outreach to eleven market participants - four data providers, three underwriters, two trading platforms, and two clearing firms - which FINRA believes demonstrated a regulatory need for consistent, uniform, and timely corporate bond new issue reference data.”³⁵ Based on this outreach, FINRA determined that “there is not currently consistent collection of new issue reference data according to established data standards, nor is there uniform distribution of the data to market participants in a timely manner.”³⁶ For example, FINRA noted the experience of one trading platform that stated its reference data provider would only provide data relating to new issues the morning after issuance, which resulted in the firm’s clients not being able to trade new issues on the platform on the first day of trading.³⁷ FINRA also stated that during its outreach it received comments from data vendors concerning the differences in their access to corporate bond new issue reference data.³⁸

FINRA further stated that during the outreach a number of problems were raised as a result of the lack of accurate, complete and timely corporate bond new issue reference data.³⁹

³⁴ See Letter from Alexander Ellenberg, Associate General Counsel, FINRA, dated October 29, 2019 (“Response Letter”), at 3-4. See also Notice, at 13980-83.

³⁵ See Response Letter, at 4. See also Notice, at 13980-81.

³⁶ See Response Letter, at 4.

³⁷ See *id.* See also Notice, at 13980, n.17.

³⁸ See Response Letter, at 4. See also Notice, at 13981.

³⁹ See Response Letter, at 4.

Specifically, as the proposal noted, FINRA found that limited new issue reference data may prevent traders from identifying and evaluating newly issued bonds for trading (particularly small traders that cannot afford multiple data vendor subscriptions), and it may prevent electronic trading platforms from making newly issued corporate bonds available to trade.⁴⁰ In addition, FINRA found from its outreach that inaccurate reference data create inconsistencies in trading and settlement and increases transaction costs for trading platforms, clearing firms, and electronic trading platforms.⁴¹

In the Response Letter, FINRA stated that the robust public record supporting the unanimous FIMSAC Recommendation also provides support for the proposal.⁴² FINRA pointed to statements by members of the FIMSAC and panelists at the FIMSAC meeting, including a data provider and an investment management firm,⁴³ to refute the assertion that a well-functioning, competitive market currently exists for corporate new issue reference data, as

⁴⁰ See id. See also Notice, at 13980.

⁴¹ See id.

⁴² See Response Letter, at 4-5.

⁴³ Specifically, FINRA pointed to (i) a statement by the chair of the Subcommittee that developed the Recommendation that “there are indeed gaps in corporate bond fixed income reference data, both in terms of when that data is available with different reference data providers, as well as sometimes the accuracy;” (ii) a statement from a data provider panelist that “there are some market anomalies where some of the vendors have access to information much earlier than other vendors,” and “that creates basically competitive advantage on certain platforms;” and (iii) a statement from an investment management firm panelist noting that there are “cases where a new issue does take time to get set up on some of [the investment firm’s] electronic trading platforms, and that means that we can’t necessarily go and use those electronic trading platforms right away.” See Response Letter, at 5 (citing to Transcript of FIMSAC Meeting (October 29, 2018), available at <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-102918transcript.txt>).

suggested by some commenters.⁴⁴ In addition, FINRA stated that supporting comment letters submitted in response to the proposal further reinforce the regulatory need for the proposal.⁴⁵

In the Response Letter, FINRA provided an analysis of corporate bond transactional data reported to FINRA's TRACE, which FINRA stated is consistent with the problematic market conditions described by FIMSAC participants and commenters, and provides additional support for the proposal.⁴⁶ Specifically, FINRA examined the time lapse between the first secondary market trade reported to TRACE and the first trade reported by ATSs for newly issued corporate bonds in 2018.⁴⁷ FINRA found persistent lags between the first reported trades and first reported ATS trades, which FINRA stated suggested that some ATSs may not be receiving reference data in a timely fashion to allow them to set up new issues to begin trading on their platforms.⁴⁸ In response, however, one commenter stated that FINRA's analysis is flawed in that the data (i) does not show that untimely reference data is the cause of differences in the timing of trading on different platforms, (ii) includes all new issue bonds, rather than limiting the scope to large

⁴⁴ See Response Letter, at 5. See also supra note 27 and accompanying text.

⁴⁵ FINRA cited comment letters submitted in response to the proposal noting that there currently exist issues with the availability, completeness, and timeliness of new issue reference data; and that the current information asymmetry with respect to such data harms liquidity, execution quality and competition in the corporate bond market. See Response Letter, at 5 (citing to Harris Letter; ICE Bonds Letter; ICE Data Letter; Charles River Letter; and FIMSAC Letter). See also supra notes 22-25 and accompanying text.

⁴⁶ See Response Letter, at 6-7.

⁴⁷ See id.

⁴⁸ See id. FINRA found that for the first day of trading in corporate bond new issues, an ATS traded at most 3% of the 11,518 newly issued bonds, and that over the subsequent 10 days after issuance, ATSs represented an increasing percentage of trading.

issues that are more likely to trade electronically; and (iii) ignores more current data, which this commenter stated shows movement toward electronic trading is accelerating rapidly in 2019.⁴⁹

B. Competitive Impact and Data Quality

Several commenters argued that the proposal fails to adequately explain why the rule's burden on competition is necessary or appropriate consistent with Section 15A (b)(9)⁵⁰ of the Act.⁵¹ Some commenters 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.⁵² One of these commenters stated that the proposal “would expand a key regulator’s commercial role into new lines of heretofore competitive private business” and stressed “the likely chilling effect that this would have on investment and innovation.”⁵³

⁴⁹ See Bloomberg Letter V, at 1-2.

⁵⁰ Section 15A(b)(9) of the Act requires that the rules of a national securities association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. 15 U.S.C. 78o-3(b)(9).

⁵¹ See, e.g., Healthy Markets Letter II, at 5-6; Bloomberg Letter III, at 8-11; Heritage Letter II; at 2-3; Bloomberg Letter IV, at 4.

⁵² See Heritage Letter, at 1-2; Chamber Letter, at 2; Bloomberg Letter, at 2-3; Healthy Markets Letter II, at 5; Tabb Letter, at 2-3. Some of these commenters questioned the quality of FINRA’s current TRACE data, and pointed to a recent study that found that approximately 20% of entries had errors. See, e.g., Healthy Markets Letter II, at 5; Bloomberg Letter III, at 5-6; and Bloomberg Letter IV, at 4 (citing to Larry Tabb, Tabb Forum, “An SEC-Mandated Corporate Bond Monopoly Will Not Help Quality” (Mar. 21, 2019) (“Tabb Study”)). See also *supra* note 31.

⁵³ See Bloomberg Letter II, at 1. See also Bloomberg Letter IV, at 5. This commenter compared the proposal to a previous FINRA proposal to create a facility to consolidate all quotation data in the over-the-counter equities market, which was ultimately withdrawn by FINRA. See Bloomberg Letter V, at 3-4 (citing Securities Exchange Act Release No. 60999 (November 13, 2009), 74 FR 61183 (November 23, 2009) (SR-FINRA-2009-077) (Notice of Filing of Proposed Rule Change Relating to the Restructuring of Quotation

Another commenter opposed giving FINRA or any other utility or vendor a monopoly or competitive advantage in the collection and dissemination of corporate bond new issue reference data, stating that doing so may reduce the overall quality and timeliness, and increase the cost, of the data.⁵⁴ One commenter stated that the proposal creates a conflict of interest and reduces FINRA's standing as an independent regulatory force.⁵⁵

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.⁵⁶ This commenter also stated it would be concerned by any alternative construct to FINRA's proposal that would give increased market power to a single commercial data provider without a commensurate level of regulatory oversight, as data vendors are conflicted by competing commercial interests and should not be in a position to determine who can have access to data necessary to value, trade and settle a newly issued corporate bond.⁵⁷ Another commenter asserted that providing reference data in a manner similar to that proposed by FINRA promotes

Collection and Dissemination for OTC Equity Securities).

⁵⁴ See Tabb Letter, at 3. See also Bloomberg Letter V, at 2.

⁵⁵ See Bloomberg Letter IV, at 5.

⁵⁶ See FIMSAC Letter, at 3.

⁵⁷ See id. at 4. One commenter that has both a data business and an electronic bond trading platform stated that there is no basis for FIMSAC's claims that integrated firms are using their data business to harm competition in trading. The commenter pointed to data showing that it holds only 3.2% of market share of domestic institutional electronic corporate bond trading, and argued that this data contradicts any suggestion that the commenter has leveraged its data business to gain a competitive advantage for its electronic trading business. See Bloomberg Letter II, at 2-4.

competition by reducing barriers to entry for new entrants in the reference data provider market.⁵⁸

In the Response Letter, FINRA reiterated that the proposed data service is not designed to affect the opportunity for private third party vendors to compete and is rather intended to promote competition among new reference data providers by, among other things, lowering barriers to entry and allowing competition on other dimensions, such as additional fields, updates to existing data based on subsequent events related to the security, presentation, ease of access, and integration to other data or metrics deemed valuable by market participants.⁵⁹ FINRA stated that its proposed data service will provide only the basic fields necessary for trading and settling newly issued corporate bonds, and it would not inhibit reference data vendors' ability to redistribute the data with supplementary fields and other value-added services.⁶⁰ FINRA also noted that several commenters responding to the proposal agreed that the proposal would not displace reference data providers and would instead increase competition and reduce overall costs.⁶¹

In response to comments regarding alleged conflicts of interest and FINRA acting in a commercial rather than a regulatory role,⁶² FINRA stated that, as a non-profit registered

⁵⁸ See Harris Letter, at 4.

