This document is scheduled to be published in the
Federal Register on 01/25/2021 and available online at
federalregister.gov/d/2021-01438, and on **govinfo.gov**

SECURITIE

[Release No. 34-90 File No. SR-FINRA-2019-008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment No. 2, to Establish a Corporate Bond New Issue Reference Data Service

January 15, 2021.

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 ("New Issue Reference Data Service").[3] Pursuant to the proposal, FINRA would require that underwriters report to FINRA a number of data elements for new issues in corporate debt securities and FINRA would disseminate such data to the public upon receipt.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 The Commission published notice of the proposed rule change in the Federal Register on April 8, 2019. See Exchange Act Release No. 85488 (Apr. 2, 2019), 84 FR 13977 ("Notice"). 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. See Exchange Act Release No. 85911, 84 FR 24839 (May 29, 2019). On July 1, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act, 15 U.S.C. 78s(b)(2)(B), to determine whether to approve or disapprove the proposed rule change. See Exchange Act Release No. 86256, 84 FR 32506 (Jul. 8, 2019). On October 3, 2019, FINRA filed Partial Amendment No. 1 to the proposed rule change, which was subsequently withdrawn on the same day due to a non-substantive administrative error. On October 3, 2019, FINRA filed partial Amendment No. 2 to the proposed rule change ("Amendment No. 2"). On October 4, 2019, the Commission issued a notice of filing of Amendment No. 2 to the proposed rule change and, pursuant to Section 19(b)(2) of the Act, the Commission designated a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change. See Exchange Act Release No. 87232, 84 FR 54712 (Oct. 10, 2019).

On December 4, 2019, the Commission, acting through authority delegated to the Division of Trading and Markets ("Division"),[4] approved the proposed rule change, as modified by Amendment No. 2 ("Approval Order").[5] On December 18, 2019, Bloomberg, L.P. ("Bloomberg" or "Petitioner") filed a petition for review of the Approval Order ("Petition for Review"). Pursuant to Commission Rule of Practice 431(e), the Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.[6] On February 14, 2020, the Commission issued a scheduling order, pursuant to Commission Rule of Practice 431, granting the Petition for Review of the Approval Order and providing until March 16, 2020, for any party or other person to file a written statement in support of, or in opposition to, the Approval Order.[7] On March 16, 2020, FINRA submitted a written statement in support of the Approval Order.[8] On March 17, 2020, Petitioner submitted a corrected written statement in opposition to the Approval Order.[9] On April 17, 2020, Petitioner submitted a Motion for Leave to Adduce Additional Evidence pursuant to Rule 452 of the Commission's Rules of Practice,[10] attaching the declarations of Mark Flatman and David Miao of Bloomberg, L.P.[11] On April 24,

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4 17 CFR 200.30-3(a)(12).

5 See Exchange Act Release No. 87656, 84 FR 67491 (Dec. 10, 2019).

6 17 CFR 201.431(e). See Letter to Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA (Dec. 12, 2019) (providing notice of receipt of notice of intention to petition for review of delegated action and stay of order), available at https://www.sec.gov/rules/sro/finra/2019/34-87656-acknowledgement-letter.pdf.

7 See Securities Exchange Act Release No. 88214, 85 FR 9887 (Feb. 20, 2020).

8 See FINRA's Statement in Support of Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data ("FINRA Statement").

9 See Corrected Statement of Bloomberg, L.P. in Opposition to Approval of the Proposed Rule Change ("Petitioner Statement"). Petitioner's original written statement in opposition to the Approval Order was submitted on March 16, 2020. Petitioner stated that it submitted a corrected version on March 17, 2020 in order to correct non-substantive typographical errors and incorrect cross-references.

10 17 CFR 201.452.

11 See Motion of Bloomberg, L.P. for Leave to Adduce Additional Evidence ("Petitioner Motion"). See also Declaration of Mark Flatman and Declaration of David Miao (collectively, "Declarations").

2020, FINRA submitted an Opposition to the Bloomberg, L.P. Motion.[12] On April 29, 2020, Petitioner submitted a Reply in Support of the Bloomberg, L.P. Motion.[13]

In response to the Petition for Review, the Commission has conducted a de novo review of FINRA's proposal, giving careful consideration to the entire record—including FINRA's amended proposal, the Petition for Review, and all comments and statements submitted—to determine whether the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association. Under Section 19(b)(2)(C) of the Act, the Commission must approve the proposed rule change of a self-regulatory organization ("SRO") if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the applicable rules and regulations thereunder; if it does not make such a finding, the Commission must disapprove the proposed rule change.[14] Additionally, under Rule 700(b)(3) of the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Act and the rules and regulations issued thereunder … is on the self-regulatory organization that proposed the rule change."[15] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.[16] Any failure of a self-regulatory organization to provide the information required by Rule 19b-4 and elicited on Form 19b-4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule

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12 See FINRA's Opposition to Motion of Bloomberg, L.P. for Leave to Adduce Additional Evidence ("FINRA Opposition").

13 See Reply of Bloomberg, L.P. in Support of its Motion for Leave to Adduce Additional Evidence. The Commission believes that allowing Petitioner to submit additional evidence would further the Commission's ability to understand the arguments presented by both parties and their relation to FINRA's proposal. Accordingly, the Commission grants the Petitioner Motion. The Declarations are considered below in Section III.A and Section III.C.

14 15 U.S.C. 78s(b)(2)(C).

15 17 CFR 201.700(b)(3).

16 Id.

change is consistent with the Act and the rules and regulations thereunder that are applicable to the self-regulatory organization.[17]

The Commission has considered whether the proposal is consistent with the Act, including Section 15A(b)(6) of the Act, which requires 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 be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the association;[18] and Section 15A(b)(9) of the Act, which 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.[19]

For the reasons discussed further herein, FINRA has met its burden to show that the proposed rule change is consistent with the Act, and this order sets aside the Approval Order and approves FINRA's proposed rule change, as amended. In particular, the Commission concludes that the record before the Commission demonstrates that FINRA's New Issue Reference Data Service should promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in newly issued corporate bonds, consistent with Section

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17 See id. See also 17 CFR 240.19b-4.

18 15 U.S.C. 78o-3(b)(6).

19 15 U.S.C. 78o-3(b)(9).

15A(b)(6) of the Act. In addition, the record demonstrates that the New Issue Reference Data Service should not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Therefore, and as explained further below, the Commission finds the proposal consistent with Sections 15A(b)(6) and 15A(b)(9) of the Act.

II. Summary of the Proposal

FINRA proposes to establish the New Issue Reference Data Service, which would provide a central depository for public dissemination of new issue corporate bond reference data. FINRA proposes to amend Rule 6760 (Obligation to Provide Notice)[20] to require that underwriters who are FINRA members and subject to Rule 6760 [21] to report to FINRA a number of data elements, including some already specified by the rule, for new issues in Corporate Debt Securities as defined in FINRA's rules.[22] Proposed Rule 6760(b)(2) would require that, in addition to the information required by Rule 6760(b)(1),[23] for a new issue in a Corporate Debt

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20 FINRA would amend the title of the Rule to "Obligation to Provide Notice and Dissemination of Corporate Debt Security New Issue Reference Data."

21 FINRA would amend Rule 6760(a)(1) to require that underwriters subject to the rule 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).

22 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)).

23 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) 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

Security, excluding bonds issued by religious 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, as defined in FINRA's rules, prior to the first transaction in the security. FINRA would disseminate the corporate bond new issue reference data collected under Rule 6760 upon receipt.[24] FINRA states 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.[25]

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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.

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

25 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

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[26] The Commission therefore approves the proposed rule change, as amended.

As discussed below, the Commission believes that currently there is an inefficiency in the collection and availability of reference data[27] for newly issued corporate bonds and that this inefficiency results in an information asymmetry in the market for newly issued corporate bond reference data that can disadvantage many market participants. While some market participants may have timely access to reference data by virtue of receiving it directly from underwriters or from those that obtain it from underwriters, many market participants do not. This information asymmetry inhibits these market participants from transacting in the secondary market for newly issued bonds, whether through electronic trading venues, over the phone or through other methods, at the time those bonds begin trading to the detriment of those market participants and the market for newly issued corporate bonds.[28] The Commission believes it is important to make certain reference data available to market participants in a timely, accessible, and impartial

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for internal purposes only, and for a fee of $6,000 per month where the data are 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 3.

26 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). Petitioner stated that under Section 3(f) of the Act, the Commission's review of FINRA's proposal must include an assessment of overall costs and benefits. See Petitioner Statement, at 33. The Commission considers costs and benefits when it reviews SRO rule filings and has done so with respect to this proposal. The Commission addresses comments about economic effects of the proposed rule change on efficiency, competition, and capital formation, including the general costs and benefits of the proposal, below in Sections III.A.3; III.B.3, III.C.3; III.D.3; III.E.3 and III.F.3.

27 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 reference data, which terms are required for identifying, valuing, and settling transactions in newly issued corporate bonds. See Recommendation, at 1.

28 See generally infra notes 31-42 and 89-102 accompanying text.

manner, and further believes that FINRA's proposal is reasonably designed to address this information asymmetry to the benefit of the marketplace.

The Commission believes the requirement for underwriters to report the reference data fields to FINRA prior to the first transaction in the security, coupled with FINRA's dissemination of the new issue reference data immediately upon receipt, will allow all market participants to have timely, basic information that is important for the identification, valuation, and settlement of a newly issued corporate bond in order to participate in trading in the secondary market without delay, whether through electronic trading venues, over the phone or through other methods. Improved reference data transparency should promote market efficiency and fair competition and enable broader participation by all market participants when a new issue corporate bond begins trading, which should also promote improved secondary market liquidity and lower costs when secondary trading begins. In sum, the Commission believes that FINRA's proposal 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. Furthermore, the Commission will monitor the progress of the New Issue Reference Data Service and its use by market participants and consider whether further steps are necessary, including whether market participants should report certain data to the Commission.

The Commission received a number of comment letters addressing the proposed rule change's consistency with the Act, specifically focusing on (1) whether information asymmetry exists in the current marketplace for new issue reference data; (2) the requirements for information reporting and distribution under the proposal; (3) FINRA's role as the centralized data source; (4) the proposal's burden on underwriters; (5) the proposal's effect on competition

among reference data vendors; and (6) the lack of information regarding fees for the New Issue Reference Data Service.[29] The Commission addresses each of these issues below.

First, the Commission addresses comments regarding the justification for the proposal and the proposal's consistency with Section 15A(b)(6) of the Act in Sections III.A, III.B and III.C below. The Commission believes that the record demonstrates three things clearly: (1) there is an inefficiency in the collection and availability of reference data that results in an information asymmetry in the corporate bond market that can impede secondary market trading by many market participants to their disadvantage because many market participants, including investors, intermediaries, 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; (2) the proposed New Issue Reference Data Service is reasonably designed to address this information asymmetry by providing reference data important for the identification, valuation, and settlement of newly issued corporate bonds to market participants when secondary trading begins; and (3) FINRA, as an SRO that is subject to Commission oversight, is an appropriate entity to provide market participants with accurate, complete, impartial and timely access to such corporate bond new issue reference data. As discussed further below, providing all market participants, including data vendors, on an impartial basis 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 promote competition among market participants and 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.

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[29] Comments on the proposed rule change can be found at: https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008.htm.

Second, the Commission addresses comments that the proposed information required to be collected and the timing for reporting such information under the proposal would be burdensome to underwriters in Section III.D. As discussed below, the Commission finds that such burdens imposed on underwriters by the proposal, including smaller underwriters, would be limited because of such underwriters' existing data collection and reporting practices with respect to the information FINRA proposes to be reported. Furthermore, the Commission believes that any burdens on underwriters are justified by the benefits of the proposal.

Third, in Section III.E, the Commission addresses arguments raised that the proposal is inconsistent with Section 15A(b)(9) of the Act because it would burden competition by, among other things, reducing competition among reference data vendors and decreasing investment and innovation in the marketplace, ultimately leading to increased costs. The Commission finds that the proposal will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As explained below, the impact on competition is uncertain. It is possible that FINRA's proposal will have a positive impact on competition among data vendors. Additionally, the limited set of data proposed to be reported and disseminated should not supplant the demand for a more comprehensive reference database with enhanced data sets that contain additional fields that are not reported to or disseminated by FINRA. As a result, the Commission believes any burden on competition would both be limited and justified by the evidence in the record demonstrating an information asymmetry that can disadvantage many market participants due to the lack of timely access to basic information that is important for the identification, valuation and settlement of newly issued corporate bonds at the time a bond begins trading in the secondary market.

Finally, in Section III.F the Commission addresses arguments raised that (1) the Commission could not fully assess the proposal's consistency with the Act without knowing either the proposed fees for, or the cost to build, the New Issue Reference Data Service; (2) separating the fee proposal into a subsequent filing allows FINRA to avoid regulatory and public

scrutiny of the proposed fees; and (3) the Commission erred in failing to find that the proposal was consistent with Section 15A(b)(5) of the Act. As explained below, the Commission 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 or the costs to build such service. Furthermore, the proposed fees may be properly filed as an immediately effective fee filing pursuant to Section 19 of the Act and the Commission is not required to make a finding that the proposal is consistent with Section 15A(b)(5) of the Act.

A. There is an Information Asymmetry that Exists in the Current Marketplace for Corporate Bond New Issue Reference Data that can Disadvantage Many Market Participants

1. Comments on the Proposal

The Commission received several comments in support of and in opposition to FINRA's proposal.[30] Several 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.[31] One

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30 The Commission notes that FINRA's proposal is generally consistent with a unanimous recommendation from the SEC Fixed Income Market Structure Advisory Committee ("FIMSAC") made to the Commission on October 29, 2018. 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"). 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 membership includes 23 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 SROs. For a list of FIMSAC members, see https://www.sec.gov/spotlight/fixed-income-advisory-committee.

