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December 1, 2014

Via Electronic Submission

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington DC, 20006-1506

Re: Comprehensive Automated Risk Data System ("CARDS")
Regulatory Notice 14-37

Dear Ms. Asquith:

The Cornell Securities Law Clinic (the "Clinic") welcomes the opportunity to comment on FINRA's latest CARDS proposal. The Clinic is a curricular offering, in which students represent investors in the largely rural "Southern Tier" region of upstate New York. For more information, please see: http://securities.lawschool.cornell.edu.

In December 2013, FINRA issued Regulatory Notice 13-42, requesting comment on its initial proposal to implement CARDS. The Clinic opposed that proposal, reasoning that FINRA had failed to justify the undertaking, Members may shift compliance costs onto investors, and that CARDS may place additional burdens on investors to prove members' misconduct in arbitration.[1] With the aid of the public's comments, FINRA reformed its position in Regulatory Notice 14-37.

The Clinic supports FINRA's goal of using new technology to protect investors. However, Regulatory Notice 14-37 (the "Notice") proposes an unprecedented expansion of FINRA's surveillance activities. Such a major change requires careful consideration. Until such consideration is rendered, the Clinic must continue to oppose FINRA's position. The Clinic submits that FINRA should address Clinic's long-standing concerns, as set forth below, that (1) FINRA has not justified this undertaking, (2) Members will shift costs onto investors, and (3) that CARDS may prejudice investors in customer arbitrations.

[1] *Comment on Behalf of Cornell Securities Law Clinic*, (Mar. 30, 2014) *available at*: http://www.finra.org/web/groups/industry/@ip/@reg@notice/documents/noticecomments/p473368.pdf.

1. CARDS's Benefits Are Unduly Speculative, Unsupported by Evidence, and Undermined by the Variable Annuity Exclusion.

FINRA still has not adequately explained the benefit of this undertaking. Beyond conclusory language about bulk-data collection's benefits, the Notice falls short when offering specifics about how CARDS will actually work. For example, the Notice provides that CARDS will allow FINRA to "identify sets of transactions that indicate bad behavior," but the Notice completely omits any description of how FINRA will identify "bad behavior." Thus the Notice fails to dispel the notion that CARDS will overload FINRA with data. FINRA must explain how FINRA will analyze CARDS data to protect investors.

Furthermore, the Notice does not provide data upon which adequate comments about CARDS's benefits may be rendered. A few examples of situations in which bulk-data collection has been useful do not support the inference that CARDS will be superior to FINRA's existing programs. The Notice does not establish that FINRA would be able to generate comparable benefits on a disparate scale, or these benefits accrued but-for the collection of investor data.

Finally, the Notice's new variable annuity exclusion is contrary to CARDS's primary supposed benefit: investor projection. Many commenters, FINRA's *Investor Alert* website included, have opined that "marketing efforts by some variable annuity sellers deserve scrutiny."[2] Yet, the Notice excludes collection of such information. The variable annuity exclusion therefore makes CARDS's benefits only more attenuated. FINRA should consider that the fact that if FINRA excludes high-risk products from CARDS and reduces supposedly redundant on-site examinations, but still forces members to incur the compliance costs, then investors may end up paying more for less protection.

2. The Notice Fails to Grapple With Cost-Shifting and CARDS's Opportunity Cost.

FIRNA must still seriously address the risk that Members may shift CARDS's compliance costs onto investors.

The Notice concedes that firms will incur costs either transmitting CARDS data themselves or paying a third party to do so on their behalf. The Notice then minimizes the risk that investors may end up footing their firm's CARDS bill by reasoning that competition in the market for brokerage services will prevent cost-shifting. However, the Notice does not discuss competition. Nor does it account for the likelihood that CARDS may disproportionally affect smaller firms, and therefore weaken competition.

The Clinic suggests that funds allotted for CARDS should be allocated to FINRA's existing surveillance and enforcement efforts. FINRA has institutional experience in its existing practices. Deviations from these practices are unavoidably inefficient. While FINRA's current

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[2] Financial Industry Regulatory Authority, *Variable Annuities: Beyond the Hard Sell*, (Aug. 31 2009) *available at*: http://www.finra.org/Investors/ProtectYourself/InvestorAlerts/AnnuitiesAndInsurance/P005976.

efforts are not perfect, their costs and benefits are certain and measurable. Therefore, CARDS's cost-benefit analysis must include the opportunity cost of improving FINRA's existing efforts.

3. FINRA Rules Must Explicitly Prohibit the Use of CARDS as a Defense.

The Notice still fails to address the Clinic's concerns about the effect of CARDS on investor arbitrations. In passing, the Notice mentions that supervisory responsibility will remain with members. Such a limited statement will likely be unpersuasive at a hearing, and fails to address other misuses of CARDS evidence. M.E. Allison & Co., Inc.'s comment suggests that significant confusion persists about the diverse potential uses of CARDS evidence in arbitrations, mediations, and judicial proceedings.[3]

This confusion may be exploited to unfairly prejudice investors. Similar ambiguity arose with respect to the letters that FINRA sends declining to take disciplinary action against a member following a customer complaint. FINRA eventually had to prohibit the introduction of these 'no-action letters,' after some members often tried to use these letters as exculpatory evidence.[4]

Similarly, CARDS evidence may be used to unfairly prejudice public investors. Like a no-action letter, FINRA's decision to decline to take action using CARDS information is unrelated to the merits of an investor's complaint. However, it will likely be argued that FINRA's failure to act using CARDS gives disputed transactions FINRA's approval. FINRA must make it clear that FINRA considers it improper to suggest that FINRA's failure to act after the transmission of CARDS data is a defense to investor claims.

In light of some Members' mischief with no-action letters and the confusion evidenced in the comments, FINRA should make it clear that members cannot use CARDS evidence as a defense to customer claims.

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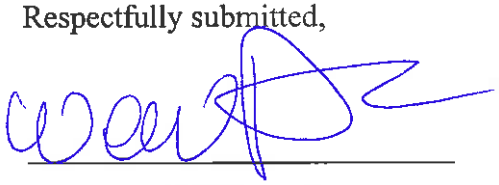
[3] Linde Murphy, *Comment on Behalf of M.E. Allison & Co., Inc.*, (Oct. 10, 2014) *available at*: http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p601102.pdf.

[4] *See, e.g.*, Ruth V. Glick, *The Neutral Corner*, (Feb. 2005) *available at*: http://www.finra.org/ArbitrationAndMediation/Arbitrators/CaseGuidanceResources/NeutralCorner/P013462

4. Conclusion

For the foregoing reasons, the Clinic urges FINRA not to move forward on CARDS until the proposal has been better justified and tailored to meet demonstrable investor protection goals.

Respectfully submitted,



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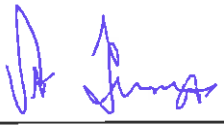

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