⁵⁹ See Response Letter, at 8-9. See also Notice, at 13982.

⁶⁰ See Response Letter, at 9.

⁶¹ See id. at 8 (citing to Harris Letter; FIMSAC Letter; ICE Data Letter; Charles River Letter). See also supra notes 56-58 and accompanying text.

⁶² See, e.g., supra notes 53 and 55 and accompanying text.

securities association and self-regulatory organization, it does not intend to compete with or displace private data vendors.⁶³ FINRA added that it did not initiate the proposal for commercial benefit but did so in response to a specific recommendation and regulatory need identified by the FIMSAC.⁶⁴ FINRA stated that the proposal is designed to achieve a clear regulatory objective—to provide more timely and accurate consolidation and dissemination of key corporate bond new issue reference data.⁶⁵ Furthermore, FINRA noted that under Section 15A of the Act, it is charged with a number of responsibilities including, among others, developing rules that are designed to foster cooperation and coordination with persons engaged in clearing, settling, processing and facilitating transactions in securities.⁶⁶ FINRA stated that, in light of this mandate, the collection, consolidation and dissemination of fundamental security information is not a novel role for a registered securities association, and FINRA routinely provides other types of basic security information to the marketplace to, among other things, facilitate the clearing and settlement of securities and improve transparency.⁶⁷ FINRA stated that it provided a

⁶³ See Response Letter, at 10.

⁶⁴ See id.

⁶⁵ See id.

⁶⁶ See id. at 9. See also Section 15A(b)(6) of the Act, 15 U.S.C. 78o-3(b)(6).

⁶⁷ See Response Letter, at 9-10. For example, FINRA makes available to the public all transaction data in corporate bonds through TRACE. See FINRA's TRACE Overview, available at https://www.finra.org/sites/default/files/TRACE_Overview.pdf. FINRA also makes details about corporate and agency debt securities available to FINRA members and provides a tool to the public that enables them to analyze and compare the costs of owning mutual funds. See TRACE OTC Corporate Bonds and Agency Debt User Guide, available at: <https://www.finra.org/sites/default/files/TRAQs-CA-user-guide-v4.7.pdf.pdf>; FINRA Fund Analyzer, available at: https://tools.finra.org/fund_analyzer/.

detailed analysis of the proposal’s anticipated costs and benefits in its filing,⁶⁸ and stated that the proposed new issue reference data service was modeled as a “regulatory utility.”⁶⁹ FINRA stated that for the foregoing reasons, it believes that the establishment of a corporate bond new issue reference data service fits squarely within the scope of FINRA’s affirmative regulatory authority under the Act.⁷⁰

While FINRA acknowledged that the proposed data service may create a potential single point of failure, it stated it continues to believe any concerns about the risks of consolidation do not outweigh the benefits of the data service, and that, as previously discussed, vendors are likely to continue collecting corporate bond new issue reference data.⁷¹ In response to comments concerning the risk of consolidating the proposed corporate bond new issue reference data with FINRA and the timeliness and accuracy of current TRACE data,⁷² FINRA stated that there is key

⁶⁸ See Response Letter, at 10. See also Notice, at 13981-83 (FINRA included an “Economic Impact Assessment” in its proposal, which, among other things, described the current dissemination process of new issue reference data in the corporate bond market, pricing of the proposed data service, benefits of the proposal, costs and negative impacts of the proposal, the anticipated effect of the proposal on competition among market participants and efficiency in the market, and alternative approaches considered by FINRA). In response, however, one commenter stated that “[d]eciding to excise the fee analysis, in the face of overwhelming negative commentary, belies FINRA’s claim to have provided a ‘detailed analysis of the Proposal’s anticipated costs and benefits.’” See Bloomberg Letter V, at 4. See also Section III.C. *infra*.

⁶⁹ See Response Letter, at 10.

⁷⁰ See *id.*

⁷¹ See *id.* However, one commenter stated that FINRA offers no reason why vendors would continue to fund their own research in addition to paying for FINRA’s information. See Bloomberg Letter V, at 3.

⁷² See *supra* notes 52-54 and accompanying text.

information missing from the analysis on which these commenters rely, and without such information it is difficult for FINRA to provide a meaningful response to the analysis.⁷³ FINRA stated that based on its own review of TRACE and the same vendor's data, FINRA found different results, including a significant number of instances where it received data not yet available from the vendor.⁷⁴ FINRA also stated that it would expect substantially fewer reconciliation differences if the proposal is approved because FINRA believes a number of the differences found in the analysis may have resulted from data fields that are not currently system-validated.⁷⁵ In contrast, FINRA stated that the corporate bond new issue reference data fields would become system-validated under this proposal, as FINRA would employ systemic and operational checks for all of the data fields to determine if any fields are either missing or not conforming to expected format or standards at the time of submission.⁷⁶

⁷³ See Response Letter, at 10-11. Specifically, with respect to the Tabb Study cited by certain commenters, FINRA stated that it is not clear what TRACE data was used for the analysis or which point in time during the trading day was used to compare TRACE data with the vendor's data. In addition, FINRA states that the analysis does not explain which of the two sources (TRACE or the vendor) were deemed accurate (it only references "reconciliation differences") or whether the differences included cases where data was not present yet in either system. See id. In response, one commenter stated that FINRA's response is "puzzling" as the Tabb Study states that it used the "initial release" of FINRA's own "TRACE Corporate and Agency Master file," and stated that neither FINRA nor any other commenter contests that the concern is with the inaccuracy of FINRA's data. See Bloomberg Letter V, at 2.

⁷⁴ See id. at 11.

⁷⁵ See id.

⁷⁶ See id. In response, one commenter stated that FINRA's reliance on unspecified "system-validated" data is not enough to refute the historical evidence of "a high error rate for comparatively simple data." See Bloomberg Letter V, at 3.

C. Fees

Commenters asserted that in order to meet its obligations under Section 15A(b)(5) of the Act,⁷⁷ FINRA must provide more information to justify the fees⁷⁸ it proposed to charge subscribers of the new issue reference data service.⁷⁹ One of these commenters further stated that the data should either be available for free, or at a “truly low cost.”⁸⁰ Another commenter asserted that the \$6,000 per month fee for redistribution could be “a considerable additional expense” for its members.⁸¹

In response to these comments, in Amendment No. 2, FINRA withdrew the proposed subscription fees for receipt of corporate new issue reference data from the proposal.⁸² FINRA stated that, based on questions raised in the comments, FINRA is further evaluating the appropriate fee structure for the proposed data service and will submit a separate filing to establish fees related to the new issue reference data service at a future date and will implement the service after those fees become effective.⁸³

⁷⁷ Section 15A(b)(5) of the Act requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. 15 U.S.C. 78o-3(b)(5).

⁷⁸ See supra note 18.

⁷⁹ 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; Committee Letter, at 1-2; Heritage Letter II at 3. See also Bloomberg Letter III, at 3-4; Bloomberg Letter IV, at 6.

⁸⁰ See Harris Letter, at 7.

⁸¹ See Credit Roundtable Letter, at 1.

⁸² See Amendment No. 2, at 4.

⁸³ See Amendment No. 2, at 4.

A number of commenters believed that removal of fees from the proposal was problematic.⁸⁴ These commenters stated that the proposed fees form a critical part of FINRA’s proposed newly issued bond-reference data service and that the Commission and the public cannot assess whether the benefits of the proposal outweigh the costs and competitive burdens without knowing the fees that FINRA would charge for the service.⁸⁵ In addition, these commenters stated that eliminating the fees from the proposal amounts to procedural maneuvering in order to avoid scrutiny, as any subsequent fee filing submitted by FINRA will be immediately effective upon filing with the Commission.⁸⁶

In response, FINRA stated that it did not withdraw the fees from the current proposal to avoid subjecting the fees to further public comment.⁸⁷ FINRA stated that any new fees would be filed with the Commission in advance of the implementation of the newly issued corporate bond

⁸⁴ See Bloomberg Letter IV, at 6-9; Chamber Letter III at 2-3; Committee Letter II at 2-3; Heritage Letter III, at 2-3; Healthy Markets Letter III at 2; SIFMA Letter III at 3-4; and Bloomberg Letter V, at 4-5.

⁸⁵ See id.

⁸⁶ See id. Some commenters pointed to the Commission’s recent proposed rule change to amend Regulation NMS to rescind a provision that allows a proposed amendment to a national market system plan (“NMS plan”) that establishes or changes a fee or other charge to become effective upon filing, and argued that the concerns voiced by the Commission in that proposal are applicable to FINRA’s current proposal. See Bloomberg Letter IV, at 8; Chamber Letter III at 2; Committee Letter II at 2-3 (citing to Commission, Proposed Rule, “Rescission of Effective-Upon Filing Procedure for NMS Plan Fee Amendments,” 84 FR 54794 (Oct. 11, 2019) (“Proposed Regulation NMS Fee Amendment”)).

