



October 25, 2019

Via Electronic Mail (rule-comments@sec.gov)

Vanessa Countryman  
Director of the Office of the Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File No. SR-FINRA-2019-008

Dear Ms. Countryman:

The Healthy Markets Association<sup>1</sup> appreciates the opportunity to offer our additional comments to the above-referenced proposal to expand the information required to be provided pursuant to FINRA Rule 6760,<sup>2</sup> as well as FINRA's Amendment No. 2 to that filing.<sup>3</sup>

Healthy Markets applauds the Commission for issuing an order to institute proceedings to determine whether to approve or disapprove of the proposal ("OIP").<sup>4</sup> The OIP solicited comments regarding whether "the proposal is consistent with Sections 15A(b)(5), 15A(b)(6), and 15A(b)(9) of the Act, or any other provision of the Act or rule

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<sup>1</sup> The Healthy Markets Association is an investor-focused not-for-profit coalition working to educate market participants and promote data-driven reforms to market structure challenges. Our members, who range from a few billion to hundreds of billions of dollars in assets under management, have come together behind one basic principle: Informed investors and policymakers are essential for healthy capital markets. To learn more about Healthy Markets or our members, please see our website at <http://healthymarkets.org>.

<sup>2</sup> *Notice of Filing of a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service*, SEC, Exch. Act Rel. No. 85488; Apr. 2, 2019, available at <https://www.sec.gov/rules/sro/finra/2019/34-85488.pdf> ("FINRA Data Filing"). Healthy Markets submitted a comment on April 29, 2019, which walks through many of our specific concerns with the proposal. Letter from Tyler Gellasch, Healthy Markets Association, to Vanessa Countryman, SEC, Apr. 29, 2019, available at <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5423848-184599.pdf>. We previously supplemented that filing in July. Letter from Tyler Gellasch, Healthy Markets Association, to Vanessa Countryman, SEC, July 29, 2019, available at <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5879134-188731.pdf>.

<sup>3</sup> *Notice of Filing of Amendment No. 2 to a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service and Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Establish a Corporate Bond New Issue Reference Data Service*, SEC, Exch. Act Rel. No. 87232, Oct. 4, 2019, available at <https://www.sec.gov/rules/sro/finra/2019/34-87232.pdf> ("Amendment Number 2").

<sup>4</sup> *Order Instituting Proceeding to Determine Whether to Approve or Disapprove a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service*, SEC, Exch. Act Rel. No. 86256; July 1, 2019, available at <https://www.sec.gov/rules/sro/finra/2019/34-86256.pdf>.

or regulation thereunder.”<sup>5</sup> As we discussed in our prior submissions, the FINRA Data Filing failed to meet its burdens under the Exchange Act or Commission Rules. Amendment Number 2 does not remedy the inadequacies of the initial filing, but instead seeks to (1) strip out the discussion of fees until after the initial approval and (2) revise the set of data fields to be collected and distributed.

Stripping out the cost component of the filing is deeply problematic. Either the service will be provided for free or for a cost. If FINRA intends to provide the service for free, it should clearly disclose that intent. However, if FINRA intends to charge for the new data product, it should be asked to explain its fee structure -- both in terms of levels and application. Segregating the cost discussion, and promising to revisit it later (as part of a less-scrutinized filing process), does not permit market participants or the Commission to engage in any reasonable analysis of the costs and benefits of the collective proposal. Further, it is unclear what, if any, limitations on future costs may be imposed. Without this key information, it is impossible for the Commission to conclude that FINRA has met the burdens of the Exchange Act and Commission rules.

We also worry about the potential precedential impact stemming from Commission approval of this procedural maneuvering. To permit this somewhat novel approach, the Commission could be opening the door for FINRA and other SROs to similarly seek to avoid scrutiny of other significant changes to their rules by simply tabling fees discussions until later on in the process.

We also note that FINRA has proposed modifications to the specific types of information to be collected. Again, those may be justifiable modifications, and may be valuable to market participants. However, FINRA has not established that these changes are consistent with the Exchange Act.

Lastly, as we noted in a prior submission:

FINRA Data Filing does not provide sufficient details to support why FINRA is making the proposal in the first place. Is the purpose of a regulatory or commercial nature?

...

What data shows that there are the purported challenges in electronic trading, settlement, or clearing? And how will the proposed new service make the market more efficient? Further, what data is used to support the conclusion that the centralized data firm should be FINRA, as opposed to any of the existing for-profit data firms, or some other firm, or even the Commission itself? Is this collection and distribution of data a regulatory function or a business function? If it is a governmental function, should this be provided to the public

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<sup>5</sup> OIP, at 8.



for free, or on an “at cost” basis? Alternatively, if this is deemed to be a commercial function, is it appropriate for FINRA to be essentially pre-empting other data providers? What is the likely impact on the firms who use the data, or may use the data in the future? What is the likely impact on firms who currently provide data and services to market participants?<sup>6</sup>

Amendment Number 2 doesn’t address any of these issues. Obviously, as we previously stated, the Commission could conclude that FINRA could, within its authority, collect and redistribute the data that is the subject of the FINRA Data Filing and Amendment Number 2. But it must also do so based on the confines of the Exchange Act.

We support the objective of providing market participants with greater data and with easing potential inhibitions on trading of corporate bonds. That said, the Commission must still apply the Exchange Act’s standards to the FINRA Data Filing, as it is beginning to do with other SRO filings. When measured against that standard, the FINRA Data Filing -- even as amended -- is deficient, and should be denied.

Thank you for your consideration. Should you have any questions or would like to discuss these matters further, please contact Chris Nagy at (402) 312-7918 or me at (202) 909-6138.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Gellasch".

Tyler Gellasch  
Executive Director

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<sup>6</sup> Letter from Tyler Gellasch, Healthy Markets Association, to Vanessa Countryman, SEC, July 29, 2019 (internal citations omitted).