31 See Recommendation at 2; Letter from Lynn Martin, President and COO, ICE Data Services, dated April 29, 2019 ("ICE Data Letter"), at 1-2; Letter from Marshall Nicholson and Thomas S. Vales, ICE Bonds dated April 29, 2019 ("ICE Bonds Letter"),

commenter noted that 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."[32] Commenters also stated that currently underwriters and issuers do not provide reference data to all market participants at the same time.[33] One commenter stated that new issue corporate bond terms and conditions today are often received delayed and incomplete.[34]

Commenters stated that access to reference data is necessary for valuing, trading and settling corporate bonds.[35] 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 market participants, including many investors, intermediaries, trading platforms, and reference data providers, are currently at a competitive disadvantage.[36] One commenter stated that "[t]he

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at 1-2; Letter from John Plansky, Executive Vice President and Chief Executive Officer, Charles River Development, dated May 24, 2019 ("Charles River Letter"), at 2; and Letter from SEC Fixed Income Market Structure Advisory Committee, dated June 11, 2019 ("FIMSAC Letter"), at 1-2.

32 See Harris Letter, at 2.

33 See FIMSAC Letter, at 2; ICE Bonds Letter, at 2 ("Certain electronic trading venues that are not registered as ATSs may have access to new issuance reference data obtained from affiliated corporate entities which process primary market trades prior to the dissemination of the reference data.").

34 See ICE Bonds Letter, at 2.

35 See ICE Data Letter, at 2; Letter from Larry Harris, Fred V. Keenan Chair in Finance, USC Marshall School of Business, dated May 17, 2019 ("Harris Letter"), at 2-3; Charles River Letter, at 2; FIMSAC Letter, at 1-2.

36 See ICE Data Letter, at 2; ICE Bonds Letter, at 2; FIMSAC Letter, at 2; Harris Letter, at 2-6; Charles River Letter, at 2 ("[T]he proposed data service will enhance transparency in a manner that benefits both buy-side investors and the financial markets as a whole, by facilitating access to new issuance reference data for corporate bonds. This is especially valuable to the fixed income market, which has historically been more opaque than other more liquid asset classes."). See also Transcript of FIMSAC Meeting (October 29, 2018), available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-102918transcript.txt ("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.").

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."[37]

Several 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.[38] One commenter stated 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 bonds" and "the proposed data service will help buy-side investors better manage their risk," including "the reduced need for manual entries and overrides."[39] One commenter stated 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."[40] Another commenter noted that a "centralized data reporting requirement for such issues could benefit the industry and investors by enhancing market transparency, potentially aiding liquidity, reducing trading costs, and lowering the cost of capital for issuers."[41] One commenter further stated that mandated reference data collection and

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37 See ICE Bonds Letter, at 2.

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

39 See Charles River Letter, at 2.

40 See ICE Bonds Letter, at 2.

41 See ICE Data Letter, at 2. See also Harris Letter, at 3("[R]educing the costs of investment research will lead to more informative prices and lower liquidity costs as more market participants make better-informed decisions about what to buy, sell, and hold….The value of the reference data and the low costs to the industry of requiring that they should be delivered in some machine-readable form provide an extraordinary strong foundation for the Commission to mandate [reference data collection and dissemination]."); Charles River Letter, at 2 ("By providing market participants with direct access to new issuance reference data, the proposed service will reduce overall costs, while permitting third party vendors to retransmit and repackage the reference data for market participants who may opt for this service. The proposed service also will increase the efficiency and interoperability of the corporate bond market and help promote fair and open competition among market participants."). See also FIMSAC Transcript, supra note 36, Comments from Spencer Gallagher, ICE Data Services, at

dissemination promotes capital formation by lowering the costs of valuing bonds so that prices more accurately reflect all available information.[42]

On the other hand, many 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) of the Act.[43] In particular, Petitioner argued that FINRA provided no evidence that there is a market structure problem that requires regulatory intervention[44] and that FINRA "failed to demonstrate a market failure limiting timely access to accurate data…."[45] Petitioner also stated that FINRA has no basis for its theory that the market

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0069-72 ("there 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").

42 See Harris Letter, at 5.

43 See Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated April 29, 2019 ("Heritage Letter"), at 1-2; Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated April 29, 2019 ("Chamber Letter"), at 2; Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, dated April 29, 2019 ("Healthy Markets Letter"), at 4-5; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg, L.P., dated April 29, 2019 ("Petitioner Letter"), at 9-10. See also Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, dated July 29, 2019 ("Healthy Markets Letter II"), at 4-6; 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"), at 2; Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated October 23, 2019 ("Heritage Letter III"), at 2; Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated July 29, 2019 ("Chamber Letter II"), at 3-4; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated July 1, 2019 ("Petitioner Letter II"), at 4-7; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated July 29, 2019 ("Petitioner Letter III"), at 5-8; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated October 24, 2019 ("Petitioner Letter IV"), at 4; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated November 27, 2019 ("Petitioner Letter V"), at 3-4; and Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated March 13, 2020 ("Heritage Letter IV").

44 See Petitioner Letter, at 12-13; Petitioner Letter II at 4-6; Petitioner Letter III at 6-7; Petitioner Letter V, at 3. See also Petitioner Statement, at 2, ("No evidence indicates that current methods of consensual information distribution are impeding electronic trading.").

45 See Petition for Review, at 19.

for data services is uncompetitive;[46] that FINRA's assertion that customers for data services are dissatisfied is unsupported by evidence;[47] and that FINRA has provided no evidence that any trader or platform cannot get the information it demands, or that lack of information is impeding trading.[48] Petitioner further stated that "the bond-trading market is already headed in the direction FINRA supports – without its intervention" and that "data and reporting show a clear acceleration in the marketplace toward electronic trading of new issues."[49] Petitioner concluded that "the bond markets are healthy and growing robustly using existing market-based data

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46 See Petitioner Statement, at 21-22. Petitioner also stated that while the proposal asserted barriers to entry, it mentioned only one such supposed barrier: the investment required to build a system to manage bond data. Petitioner argued that the fact that building a new business would require investment is not a barrier to entry and does not make a market uncompetitive. In addition, Petitioner stated that FINRA has not offered any evidence of the investment required to build such a system and how that would dissuade market entrants. See id.

47 See id. at 22-23.

48 See id., at 28. Petitioner stated that one anonymous person told FINRA it could not get the data it wanted from its current vendor and that FINRA has not reported any reason that the person could not fulfill its needs with a different, competing vendor. See id., at 28, n.19.

49 See Petition for Review, at 22; Petitioner Statement, at 24-28. Petitioner presented data regarding trading by alternative trading systems ("ATSs") 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 Petitioner Letter, at 12-13; Petitioner Statement, at 25, n.15. 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 Petitioner Letter II, at 4-6; Petitioner Letter III, at 6; Petitioner Letter IV, at 4-5; Petitioner Statement, at 25, n.15. This commenter 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 Petitioner Letter IV, at 6. This commenter also pointed to an analysis from Greenwich Associates that it stated shows overall growth in ATS electronic corporate bond trading. See Petitioner Statement, at 25. This commenter further stated that based on data from February 2020 compiled by the commenter's market information, in mid-2018 the percentage of first-day trades over $250 million that were on ATSs increased to 39%, and electronic trading of the largest issues has steadily grown from 16% to over 48%. See Petitioner Statement, at 27.

services" and that "FINRA should not be allowed to oust market-based providers in favor of a regulatory utility without showing a substantial market failure."[50]

In addition, Petitioner stated that FINRA provided no evidence that the proposal would provide market participants with more complete, accurate, and timely data about new issues; reduce broken trades and errors;[51] or reduce costs or duplicated efforts.[52] Petitioner stated that FINRA suggests a number of hypothetical benefits that might flow from the proposal, such as more accurate data, but that such benefits "are entirely speculative."[53] Another commenter stated that "[b]efore intervening in the existing market for information and granting itself a potentially lucrative monopoly on providing this information to market participants, FINRA should be required to factually demonstrate that…[the] benefits [of the proposal] are so substantial and clear to overcome the strong presumption that private actors in competitive markets are the best means of providing goods and services."[54]

2. FINRA Response to Comments

In its response to the petitioner, FINRA stated that its proposal is "designed to address a particular problem in today's market – namely, that a number of market participants are not reasonably able to gain access to timely, comprehensive, and accurate corporate bond new issue reference data when the bonds begin trading."[55] FINRA stated that the record provides sufficient

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50 See Petitioner Statement, at 21, 24.

51 Petitioner stated that "there appears to be plenty of time to correct errors before 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 Petitioner Letter, at 10-11.

52 See Petitioner Letter, at 9-14; Petitioner Letter II, at 4-7; Petitioner Letter III, at 5-8. Petitioner 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 Petitioner Letter, at 13-14.

53 See Petitioner Statement, at 3, 35. See also Heritage Letter V, at 2 (stating that FINRA has not conducted "even the most rudimentary cost-benefit analysis.").

54 See Heritage Letter V, at 2.

55 See FINRA Statement, at 3.

support for its proposal, and that this problem is identified by the Fixed Income Market Structure Advisory Committee ("FIMSAC"), by FINRA's own independent outreach to a diverse set of market participants, by comments submitted in support of the proposal,[56] and in FINRA's data analysis.[57]

FINRA stated that the robust public record supporting the proposal begins with the unanimous FIMSAC Recommendation.[58] FINRA stated that FIMSAC's Technology and Electronic Trading Subcommittee ("Subcommittee"), which represents a cross-section of market participants, recognized that disparities exist among reference data vendors' access to new issue reference data depending on several factors, including the vendors' relationship with underwriters; that private data vendors are not obligated to provide impartial access to key new issue reference data; and that the resulting confusion increases transaction costs and impedes competition in the corporate bond markets.[59] FINRA stated that to address these concerns, the Subcommittee recommended the establishment of a consolidated new issue reference data service that is made available to all subscribers in a timely fashion and recommended that FINRA operate the service and provide subscribers with impartial and commercially reasonable access, subject to applicable SRO regulation.[60] FINRA stated that the Subcommittee received strong support for the Recommendation when it was presented for consideration by the full

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56 FINRA cited comment letters 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 Letter from Alexander Ellenberg, Associate General Counsel, FINRA, dated October 29, 2019 ("Response Letter"), at 5 (citing to Harris Letter; ICE Bonds Letter; ICE Data Letter; Charles River Letter; and FIMSAC Letter). See also supra notes 31-42 and accompanying text.

57 See FINRA Statement, at 3. See also Response Letter, at 3-4; Notice, at 13980-83.

58 See FINRA Statement, at 5; Response Letter, at 4-5. See also Recommendation, supra note 30.

59 See FINRA Statement, at 6-7 (citing Recommendation, supra note 30).

60 See FINRA Statement, at 7.

FIMSAC and from panelists who supported the Recommendation.[61] FINRA pointed to statements by members of the FIMSAC and panelists at the FIMSAC meeting, including two data providers and an investment management firm, to refute the assertion that a well-functioning, competitive market currently exists for corporate new issue reference data, as suggested by some commenters, and to provide support that market participants bear the costs of the current information disparity.[62] FINRA noted that the FIMSAC also subsequently reaffirmed the Recommendation in the FIMSAC Letter.

In addition, FINRA stated that it performed its "own independent outreach to eleven market participants – four data providers, three underwriters, two trading platforms, and two clearing firms – and heard the same problems as identified by the FIMSAC."[63] 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

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61 See FINRA Statement, at 8.

62 Specifically, FINRA pointed to (i) a statement by Richard McVey, MarketAxess, that "there are indeed gaps in corporate bond fixed income reference data, both in terms of when that data are available with different reference data providers, as well as sometimes the accuracy;" (ii) a statement from Spencer Gallagher, ICE Data Services, that "there 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;" (iii) statements from Frederic Demesy, Refinitiv, that "at 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," and that this disparity imposes "higher costs for our customers;" and (iv) statements from Alex Sedgwick, T. Rowe Price, noting that "[h]istorically 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." See FINRA Statement, at 8-9; Response Letter, at 5 (each citing to FIMSAC Transcript).

63 See FINRA Statement, at 11; Response Letter, at 4; Notice, at 13980-81. FINRA stated that new issue reference data are generated by underwriters, aggregated by data providers, and then sold to various market participants for consumption, including trading and clearing firms, electronic trading platforms, broker-dealers and bond investors. FINRA stated that it conducted outreach to understand this dissemination process, direct and indirect costs imposed by the process and ways it might be improved. See Notice, at 13980.

data to market participants in a timely manner."[64] FINRA stated that its outreach indicated that data vendors receive new issue reference data through different channels at different times, and that as a result, market participants experience problems with trading and settling new issues of corporate bonds.[65] For example, FINRA stated that if a trading platform does not have essential information about a new issue, it cannot identify the bond and set it up on its platform to trade.[66] FINRA noted the experience of one trading platform that stated it could not facilitate trades in new issues on their first day of trading because the platform's reference data provider would only provide reference data relating to new issues the morning after issuance.[67] In addition, FINRA stated that if trading platforms, trading firms, or investors receive inconsistent reference data, there is an increased likelihood of broken trades and reduced efficiency reconciling data for purposes of trading, clearance, and settlement.[68] FINRA found from its outreach that inaccurate reference data create inconsistencies in trading and settlement and increase transaction costs for trading platforms, clearing firms, and electronic trading platforms.[69]

In response to comments that the need for the proposal is negated by data on the growth of electronic bond trading, FINRA argued that such data do not mitigate the concerns that the proposal is designed to address – namely, the lack of broadly available and accessible new issue reference data on the first day of secondary market trading.[70] FINRA stated that "electronic trading platforms may receive data and begin trading late, while still contributing to cumulative growth" and that "data on the overall growth of electronic trading says nothing about whether the rate of growth is impacted or inhibited by the costs of limited access to reference data on the first

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64 See Response Letter, at 4.