⁸⁷ See Response Letter, at 12, n.35. However, one commenter responded that the problem is not that FINRA could entirely avoid subjecting the fees to public comment, but that the fee filing would be immediately effective before Commission scrutiny, and that this “would flip the burden of securing Commission intervention from FINRA to affected market participants.” See Bloomberg Letter V, at 4.

new issue reference data service and would be subject to applicable Commission rule filing requirements under the Act.⁸⁸

D. Requested Modifications and Clarifications to the Proposal

Several 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.⁸⁹ Two commenters requested that FINRA clarify the meaning of the “prior to the first transaction” deadline for reporting reference data to FINRA.⁹⁰

In the Response Letter, FINRA stated that it believes it is important to maintain the proposal’s pre-first transaction reporting requirement and that, on balance, the significant benefits of requiring all data fields to be reported pre-first trade outweigh the additional burdens on underwriters.⁹¹ FINRA stated that the purpose of the pre-first trade requirement is to facilitate the collection and dissemination of all proposed new issue reference data fields before secondary

⁸⁸ See id.

⁸⁹ 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).

⁹⁰ See ICE Data Letter, at 2; ICE Bonds Letter, at 2.

⁹¹ See Response Letter, at 14. FINRA stated that “[b]ased on conversations with underwriters, FINRA understands that underwriters do not anticipate incurring significant costs for reporting under this proposal.” See Notice, at 13982.

trading in a security begins, and recognized supporting comments on this point.⁹² In response to comments requesting clarification on what the term “first transaction” means, FINRA stated that “it means the time of execution of the first transaction of the offering (i.e., the time of execution for the first reported primary transaction in the security), as specified currently in Rule 6760.”⁹³

Several commenters requested FINRA make modifications to and/or provide further clarity regarding certain data fields.⁹⁴ One commenter stated that while it did not disagree with FINRA’s proposed data fields, FINRA should provide information to support its selections of each of the proposed data fields.⁹⁵ In its comment letter, FIMSAC provided supporting rationale for the data fields included in the proposal⁹⁶ and recommended that FINRA combine certain proposed data fields and include six additional data fields.⁹⁷

In response, FINRA stated that it agrees with the FIMSAC’s additional supporting rationale for the data fields and, in Amendment No. 2, FINRA incorporated this rationale into its

⁹² See Response Letter, at 14 (citing to ICE Bonds Letter, at 2; and ICE Data Letter).

⁹³ See Response Letter, at 14. FINRA stated that it believes this position is consistent with the recommendation from ICE Data to provide clarification for the term “first transaction” consistent with MSRB Rule G-34. See Response Letter at 14, n.45 (citing to ICE Data Letter, at 2).

⁹⁴ See Credit Roundtable Letter, at 1; ICE Data Letter, at 2-3; SIFMA Letter, at 3; FIMSAC Letter, at 14; SIFMA Letter II, at 2; SIFMA Letter III, at 2-3.

⁹⁵ See Healthy Markets Letter, at 6; Healthy Markets Letter III, at 2.

⁹⁶ See FIMSAC Letter at 2-3 and Schedule A.

⁹⁷ See FIMSAC Letter, at 7-8, 10, 12-13. This commenter proposed combining the Maturity and Perpetual Maturity indicators into one existing field (Maturity Date) and the 144A Eligible and Regulation S indicators into one new field (Series). In addition, this commenter recommended requiring the following additional data fields: First Conversion Date; First Conversion Ratio; Spread; Reference Rate; Floor; and Underlying.

filing.⁹⁸ In addition, in Amendment No. 2, FINRA added the six additional data fields suggested by the FIMSAC.⁹⁹ FINRA stated that it agrees that these six new fields are useful and appropriate to include in the proposal as they are important for settlement and valuation of floating rate notes and convertible bonds.¹⁰⁰ FINRA further stated that it believes the six new fields would not materially increase the costs of the proposal on underwriters.¹⁰¹ In addition, in response to comments requesting clarification of certain data fields, Amendment No. 2 included additional detail relating to certain data fields.¹⁰² In particular, FINRA stated that it (i) provided additional guidance to clarify that the ratings data field does not require reporting specific ratings, but rather whether the security is Investment Grade or Non-Investment Grade, as those terms are defined in Rule 6710; and (ii) clarified the information to be reported for the security type, first coupon period type, minimum increment, and minimum piece/denomination data

⁹⁸ See Response Letter, at 12; Amendment No. 2, at 5 and Exhibit 3.

⁹⁹ See Amendment No. 2, at 5 and Exhibit 3. See also Response Letter, at 13.

¹⁰⁰ See Amendment No. 2, at 5 and Exhibit 3; Response Letter, at 13. FINRA stated that it also agrees with FIMSAC's recommendation to combine the Maturity and Perpetual Maturity indicators into one existing field (Maturity Date) and marked the amended Exhibit 3 to reflect that the maturity and perpetual maturity indicator fields will be tied together as combined fields for purposes of reporting the information, although they remain noted in Exhibit 3 as separate data fields to reflect that FINRA included the perpetual maturity indicator field based on its industry outreach. See Amendment No. 2, at 5, n.9, and Exhibit 3; Response Letter, at 13, n.41. With respect to FIMSAC's recommendation to combine the 144A Eligible and Regulation S indicator fields into a single "Series" field, FINRA stated that it believes it will be easier operationally to maintain the separate fields to limit potential confusion about other security offering types or issuances that may meet more than one offering type. See id.

¹⁰¹ See Response Letter, at 13.

¹⁰² See Amendment No. 2, at 5 and Exhibit 3; Response Letter, at 12-13.

fields.¹⁰³ FINRA further stated that it recognizes that commenters have requested further clarification of several data fields,¹⁰⁴ and that FINRA believes such requests can be addressed with guidance provided in the customary course of new rule implementation, and FINRA will continue to engage with market participants as required to provide such guidance.¹⁰⁵

One commenter requested FINRA clarify the process for underwriters to correct erroneously reported reference data.¹⁰⁶ Two commenters made technical suggestions regarding the methods for supplying and redistributing the required data.¹⁰⁷

In its Response Letter, FINRA stated that if the proposal is approved, FINRA will continue to engage with market participants on the appropriate business requirements for the reporting process.¹⁰⁸ In addition, FINRA stated that it intends to implement functionality to allow for underwriters to correct previously submitted data to FINRA for a significant period after receiving the initial Rule 6760 submission.¹⁰⁹ FINRA also stated that it may take a phased approach to implementation to promote compliance and data accuracy.¹¹⁰

¹⁰³ See Amendment No. 2, at 5, n.10, and Exhibit 3; Response Letter, at 12-13, n.39.

¹⁰⁴ See, e.g., SIFMA Letter III, at 2-3.

¹⁰⁵ See Response Letter, at 12-13.

¹⁰⁶ See IHS Markit Letter, at 2-3.

¹⁰⁷ See SIFMA Letter, at 2; ICE Data Letter, at 3; SIFMA Letter III, at 2.

¹⁰⁸ See Response Letter, at 14.

¹⁰⁹ See id. at 14-15.

¹¹⁰ See id. at 15.

IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the comment letters, and the Response Letter, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act, which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, 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 a national market system, and, in general, to protect investors and the public interest;¹¹² and Section 15A(b)(9) of the Act, which requires that FINRA rules not impose

¹¹¹ In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). The Commission addresses comments about economic effects of the proposed rule change on efficiency and competition in Sections IV.A.1, IV.B. and IV.C. below. The Commission does not believe that FINRA's proposal implicates capital formation in a notable way. However, to the extent capital formation is implicated, the Commission believes that the proposal would promote capital formation and, as discussed in more detail below with respect to the proposal's impact on efficiency and competition, FINRA's proposal could promote improved liquidity and price discovery in the secondary market by enabling more market participant participation in the secondary market on the first day a bond trades. As such, an investor may be more likely to participate in primary bond offerings if they are confident that they can resell the bond in the secondary market at an efficient price. If more investors are more likely to participate in primary bond offerings, corporations would have a broader investor base for raising capital in the corporate bond market.

¹¹² 15 U.S.C. 78o-3(b)(6).

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹¹³

A. Justification for the Proposal

Several commenters argued that FINRA has not provided a sufficient justification under the Act for the proposal, and that, in particular, there is no market structure problem that requires regulatory intervention.¹¹⁴ The Commission disagrees; the record provides ample evidence supporting the proposed new issue reference database. In particular, as discussed below, the record demonstrates two things clearly: (1) many market participants, including investors, trading platforms, and data vendors, do not have accurate, complete and timely access to corporate bond new issue reference data on the day a new issue begins trading in the secondary market; and (2) the proposed data elements to be included in the FINRA database could provide

¹¹³ 15 U.S.C. 78o-3(b)(9).

