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March 21, 2014

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

Via email: pubcom@finra.org

Re: Regulatory Notice 13-42 - Concept Proposal to Develop the Comprehensive Automated Risk Data System

Dear Ms. Asquith:

On behalf of our members, the Insured Retirement Institute ("IRI")[1] appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority ("FINRA") in response to the concept proposal described in Regulatory Notice 13-42 (the "Concept Release") to develop the Comprehensive Automated Risk Data System ("CARDS"). While we appreciate FINRA's view that it must "take advantage of technological advancements to continue as an efficient and effective regulator," we have significant concerns about the costs and operational challenges associated with implementing the CARDS proposal, as well as the implications of the CARDS proposal for the future of broker-dealer regulation. As we will explain in greater detail below, based on these concerns, IRI cannot support the proposed development of CARDS.

[1] The Insured Retirement Institute (IRI) has been called the "primary trade association for annuities" by U.S. News and World Report. IRI proudly leads a national consumer coalition of more than 20 organizations, and is the only association that represents the entire supply chain of insured retirement strategies. IRI members are the major insurers, asset managers, broker-dealers/distributors, and 150,000 financial professionals. As a not-for-profit organization, IRI provides an objective forum for communication and education, and advocates for the sustainable retirement solutions Americans need to help achieve a secure and dignified retirement.

Executive Summary

The following is an overview of our comments with respect to the CARDS proposal. We respectfully offer these comments to demonstrate that the costs, burdens and problems associated with the proposal far outweigh any potential benefits CARDS might achieve:

1. The Concept Release does not provide the level of detail necessary to fully assess the impact of the proposal.

2. Prior to adopting CARDS, FINRA should undertake a more comprehensive review of the costs and benefits to both investors and member firms, including the proposed uses of the data to be gathered through CARDS, the elements it will include, and the manner in which CARDS will collect and transmit data.

3. Many of the data elements CARDS seeks to collect and analyze are not standardized among broker-dealers, and attempting to mandate standardization would be an enormous and costly undertaking which is likely to ultimately prove futile.

4. Without standardization, FINRA's ability to effectively analyze the data it collects through CARDS will be severely limited.

5. Any analysis of the data to be collected through CARDS would omit material information about the customer's overall investment holdings, and could therefore lead to incorrect conclusions regarding suitability and other regulatory requirements.

6. Much of the data CARDS would seek to collect with respect to variable insurance products is owned by insurance companies not subject to FINRA's jurisdiction, and may not be maintained by FINRA members selling such products.

7. If FINRA implements CARDS in the manner described in the Concept Release, firms might effectively be required to meet a supervision standard beyond what is currently required (i.e., "reasonably designed to achieve compliance…") and beyond what most firms can realistically achieve based on the resources available to them without any meaningful impact on FINRA's goal of enhancing investor protection.

8. The CARDS proposal potentially undermines the role of registered principals in reviewing the suitability of recommendations based on their own personal knowledge and experience, as well as a holistic view of the customer.

9. CARDS could unintentionally impair investor protection by encouraging broker-dealers and/or individual registered representatives to leave FINRA membership

and operate solely as investment advisers simply to escape the significant additional burden CARDS would impose on broker-dealers.

In addition, we note that, since the date of the original Concept Release, FINRA has stated publicly that it does not intend to collect Personally Identifiable Information ("PII"), such as tax identification numbers for individual customers. We believe that collection, transmission, and storage of such information raise a number of significant issues with respect to data security and privacy. If FINRA seeks to collect PII at any point, it should solicit comments from member firms and the public about the potential issues that may result. We note that several other interested parties are commenting on such concerns in their letters and urge FINRA to seriously consider their views on this important subject.

Background

Before turning to the CARDS proposal, we believe it would be helpful to review the history of FINRA's efforts to develop various data collection tools.

In 2007, the NASD established a Variable Annuity Data Task Force comprised of senior executives from insurance carriers, broker-dealers, regulators and other organizations that play important roles in the variable annuity industry. The original idea was for the NASD to establish an industry data utility to collect and disseminate up-to-date variable annuity product information, including the characteristics of a variable annuity that financial advisors and investors would most commonly need to know in order to evaluate and understand a particular product. Through this effort, it became clear that a standardized data format would have to be developed and adopted in order for the system to maintain current information. The NASD Task Force ultimately determined the NASD/FINRA would encounter significant and insurmountable obstacles in trying to construct a central data repository given the inherently complex structure of some products, the difficulty in obtaining accurate data on older products, the rapid innovation of products, and most importantly, the lack of common terminology across manufacturers and distributors.

The subject of a variable annuity data repository was again broached during a meeting between FINRA and IRI in January 2012. Following that meeting, FINRA, DTCC and several companies in the variable annuity industry established a Working Group to explore the possible development of a utility that would enable the industry to respond to FINRA requests for standardized information about annuity product activity and enhance the efficiency of the regulatory examination process. Once again, the effort revealed significant issues, including potentially insurmountable hurdles associated with obtaining standardized data across multiple manufacturers and distributors, as well as concerns about responsibility for accuracy of the data.