65 See FINRA Statement, at 11; Response Letter, at 4; Notice, at 13981.

66 See FINRA Statement, at 11.

67 See FINRA Statement, at 11; Response Letter, at 4; Notice, at 13980, n.17.

68 See FINRA Statement, at 11-12; Notice, at 13981.

69 See Response Letter, at 4; Notice, at 13980.

70 See FINRA Statement, at 21-22.

day of trading."[71] FINRA argued that the growth of electronic trading in corporate bonds actually makes impartial access to these data even more important.[72]

In response to comments on the proposal, FINRA provided an analysis of corporate bond transactional data reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"), which FINRA stated is consistent with the problematic market conditions described by FIMSAC participants and commenters, and provides additional support for the proposal.[73] 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.[74] FINRA found some ATSs experienced 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.[75] In response, however, Petitioner stated that FINRA's analysis is flawed in that the data (i) do not show that untimely reference data is the cause of differences in the timing of trading on different platforms; (ii) include all new issue bonds, rather than limiting the scope to large issues that are more likely to trade electronically; and (iii) ignore more current data that show movement toward electronic trading is accelerating rapidly in 2019.[76] In response to this commenter's objections, FINRA provided additional data from 2019, which it stated also demonstrate that some ATSs experienced persistent time lags before they began trading newly issued corporate bonds.[77]

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71 See FINRA Statement, at 22 (emphasis in original).

72 See FINRA Statement, at 22.

73 See Response Letter, at 6-7.

74 See id.

75 See id. See also FINRA Statement, at 22. 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. Id.

76 See Petitioner Letter V, at 1-2; Petitioner Statement, at 25-26.

77 See FINRA Statement, at 22, 30. FINRA stated that while it recognizes the limitations of quantitative analysis given that TRACE data cannot currently identify trades on

In response to comments that FINRA did not provide an estimate of costs and benefits,[78] FINRA stated in its Response Letter that it provided a detailed analysis of the proposal's anticipated costs and benefits in its proposal.[79] FINRA stated that it 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, 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.[80]

In its proposal, FINRA stated that it expects that the New Issue Reference Data Service will increase the transparency of the corporate bond market, especially around the issuance period, and that such increased transparency will benefit the market, including investors, trading platforms, clearing firms, data providers, issuers, and underwriters, in a number of ways.[81] Specifically, FINRA stated that such transparency would provide benefits by: (i) providing potential buyers with the opportunity to evaluate the bonds for investment, especially right after issuance, which would likely increase investment choices; (ii) allowing index operators the opportunity to evaluate new bonds for timely inclusion, which would help ensure that the index

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electronic trading platforms other than ATSs, such as trades facilitated by Petitioner, it continues to believe that, because ATSs represent one of the types of market participants that provided statements for the record of their difficulty receiving timely reference data access, this ATS analysis helps validate such qualitative evidence. See FINRA Statement, at 23.

78 See supra notes 53-54 and accompanying text.

79 See Response Letter, at 10. See also Notice, at 13981-83 (providing FINRA's Economic Impact Assessment). However, Petitioner 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 Petitioner Letter V, at 4. See also Section III.F., infra.

80 See Notice, at 13981-83.

81 See Notice, at 13981. To support this statement, FINRA cited to various studies finding that TRACE implementation has demonstrated that transparency has facilitated trading and improved market quality. See FINRA's website for a list of TRACE Independent Academic Studies, available at http://www.finra.org/industry/trace/trace-independent-academic-studies. See id. at n.20.

accurately represents the concurrent bond market condition; (iii) reducing broken trades and errors in trading due to inconsistent information; (iv) increasing trading speed by removing delays due to manually correcting reference data errors; (v) potentially increasing trading volumes that might otherwise be lost when traders do not have reference data on newly issued bonds, thereby increasing liquidity and lowering the cost of capital for issuers; (vi) providing data providers with a complete and accurate source of data and reducing the need for data providers to manually collect missing data or correct errors in the new issue reference data; (vii) increasing awareness of new issuances, which may help underwriters in marketing and underwriting; and (viii) reducing the need for underwriters to manually research other reference data sources for proper procurement of information.[82]

On the other hand, FINRA stated in its proposal that the New Issue Reference Data Service may impose costs on underwriters to report the additional reference data to FINRA through system upgrades or use of third-party vendors to report, and recognized that smaller underwriters may be burdened disproportionally.[83] However, FINRA also stated that (i) it understands that underwriters do not anticipate incurring significant costs for reporting under the proposal and (ii) any additional burden on smaller underwriters may be alleviated because reporting to FINRA would reduce the need for underwriters to report to other parties and/or underwriters can leverage investments already made in the existing reporting system necessary under FINRA Rule 6760.[84] In addition, FINRA noted that subscribers to FINRA's New Issue Reference Data Service will incur a subscription fee and setup cost, and FINRA stated that it intends to price the service as a utility provider using a cost-based approach.[85] Finally, FINRA stated that a centralized source of new issue reference data may create a single point of failure if

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82 See Notice, at 13981.

83 See Notice, at 13982.

84 See id. See also Section III.D, infra.

85 See Notice, at 13982; FINRA Statement, at 18.

data providers stop collecting data on their own and solely rely on FINRA's data service.[86] However, FINRA stated that it believes this is unlikely to happen because data providers will likely continue to collect a range of bond reference data beyond the limited fields provided by FINRA's service.[87]

3. Commission Discussion and Findings

The Commission understands that currently there is an inefficiency in the collection of reference data for newly issued corporate bonds and that this inefficiency results in an information asymmetry in the market for newly issued corporate bond reference data. This information asymmetry exists because some market participants have access to reference data necessary for identifying, valuing and settling newly issued corporate bonds at the time such bonds begin trading in the secondary market, while many other market participants lack that information at the time secondary trading begins. This information asymmetry inhibits many market participants from transacting in the secondary market for newly issued bonds at the time those bonds begin trading which can disadvantage those market participants.[88]

The collection of reference data by market participants currently is inefficient and the challenges associated with collecting this data and making it available broadly to market participants in time to trade in the secondary market are significant.[89] While some market

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86 See Notice, at 13982.

87 See Notice, at 13982. See also Section III.C, infra. For example, 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/.

88 See generally supra notes 31-42 and accompanying text.

89 See Notice, at 13980-13981 (describing in FINRA's Economic Impact Statement the current process for the collection and distribution of corporate bond reference data). The Commission notes that the process FINRA described in its Notice is consistent with the

participants may have timely access to reference data directly from underwriters or from those that obtain it from underwriters, many market participants do not. Underwriters may be unwilling to distribute reference data to all market participants that desire it out of concern that distributing the data to multiple market participants increases the risk of inaccuracies.[90] Market participants who do not have access to reference data from a vendor that has timely access to such data from underwriters or do not otherwise have the necessary relationships with underwriters[91] must expend substantial time and effort gathering information from multiple

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comments provided by reference data providers at the October 29, 2018 FIMSAC meeting. See also FIMSAC Transcript, supra note 36, Comments from Spencer Gallagher, ICE Data Services, at 0069-72 ("there 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"). See generally FIMSAC Transcript, supra note 36 (highlighting a detailed discussion among data vendors of the challenges with collecting and distributing reference data).

90 See FIMSAC Transcript, supra note 36, Comments from Bob LoBue, J.P. Morgan, at 0080-81 ("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."). Even if underwriters were to provide access to every market participant that sought to gain access to such information prior to the beginning of secondary market trading, that process would be inefficient as the underwriters would expend substantial effort providing such data to multiple parties and the recipients would likewise expend substantial effort to receive and ultimately utilize data from multiple parties.

91 In the corporate bond market today, the Commission understands from market participants that Petitioner typically has the timeliest access to newly issued bond reference data on the first day a bond trades, as it enjoys the voluntary cooperation of underwriters. See FIMSAC Transcript, supra note 36, 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."). See also FINRA Statement, at 3 (noting that Petitioner is the dominant private data vendor in today's market for corporate bond new issue reference data and "often gains access to new issue reference data before other vendors and market participants."). In his declaration, David Miao, the Global Head of Fixed Income Data at Bloomberg, L.P., states that he is "not aware of any legal or structural barrier that prevents other vendors and market participants from accessing new issue reference data" and that "nothing prevents other vendors and market participants from accessing corporate bond new issue reference data in the same voluntary manner in which Bloomberg acquires it." Based on the information available to the Commission, the Commission disagrees. The statements of one of the largest underwriters of corporate bonds in the United States are particularly informative: Mr. Lobue stated at the October

sources.[92] For those that lack this access, the process of collecting data from multiple sources is time consuming, requires substantial effort in order to assure the completeness and accuracy of the information, and often results in participants having unequal access to reference data on the first day a bond trades in the secondary market, ultimately resulting in an unnecessary market inefficiency.[93]

The Commission believes that the information asymmetry and resulting market inefficiency that exists can disadvantage many market participants because it hinders timely market-wide participation in the secondary market when a newly issued bond begins to trade, potentially negatively impacting secondary market liquidity. Comments received from investors, trading platforms, and data vendors support this finding. Commenters stated that the inability to participate in the secondary market raised a number of concerns.[94] First, market participants that are unable to trade newly issued bonds due to a lack of information, whether they be

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29, 2018 FIMSAC meeting that J.P. Morgan provides corporate bond reference data to Petitioner and does not provide it to other data vendors. See See FIMSAC Transcript, supra note 36, Comments from Bob LoBue, J.P. Morgan, at 0080-81.

92 See e.g., supra notes 32-37; FIMSAC Transcript, supra note 36, 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.").

93 See id. See also FIMSAC Transcript, supra note 36, Comments from Spencer Gallagher, ICE Data Services, at 0069-72 ("there 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"); Comments from Spencer Gallagher, ICE Data Services, at 0069-72; Comments from Rick McVey, MarketAxess, at 0066 ("there is significant manual effort today in getting new issue information into various databases. And that is prone to error. Reference data errors lead directly to trading errors.").

94 See generally supra notes 31-42 and accompanying text for a discussion of commenter concerns about information asymmetry in the corporate bond market today that can disadvantage many market participants.

intermediaries, investors or trading platforms,[95] are at a competitive disadvantage to other market participants that have the information and ability to trade newly issued bonds on the first day of secondary trading when significant trading occurs.[96] These market participants have fewer investment options to meet their own business and investment needs or those of their customers relative to market participants that have access to reference data when a newly issued bond begins trading.[97] For example, as stated by one commenter, many "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."[98] Additionally, to the extent some electronic trading platforms do not have the information necessary to identify, value and settle newly issued corporate bonds when such bonds begin trading in the secondary market,

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95 Petitioner stated that there is currently a trend in the marketplace toward electronic trading of new issues and therefore concluded that the bond markets are healthy and growing robustly using existing market-based data services and the proposal is unnecessary. See supra notes 49-50. Petitioner 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. See supra note 49. In response, FINRA also presented 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 supra notes 73-75 and 77 and accompanying text. Petitioner disputed FINRA's analysis as flawed. See supra note 76. The Commission believes that the analyses of electronic trading in corporate new issues by ATSs provided by Petitioner and FINRA are necessarily limited, as there are a number of electronic bond trading platforms that are not regulated 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, these analyses, which focus on ATS trading in new issues, are not reflective of the market for newly issued corporate bonds as a whole.

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

97 See ICE Bonds Letter, at 2 ("The 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."); Notice, at 13981 (discussing in FINRA's Economic Impact Assessment a variety of reasons why market participants that lack timely reference data today are at a competitive disadvantage to those market participants that do have timely access to reference data).

98 See ICE Bonds Letter, at 2.

these platforms may be at a competitive disadvantage to those that do have such information.[99] Second, reduced participation in the secondary market due to this information asymmetry can adversely impact secondary market liquidity for newly issued bonds on the first day a bond trades and ultimately raise the cost of capital for issuers.[100] It has been shown that corporate issuers pay more to issue bonds (i.e., bond offering yields are higher) when the expected liquidity in the secondary market is lower for those corporate bonds.[101] Third, information asymmetry with respect to new issue reference data increases transaction and opportunity costs, which may be passed on to customers.[102] The Commission also believes that the results of FINRA's

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99 See e.g., ICE Bonds Letter at 2; FIMSAC Letter at 2; FINRA Notice at 13980; FIMSAC Transcript, supra note 36, Comments from Rick McVey, MarketAxess, at 0065 (recognizing that not all trading venues have timely access to reference data which results in some venues being able to trade the bonds when they begin trading in the secondary market while others cannot).

100 See ICE Data Letter, at 2 ("a centralized data reporting requirement for such issues could benefit the industry and investors by enhancing market transparency, potentially aiding liquidity, reducing trading costs, and lowering the cost of capital for issuers"); FIMSAC Letter, at 2. See also FIMSAC Transcript, supra note 36, 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.").

101 See Goldstein, M. A., Hotchkiss, E. S., and Pedersen, D. J., 2019. Secondary market liquidity and primary market pricing of corporate bonds. Journal of Risk and Financial Management 12, 1-17.

102 See Recommendation at 2. See also FIMSAC Transcript, supra note 36, Comments from Alex Sedgwick, T. Rowe Price, at 0084-85 (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."); 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

outreach[103] are consistent with the range of comments and statements concerning the lack of timely reference data and the resultant impact on many market participants' ability to participate in the market on the first day a new issue trades in the secondary market, and the potentially negative impacts on liquidity that result.[104]

In sum, the record reflects that an information asymmetry that can disadvantage many market participants currently exists in the market for newly issued corporate bond reference data. In the Commission's view, FINRA's proposal, as discussed further below, is reasonably designed to address this information asymmetry in the current market to the benefit of the marketplace.