¹¹⁴ See supra notes 27-31 and accompanying text. Commenters also argued that FINRA provided no evidence the proposal would reduce broken trade errors or reduce costs or duplicated efforts. See supra notes 29 and 31. In contrast, other commenters and market participants stated that FINRA’s proposed data service would reduce costs, eliminate duplicated efforts, and reduce trading errors, as market participants would no longer have to source data from multiple vendors or enter data manually. See supra note 25; infra notes 122-124. See also Harris Letter at 2 (noting the current process for underwriters to provide data is “tedious, prone to transcription errors, and must be repeated for every bond in which the reference data vendor or the end user is interested”); Charles River Letter at 2 (stating that “the creation of the data service will enhance operational efficiencies for buy-side investors by ensuring reliable, consistent and timely access to data, necessary for the seamless trading and settlement of new issue corporate data” and “the proposed data service will help buy-side investors better manage their risk,” including “the reduced need for manual entries and overrides.”) As further discussed below, the Commission believes the proposal would benefit the corporate bond market by helping to ensure all market participants have access to consistent, timely and accurate reference data regarding newly issued corporate bonds, which the Commission believes, among other things, may result in a reduction in costs for participants in the market and potentially a reduction in trading errors. See infra notes 125-128 and accompanying text.

such access, as they encompass data that allow for the identification, valuation, and settlement of newly issued corporate bonds.

As discussed further below, providing all market participants with basic information concerning a newly issued bond that market participants need in order to identify and value corporate bonds and settle corporate bond transactions should improve the corporate bond market's overall function by enabling a broader array of market participants and service providers to engage in this market on the day a newly issued corporate bond begins trading in the secondary market. As a result, the Commission finds that FINRA's proposal is consistent with Section 15A(b)(6) of the Act. The proposed corporate bond new issue reference database is designed to 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, corporate bond new issuances, and is also designed to remove impediments to and perfect the mechanism of a free and open market in such securities.

1. The Proposal is Reasonably Designed to Address Gaps in the Availability of Accurate, Complete and Timely Access to Corporate Bond New Issue Reference Data

The Commission believes that the record supports the conclusion that today many market participants, including investors, trading platforms, and data vendors, do not have accurate, complete and timely access to corporate bond new issue reference data to identify, value, and settle a bond at the time secondary market trading commences in a newly issued corporate bond. Several commenters specifically identified problems that currently exist with the availability, accuracy, and distribution of new issue corporate bond reference data, and believed that the

proposal would address these problems.¹¹⁵ For example, one commenter stated that “[t]he information asymmetry which exists today adversely impacts the liquidity in the secondary markets for the first few hours or days of trading when significant trading occurs” and that “[t]he timely dissemination of complete reference data will allow retail investors to have more timely access to newly issued bonds for purchase and/or price discovery, eliminating unnecessary information asymmetry.”¹¹⁶

In addition, as discussed at the October 29, 2018 FIMSAC meeting, current gaps exist in the market for fixed income reference data¹¹⁷ and thus the FIMSAC unanimously adopted the Recommendation on which the proposal is based.¹¹⁸ Specifically, currently in the U.S. corporate

¹¹⁵ See, e.g., ICE Bonds Letter, at 2 (“Without a level playing field for new issue reference data, these retail investors and the broker dealers servicing them are disadvantaged by not being able to participate in the secondary markets during the critical time after a security is available to trade.”); Charles River Letter, at 2 (“Currently, phased reporting of data elements is permitted, causing material inefficiencies in the intake and consumption of data. Eliminating the phased reporting approach will lead to the availability of more complete and consistent reference data.”) See also supra notes 22-25 and accompanying text.

¹¹⁶ See ICE Bonds Letter, at 2.

¹¹⁷ See Recommendation, at 1-2. See also Transcript from the October 29, 2018 Meeting of the FIMSAC (“FIMSAC Transcript”), Comments from Richard McVey, MarketAxess, at 0064-64 (stating that, following research and deliberations over the past quarter, “we identified that there are indeed gaps in corporate bond fixed income reference data, both in the timing of when that data is available with different reference data providers, as well as sometimes the accuracy” and that “we consider both of those to be significant issues.”)

¹¹⁸ FIMSAC comprises experts and interested persons representing a broad array of fixed income market perspectives, including investors, issuers, dealers, trading venues, quantitative trading firms, SROs, service providers, and market observers. See supra note 11. In addition, the Recommendation states that input was considered from reference data providers, underwriters, the Municipal Securities Rulemaking Board (“MSRB”), and FINRA. See Recommendation, at 1.

bond market, neither underwriters nor issuers are required to submit a full set of new issue reference data sufficient to identify, value, and settle a bond¹¹⁹ to a central depository for public dissemination,¹²⁰ and without a full set of reference data fields, trading platforms are unable to list a bond for trading.¹²¹ In addition, currently no universal automated means exists for underwriters or issuers to distribute new issue data to corporate bond market participants.¹²²

¹¹⁹ It is the Commission’s understanding that such reference data include issuer and issue identifiers and details, such as maturity, coupon, par value, payment frequency, amortization details, call schedule and convertibility, among other terms and conditions. See Recommendation, at 1.

¹²⁰ See id. at 2. Under current FINRA Rule 6760, members that are underwriters of an initial offering of a TRACE-Eligible Security are required to submit certain specified information to FINRA prior to the execution of the first transaction of the offering to facilitate trade reporting and dissemination of transactions. See FINRA Rule 6760. The information required by the rule generally is limited to the fields needed to set up a bond on TRACE for trade reporting purposes, and does not include the more detailed data required to price and settle a bond trade. See Notice, at 13978. FINRA disseminates some of this new issue information as part of the Corporate Security Daily List; however, electronic trading platforms generally require more information to make new issues available to trade. See id.

¹²¹ See FIMSAC Letter, at 1. The FIMSAC noted that the research of the Subcommittee indicated that “the immediate trading of newly issued bonds is hampered by the lack of broad distribution of the required data fields...” and that “[i]n practice, each reference data provider is able to collect and disseminate new issue reference data at different speeds that vary by a few hours to several days.” See id.

¹²² See Recommendation, at 2. See also FIMSAC Transcript, Comments from Spencer Gallagher, ICE Data Services, at 0069-72 (“Distribution [of new issue reference data] is not consistent in both completeness of the content or timeliness of the delivery. . . . All said, none of the avenues [for securing new issue reference data], underwriter e-mails, new issue publishing announcement or issuer websites provide a comprehensive coverage in a timely manner. We piece all of this together as available to us. On the few cases where we see no information, we will see the data on Edgar, usually via prospectus. But that is well after the pricing event and clearly not sufficient for pre-trade and trade workflows.”)

Furthermore, there is currently no requirement that underwriters or issuers provide information about a new issue to all reference data providers at the same time.¹²³

Current gaps in the availability of new issue reference data increase transaction costs and impede competition in the corporate bond markets.¹²⁴ As a result of these market structure issues, in the Commission’s view, having a single source of new issue reference data would benefit the corporate bond market.¹²⁵ Among other things, reliable and timely reference data is

¹²³ See FIMSAC Letter, at 2. See also FIMSAC Transcript, Comments from Spencer Gallagher, ICE Data Services, at 0068 (“[T]here is one area that no investment or no level of ingenuity can solve and that is equal access to new issue reference data at or prior to first trade execution. . . . [A]ccess and timeliness to fixed income reference data has a significant impact on the efficiency and inter-operability of the corporate bond markets.”); Comments from Bob LoBue, J.P. Morgan, at 0081 (“We do undertake some communications, and various dealers do it differently. I can comment on JP Morgan. We tend to not disseminate data to third party vendors off the corporate platform. I think the point of inaccuracies is the reason for that. So, we tend to use Bloomberg as our let’s ensure it is accurate, and then people can source that information from that venue.”)

¹²⁴ See Recommendation at 2. See also FIMSAC Transcript, Comments from Frederic Demesy, Refinitiv, at 0078 (“[A]t the moment, we see that there are some market anomalies where some of the vendors have access to information much earlier than other vendors. And that creates basically competitive advantage on certain platforms, which is in my view not ideal for having a transparent market. It also incurs higher costs for our customers. The first one would be on vendors. Market participants will have to source the data from multiple vendors to ensure that all the information is available, so [there are] duplicating costs. There is also an operational cost related in terms of data quality. So, when you onboard multiple feeds, ICE Data Service and Refinitiv data is not automatically in the same format. So, the customer has to develop operational efficiency tools to standardize the data on their platform. And third is when the market participant gets things wrong, it can have a huge impact, missing trade opportunities but also reputational risks that would be the worst.”); Comments from Bob LoBue, J.P. Morgan, at 0080-81 (“And I think the Refinitiv team and the ICE team intimating a competitive advantage for Bloomberg, there is no question that we do undertake getting our securities set up on the Bloomberg trading platform because that is what the industry predominately uses to book our tickets.”)

¹²⁵ See Recommendation at 2.

necessary to support the efficient trading and settlement of corporate bonds;¹²⁶ access to accurate and timely reference data is of growing importance as fixed income market participants increasingly rely on electronic trading platforms;¹²⁷ and in order to support the trading of newly issued bonds on electronic platforms, it is necessary that all platform participants price and trade bonds based on consistent and accurate information.¹²⁸

¹²⁶ See Recommendation, at 1. See also FIMSAC Transcript, Comments from Alex Sedgwick, T. Rowe Price, at 0084-85 (“Electronic market-makers ultimately need this information to provide accurate pricing and accurate valuation for the prices that they are pushing out to the market. If this information is not available, that ultimately means that there are liquidity providers that may not be able to provide liquidity to us when those new issues are free to trade.”); (So, when . . . we are trading on the desk, we need to be able to measure our execution against benchmarks. If it takes more than a couple of hours or even more than a day for those benchmarks to become available, that is an area where we may not be able to do accurate trade cost analysis. And that is a very important sort of supporting piece of information as we think about best execution on the trading desk.”)

¹²⁷ See Recommendation, at 1. See also FIMSAC Transcript, Comments from Frederic Demesy, Refinitiv, at 0077-78 (“[W]e see a transformation in the bond markets where in the past market participants were expecting the data to be available at the end of day or the timeliness was not as important as it is now. Now, a market participant wants to have the information when the bond prices to set up their platforms to be able to trade. They want to have updates intraday, and that is a very big difference from what happened maybe two, three or five years ago where end of day updates was enough for them to operate. Now, the market participants want information intraday. And that forces market vendors . . . to rethink the way we distribute the reference data. And obviously the more the bond trades electronically, the more market participants would want to have this information on time.”); Comments from Alex Sedgwick, T. Rowe Price, at 0084 (“Historically, we have noticed cases where a new issue does take time to get set up on some of our electronic trading platforms, and that means that we can't necessarily go and use those electronic trading platforms right away. So, we have to trade them via voice or another venue.”)

¹²⁸ See Recommendation, at 1. See also FIMSAC Transcript, Comments from Alex Sedgwick, T. Rowe Price, at 0085 (“I think from our perspective, we are supportive of the proposal. Our focus is primarily on the automated delivery of accurate and timely data and ultimately minimizing secondary dependencies on the desk.”)

FINRA’s proposal was also informed by FINRA’s outreach to a diverse set of market participants—including several data providers, underwriters and trading platforms—and that responses from these market participants “demonstrated a regulatory need for consistent, uniform, and timely corporate bond new issue reference data.”¹²⁹ Based on this outreach, FINRA observed that various market segments may be lacking accurate, complete and timely reference data, including smaller traders that may not afford multiple data vendor subscriptions and electronic trading platforms.¹³⁰ The Commission believes that the results of FINRA’s outreach give credence to FIMSAC participants’ complaints and commenters’ statements concerning the lack of timely reference data and the resultant impact on their participation in the market on the first day a new issue trades in the secondary market.

¹²⁹ See Response Letter, at 4. See also Notice, at 13980-81. The concerns of market participants, including data vendors, trading venues, and investors, regarding the lack of timely reference data are described in detail above. See supra Section III.A. and this Section IV.A.1.

¹³⁰ See Response Letter, at 4. See also Notice, at 13980. In response to one commenter who presented data concerning ATS trading in new issues purporting to suggest that there is no current access problem relating to new issue bond reference data, FINRA reviewed TRACE data concerning ATSS and conducted its own analysis, which FINRA stated suggests that some ATSS may not be receiving reference data in a timely fashion to allow them to begin trading a newly issued corporate bond. See Response Letter, at 6-7. See also supra note 30. The same commenter disputed FINRA’s analysis as flawed. See supra note 49. In the Commission’s view, any analysis of electronic trading in corporate new issues by ATSS is necessarily limited, as there are a number of electronic bond trading platforms that are not registered as ATSS and there are a number of other types of market participants, including investors, intermediaries and data vendors that may not have timely access to newly issued bond reference data to identify, value and settle bonds on the first day of trading in the secondary market. Therefore, the analyses provided by the commenter and FINRA, which focus on ATS trading in new issues, is not reflective of the market for newly issued corporate bonds as a whole.

In sum, the record reflects that a gap currently exists in the market of newly issued corporate bond reference data – i.e., the lack of broadly available and accessible new issue reference data on the first day of secondary market trading. And this gap can impede the efficiency and competition in the current marketplace. FINRA’s proposal is reasonably designed to address this regulatory gap in the current market to the benefit of the marketplace.

The proposal would require that all data elements for new issues in corporate debt securities be reported prior to the first transaction in the security.¹³¹ FINRA stated this approach—to require uniform pre-first trade reporting—would allow FINRA to collect and make all of the data available immediately to market participants, resulting in a more consistent, timely and complete data set that will support more efficient pricing, trading and settlement of bonds.¹³² As discussed further below, the data required to be reported will allow market participants to identify, value and settle corporate bond transactions.¹³³ For this reason, it is important for all such data fields to be reported to FINRA prior to the first transaction in the security.

Furthermore, the Commission recognizes that there may be an incremental burden on

¹³¹ Currently, for information reported under Rule 6760 for trade reporting purposes, the rule allows phased reporting in some cases. Specifically, for an offering of a security that is priced and begins trading on the same business day between 9:30 a.m. and 4:00 p.m. Eastern Time, Rule 6760 requires certain information to be reported before the first trade in the security and remaining information within 15 minutes of the time of the first trade. Otherwise, the current rule requires all information to be reported before the first trade in the security. See Rule 6760.

¹³² See Notice, at 13979. FINRA noted that the Recommendation stated that managing underwriters should be required to report the data elements to FINRA no later than reporting such data elements to any third party not involved in the offering, including reference data vendors. See Recommendation, at 3.

¹³³ See *infra* Section IV.A.2.

underwriters; however, the Commission believes this burden will be mitigated both by the existence of current reporting infrastructures to FINRA and the fact that the data elements to be reported are likely already in the possession of underwriters, given the use of this information in the newly issued bond's primary offering.¹³⁴

FINRA has put forth a reasonable basis for requiring pre-first trade reporting of the reference data (i.e., to facilitate the collection and dissemination of all proposed new issue reference data fields before secondary trading begins), and we believe that FINRA's proposed reporting requirements and dissemination protocol of such data are reasonably designed to address a gap in the current market by facilitating access to timely and accurate new issue corporate bond reference data, consistent with Section 15A(b)(6) of the Act. The reporting of the reference data prior to the first transaction in the security and FINRA's dissemination of such information will enable FINRA to provide all market participants with the ability to have the information concerning a newly issued corporate bond in order to participate in the secondary market effectively when the bond begins trading, promoting market efficiency and fair competition among all market participants.

Currently, the inability of market participants that lack reference data to trade newly issued corporate bonds reduces the breadth of participation in the secondary market, thereby impacting liquidity, market efficiency and price competition.¹³⁵ FINRA's proposal is designed to provide all investors with timely access to the same information to allow for the identification,

¹³⁴ See infra Section IV.B.

¹³⁵ See e.g., Recommendation at 2 (noting that "common access to timely and accurate corporate bond reference data would increase the efficiency and interoperability of the corporate bond market and promote fair competition among all market participants.")

valuation, and settlement of newly issued corporate bonds, promoting equitable principles of trade and protecting investors from the negative impacts of information asymmetry. As such, the Commission believes that the availability of the required newly issued corporate bond reference data to all market participants at the same time will in turn support the fair and efficient trading, valuation, and settlement of new issue corporate bonds by all market participants. For these reasons, the Commission believes that FINRA’s proposal is consistent with Section 15A(b)(6) of the Act as it promotes just and equitable principles of trade and fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitates transactions in newly issued corporate bonds.

In addition, and as noted by FINRA, the FIMSAC, and commenters, in considering the need for improved corporate new issue reference data, it is informative to look to the municipal bond market, which currently has a centralized reference data service.¹³⁶ Specifically, pursuant to MSRB Rule G-34, underwriters must submit new issue information for municipal bonds to the New Issue Information Dissemination Services (“NIIDS”), which is operated by the Depository Trust and Clearing Corporation (“DTCC”). The information required to be reported includes all data elements that must be populated for DTCC to mark the issue as “trade eligible.”¹³⁷ NIIDS

¹³⁶ See Notice, at 13982-83; Recommendation, at 1-2; ICE Data Letter, at 2 (“The current system for submitting and disseminating new issue information for municipal bonds established under MSRB Rule G-34 provides a successful model and we support the Proposal’s intent to similarly collect and disseminate data for corporate bond new issues.”).

¹³⁷ The FIMSAC notes that this information includes ten data elements required to set up an issue in the NIIDS, as well as up to 70 additional data elements. See Recommendation, at 1.

then makes this new issue data immediately available to reference data providers that provide or sell such information to market participants.¹³⁸ The FIMSAC found that the municipal bond market has largely avoided reference data access problems due to this structure.¹³⁹

Some commenters argued that the proposal is materially unlike the MSRB's NIIDS, which should not be relied on by FINRA as precedent, because the circumstances surrounding the development and the implementation of the NIIDS were very different than those surrounding FINRA's proposal.¹⁴⁰ But regardless of the development and implementation, the substance of FINRA's proposal is similar to the MSRB's NIIDS. At the time the MSRB proposed the rule requiring underwriters to report certain new issue reference data to NIIDS, it stated that such requirement was "intended to ensure that the information reaches information vendors and is further re-disseminated for use in automated trade processing systems by the time that trade executions begin in a new issue."¹⁴¹ The MSRB articulated many of the same

¹³⁸ See MSRB Rule G-34(a)(ii)(C).