B. The Proposal is Reasonably Designed to Address Existing Information Asymmetry that can Disadvantage Many Market Participants by Providing Reference Data

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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.").

103 FINRA's proposal was informed by FINRA's outreach to a diverse set of market participants—including several data providers, underwriters and trading platforms—and responses from these market participants "demonstrated a regulatory need for consistent, uniform, and timely corporate bond new issue reference data." See supra notes 63-69 and accompanying text. See also Response Letter, at 4; 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. Based on this outreach, FINRA observed that various market segments may be lacking accurate, complete and timely reference data, including electronic trading platforms and smaller market participants that may not afford multiple data vendor subscriptions. See Response Letter, at 4. See also Notice, at 13980.

104 See e.g. Notice, at 13980, n.17 ("According to one trading platform, 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 the bond when it began to trade."). Petitioner argued that nothing prevented this platform from fulfilling its needs with a different, competing vendor. See Petitioner Statement, at 28, n.19. However, as further discussed herein, in the present market different vendors may have access to different reference data relating to new issues as there is no requirement that underwriters or issuers provide the same information to all reference data providers or provide it at the same time. See supra notes 88-93 and accompanying text.

Important for the Identification, Valuation, and Settlement of Newly Issued Corporate Bonds When Secondary Trading Begins

1. *Comments on the Proposal*

The Commission received several comments relating to the proposed data fields required to be reported and the timing for submission of such data fields. Several commenters requested that FINRA make modifications to and/or provide further clarity regarding certain data fields.[105] One commenter stated that, while it did not disagree with or question the value of FINRA's proposed data fields, FINRA should provide information to support its selections of each of the proposed data fields.[106] One commenter stated that the proposal would not require the disclosure of any data that is not already disclosed in required security registration statements and other required filings.[107] In its comment letter the FIMSAC recommended that FINRA combine certain proposed data fields and include six additional data fields.[108] Petitioner stated that FINRA's proposal to require underwriters to report both CUSIPs and ISINs would further entrench the monopoly enjoyed by CUSIP and ISIN, and would embed ISIN into the FINRA rulebook for the first time.[109] Petitioner further stated that FINRA does not address the market consequences or additional costs to underwriters or end users that would result from mandating

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105 See Credit Roundtable Letter, at 1; ICE Data Letter, at 2-3; SIFMA Letter, at 3; FIMSAC Letter, at 14; Letter from Christopher B. Killian, Managing Director, SIFMA, dated July 29, 2019 ("SIFMA Letter II"), at 2; Letter from Christopher B. Killian, Managing Director, SIFMA, dated October 24, 2019 ("SIFMA Letter III"), at 2-3.

106 See Healthy Markets Letter, at 4, 6; Healthy Markets Letter III, at 2.

107 See Harris Letter, at 2, 66 ("The fields on the FINRA list are sufficient to value most bonds. . . . I believe that FINRA chose the fields wisely.").

108 See FIMSAC Letter, at 7-8, 10, 12-13. FIMSAC 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, FIMSAC recommended requiring the following additional data fields: First Conversion Date; First Conversion Ratio; Spread; Reference Rate; Floor; and Underlying. The FIMSAC also provided supporting rationale for the data fields included in the proposal and the suggested additional data fields. See FIMSAC Letter at 2-3 and Schedule A.

109 See Petitioner Letter I, at 17; Petitioner Letter, III, at 11.

further usage of CUSIPs and ISINs.[110] Petitioner recommended that FINRA consider allowing the use of free, open-source alternative security identifiers, such as the Financial Instrument Global Identifier ("FIGI"), in addition to or in the place of CUSIP and ISIN.[111]

One commenter stated that it could be challenging for underwriters to provide all of the data elements prior to the first trade and requested that the proposal be modified so that underwriters would only be required to report certain information prior to the first trade, with the remaining information required to be reported within 60 minutes of the first trade.[112] On the other hand, one commenter stated that phased reporting of data elements causes material inefficiencies in the intake and consumption of data and that eliminating phased reporting will lead to more complete and consistent reference data.[113]

Commenters also requested various other clarifications to the proposal.[114]

2. FINRA Response to Comments

In response to the FIMSAC Letter, FINRA incorporated the FIMSAC's additional supporting rationale for the data fields into its filing and added the six additional data fields suggested by the FIMSAC.[115] FINRA stated that it agrees that these six new fields are useful

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110 See id.

111 See Petitioner Letter I, at 18.

112 See Letter from Christopher B. Killian, Managing Director, SIFMA, dated April 29, 2019 ("SIFMA Letter"), at 1-2. See also Letter from Cathy Scott, Director, Fixed Income Forum, on behalf of The Credit Roundtable, dated April 29, 2019 ("Credit Roundtable Letter"), at 1 (cautioning that any data provision requirements on underwriters should not impede their ability to make markets in the new issue as soon as possible).

113 See Charles River Letter, at 2. See also Healthy Markets Letter, at 4 ("[W]e do not disagree with FINRA's determination to require uniform pre-first trade reporting.").

114 Two commenters requested that FINRA clarify the meaning of the "prior to the first transaction" deadline for reporting reference data to FINRA. See ICE Data Letter, at 2; ICE Bonds Letter, at 2. One commenter requested FINRA clarify the process for underwriters to correct erroneously reported reference data. See Letter from Salman Banaei, Executive Director, IHS Markit, dated April 29, 2019 ("IHS Markit Letter"), at 2-3. Two commenters made technical suggestions regarding the methods for supplying and redistributing the required data. See SIFMA Letter, at 2; ICE Data Letter, at 3; SIFMA Letter III, at 2.

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

and appropriate to include in the proposal as they are important for settlement and valuation of floating rate notes and convertible bonds.[116] FINRA further stated that it believes the six new fields would not materially increase the costs of the proposal on underwriters.[117] In addition, in response to comments requesting clarification of certain data fields, Amendment No. 2 included additional detail relating to certain data fields.[118]

In response to comments regarding the timing of the reporting requirement, FINRA stated that it believes it is important to maintain the proposal's pre-first transaction reporting requirement.[119] 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 trading in a security begins, and recognized supporting comments on this point.[120] FINRA stated

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116 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. 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.

117 See Response Letter, at 13.

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

119 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.

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

that, as amended, it believes its proposal "reflects a modest expansion of Rule 6760 to include the basic set of essential new issue reference data fields that market participants require for pricing trading and settlement."[121] FINRA stated that the proposed requirement for underwriters to report reference data for a new issue before the first trade in the bond, coupled with FINRA's dissemination of the new issue reference data immediately upon receipt, "will allow market participants to receive the information in a timelier manner and more efficiently participate in market activity once a new issue begins secondary trading."[122] In response to comments regarding the use of alternative securities identifiers, rather than CUSIP and ISIN, FINRA stated that it does not believe this element of the proposal requires new economic impact analysis since current FINRA Rule 6760 already requires underwriters to report a CUSIP number or a similar numeric identifier if a CUSIP number is not available.[123]

FINRA further stated that it recognizes that commenters have requested further clarification of several data fields,[124] 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.[125] 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 and that FINRA will continue to engage with market participants on the appropriate business requirements for the reporting process.[126] FINRA also stated that it may take a phased approach to implementation to promote compliance and data accuracy, where FINRA would

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121 See FINRA Statement, at 10-11.

122 See id.

123 See FINRA Response Letter, at 9, n.28.

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

125 See Response Letter, at 12-13.

126 See id., at 14-15.

make the reporting requirements effective for a brief time period to analyze and evaluate the accuracy of the reported data before implementing dissemination of the data.[127]

3. Commission Discussion and Findings

By helping eliminate the existing information asymmetry in access to reference data, the proposed collection and dissemination of the proposed data elements should promote (i) competition among market participants by facilitating broader market participation in the secondary market of a newly issued corporate bond on the first day that bond trades, (ii) improved secondary market liquidity when a bond becomes available to trade in the secondary market and lower cost of capital for issuers, and (iii) lower other costs by providing data vendors with a more efficient method of collecting reference data and eliminating existing market inefficiencies. As discussed further below, the Commission believes eliminating the information asymmetry with respect to newly issued bond reference data is consistent with Section 15A(b)(6) of the Act as it 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. FINRA's proposal would require all FINRA member underwriters subject to Rule 6760 to report to FINRA 32 new data elements for all new issues in Corporate Debt Securities, as defined in FINRA's rules. 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,[128] and include additional data fields identified by FINRA during its supplemental industry

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127 See id. at 15.

128 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

outreach.[129] As stated 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.[130] In addition to the FIMSAC,[131] a number of commenters agreed with the required data fields put forth by FINRA.[132] FINRA set forth a detailed description of each new required data field[133] and the rationale for including the field, as follows:[134]

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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.

129 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.

130 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.

131 See supra note 128 and accompanying text.

132 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.").

133 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.

134 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: (1) Issuer – necessary for settlement and valuation purposes; the investor needs to know the issuing entity of the bond; (2) Coupon – needed for settlement and valuation purposes; the coupon rate is needed for accrual/interest/cash flow calculations; (3) CUSIP Number – needed to uniquely identify securities that trade, clear, and settle in North America, particularly in the United States; (4) 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 (5) 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.

- 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; required in order to populate the first settlement date of the bond; needed in order to settle the bond trade between counterparties when trading new issues.
- Interest Accrual Date - necessary for settlement and valuation purposes; needed in order to start the cash flow period of the coupon.
- Day Count Description – necessary for settlement and valuation purposes; needed to calculate the purchase accrued interest and coupon of the security.
- Coupon Frequency – necessary for settlement and valuation purposes; 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; needed to determine whether the coupon will have a short or long stub on its first coupon payment.
- Regulation S Indicator –necessary for settlement purposes; 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; needed as the bond classification dictates the payout order in the event of an issuer default; determines the liquidation preference which specifically affects the valuation of the security.

- First Coupon Period Type – necessary for settlement and valuation purposes; denotes 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; needed 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; needed to determine when the bond may be converted into stock.
- First Conversion Ratio – necessary for valuation purposes; needed to determine the number of shares into which each convertible bond can be converted.
- Call Indicator – necessary for valuation purposes; needed in order to know if the bond has call feature(s); needed when the security is created and will also have an effect on its valuation.
- First Call Date – necessary for valuation purposes; 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; needed in order to know if the bond has puttable feature(s); needed when the security is created and will also have an effect on its valuation.
- First Put Date – necessary for valuation purposes; 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 almost every fixed income index; would have influence on ETF, liquidity, etc.[135]
- 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 – 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 – important for pre-trade compliance; yield calculations generally use first call on perpetual securities.
- PIK Indicator – important for pre-trade compliance as it indicates cash flow implications and risk for many investors.

As set forth above, FINRA has explained (and several commenters have agreed)[136] that each data field is required to either identify, settle or value a newly issued corporate bond. The

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135 The Commission believes that FINRA's statement here is intended to convey that a bond's issuance amount (e.g., the total par amount issued) is an important piece of information for market participants because the size of the issuance impacts a bond's potential inclusion in ETFs and impacts a bond's secondary market liquidity.

136 See supra notes 131-132.

Commission agrees with FINRA's rationale for requiring each data field, and believes that the required data fields are appropriately tailored to facilitate the identification, valuation and settlement of newly issued corporate bonds.[137] Furthermore, as discussed in detail in Section III.E below, the Commission believes FINRA's proposal encompasses a limited set of data that will enable broader market participation at the beginning of secondary market trading, but will not supplant the demand for more comprehensive data sets that contain additional fields not reported to or disseminated by FINRA.[138]

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137 See ICE Data Letter, at 2, FIMSAC Letter, at 2-3 and Schedule A and Harris Letter, at 6 (all commenting that FINRA's proposal included the necessary data elements for achieving the purpose of enabling market participants to participate in the secondary market when trading begins). The Commission does not believe that requiring the reporting of CUSIP and ISIN will cause any change in the manner underwriters procure this information today or the extent to which market participants rely on this information to identify specific securities. As FINRA recognized, CUSIP is already required to be reported to FINRA under FINRA Rule 6760. See, e.g., FINRA Response Letter, at 9, n.28. Furthermore, both CUSIP and ISIN are widely used today as primary methods for identifying securities. While consideration could be given by FINRA to accept the reporting of other securities identifiers if FINRA decided to explore that in the future, the Commission agrees with comments that CUSIP and ISIN are currently necessary data elements for market participants to identify specific securities, thereby enabling their participation in the secondary market when these securities begin trading. See e.g., FIMSAC Letter, at Schedule A; FINRA Letter, at 6. Regarding comments concerning the collection of alternative securities identifiers such as FIGI, the Commission recognizes that freely available, open alternatives to proprietary identifiers do not entail fees for storage, use, and redistribution, as is frequently the case for proprietary identifiers. The Commission also recognizes there are challenges to the adoption of alternatives to proprietary identifiers such as CUSIP and ISIN that are in widespread use, such as the need for such alternative identifiers to be supported in reference data and clearance and settlement systems in order for them to be viable alternatives to proprietary identifiers. A future proposed rule change could seek to lessen reliance on proprietary identifiers for regulatory reporting, including regulatory reporting related to corporate bonds. The Commission notes that FINRA could, if appropriate, file a proposed rule change with the Commission to supplement or allow alternatives to the securities identifier information that it will be collecting pursuant to this proposal. Any such proposal would be informed by the public notice and comment process required by the Act.

138 There are many other data provided by data vendors that provide bond issue reference data, 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 supra note 87.