¹³⁹ See Recommendation, at 2. See also FIMSAC Transcript, Comments from Spencer Gallagher, ICE Data Services, at 0070-74 ("Conversely, in the muni market, we do not have this problem. We can clearly state when a reference data is available on municipal new issues. The award date and time is established and the data is made available prior to the first execution. For municipals, new issue reference data dissemination is mandated This was a positive transformation in the way municipal content was made available. We re-tooled our products to make sure our clients had increased access to data to fit the more efficient new issue dissemination and trade reporting requirements. This had a significant impact on the muni market as it could now depend [sic] sufficient content to execute pre-trade and trade activities without a scramble to secure the required new issue reference data.")

¹⁴⁰ See Bloomberg Letter, at 14-15; Chamber Letter II, at 3-4.

¹⁴¹ See Securities Exchange Act Release No. 57131 (January 11, 2008), 73 FR 3295 (January 17, 2008) (MSRB-2007-08) ("MSRB NIIDS Proposal"), at 3297.

concerns noted by FINRA's proposal and raised by FIMSAC and other market participants, recognizing that access to necessary securities information depended not only on links with information vendors, but also on whether or not information vendors have information concerning the new issue.¹⁴² In particular, concern was expressed that not all information vendors had the necessary reference data at the time of the first trade because obtaining such information often required the voluntary cooperation of underwriters.¹⁴³

These very same concerns are at the core of FINRA's proposal and FIMSAC's recommendation with respect to the corporate bond market. The Commission therefore finds the impact of NIIDS informative for purposes of FINRA's proposal, and as market participants have noted, the NIIDS has had a positive impact on the market for new issue municipal bonds.¹⁴⁴ As a result, taking into account the positive experience of market participants with the NIIDS, the Commission is further convinced that FINRA's proposal, which is similar to the NIIDS, is reasonably designed to achieve the purposes of Section 15A(b)(6) of the Act, including to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market for new issue corporate bonds.

2. The Proposed Data Elements Allow for the Identification, Valuation, and Settlement of Newly Issued Corporate Bonds

The proposed data elements to be included in the database are appropriate and will allow for market participants to be able to participate in the secondary market of a newly issued

¹⁴² See MSRB NIIDS Proposal, supra note 141.

¹⁴³ See id. at 3296.

¹⁴⁴ See supra notes 136 and 139 and accompanying text.

corporate bond on the first day that bond trades. FINRA’s proposal would require all underwriters to report to FINRA 32 new data elements for all new issues in Corporate Debt Securities. The required data fields proposed to be reported and disseminated, together with data fields already specified in the current rule, reflect all but one of the fields that were described in the Recommendation and in the supplemental FIMSAC Letter,¹⁴⁵ and include additional data fields identified by FINRA during its supplemental industry outreach.¹⁴⁶ As noted by FINRA, several fields specified in the proposed rule change are already required to be reported or are reported voluntarily on the FINRA TRACE New Issue Form.¹⁴⁷ In addition to the FIMSAC,¹⁴⁸ a number of commenters agreed with the required data fields put forth by FINRA.¹⁴⁹ FINRA set

¹⁴⁵ See Recommendation at Schedule A; FIMSAC Letter at Schedule A. The one field from the Recommendation that FINRA did not include is “Calculation Types (CALT).” FINRA stated that it understands from industry outreach that this field leverages calculation methodology that is specific to one data vendor’s protocols and may not be readily available to all underwriters that would be required to report information to FINRA under Rule 6760, or to consumers of the data. See Notice, at 13978, n.8.

¹⁴⁶ FINRA stated these additional fields were indicated by market participants as important in liquidity and risk assessment. See Notice, at 13978-79. See also Amendment No. 2, Exhibit 3.

¹⁴⁷ See Notice, at 13978. The FINRA TRACE New Issue Form is used by firms to set up securities pursuant to firms’ existing obligations either under Rule 6760 or 6730 (Transaction Reporting). It allows for the submission of data fields required by these rules as well as additional data fields that underwriters often report voluntarily. As part of the proposal, FINRA would codify in Rule 6760 the specific fields that have been deemed necessary under current Rule 6760(b) and therefore are mandatory for successful submission of the TRACE New Issue Form. See Notice, at 13978, n.9.

¹⁴⁸ See supra note 145 and accompanying text.

¹⁴⁹ See, e.g., Harris Letter, at 6 (“The fields on the FINRA list are sufficient to value most bonds. . . . I believe that FINRA chose the fields wisely.”); ICE Data Letter, at 2 (“ICE Data Services believes the scope of the Proposal is appropriate and we support the inclusion of the 30 data fields enumerated in the Proposal’s Exhibit 3.”).

forth a detailed description of each new required data field¹⁵⁰ and the rationale for including the field, as follows:¹⁵¹

- ISIN Number - needed to uniquely identify securities that are traded and settled internationally outside of North America.
- Currency – necessary for settlement purposes in order to determine the currency of the principal, interest, or premium that will be paid or received at the time of distribution or settlement of a trade.
- Issue Date/First Settlement Date – needed for settlement purposes; it is required in order to populate the first settlement date of the bond; and when trading new issues, this field is needed in order to settle the bond trade between counterparties.

¹⁵⁰ FINRA Rule 6760 currently requires underwriters to report to FINRA the following information: Issuer; Coupon; CUSIP Number; Maturity; 144A Eligibility Indicator; the time that a new issue is priced and, if different, the time that the first transaction in the offering is executed; a brief description of the issue; and such other information as FINRA deems necessary to properly implement the reporting and dissemination of a TRACE-Eligible Security. FINRA’s proposal will require that these data elements be reported to FINRA prior to the first transaction in the security in all instances.

¹⁵¹ See Amendment No. 2, Exhibit 3. Similar rationale for each data field was also put forth by the FIMSAC. See FIMSAC Letter, at Schedule A. In addition, in Amendment No. 2, FINRA set forth its rationale for including certain data fields currently required to be reported under Rule 6760, as follows: Issuer - necessary for settlement and valuation purposes; the investor needs to know the issuing entity of the bond; Coupon – needed for settlement and valuation purposes; the coupon rate is needed for accrual/interest/cash flow calculations; CUSIP Number – needed to uniquely identify securities that trade, clear, and settle in North America, particularly in the United States; Maturity - necessary for settlement and valuation purposes; this field is necessary in order to understand when the bond is due to pay back its principal at par; this field is used to back populate accruals and cash flows; and 144A Eligible Indicator - necessary for settlement purposes; this field is needed to distinguish 144A securities for QIB eligible investors. See Amendment No. 2, Exhibit 3. See also FIMSAC Letter, at Schedule A.

- Interest Accrual Date - necessary for settlement and valuation purposes; this field is needed in order to start the cash flow period of the coupon.
- Day Count Description - necessary for settlement and valuation purposes; this field is needed to calculate the purchase accrued interest and coupon of the security.
- Coupon Frequency - necessary for settlement and valuation purposes; this field is needed to determine how often the coupon payment is made within the year and to calculate the purchase accrued interest and coupon payments.
- First Coupon Payment Date - necessary for settlement and valuation purposes; this field is needed to determine whether the coupon will have a short or long stub on its first coupon payment.
- Regulation S Indicator - this field is necessary for settlement purposes; this field is needed to distinguish Regulation S securities for non-U.S. entities.
- Security Type –needed to identify the type of security being traded and its terms/features.
- Bond Type - necessary for valuation purposes; this field is needed as the bond classification dictates the payout order in the event of an issuer default; this field determines the liquidation preference which specifically affects the valuation of the security.
- First Coupon Period Type - necessary for settlement and valuation purposes; this field will denote whether the coupon will have a short or long stub on its first coupon payment depending on the security's issue date.

- Convertible Indicator - necessary for valuation purposes; this indicator is necessary to understand if the bond is convertible and to allow set up with the underlying equity and conversion price/conversion ratio.
- First Conversion Date - necessary for valuation purposes as it is needed to determine when the bond may be converted into stock.
- First Conversion Ratio - necessary for valuation purposes as it is needed to determine the number of shares into which each convertible bond can be converted.
- Call Indicator - necessary for valuation purposes; this field is needed in order to know if the bond has call feature(s); this is needed when the security is created and will also have an effect on its valuation.
- First Call Date - necessary for valuation purposes; this field is needed in order to know the first call date of the security and will have an effect on bond valuation.
- Put Indicator - necessary for valuation purposes; this field is needed in order to know if the bond has puttable feature(s); this is needed when the security is created and will also have an effect on its valuation.
- First Put Date - necessary for valuation purposes; this field is needed in order to know the first put date of the security and will have an effect on bond valuation.
- Minimum Increment - necessary for settlement purposes; needed in order to understand the minimum incremental amount of bonds that an entity can buy and settle at the depository.