In addition, the Commission agrees that it is important that all required data elements for new issues in corporate debt securities be reported prior to the first transaction in the security so that market participants will be able to participate in the secondary market promptly.[139] FINRA stated this approach—to require uniform pre-first trade reporting[140]—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.[141] As stated by FINRA and other commenters, improved reference data transparency should promote market efficiency and fair competition among all market participants by helping to ensure all market participants have access to consistent, timely and accurate reference data regarding newly issued corporate bonds.[142] The Commission believes providing market participants with reference data important for their participation in the secondary market when a bond begins to trade should eliminate the information asymmetry described above, which would benefit the corporate bond market.[143] Enabling broader participation by all market participants should promote (i) improved competition among market

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139 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 "as much of the information set forth in paragraph (b)(1) that is available prior to the execution of the first transaction of the offering, which must be sufficient to identify the security accurately, and such other information that FINRA deems necessary and provide all other information required under paragraph (b)(1) within 15 minutes of the Time of Execution of the first transaction." See Rule 6760(c).

140 The Commission recognizes that there may be an incremental burden on underwriters; however, the Commission believes this burden will be mitigated both by the existence of current reporting infrastructures 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. See infra Section III.D.3.

141 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. See also supra note 113 for supporting comment letters.

142 See Notice, at 13981. See also supra notes 31-42 and accompanying text.

143 See supra Section III.A.3.

participants by providing all market participants with the ability to access the same investment options to meet their own business and investment needs or those of their customers at the time a bond becomes available in the secondary market, (ii) improved secondary market liquidity and lower the cost of capital for issuers as more market participants become able to participate in the secondary market on the first day of trading; and (iii) lower other costs by providing data vendors with a more efficient method of collecting reference data and eliminating existing market inefficiencies.[144] Furthermore, the Commission agrees with commenters and believes that the provision of reference data will benefit all participants on electronic trading platforms, including investors and intermediaries, by enabling them to price and trade bonds based on consistent, accurate, and timely information, which is vital to meet the information needs of an increasingly electronic corporate bond market.[145]

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144 See id. See also supra notes 90-104 and accompanying text for a discussion of concerns about information asymmetry in the corporate bond market today that can disadvantage many market participants. Petitioner argued that FINRA provided no evidence the proposal would reduce broken trade errors or reduce costs or duplicated efforts. See supra notes 51-52. 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 notes 31-42 and 92-103 and accompanying text. As discussed herein, the Commission believes the proposal would benefit the corporate bond market by, among other things, lowering costs and potentially reducing trading errors.

145 See supra notes 37-41 and note 100. See also FIMSAC Transcript, supra note 36, 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 0084-85 ("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.")

For these reasons, the Commission believes that FINRA's proposal is consistent with Section 15A(b)(6) of the Act as it 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.[146] The Commission believes it is important for all required data fields to be reported to FINRA prior to the first transaction in the security because this requirement, coupled with FINRA's dissemination of the new issue reference data immediately upon receipt, will allow all market participants to have timely, basic information that is important for the identification, valuation, and settlement of newly issued corporate bonds in order to participate in the secondary market without delay.[147]

C. *FINRA as Centralized Data Source*

1. Comments on the Proposal

Petitioner questioned whether a single SRO would provide more accurate, complete and timely service than competing private sector providers and noted that the impact of any errors in

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146 One commenter stated that FINRA should be required to demonstrate that the benefits of the proposal are so substantial and clear to overcome the strong presumption that private actors in competitive markets are the best means of providing goods and services. See supra note 54 and accompanying text. Pursuant to the Act, the Commission must approve an SRO's proposed rule change if it finds that such proposed rule change is consistent with Act and the rules and regulations issued thereunder that are applicable to such organization. See Section 19(b)(2)(C)(i) of the Act. For the reasons set forth herein, the Commission finds that FINRA has made such a showing.

147 See supra Section III.A and notes 90-104 and accompanying text for a discussion of concerns about information asymmetry in the corporate bond market today that can disadvantage many market participants; and note 145 and accompanying text. As discussed above, timely availability of this data should promote (i) competition, (ii) improve secondary market liquidity and lower cost of capital and (iii) lower other costs. In addition, FINRA has clearly and explicitly stated that it will provide guidance in the course of new rule implementation to provide any further clarification required regarding data fields, and will engage with market participants as required to provide such guidance. FINRA has also clearly and explicitly stated that it will engage with market participants on the appropriate business requirements for the reporting process and has stated that it may take a phased approach to implementation to promote compliance and data accuracy. See supra notes 125-127 and accompanying text.

a centralized system would be magnified.[148] Petitioner stated that "[i]f trades need more accurate, compete and timely data, they can switch to one of several major data providers."[149] Petitioner stated that the Approval Order did not explain "why uniform (as opposed to accurate and accessible) data is necessary or desirable in a competitive market" and that "assuming uniformity were an important goal…, neither FINRA nor the [Approval Order] has explained why that justifies a sole-source provider."[150] Petitioner further stated that private vendors will have a diminished incentive to gather, verify, organize, maintain, and provide reference data information, and that FINRA will not have the financial incentive to do so in a cost-effective manner or to improve its technology for collecting or distributing bond data, and, as a result, traders' cost for bond reference data may increase.[151] 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.[152] Petitioner suggested that FINRA should have considered alternatives to the proposal, including "develop[ing] certification criteria for vendors, or common data standards for underwriters, at far less cost than the construction of a new service, and at far less risk of a single point of failure"[153] and stated that the proposal violates the Act because it does not foster cooperation with existing data vendors and providers.[154]

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148 See Petitioner Letter, at 9-10.

149 See Petitioner Statement at 23.

150 See Petitioner Statement, at 24.

151 See Petitioner Letter III, at 5-6; Petition for Review, at 31. This commenter further stated that the proposed centralized data service could achieve a dominant position regardless of whether an innovating company could have done a better job and that the proposed database, run as a "regulatory utility," is likely to produce a service less valuable than what market-based providers would produce. See Petitioner Statement, at 37.

152 See Letter from Larry Tabb, TABB Group, dated May 15, 2019 ("Tabb Letter"), at 3. See also Petitioner Letter V, at 2.

153 See Petitioner Statement, at 24.

154 See Petitioner Statement, at 20.

Petitioner and another commenter stated that the proposal creates a conflict of interest for FINRA and reduces FINRA's standing as an independent regulatory force.[155] The other commenter stated that FINRA has a pecuniary interest in promulgating the proposal and "can use its regulatory authority to force underwriters to provide it with information and then sell the information to market participants at a profit."[156] On the other hand, FIMSAC 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.[157]

A number of 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.[158] Petitioner stated that "[t]he best predictor of whether FINRA will be able to run an accurate data system is its experience with the TRACE system, an existing system that is simpler than the as-yet-unbuilt

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155 See Petitioner Letter IV, at 5; Heritage Letter V, at 2. See also Petitioner Statement, at 31 ("The [proposal]…creates an inherent conflict between a public regulator and the private parties it regulates.").

156 See Heritage Letter V, at 2. See also Petitioner Statement, at 31 (stating that pursuant to the proposal, FINRA "would coerce underwriters to surrender bond-reference data and would (at least implicitly) compel broker-dealers to buy FINRA's data" and that if the proposed database costs more than expected or does not achieve the purported benefits, FINRA may be motivated to take steps to save its own finances that, "as a regulator, it is uniquely empowered to take."). In Section III.F below, the Commission discusses comments regarding FINRA's potential fees for this service.

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

158 See, e.g., Healthy Markets Letter II, at 5; Petitioner Letter III, at 5-6; and Petitioner 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 Petitioner Statement, at 29.

system FINRA proposes" and that "[n]othing in the record supports any inference that FINRA's new system would outperform the 20% error rate cited in the…Tabb Study."[159]

2. FINRA Response to Comments

In response to comments that private vendors should continue to provide this information rather than a single SRO,[160] FINRA stated that "[a] key element of the [p]roposal is that FINRA, as a not-for-profit SRO, will provide a limited set of essential corporate bond new issue reference data as a public market utility on timely, reasonable, and non-discriminatory terms to anyone who chooses to receive it."[161] FINRA noted that, in contrast, "the private data vendors that today provide corporate bond new issue reference data are not bound by similar obligations, and the FIMSAC expressed particular concern that a dominant private data vendor has refused to license data, or has withheld it selectively, for anti-competitive reasons."[162] FINRA stated that the current disparity among vendor access to reference data results from competitive barriers in the current market, "as underwriters have relatively few incentives to report to data vendors other than the prevalent incumbent data vendor, i.e., Petitioner."[163] FINRA further noted that the FIMSAC was particularly concerned that "a dominant private vendor's ability to restrict access to new issue reference data has immediate and direct downstream impacts on the ability of other market participants to perform critical market functions such as pricing, trading, clearing, and

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159 See Petitioner Statement, at 30.

160 See supra notes 148-152 and accompanying text.

161 See FINRA Statement, at 2.

162 See FINRA Statement, at 2 (citing Recommendation, supra note 30). In response, Petitioner stated that it submitted the Petitioner Motion and Declarations to rebut FINRA's allegations of anti-competitive conduct. Specifically, Petitioner stated that the Declarations demonstrate that Petitioner does not restrict access to its reference data service based on firms' willingness to use any of its trading services, or for any other anti-competitive reasons, and that Petitioner makes its reference data service broadly available on standard terms for standard use cases. See Petitioner Motion, at 10. FINRA, on the other hand, stated that the Declarations do not directly address the specific concerns expressed by the FIMSAC and are immaterial in light of the well-developed record. See FINRA Opposition, at 6-7.

163 See FINRA Statement, at 12.

settling new issues once the bonds begin trading in the secondary market."[164] FINRA stated that comments from members and panelists at the FIMSAC meeting also provided support for the Subcommittee's recommended solution that FINRA establish and operate a consolidated, regulated data service.[165] Furthermore, FINRA noted that the FIMSAC reaffirmed FINRA as "the most logical and impartial choice" to establish and operate the data service in its comment letter, as FINRA would provide the data impartially "to all market participants on objective and non-discriminatory terms."[166] While FINRA acknowledged that the proposed data service may create a potential single point of failure,[167] FINRA stated it continues to believe any concerns about the risks of consolidation do not outweigh the benefits of the data service, and that vendors are likely to continue collecting corporate bond new issue reference data.[168]

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164 See FINRA Statement, at 2-3 (citing Recommendation, supra note 30). FINRA further stated that Petitioner is the dominant private data vendor in today's market for corporate bond new issue reference data and "often gains access to new issue reference data before other vendors and market participants." See FINRA Statement, at 3. In response, Petitioner stated that neither the Recommendation nor the FIMSAC Letter suggested that one dominant private data vendor engaged in anti-competitive activity. See Petitioner Motion, at 3. In addition, Petitioner stated that the Declarations "conclusively rebut the notion that Petitioner engages in an anticompetitive leveraging of the new bond issuance functionality on the Petitioner Terminal service to gain preferential access to reference data." See Petitioner Motion, at 9. On the other hand, FINRA stated that the Declarations neither directly address nor dispel the concerns expressed by the FIMSAC and others that underlie the proposed rule change. See FINRA Opposition, at 6-9.

165 Specifically, FINRA pointed to (i) a statement by Larry Harris, USC Marshall School of Business, that "FINRA is best equipped to solve this problem;" and (ii) a statement by Bob LoBue, J.P. Morgan, that the firm "could probably populate [its existing process for providing new issue reference data to FINRA] a little bit deeper." See FINRA Statement, at 9 (citing to FIMSAC Transcript, supra note 36).

166 See FINRA Statement, at 9-10 (citing the FIMSAC Letter). FINRA further noted that the FIMSAC articulated a "concern that certain large reference data providers 'have in the past, and could in the future, manage their data and trading businesses in a coordinated fashion – refusing to license their leading reference data products to trading platforms that they deem to be competitive with their own.'" See id. at 10 (citing FIMSAC Letter, at 3-4).

167 See supra note 153 and accompanying text.

168 See Response Letter, at 10. 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 Petitioner Letter V, at 3. See also Section III.E for a discussion of the proposal's impacts on competition.

In response to comments that there exist alternatives to the proposal that would be less costly,[169] FINRA noted that it considered alternatives and explained its rationale for the choices it made in its proposal.[170] FINRA further stated that Petitioner's analysis that an SRO's proposed rule change cannot be approved if some alternative might also accomplish the same goal is flawed.[171]

In response to comments regarding alleged conflicts of interest and FINRA acting in a commercial rather than a regulatory role,[172] FINRA stated that, as a non-profit registered securities association and SRO, it does not intend to compete with or displace private data vendors.[173] 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.[174] 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.[175] Furthermore, FINRA noted that under Section 15A of the Act, it is charged

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169 See supra note 153 and accompanying text.

170 See FINRA Statement, at 25. See also Notice, at 13979 ("FINRA alternatively considered maintaining the Rule's phased reporting approach for offerings in corporate debt securities subject to the proposal, with certain core information required prior to the first trade and an extended 60-minute window for remaining information, given the additional data fields that would be required to be reported under the proposal. However, FINRA believes that the proposed approach to require uniform pre-first trade reporting better supports the stated goals in the FIMSAC Recommendation to increase the efficiency of the corporate bond market and promote fair competition among all market participants."); 13982-83 ("FINRA also considered whether there was an appropriate alternative approach that involved an expansion of the DTCC's NIIDS service to include corporate new issue reference data. However, based on operational and commercial reasons, including inefficiencies with integrating the existing FINRA reporting infrastructure with a separate DTCC infrastructure, FINRA concluded that expanding the current existing FINRA reporting and dissemination framework was a more effective and efficient approach…").

171 See FINRA Statement, at 25.

172 See supra notes 155-157 and accompanying text.

173 See Response Letter, at 10.

174 See id.

175 See id.

with a number of responsibilities including, among others, removing impediments to a free and open market and fostering clearance, settlement, and information processing with respect to transactions in corporate bonds and other securities.[176] 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.[177] FINRA also noted that SRO regulation of new issue reference data is not novel, as the same kind of new issue reference data for municipal bonds are made available under rules adopted by the MSRB, which is charged with a similar mandate as FINRA in the municipal securities market.[178] FINRA concluded that 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.[179]

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,[180] FINRA stated that there is key information missing from the analysis on which these commenters rely, and without such information it is difficult for FINRA to provide a meaningful

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176 See FINRA Statement, at 2; Response Letter, at 9. See also Section 15A(b)(6) of the Act, 15 U.S.C. 78o-3(b)(6).

177 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. See also FINRA Statement, at 2. 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/.

178 See FINRA Statement, at 2.

179 See FINRA Statement, at 2.

180 See supra notes 148, 158-159 and accompanying text.

response to the analysis.[181] 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.[182] 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.[183] 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.[184] Furthermore, FINRA stated that FINRA's long history of successfully providing critical TRACE data to the markets since 2002 negates any concerns about TRACE' s accuracy.[185]

3. Commission Discussion and Findings

a. Centralized Database Provider

The Commission believes that FINRA is an appropriate entity to operate a centralized database for newly issued corporate bond reference data because of its status as a regulated SRO and its accompanying regulatory obligations, and because of its demonstrated experience with

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181 See Response Letter, at 10-11; FINRA Statement, at 23-22. 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 stated 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 were not present yet in either system. See id. In response, Petitioner 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 Petitioner Letter V, at 2.

182 See Response Letter, at 10-11; FINRA Statement, at 23-22.

183 See id.

184 See id. In response, Petitioner 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 Petitioner Letter V, at 3.

185 See FINRA Statement, at 24.

the establishment and maintenance of databases used by the public.[186] There is an information asymmetry in the market for newly issued corporate bond reference data.[187] Specifically, there is a lack of broadly available and accessible new issue reference data on the first day of secondary market trading that impedes the efficiency and competition in the current marketplace.[188] The Commission finds that FINRA's proposed reporting requirements and dissemination protocol of such data are reasonably designed to address this information asymmetry by facilitating access to timely and accurate new issue corporate bond reference data, consistent with Section 15A of the Act.[189]

The Commission believes that FINRA's status as an SRO will help ensure that it operates the New Issue Reference Data Service in a manner that will address the current information asymmetry in reference data availability on the first day of secondary market trading.

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186 See infra notes 193-197 and accompanying text.

187 As discussed above, in the corporate bond market today, the Commission understands from market participants that Petitioner typically has the timeliest access to newly issued bond reference data on the first day a bond trades, as it enjoys the voluntary cooperation of underwriters. See supra note 91. While market participants and others have expressed concerns that Petitioner is engaged in anti-competitive conduct in the market for newly issued corporate bond reference data, the Commission is not making any findings herein regarding whether Petitioner has actually engaged in such conduct. See supra notes 162 and 164 and accompanying text.

188 In contrast to the corporate bond market, the municipal securities market and Treasury market have centralized mechanisms in place that provide market-wide access to information about newly issued securities on the first day of trading. MSRB Rule G-34 requires municipal securities underwriters to submit new issue information for municipal bonds to the New Issue Information Dissemination Service ("NIIDS"), which is operated by the Depository Trust and Clearing Corporation ("DTCC"). The FIMSAC noted 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. In the Treasury market, the U.S. Department of the Treasury publishes details about upcoming issuances in a new issue calendar and immediately following each auction.

189 See supra Section III.A.3 and Section III.B.3. One commenter argued that FINRA should have considered alternatives to the proposal to address information asymmetries in the market for newly issued corporate reference data. But, as discussed above, the Act requires that the Commission approve an SRO's proposed rule change if it finds that such proposed rule change is consistent with Act and the rules and regulations issued thereunder that are applicable to such organization. See Section 19(b)(2)(C)(i) of the Act. For the reasons set forth herein, the Commission finds that FINRA has made such a showing.

Importantly, Section 15A of the Act will require FINRA to provide the New Issue Reference Data Service to market participants in a manner that is not unfairly discriminatory and on terms that are equitable and reasonable.[190] Furthermore, as an SRO, the Commission oversees FINRA to ensure that it is carrying out its regulatory responsibilities. The Commission has the ability to review FINRA's proposed rule changes for consistency with the Act, which would include any proposed changes with respect to the operation of the New Issue Reference Data Service and, as discussed below, any proposed fees for accessing the database.[191] The Commission also oversees FINRA through inspections of its operations and programs. Finally, FINRA has an obligation to operate consistent with requirements under the Act and with its own rules, and is required to enforce compliance by its members with the federal securities laws and FINRA's own rules.[192]

In addition to being subject to a comprehensive regulatory regime, FINRA has extensive experience with collecting data from its members and disseminating such data to the public. For example, TRACE, which FINRA has operated since 2002, provides information to investors and other market participants about secondary market trades in corporate bonds and other debt securities that it collects from its member firms. Currently, TRACE disseminates information to the marketplace about corporate bond trades, including trade price and size, immediately upon

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190 See 15 U.S.C. 78o-3. See also FIMSAC Letter, at 3 (recognizing the importance of the operator of a reference data to be subject these standards of conduct).

191 Pursuant to Section 15A of the Act, FINRA, as a registered securities association, must establish rules that generally: (1) are designed to prevent fraud and manipulation, 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, protect investors and the public interest; (2) provide for the equitable allocation of reasonable fees; (3) do not permit unfair discrimination; (4) do not impose any unnecessary or inappropriate burden on competition; and (5) with limited exceptions, allow any broker-dealer to become a member. See 5 U.S.C. § 78s(g).

192 See 5 U.S.C. § 78s(g).

receipt.[193] U.S. secondary trading markets have greatly benefitted from the increased transparency that have resulted from FINRA's establishment, management and expansion of TRACE.[194] In addition, FINRA currently operates the Order Audit Trail System ("OATS"), which was established in 1996.[195] Pursuant to FINRA Rules, FINRA's members report data to OATS to create an integrated audit trail of order, quote, and trade information for all NMS stocks and OTC equity securities.[196] The Commission believes that the New Issue Reference Data Service would be an appropriate extension of the data services that FINRA provides to the public and would benefit from FINRA's experience in collecting and disseminating data to the public;

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193 See FINRA Regulation Notice 19-12 (April 12, 2019), available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/finra-regulatory-notice-trace-19-12.pdf. In addition, FINRA makes details about corporate and agency debt securities available to FINRA members. 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.

194 See, e.g., FIMSAC Letter, at 3; Hendrik Bessembinder, William Maxwell, and Kumar Venkataraman, "Market Transparency, Liquidity Externalities, and Institutional Trading Costs in Corporate Bonds," Journal of Financial Economics 82, 251-288 (2006), available at https://doi.org/10.1016/j.jfineco.2005.10.002; Michael A. Goldstein, Edith S. Hotchkiss, and Erik R. Sirri, "Transparency and Liquidity: A Controlled Experiment on Corporate Bonds," The Review of Financial Studies 20, 235-273 (2007), available at https://doi.org/10.1093/rfs/hhl020; Amy K. Edwards, Lawrence E. Harris, and Michael S. Piwowar, "Corporate Bond Market Transaction Costs and Transparency," The Journal of Finance 62, 1421-1451 (2007), available at https://doi.org/10.1111/j.1540-6261.2007.01240.x; and Dominique C. Badoer and Cem Demiroglu, "The Relevance of Credit Ratings in Corporate Bond Markets," The Review of Financial Studies 32, 42-74 (2018), available at https://doi.org/10.1093/rfs/hhy031.

195 See In the Matter of National Association of Securities Dealers, Inc., Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Exchange Act Release No. 37538 (August 8, 1996), Administrative Proceeding File No. 3–9056 and Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market LLC (''Nasdaq''). See also Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (order approving proposed rules comprising OATS) (''OATS Approval Order'').

196 Id. See also Securities Exchange Act Release No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR–FINRA–2010–044) (order approving proposed rule change by FINRA relating to the expansion of OATS to all NMS stocks). While OATS data are not disseminated to the public, it is used by FINRA to recreate events in the lifecycle of an order and monitor the trading activity of member firms. See https://www.finra.org/filing-reporting/market-transparency-reporting/order-audit-trail-system-oats.

the Commission also notes that the proposal is limited to reference data regarding TRACE-eligible bonds.[197]

b. Data Quality and Resilience

Some commenters have expressed concerns that the New Issue Reference Data Service will harm corporate bond reference data quality and resilience, noting that (1) it would create a single point of failure, (2) FINRA would not be incentivized to maintain high quality data, and (3) current error rates in TRACE is evidence that FINRA's reference database will not be reliable.[198] The Commission is not persuaded by these arguments. Regarding concerns about a single point of failure, it is not clear to the Commission that FINRA's New Issue Reference Data Service will indeed be a single point of failure.[199] While some have suggested that FINRA's proposal would increase efficiencies due to the consolidation of reference data within one entity,[200] it is the Commission's judgment that it is premature to draw conclusions about the impact of FINRA's proposal on the manner in which underwriters currently distribute data or how other data vendors conduct business or customers' demand for other data vendors' services. FINRA's proposal does not disrupt the ability of underwriters to continue reporting new issue reference data to data vendors. Because underwriters already have these data reporting processes in place and have incurred the costs of establishing those processes, underwriters may choose to continue to provide new issue reference data to data vendors as well as to FINRA. Should that be the case, private data vendors will continue to be incentivized to invest in their current

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197 The Commission also notes that the FIMSAC considered various alternatives to FINRA in its deliberations, including private sector providers, and settled on FINRA because it believed that FINRA was the most logical and impartial choice because it is subject to regulatory oversight by the Commission and because of underwriters' existing reporting mechanisms with FINRA. See FIMSAC Letter, at 3.

198 See supra notes 148, 151-152, and 158-159 and accompanying text.

199 The Commission believes that data vendors will continue to compete for the provision of data services and expects that market participants will turn to a variety of sources for their data needs depending on the facts and circumstances at hand. See infra Section III.E for a discussion of the proposal's impact on competition.

200 See, e.g., infra note 216 and accompanying text.

methods of collection and distribution and concerns about a single point of failure will be mitigated. If market participants do in fact change their current practices and report new issue reference data to FINRA only,[201] the Commission believes that FINRA's experience with establishing and maintaining databases such as TRACE and OATS and the Commission's regulatory oversight of FINRA will ensure that the New Issue Reference Data Service is designed and operated consistent with the Act.[202]

The Commission also believes that FINRA will be incented to build and maintain a high quality New Issue Reference Data Service. As discussed previously, it is possible that the current business processes for new issue reference data distribution remain, which would impose competitive pressures on FINRA to provide high quality new issue reference data. If FINRA does become the sole source of new issue reference data, however, the Commission believes that FINRA will build and maintain a high quality New Issue Reference Data Service, mitigating concerns about data quality and resilience, because of (i) FINRA's experience with the establishment and maintenance of databases such as TRACE and OATS, (ii) its status and regulatory obligations as a regulated SRO, and (iii) the Commission's oversight of FINRA, including our inspection and examination functions.

Finally, the Commission is not persuaded that commenters' concerns about error rates in TRACE data call into question the ability of FINRA to build and maintain a reliable reference database. As discussed above, commenters have expressed concerns about FINRA's proposed reference database, arguing that "reconciliation differences" show that FINRA's current collection of bond data contains a high incidence of errors.[203] On the other hand, FINRA has

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201 See, e.g., FIMSAC Letter, at 3 and infra note 216 and accompanying text (describing the potential for underwriters to change their current practices by reporting reference data to FINRA only).

202 As discussed above, the Commission oversees FINRA by, among other things, conducting inspections of its operations and programs to examine whether FINRA is operating consistent with Act requirements and its own rules. See supra Section III.C.3.a.

203 See supra notes 158-159 and accompanying text.

argued that "reconciliation differences" do not necessarily mean errors nor demonstrate that FINRA's current collection of data has a high incidence of errors.[204] Furthermore, FINRA states that it found different results based on its own review of TRACE data, including a significant number of instances where it received data not yet available from the vendor.[205] This FINRA analysis suggests that a number of the "reconciliation differences" deemed to reflect FINRA errors may in fact be the simple result of FINRA possessing certain data that was not yet available to the vendor.

Moreover, the Commission does not believe that the disputed comments concerning existing TRACE error rates call into question the ability of FINRA to build and maintain a reliable reference database for the following additional reasons.[206] First, as discussed above, FINRA has an established track record of creating reliable databases of information gathered from its member firms and made available to the public.[207] Additionally, FINRA has explicitly and clearly 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.[208] The Commission expects FINRA to do these things and believes that FINRA is committed to establishing a reliable reference database, consistent with its statutory and regulatory obligations under the Act, and the Commission will continue to monitor closely FINRA's work and

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204 In particular, 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 were not present yet in either system. See Response Letter, at 11.

205 See id.

206 The Commission is not taking a position on the accuracy of either commenters' or FINRA's statements regarding error rates.

207 See supra notes 193-197 and accompanying text.

208 See Response Letter, at 11-15.

implementation of the New Issue Reference Data Service.[209] Furthermore, as discussed above, the Commission oversees FINRA as an SRO and, to the extent that it is operating the database in a manner that violates the Act or the rules and regulations thereunder, the Commission will have recourse.

D. Burden on Underwriters

1. Comments on the Proposal

Commenters expressed concerns about how FINRA's proposal might impact the underwriters that will be required to provide FINRA with new reference data elements for newly issued corporate bonds. One commenter argued that the proposal would increase regulatory and liability burdens for underwriters without any clear benefit.[210] This commenter and Petitioner argued that the proposed rule's compliance burden would disproportionately impact smaller underwriters.[211] Another commenter stated that FINRA should be required to demonstrate "that the benefits to information purchasers [of the proposal] would materially outweigh the unrecompensed costs imposed on underwriters."[212] Petitioner argued that FINRA must include

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209 In addition, as discussed below, the Commission believes that data vendors will likely continue to compete in the market for data. In addition to potentially competing in the market for new issue reference data by operating as they do today, these data vendors will also continue to compete based on differing value added services related to the required information and also based on additional data fields, data updates, and services related to the data and that such competition should continue to spur innovation and allay concerns regarding a single point of failure and error rates. See infra Section III.E.3.