- Minimum Piece/Denomination - necessary for settlement purposes; needed in order to understand the minimum tradeable amount of bonds that an entity can buy and settle at the depository.
- Spread; Reference Rate & Floor –necessary for settlement and valuation purposes; needed to build a cash flow table for the security which determines the coupon for the period; directly affects the purchase accrued interest and future interest distributions; needed to calculate the purchase and interest accrued.
- Underlying Entity Ticker - necessary for valuation purposes; needed to value convertible bonds.
- Issuance Amount - addresses the size of the deal, which is a data attribute for index inclusion criteria across most every fixed income index; would have influence on ETF, liquidity, etc.
- First Call Price & First Put Price - critical for option adjusted spread (OAS) and average life calculations; represent important fields for most clients (especially retail investors) when they gauge re-investment risk.
- Coupon Type – field denotes potential complexity and predictable cash flow data.
- Rating (TRACE Grade) - important to assess risk; FINRA utilizes ratings to determine TRACE grade (Investment Grade or Non-Investment Grade) which determines dissemination volume caps.
- Perpetual Maturity Indicator - field is used in pre-trade compliance; yield calculations generally use first call on perpetual securities.

- PIK Indicator - field used in pre-trade compliance as it indicates cash flow implications and risk for many investors.

As set forth above, FINRA has explained (and commenters have agreed)¹⁵² that each data field is required to either identify, settle or value a newly issued corporate bond. FIMSAC confirmed FINRA’s rationale for including each data field.¹⁵³ The Commission agrees with FINRA, and believes that because the proposed data fields allow for the identification, valuation and settlement of newly issued corporate bonds, the proposal for collecting and disseminating such data will “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” newly issued corporate bonds, and “remove impediments to and perfect the mechanism of a free and open market” with respect to the market in such securities, consistent with Section 15A(b)(6) of the Act.

B. Burden on Underwriters

As noted above, FINRA’s proposal would require pre-first transaction reporting by all underwriters to FINRA of 40 data elements for all new issues in Corporate Debt Securities, which includes 32 new data elements not currently required. Some commenters raised concerns regarding increased burdens on underwriters due to such reporting requirements, and on small underwriters in particular.¹⁵⁴ FINRA stated that “[b]ased on conversations with underwriters,

¹⁵² See supra notes 148-149.

¹⁵³ See FIMSAC Letter, at 2-3 and Schedule A.

¹⁵⁴ See supra notes 32-33. One commenter presented evidence of the size of underwritten investment grade corporate bonds in 2019, stating that “through October 7, 33 underwriters have each underwritten more than \$1 billion (notional year to date, while 59

FINRA understands that underwriters do not anticipate incurring significant costs for reporting under this proposal.”¹⁵⁵ In addition, FINRA acknowledged the concern that underwriters that underwrite fewer deals may be disproportionately burdened if there are fixed costs associated with amending an underwriter’s reporting system to meet the additional requirements of the proposal, but stated that any such additional burden “may be alleviated because reporting to FINRA would reduce or eliminate the need for underwriters to report to other parties, or by the fact that underwriters can leverage investments already made in the existing reporting system necessary under Rule 6760.”¹⁵⁶ Furthermore, the FIMSAC stated that they heard from underwriters that it would be relatively easy for them to report the new issue reference data to FINRA given the current established reporting mechanisms to TRACE.¹⁵⁷

other underwriters also have priced issues during 2019 – overwhelmingly for small issues of less than \$25 million” and stated that FINRA has failed to address the differential impact of the proposed new compliance burden on different sized underwriters. See Bloomberg Letter IV, at 5, n.10. Other commenters supported the proposal’s pre-first transaction reporting requirement. See ICE Bonds Letter, at 2 (“In order to avoid disadvantaging ATS subscribers and their clients, we believe it is critical for the rule to establish conditions that allow ATS providers to access the data required to trade and settle a transaction in a new issue corporate bond prior to the start of secondary market trading”). See also ICE Data Letter, at 2.

¹⁵⁵ See Notice, at 13982.

¹⁵⁶ See id. See also FIMSAC Transcript, Comments from Spencer Gallagher, ICE Data Services, at 0074 (“Possibly, the centralization will work out in [the underwriters’] benefit as underwriters are distributing through just one pipe instead of the multiple pipes that they do today.”)

¹⁵⁷ See FIMSAC Letter, at 3. See also FIMSAC Transcript, Comments from Bob LoBue, J.P. Morgan, at 0080 (“We have a 15-minute window post-pricing to deliver the pricing information of FINRA for trace eligibility. And we could talk about . . . while we are delivering to FINRA, I think both FINRA and ourselves would say we could probably populate that a little bit deeper.”).

The Commission agrees that any increased burdens on underwriters, including smaller underwriters, would be limited. Underwriters, including small underwriters, are already required to report some information related to new issue bonds to FINRA.¹⁵⁸ That means that all underwriters of Corporate Debt Securities have already developed data reporting mechanisms to FINRA for purposes of transmitting required data concerning these securities. Indeed, the purpose behind FIMSAC's recommendation to have FINRA establish this database, as opposed to another entity, was to minimize any burdens on underwriters by utilizing existing reporting infrastructures.¹⁵⁹ While the proposed rule would require underwriters to report a larger number of data elements allowing for the identification, valuation, and settlement of a bond, the proposal itself merely expands upon an existing reporting requirement in FINRA's rules and requires underwriters to report additional data fields.¹⁶⁰ The Commission recognizes that there may be an incremental burden on underwriters due to reporting additional data fields; however, the Commission believes this burden will be mitigated both by the existence of current reporting infrastructures to FINRA and the fact that the data elements to be reported are likely already in the possession of underwriters, given the need for this information by investors in the newly

¹⁵⁸ See FINRA Rule 6760.

¹⁵⁹ See Recommendation supra note 12.

¹⁶⁰ In response to commenter concerns about underwriters facing potential liability for errors in reporting, the Commission recognizes that underwriters may be subject to antifraud liability. However, the Commission notes that the information to be provided to FINRA under this proposal is a subset of the information underwriters currently provide to investors in the primary offering. For this reason, the Commission believes that the risk of potential additional liability for reporting this subset of information to FINRA is minimized.

issued bond's primary offering. Furthermore, as discussed herein, the Commission believes that the proposal would benefit the corporate bond market by, among other things, reducing costs for participants in the market, and such benefits would outweigh any increased burdens on underwriters due to the proposal.¹⁶¹

C. Competition

A number of commenters raised concerns that the proposal would diminish competition among private sector reference data providers by displacing existing for-profit competition with a regulator-provided service.¹⁶² On the other hand, FINRA, along with a number of other commenters,¹⁶³ stated that the proposal would actually promote competition among data

¹⁶¹ See supra notes 114; 122-128 and accompanying text. Additionally, FINRA stated in its Response Letter that it believes it is important to maintain the proposal's pre-first transaction reporting requirement and that "on balance, the significant benefits of requiring all data fields to be reported pre-first trade outweigh the additional burdens on underwriters." See Response Letter, at 14.

¹⁶² See supra notes 51-54 and accompanying text. These commenters were further concerned that diminished competition would result in a lack of innovation, poor data quality, and a potential single point of failure. See id. See also supra note 71. The Commission notes that FINRA's proposal is designed to provide information that will allow for the identification, valuation, and settlement of corporate bonds broadly to the market before such bonds begin trading in the secondary market. As discussed below, the Commission believes that data vendors will likely continue to compete based on differing value added services related to the required information and also based on additional data fields, data updates, and data quality and that such competition should continue to spur innovation and allay concerns regarding a single point of failure and error rates. Furthermore, FINRA has stated that the required data fields would be system validated fields, meaning that FINRA would employ systemic and operational checks for all of the data fields to determine if any fields are missing or not conforming to expected format or standards at the time of submission, and therefore the instance of reconciliation differences should be reduced. See supra notes 75-76 and accompanying text.

¹⁶³ See supra notes 56-58 and accompanying text.

providers by reducing costs and barriers to entry.¹⁶⁴ The proposal would require underwriters to report a limited set of data that will allow for the identification, valuation and settlement of new issue corporate bonds, leaving data vendors with space to continue competing on a variety of value-added services. Indeed, as noted by one commenter, data vendors currently sell reference data products that provide data in addition to FINRA's proposed required data fields, and these additional data presumably provide value to their customers.¹⁶⁵

We conclude that, as the FIMSAC noted, the limited set of data proposed to be reported and disseminated to allow for the identification, valuation and settlement of new issue corporate bonds would not supplant the demand for a more comprehensive reference database with enhanced data sets that contain additional fields not reported to or disseminated by FINRA.¹⁶⁶ For example, reference data providers could continue to provide the same data as would be

¹⁶⁴ See Response Letter, at 8-9.

¹⁶⁵ See Harris Letter at 4 (noting that such additional data includes ratings and indications of whether an issuer is currently in default, in an agreement to merge, or negotiating such an agreement). One commenter who argued the proposal would diminish competition amongst reference data providers nevertheless stated that market participants currently demand more reference data fields than FINRA is proposing to collect. See Bloomberg Letter, at 13-14. In addition, this commenter noted that since FINRA's proposal was filed, competition in this area has increased. See *supra* note 30.