210 See Chamber Letter, at 4 ("Underwriters would face potential liability for errors in reporting and calculation, while there is no clear benefit for this increased burden."); Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated October 24, 2019 ("Chamber Letter III"), at 2.

211 See Petitioner Letter IV, at 5. See also Chamber Letter III, at 3. Petitioner 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 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 Petitioner Letter IV, at 5, n.10.

212 See Heritage Letter V, at 2.

information regarding underwriter's costs of preparing for new infrastructure and compliance obligations.[213]

On the other hand, FIMSAC stated that it heard from underwriters that it would be relatively easy for them to report the new issue reference data to FINRA given their current established reporting mechanisms to TRACE and that underwriters could thereby avoid the duplicative effort involved in sending the same data multiple times to various reference data providers.[214]

2. Response to Comments

In its proposal, FINRA stated that "[b]ased on conversations with underwriters, FINRA understands that underwriters do not anticipate incurring significant costs for reporting under this proposal."[215] In addition, FINRA acknowledged the concern that underwriters that underwrite fewer deals may be disproportionally 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."[216]

3. Commission Discussion and Findings

The Commission believes that any burdens imposed on underwriters by the proposal, including smaller underwriters, would be limited because of such underwriters' existing data collection and reporting practices with respect to the information FINRA proposes to be

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213 See Petitioner Statement, at 17-18

214 See FIMSAC Letter, at 3. As discussed above, it is the Commission's judgment that it is premature to draw conclusions about the impact of FINRA's proposal on the manner in which underwriters currently distribute data. See supra notes 200-202 and accompanying text.

215 See Notice, at 13982.

216 See id.

reported.[217] First, the Commission believes, and no commenter has disputed, that all underwriters, including small underwriters, should be able to leverage their existing infrastructure used to connect and report to FINRA with respect to the information required under the proposal. Underwriters today are already required to report certain data elements related to new issue bonds to FINRA pursuant to the requirements of current Rule 6760.[218] All underwriters of Corporate Debt Securities, as defined in FINRA's rules, have already developed data reporting mechanisms to FINRA for purposes of transmitting required data concerning these securities.[219]

Second, the Commission believes that underwriters today are already collecting the additional information required under the 32 data elements in the proposal, and are already reporting such information to at least one private vendor on the first day a bond trades, given the

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217 See, e.g., Recommendation, at 3 ("The FIMSAC recognizes that the creation of this service will impose costs on FINRA and the underwriters. Based on available information, the FIMSAC believes that the costs would be small relative to the value of the service as the required information to be reported is similar to the information that underwriters already provide directly to reference data vendors."). See also supra notes 215-216 and accompanying text.

218 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) 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. See FINRA Rule 6760.

219 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. See Recommendation supra note 30; FIMSAC Letter, at 3.

need for this information by investors in the newly issued bond's primary offering.[220] Underwriters should be able to leverage their existing data collection and reporting infrastructures to FINRA and private data vendors in order to meet their obligations under the proposal to report additional information to FINRA.[221] Furthermore, because underwriters currently have infrastructure in place to report certain information to FINRA and the information required by the proposal to private data vendors, they are already incurring costs to update and maintain this existing infrastructure. As a result, the Commission believes the initial set-up costs resulting from the proposal on underwriters will be small and there would be no or very little additional ongoing costs as a result of the proposal that are not already being incurred by underwriters.

The Commission also notes that underwriters may also be able to efficiently leverage the services of third-party vendors to comply with FINRA's new reporting requirements, as one commenter suggested.[222] Moreover, the Commission believes that the incremental burden on underwriters to set up and maintain infrastructure to comply with FINRA's proposal, if any, is

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220 See supra note 91. The Commission believes that it would be rare for an underwriter involved in the distribution of debt securities to be able to act as an underwriter and broker-dealer without having this information immediately available for its engagement with customers. Additionally, the Commission understands that technical implementation may require a phased approach, as stated by FINRA, to promote compliance and data accuracy. See Response Letter, at 15; supra notes 125-127 and accompanying text (describing FINRA's implementation plans).

221 One commenter raised concerns about underwriters facing potential liability for errors in reporting. See supra note 210. While the Commission recognizes that underwriters may be subject to antifraud liability or FINRA enforcement actions, 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.

222 See IHS Markit Letter, at 3.

justified by the benefits to the market of eliminating information asymmetries, which should improve efficiency and competition.[223]

Finally, the proposal would require uniform pre-first trade reporting to FINRA. Currently, for information reported under Rule 6760 for trade reporting purposes, the rule generally requires pre-first trade reporting but allows some information to be reported within 15 minutes of the first-trade.[224] The Commission recognizes that there may be an incremental burden on underwriters to report certain information earlier than they were previously required; however, the Commission believes this burden will be mitigated both by the existence of current reporting infrastructures discussed above and the fact that the data elements to be reported are already in the possession of underwriters, given the use of this information in the newly issued bond's primary offering.

E. Competition

1. Comments on the Proposal

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) of the Act.[225] A number of commenters asserted that the proposal would inappropriately displace competition among private sector reference data providers, which would impose costs on the market and could ultimately impede the quality of data available to market participants.[226] Petitioner stated that the proposal would "both limit vendors' demand and make it harder for

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223 See supra Section III.B.3. See also FIMSAC Transcript, supra note 36, Comments from Larry Harris, at 0111 (noting that the burden on underwriters "though it might be twice as large, is still extremely small and very, very small in comparison to the value of these data.").

224 See supra note 139.

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

226 See Heritage Letter, at 1-2; Heritage Letter V, at 3; Chamber Letter, at 2; Petitioner Letter, at 2-3; Healthy Markets Letter II, at 5; Tabb Letter, at 2-3. See also Petitioner Statement, at 3, 32-34.

vendors to obtain and distribute information from underwriters mandated to provide the information to FINRA."[227] Petitioner stated that the proposal would establish a rival data service that would be a "government-privileged quasi-monopoly enjoying the advantage of compulsory access to data that market-based services must compete for."[228] This commenter argued that "[s]upplanting the current competitive system in favor of a compulsory government service" is inconsistent with the Act.[229]

Petitioner 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."[230] This commenter stated that the proposal would chill future innovation and investment "through the threat of SROs commandeering private markets" and that "FINRA's willingness to enter new markets and provide new services undermines the incentives for private actors to invest and innovate."[231] Petitioner stated that it and other similar companies have spent "tens of thousands of hours and millions of dollars over decades building attractive bond-reference data services" and that "FINRA's attempt to appropriate the space would cause incumbent providers to hesitate before investing more in capital-markets innovation."[232]

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227 See Petition for Review, at 29.

228 See Petitioner Statement, at 20.

229 See id. at 21.

230 See Petitioner Letter II, at 1. See also Petitioner 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 Petitioner 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 Collection and Dissemination for OTC Equity Securities).

231 See Petition for Review, at 28, 30. See Petitioner Statement, at 32-33; 36.

232 See Petitioner Statement, at 38.

In contrast, commenters 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.[233] One of these commenters asserted that providing reference data in a manner similar to that proposed by FINRA promotes competition by reducing costs and barriers to entry for new entrants in the reference data provider market.[234] This commenter noted that data vendors currently sell reference data products that provide data in addition to FINRA's proposed required data fields.[235]

2. FINRA Response to Comments

In response, 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 with other data sets and systems deemed valuable by market participants.[236] FINRA stated that its proposed data service is narrowly tailored to provide only the basic fields of reference data that are essential for trading and settling newly issued corporate bonds.[237] FINRA argued that because of the proposal's narrow scope, it would not interfere with private data

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233 See FIMSAC Letter, at 3; Harris Letter at 4.

234 See Harris Letter, at 4.

235 See Harris Letter at 4 (noting that such additional data include 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 Petitioner Letter, at 13-14.

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

237 See FINRA Statement, at 3; Response Letter, at 9.

vendors' ability to compete to provide more enriched and value-added data, including data with supplementary fields and other value-added services.[238]

FINRA noted that several commenters responding to the proposal, including those that operate alongside Petitioner in both the markets for reference data and trading services, agreed that the proposal would not displace reference data providers or chill private market investments and would instead enhance competition among market participants, level the playing field, and reduce overall costs.[239] FINRA also noted that competition among reference data providers continues to exist in the municipal bond market, where there has long been a centralized, SRO-mandated data service similar to that proposed by FINRA.[240]

FINRA also stated that a key indicator of enhanced competition is the ability to reduce prices,[241] and noted that a number of market participants stated that the proposal will lower the costs to obtain new issue reference data.[242] FINRA stated it believes the proposal will promote competition in the markets both for reference data and trading in that providing all data vendors with timely access to a basic set of new issue reference data will level the playing field and allow vendors to compete on other value-added dimensions, which in turn will lower the costs of

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238 See FINRA Statement, at 3-4; Response Letter, at 9.

239 See FINRA Statement, at 4, 27; Response Letter, at 8 (citing to Harris Letter; FIMSAC Letter; ICE Data Letter; Charles River Letter). See also supra notes 233-234 and accompanying text.

240 See FINRA Statement, at 4, 28.

241 See FINRA Statement, at 25 (citing SEC Staff Memorandum, Current Guidance on Economic Analysis in SEC Rulemakings, at 11 (March 16, 2012)).

242 Specifically, FINRA cited to statements at the FIMSAC meeting and comment letters submitted in response to the proposal noting that the status quo currently results in higher costs for customers and that the proposal will reduce overall costs. See FINRA Statement, at 25-26 (citing to statements of Frederic Demesy, Refinitiv, FIMSAC Transcript, supra note 36; Harris Letter, at 4; and Charles River Letter). As further discussed below, FINRA has expressly and clearly committed that its fees for the New Issue Reference Data Service will be cost-based. See FINRA Statement, at 18. In its filing with the Commission to adopt fees for the New Issue Reference Data Service, FINRA will be required to set forth why such cost-based fees meet the requirements of the Act, and the Commission will evaluate FINRA's eventual fee application based on the requirements of the Act and assess FINRA's proposed cost-based formula. See infra Section III.F.3.b.

timely and impartial access to essential data (a barrier to entry) for trading firms.[243] FINRA also argued that competition law is meant to protect competition, not competitors, and that a rule proposal does not burden competition in a market for services simply because it may impact the standing of one market competitor.[244]

3. *Commission Discussion and Findings*

The Commission believes that FINRA's proposal is designed to address an information asymmetry in the market for newly issued corporate bond reference data. Specifically, there is a lack of broadly available and accessible new issue reference data on the first day of secondary market trading that impedes the efficiency and competition in the current marketplace. The Commission believes that FINRA's proposal will improve competition among market participants, including investors, data vendors, and trading platforms, by providing all market participants with the ability to access the same investment products to meet their own business and investment needs or those of their customers at the time a bond becomes available in the secondary market. The Commission believes that the burden on competition imposed on private data vendors by the proposal should be minimal and is necessary or appropriate to further the purposes of Section 15A(b)(6) of the Act, namely to promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, newly issued corporate bonds.

First, as discussed above, the impact of FINRA's proposal on the manner in which underwriters currently distribute data or how other data vendors conduct business is uncertain. It

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243 See FINRA Statement, at 12.

244 See FINRA Statement, at 26. FINRA further argued that if an entity is a dominant incumbent and creates barriers to entry for users of its service, then impacting that entity's standing may be required to promote competition and relieve inappropriate burdens on competition. FINRA noted that the FIMSAC expressed particular concern that a dominant reference data vendor has limited other market participants' access to its data for anti-competitive purposes. See FINRA Statement, at 26 (citing FIMSAC Letter, at 4).

is possible, for example, that FINRA's proposal could have a positive impact on competition by lowering barriers to entry among data providers and enabling them to compete on a more level playing field.[245] Additionally, for those vendors or market participants that may be getting reference data from underwriters directly, there is nothing in FINRA's proposal that prohibits underwriters from continuing to provide new issue reference data to data vendors as they do currently. Because underwriters already have these data reporting processes in place and have incurred the costs of establishing those processes, it is possible that despite the creation of a new database by FINRA, underwriters will continue to provide new issue reference data as they do today. Should that be the case, private data vendors will continue to enjoy the benefits of any investments made to acquire newly issued corporate bond reference data, which should limit any competitive impacts of FINRA's proposal.

If market participants do in fact change their current practices and report new issue reference data to FINRA only,[246] the Commission believes that FINRA's proposal will impose a limited burden on competition.[247] There is nothing in FINRA's proposal that would require market participants to purchase the reported data directly from FINRA. The FINRA proposal only applies to new issue corporate bond data and does not contemplate collecting and disseminating other data not collected by FINRA (as described further below) or updates to these

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245 See Notice, at 13981; FIMSAC Transcript, supra note 36, 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."), Comments from Spencer Gallagher, ICE Data Services, at 0069-72 ("there 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"); Harris Letter, at 4-5 (describing anticipated pro-competitive impacts of the proposal on the data vendor market).