¹⁶⁶ See FIMSAC Letter, at 3. There are many other data provided by reference data providers concerning a bond issue, such as issuer information (e.g., fundamentals data, capital structure data), specific bond rating, bond trade and selling restrictions, classification data (industry, legal entity, etc.), corporate action data, ESG (Environmental, Social & Governance) data, dividend data, instrument analytics data, and security ownership data. See e.g., IHS Markit Reference Data Bonds Factsheet, available at <https://cdn.ihs.com/www/pdf/Reference-Data-Bonds-factsheet.pdf>; Bloomberg Reference Data Content and Data, available at <https://www.bloomberg.com/professional/product/reference-data/>.

disseminated by FINRA, while offering additional value add-ons with respect to such data, such as additional data concerning the newly issued bond, enhanced presentation, ease of access, and integration to other data.¹⁶⁷ Moreover, any reference data provider that sources its initial reference data fields from FINRA would also have the opportunity to provide a value-added service by scrubbing the FINRA data before redistributing to its own subscribers to ensure acceptable data quality for its customers.¹⁶⁸ Furthermore, the proposal only applies to new issue corporate bond data and does not contemplate collecting and disseminating updates to this data throughout the life of the bond. The Commission believes that while FINRA's proposal will provide certain basic information for a bond allowing for the identification, valuation, and

¹⁶⁷ See Response Letter, at 9.

¹⁶⁸ Commenters have expressed concerns about FINRA's proposed reference database in light of evidence that the commenters believe show that FINRA's current collection of bond data contains a high incidence of errors. See *supra* notes 52-54. In response, FINRA has stated that the Tabb Study cited by certain commenters is not clear as to what TRACE data was used for the analysis or which point in time during the trading day was used to compare TRACE data with the vendor's data, and that the analysis does not explain which of the two sources (TRACE or the vendor) were deemed accurate (it only references "reconciliation differences") or whether the differences included cases where data was not yet present in either system. See Response Letter, at 10-11. See also *supra* notes 73-76 and accompanying text. In response, one commenter stated that FINRA's response is "puzzling" as the Tabb Study states that it used the "initial release" of FINRA's own "TRACE Corporate and Agency Master file," and the commenter stated that neither FINRA nor any other commenter contests that the concern is with the inaccuracy of FINRA's data. See Bloomberg Letter V, at 2. The Commission is not persuaded that error rates (whatever they may be) in TRACE data call into question the reliability of FINRA's proposed reference database. In this regard, FINRA has stated that it will engage with market participants on the appropriate business requirements for the reporting process, it intends to implement functionality to allow for underwriters to correct previously submitted data to FINRA for a significant period after receiving the initial Rule 6760 submission, it may take a phased approach to implementation to promote compliance and data accuracy, and data reported to FINRA will be system-validated. See Response Letter, at 11-15. The Commission believes that these statements indicate that FINRA is committed to establishing a reliable reference database.

settlement of newly-issued bonds, market participants will continue to require additional data and value-added services from reference data providers beyond what will be provided by FINRA. As such, the Commission believes that reference data providers will continue to compete and innovate in order to meet the additional needs of their customers. Furthermore, because of the limited scope of the data required to be reported pursuant to the proposal and the range of services provided by data vendors, the Commission believes that any negative competitive impact would be minimal. Finally, the potential benefits of the proposal discussed above, including furtherance of the purposes of Section 15A(b)(6), justify the minimal competitive burden on reference data vendors that may result from this proposal. The Commission thus finds that the proposal is consistent with Section 15A(b)(9) of the Act, and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

D. Fees

A number of commenters asserted that FINRA did not provide enough information to justify the fees it proposed to charge subscribers of the new issue reference data service under Section 15A(b)(5) of the Act.¹⁶⁹ In response, FINRA withdrew the proposed subscription fees from the proposal and stated that it will submit a separate filing to establish fees related to the new issue reference data service at a future date and will implement the service after those fees are adopted.¹⁷⁰ Several commenters objected to the withdrawal of fees, stating that the proposed fees from a critical part of the proposal without which the Commission and the public cannot

¹⁶⁹ See supra notes 79-81 and accompanying text.

¹⁷⁰ See Amendment No. 2, at 4.

assess the costs of the proposal, and that filing such fees at a later date will cause such fees to be immediately effective upon filing, thus allowing FINRA to avoid regulatory and public scrutiny of the fees.¹⁷¹

The Commission disagrees that separating the fee proposal into a subsequent filing would allow FINRA to avoid regulatory and public scrutiny of the proposed fees. FINRA cannot charge fees for the proposed data service until the Commission receives a proposed rule change that complies with the Act and Commission rules concerning proposed fee changes. All proposed rule changes, including proposed fee changes, are subject to public notice and comment and must be consistent with the Act. As required by Section 19(b)(1) of the Act, the Commission must publish notice of all proposed rule changes and must give interested persons an opportunity to comment, whether or not such proposed rule change is immediately effective or not. The instructions to Form 19b-4 state that the form “is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change . . . and for the Commission to determine whether the proposed rule change . . . is consistent with the requirements of the Act and the rules and regulations thereunder . . . as applicable to the self-regulatory organization and in accordance with the requirements for each type of filing.” A

¹⁷¹ See supra notes 84-86. SROs are required by Section 19(b) of the Act and Rule 19b-4 thereunder to file proposed rule changes with the Commission on Form 19b-4. The Act provides that a proposed rule change may not take effect unless it is approved by the Commission pursuant to Section 19(b)(2) of the Act, or it becomes immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Act. Rule 19b-4(f) under the Act specifies the types of proposed rule changes that may become immediately effective upon filing with the Commission, and includes those properly designated by the SROs as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization.” See Rule 19b-4(f)(2) under the Act.

proposed fee filing must fully and fairly describe the operation of the applicable fee (including its effect on market participants) and do so in sufficient detail so that the public can understand the proposal sufficiently to provide meaningful comment and the Commission can determine whether the proposal is consistent with the Act.

A proposed fee filing by a national securities association such as FINRA must also address all relevant statutory requirements, including Section 15A(b)(5) of the Act which requires that “[t]he rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls;” Section 15A(b)(6) of the Act, which requires, in part, that the rules of an association are “not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;” and Section 15A(b)(9) of the Act, which requires, in part, that the rules of an association “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.” Regardless of whether a fee proposed by FINRA is effective upon filing with the Commission, the Commission assesses whether or not the fee proposal is consistent with the Act.¹⁷² If the Commission determines that a fee filing merits further review, which may be informed by the required notice and comment process, the

¹⁷² Furthermore, in contrast to one commenter’s assertion, FINRA has the burden of demonstrating that a proposed fee is consistent with the Act and the rules and regulations thereunder, regardless of whether the proposed fee is effective upon filing with the Commission. See Securities and Exchange Commission Rules of Practice, Rule 700(b)(3) (17 CFR 201.700(b)(3)). See also supra note 87.

Commission may temporarily suspend it and issue an order instituting proceedings to determine whether to approve or disapprove the proposal.¹⁷³

The Commission further disagrees that it cannot adequately assess the proposal's consistency with the Act and its economic effects without knowing the fees that FINRA will charge for the proposed reference data service. As discussed above, the proposal is intended to provide accurate, complete, and timely access to basic information regarding newly issued corporate bonds and FINRA has stated that the proposal was modeled as a regulatory utility. The Commission's consideration of the proposal, including the burden on underwriters, the proposal's impact on competition among market participants, including other data vendors, and its impact on efficiency and capital formation, is based upon the understanding that the fees assessed will be consistent with these representations. And, based on that understanding, the Commission finds that the proposal is consistent with the Act. The Commission will also evaluate FINRA's eventual fee application based on this understanding.

Finally, while the Commission outlined various concerns relating to effective-upon-filing fee changes for NMS plans under Rule 608(b) in the Proposed Regulation NMS Fee Amendment, we do not believe those concerns call into question our approach here. Fee filings in this context would, of course, be governed by Section 19 of the Act rather than Rule 608.

¹⁷³ See Section 19(b)(3)(C) of the Act, authorizing the Commission at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act, to summarily temporarily suspend the change in the rules of an SRO if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act, and Section 19(b)(2)(B) of the Act, setting forth a notice and hearing procedure for an order instituting proceedings.

More importantly, as stated above, the Commission assesses whether or not any fee proposal filed under Section 19 of the Act is consistent with the Act. If the Commission determines that a fee filing merits further review, which may be informed by the required notice and comment process, the Commission may temporarily suspend it and issue an order instituting proceedings to determine whether to approve or disapprove the proposal. And, again, the Commission will make that assessment in the context of FINRA's assertion that the new database was modeled as a regulatory utility.

V. Conclusion

The Commission has carefully considered the proposal, as modified by Amendment No. 2, the comment letters received, and FINRA's Response Letter, and, for the reasons discussed throughout, finds that the proposal is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷⁴ that the proposed rule change (SR-FINRA-2019-008), as modified by Amendment No. 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷⁵

Jill M. Peterson
Assistant Secretary

¹⁷⁴ 15 U.S.C. 78s(b)(2).

¹⁷⁵ 17 CFR 200.30-3(a)(12).