246 See supra note 216 and accompanying text.

247 As discussed in more detail in this section, the Commission expects that data vendors will continue to provide enhanced data services (e.g., adding additional data and making various analytical calculations based on the data in the New Issue Reference Data Service) to customers, and that market participants will turn to a variety of sources for their data needs depending on the facts and circumstances at hand.

data throughout the life of the bond. For this reason, the Commission believes market participants would continue to procure data provided by parties other than FINRA. In addition, the Commission believes that many market participants may ultimately continue to rely on their existing data vendors as a single source for all security-specific data and rely on those vendors to incorporate the data proposed to be collected by FINRA. Otherwise, these market participants could incur the costs of collecting and maintaining two data sets—the data available from FINRA and the range of other data available from other data vendors as discussed further below. Furthermore, the information that FINRA will require to be reported is a limited set of data, leaving data vendors with space to continue competing on a variety of fronts. For example, reference data providers could offer additional value add-ons with respect to data reported to FINRA, such as additional data concerning the newly issued bond, enhanced presentation, analytical capabilities, ease of access, and integration with other data sets and systems.[248] In addition, data vendors could offer additional services relating to the data, such as enhanced data scrubbing, if their customers demand such services. Indeed, as stated by one commenter, data vendors currently sell data products that provide data in addition to FINRA's proposed required data fields, and these additional data presumably provide value to their customers.[249] In addition, the Commission understands that data vendors currently offer various services beyond the initial supply of the data set, such as the integration of such data into other data sets and systems, and data vendors would presumably continue to offer such services relating to the required reference data.[250]

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248 See, e.g., Response Letter, at 9.

249 See Harris Letter at 4 (noting that such additional data include ratings and indications of whether an issuer is currently in default, in an agreement to merge, or negotiating such an agreement). Petitioner, 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 Petitioner Letter, at 13-14.

250 For a description of various data vendor's bond reference data offerings, see e.g. https://www.bloomberg.com/professional/product/reference-data/;

The Commission concludes that the limited set of data proposed to be reported and disseminated to allow for the identification, valuation and settlement of new issue corporate bonds is unlikely to supplant the demand for a more comprehensive reference database with enhanced data sets that contain additional fields not reported to or disseminated by FINRA and additional services related to such data not provided by FINRA.[251] The Commission believes that while FINRA's proposal will provide certain basic information for a bond on an impartial basis to market participants to allow for the identification, valuation, and 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, allaying commenters' concerns regarding potential increased costs, decreased data quality, and a chilling on investment and innovation.

For these reasons, the Commission believes that 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.

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https://www.theice.com/market-data/pricing-and-analytics/reference-data; https://www.refinitiv.com/en/financial-data/market-data/reference-data; and https://www.ftserussell.com/data/fixed-income-data.

251 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/.

F. Fees

1. Comments on the Proposal

As discussed above, in Amendment No. 2, FINRA withdrew the proposed subscription fees for receipt of corporate new issue reference data from the proposal and stated that it would 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.[252] In particular, several commenters believed that removal of fees from the proposal was problematic.[253] 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.[254] Petitioner stated that "FINRA should not be allowed to circumvent the Act's requirement of an affirmative finding of compliance with [Section] 15A(b)(5) by dodging the many comments critical of its unjustified fees."[255] This commenter further stated that "[b]y segregating and delaying the fee justification, the [a]mended

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252 See Amendment No. 2, at 4.

253 See Petitioner Letter IV, at 6-9; Chamber Letter III at 2-3; Letter from John Thornton, Co-Chair, et al., Committee on Capital Markets Regulation, dated October 22, 2019 ("Committee Letter II"), at 2-3; Committee Letter III, at 2; Heritage Letter III, at 2-3; Healthy Markets Letter III, at 2; SIFMA Letter III, at 3-4; Petitioner Letter V, at 4-5; Petitioner Statement, at 34-36.

254 See Petitioner Letter IV, at 6-9; Chamber Letter III at 2-3; Committee Letter II at 2-3; Committee Letter III, at 2; Heritage Letter III, at 2-3; Healthy Markets Letter III at 2; SIFMA Letter III at 3-4; and Petitioner Letter V, at 4-5. 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 Petitioner 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")). See also Petitioner Statement, at 17-19.

255 See Petition for Review, at 16; Petitioner Statement, at 18.

[p]roposal would relieve FINRA of the burden of proving the reasonableness of the fees and charges associated with its new service."[256]

In addition, 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.[257] Petitioner further stated that FINRA has failed to provide any quantitative estimate for any costs that the proposal would impose.[258] This commenter stated that FINRA failed to include any information regarding the cost of developing and operating the new data system and provided no information about whether the costs of the service for traders will be higher or lower than current prices.[259] This commenter argued that FINRA must include information regarding the cost of building and operating the new reference data service, which FINRA proposes to pass on to market participants.[260] Petitioner concluded that "lacking any evidence from FINRA about the costs of

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256 See Petitioner Statement, at 17; Petitioner Letter V, at 4.

257 See Petitioner Letter IV, at 6-9; Chamber Letter III at 2-3; Letter from John Thornton, Co-Chair, et al., Committee on Capital Markets Regulation, dated October 22, 2019 ("Committee Letter II"), at 2-3; Committee Letter III, at 2; Heritage Letter III, at 2-3; Healthy Markets Letter III, at 2; SIFMA Letter III, at 3-4; Petitioner Letter V, at 4-5; Petitioner Statement, at 34-36.

258 See Petitioner Statement, at 35.

259 See Petitioner Statement, at 14, 36.

260 See id. Petitioner also noted that FINRA's own representative acknowledged that FINRA's current TRACE system could not support a new data service and instead FINRA would need to build new reporting, validation and distribution infrastructure. See id., at 5-6 (citing to statements by Ola Persson, FINRA, FIMSAC Transcript, supra note 36, ("Speaking for FINRA, not the effort on behalf of the underwriters, but speaking for FINRA, we would have some work to do. The technology today does not lend itself very well to this. We would need to create the ability for underwriters to come in, give us partial information and have the ability to edit their own records, et cetera. Today, that is a … bit of a one-way street….We would also need to create a separate distribution channel for this….").

its proposed data service, the Commission cannot approve the [proposal] consistent with the requirements of the Act."[261]

Petitioner further stated that the Commission erred in the Approval Order by not making a finding under Section 15A(b)(5) of the Act that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which FINRA operates or controls.[262] This commenter stated that "[t]o the extent the [Approval] Order suggests that requirement applies only to a 'proposed fee filing'…it is wrong" and, rather, that Section 15A(b)(5) applies to all the rules of the national securities association.[263] Petitioner argued that the Commission must determine whether FINRA's current proposal provides for the equitable allocation of reasonable charges.[264]

2. FINRA Response to Comments

In response, FINRA stated that it did not withdraw the fees from the current proposal to avoid subjecting the fees to further public comment, but rather so it could further evaluate an appropriate fee structure for the data service.[265] FINRA stated that it believed that "with additional time, it could better assess the costs it incurs to develop the data service, and also

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261 See id. at 2, 12. See also Letter from Hal. S. Scott, President, Committee on Capital Markets Regulation, dated March 16, 2020 ("Committee Letter III"), at 2 ("[B]ecause the [proposal] does not specify its proposed fees and underlying cost, the SEC cannot conduct the informed cost-benefit analysis necessary for approval…"); Heritage Letter V, at 2 (stating that FINRA should be required to demonstrate "that the benefits to information purchasers would materially outweigh the unrecompensed costs imposed on underwriters….").

262 See Petition for Review, at 12-13; Petitioner Statement, at 11-13.

263 See Petition for Review, at 13; Petitioner Statement, at 13.

264 See Petitioner Statement, at 11. This commenter further argued that the proposal cannot satisfy the requirements of Section 15(A)((b)(5) of the Act because FINRA has failed to provide any information regarding fees or an analysis of costs or "margins." See Petitioner Statement, at 2, 13-16.

265 See FINRA Statement, at 17; Response Letter, at 12, n.35. FINRA stated that it removed the fees so that it could further evaluate the appropriate fee structure in light of comments received, as well as new Commission staff guidance on SRO fee filings published after FINRA's initial proposal. See FINRA Statement, at 17.

better forecast the number of expected subscribers," and that this information would help it to better determine the proposed fees for the data service.[266]

FINRA stated that it has committed to pricing the data service as a utility, using a cost-based formula, meaning that it will tie the subscription price of the data service to FINRA's costs and that FINRA will allow all market participants to subscribe to the data service on reasonable, disclosed terms, as required of SROs.[267] In addition, FINRA stated that it will not employ discriminatory pricing or unreasonably refuse anyone access to the data, unlike the anti-competitive practices the FIMSAC noted have been observed in the current private market.[268]

FINRA stated that any new fees would be filed with the Commission in advance of the implementation of the newly issued corporate bond new issue reference data service and would be subject to applicable Commission rule filing requirements under the Act.[269] In addition, FINRA argued that Petitioner's contentions that the proposal cannot be approved without including the proposed fees and that the Commission erred by not making an affirmative finding under Section 15A(b)(5) of the Act are is inconsistent with the plain text of the Act and longstanding Commission precedent.[270]

3. Commission Discussion and Findings

A number of commenters expressed concerns about the lack of information regarding fees for the New Issue Reference Data Service, including (a) the appropriateness of separating the fees into a separate immediately effective filing; (b) the ability of the Commission to assess the proposal's consistency with the Act without knowing either the proposed fees for the service

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266 See FINRA Statement, at 17-18.

267 See FINRA Statement, at 18.

268 See id.

269 See FINRA Statement, at 18; Response Letter, at 12.

270 See FINRA Statement, at 19-21 (citing to Section 19(b)(3)(A) of the Act, Section 15(A)((b)(5) of the Act, and various immediately effective proposed rule changes filed by SROs to adopt fees).

or the potential costs to FINRA for building the service; and (c) the application of Section 15A(b)(5) to the proposal. The Commission addresses each of these issues below.

a. *Fee Filings*

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.[271] 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 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

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271 The Commission notes that 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. Furthermore, Section 19(b)(3)(A) of the Act states "a proposed rule change shall take effect upon filing with the Commission if designated by the self-regulatory organization as . . . establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization. . . ." See 15 U.S.C. 78s(b)(3)(A). 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.

the proposal sufficiently to provide meaningful comment and the Commission can determine whether the proposal is consistent with the Act. While FINRA may file its eventual fees for the New Issue Reference Data Service as immediately effective pursuant to Section 19(b)(3)(A) of the Act, the fee filing will be subject to the same notice and comment requirements as a proposed rule change that is not eligible to be filed as immediately effective. Thus, use of the immediately effective fee filing process will not allow FINRA to avoid commenter scrutiny for its proposed fees for the service.

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.[272] If the Commission determines that a fee filing merits further review, the Commission may temporarily suspend it and issue an order instituting proceedings to determine whether to approve or disapprove the proposal.[273] Such a

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[272] Furthermore, in contrast to Petitioner'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 256.

[273] 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

determination would be informed by any comments received on a fee filing. Therefore, the Commission does not believe that FINRA's use of the immediately effective fee filing process would allow FINRA to avoid regulatory scrutiny for its proposed fees for the service.

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 are governed by Section 19 of the Act rather than Rule 608. 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 pursuant to Section 19(b)(3)(A) 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.

b. Assessment of Proposal's Consistency with the Act

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 or the costs to build the service. The Commission has evaluated the economic effects, including the qualitative costs and benefits, of the proposal based on the record before it and has concluded that there is a lack of broadly available and accessible new issue reference data on the first day of secondary market trading that impedes the efficiency and competition in the current marketplace, and that FINRA's proposal would address this information asymmetry to the benefit of the market and market participants.[274] The Commission's consideration of the proposal's economic effects, including the burden on

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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.

274 See generally Sections III.A and III.B; supra notes 31-42, 89-102 and 139-145 and accompanying text.

underwriters, the proposal's impact on competition among market participants, including other data vendors, and its impact on efficiency and capital formation, as discussed above, is based upon the understanding that the fees assessed will be consistent with the Act and will be assessed using a cost-based formula. It is reasonable for the Commission to assume that any future fees assessed will be consistent with the Act because, as discussed above, if it believes such fees are not consistent with the Act, the Commission must suspend and disapprove them.[275] The Commission will evaluate FINRA's eventual fee application based on the requirements of the Act and assess FINRA's proposed cost-based formula. It is that fee filing that will merit a consideration of FINRA's cost to build the New Issue Reference Data Service because the costs of the system, which will be better known once the system is built, will be necessary to assess whether FINRA has proposed a fee for that service that is consistent with the Act, including Section 15A(b)(5).[276] FINRA has expressly and clearly committed that its fees will be cost-based, and it will be required to set forth why such cost-based fees meet the requirements of the Act. While commenters have raised concerns regarding FINRA's costs to build and operate the new reference data service,[277] should FINRA hypothetically build a New Issue Reference Data Service at a high cost that would be unreasonable to pass on to end-users, FINRA would not be able to make a showing that any such fees proposed to be assessed on the basis of its cost to build the service are reasonable, as required by Section 15A(b)(5) of the Act. In such a case, as discussed above, the Commission would suspend and disapprove the proposal.

c. Application of Section 15A(b)(5) to FINRA's Proposal

The Commission disagrees with one commenter's argument that the Commission is required to make a finding under Section 15A(b)(5) of the Act that the current proposal "provides for the equitable allocation of reasonable dues, fees, and other charges among

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275 See supra note 273 and accompanying text.

276 See supra note 266 and accompanying text.

277 See supra notes 259-261 and accompanying text.

members and issuers and other persons using any facility or system which the association operates or controls." The plain language of the Act necessitates that the proposal involve a due, fee or other charge in order to make such a finding concerning Section 15A(b)(5) of the Act.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

IT IS THEREFORE ORDERED, pursuant to Rule 431 of the Commission's Rules of Practice, that the earlier action taken by delegated authority, Exchange Act Release No. 87656 (December 4, 2019), 84 FR 67491 (December 10, 2019), is set aside and, pursuant to Section 19(b)(2) of the Act, the proposed rule change (SR-FINRA-2019-008), as modified by Amendment No. 2, hereby is approved.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021-01438 Filed: 1/22/2021 8:45 am; Publication Date: 1/25/2021]