Need for More Details about CARDS

As a preliminary matter, we note that it is not possible to fully assess the CARDS proposal based on the limited amount of information included in the Concept Release. Among other things, our member companies would need more details regarding the specific data elements that would be included in CARDS, and how the data would have to be standardized, reported, transmitted, stored, protected, and used. If FINRA decides to move forward, we believe it is critical that the next step in the process cover these open subjects.

Need for Comprehensive Cost/Benefit Analysis

The Concept Release sets forth a general description of what FINRA seeks to accomplish through implementation of the CARDS system, but leaves a number of questions unanswered. As discussed in more detail below, it is not clear how FINRA intends to use this data, what information FINRA member firms would be required to produce, what changes to systems and processes this would require for both clearing and introducing firms, and what alternatives may be available that would either be more efficient or more cost-effective. In light of these uncertainties, we believe it is crucial that, before proceeding with the CARDS proposal, FINRA must: (a) provide more details about how it intends to use the data to be collected through CARDS in connection with examinations, enforcement, and market regulation, and (b) conduct a more comprehensive study of the costs and burdens that it will impose.[2] We have concerns with both aspects of the cost/benefit equation.

CARDS is Duplicative of Other FINRA Data Collection Programs, and Its Prospective Benefits are Either Limited or Not Quantifiable

Enhancing investor protection is an important goal, but the Concept Release does not articulate what CARDS will accomplish that existing systems or processes do not. It appears the data CARDS will assemble is duplicative or overlapping a good deal of data that FINRA already collects. For example, the Concept Release indicates that CARDS data will be used to assess market integrity issues, such as markups, insider trading, market manipulation, and "pump and dump" schemes. Detection of these activities can be accomplished through the use of transaction data without customer profile information. FINRA already collects this data through the OATS system. We would therefore submit that implementation of CARDS would not meaningfully enhance FINRA's ability to protect either investors or the integrity of markets in the manner described in the Concept Release.

[2] FINRA has explicitly recognized and embraced the importance of performing a cost/benefit analysis before engaging in rulemaking activity. *See* Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking (September 2013).

FINRA has also put considerable time and effort into the Consolidated Audit Trail ("CAT") program. CAT would assemble vast amounts of data regarding transactions in equities and equity options. It has been in development for some time, and has experienced considerable delays in implementation. It would appear that the CAT program seeks to assemble much of the same information as CARDS. We suggest that, at a minimum, FINRA should wait until the CAT program is fully implemented to determine where overlaps or duplication may exist before proceeding with further development of CARDS.

In addition, we note that, in the Concept Release, FINRA suggests that CARDS would result in a "more effective examination program" because it would "reduce burdens on firms by eliminating intermittent information requests from FINRA [and] potentially reducing the length of examiners' on-site visits to firms." While improving the effectiveness of FINRA's exam program is certainly a laudable goal, the Concept Release does not provide any detailed analysis to support the assertion that CARDS would help achieve that goal. We are unable to locate anything in the Concept Release which leads us to believe that CARDS would actually make for a better examination experience for FINRA member firms.

The Costs to FINRA Members for Implementing CARDS are not Currently Quantifiable and Potentially Enormous

Based on the limited details included in the Concept Release, it is impossible to assess how much it will cost FINRA member firms to create systems to collect and process the data sought by CARDS. To more fully assess the CARDS proposal, IRI and its member companies need far more detail about the specific information to be collected, the obligations of FINRA member firms with respect to the process of collection and transmission of the information, and the format in which the information would be transmitted. As discussed below, the creation of an analytical tool like CARDS would require that data from thousands of member firms be standardized. It is extremely difficult to quantify the total cost of such an effort, but we offer a recent analogy. In 2012, FINRA adopted changes to Rule 2111 relating to customer investment profile information and suitability. The changes mandated by these amendments involved addition of four new elements that firms were required to collect with respect to customer profiles. This effort involved changes to IT systems, education and training for representatives and employees, and integration with vendor and clearing firm systems, among others. We have heard from our member firms that some of them incurred expenses in excess of $1 million making what were relatively minimal modifications required by Rule 2111. CARDS would be many orders of magnitude larger, with costs that are likely to be immense. Before proceeding with CARDS, FINRA should conduct additional data gathering and analysis, possibly including a pilot program with a limited number of clearing and introducing firms to obtain hard data about the costs that firms are likely to incur.

Compliance with new regulatory requirements under CARDS is also likely to become a new subject of focus for FINRA examinations. Our members' past experiences with other regulatory reporting mechanisms has shown how expensive and time consuming it can be to develop, implement and maintain a program for compliance with such mechanisms.

In addition to the expense that will be borne by member firms in complying with requirements imposed by CARDS, FINRA will incur substantial expenses as well. The recent experience with the development of CAT would indicate that implementation of systems of this magnitude involve large outlays by FINRA. Since FINRA is a membership organization, all of these costs must be borne, at least in the first instance, by FINRA members. It is also important to bear in mind that costs incurred by FINRA members in complying with regulatory obligations are generally passed on to investors in some form. Before implementing a system which is likely to increase costs to investors, FINRA should thoroughly evaluate the extent to which those costs are likely to rise.

Question 5 in the Concept Release specifically requests comments about the extent to which introducing firms currently maintain customer profile information with their clearing firms. As discussed in more detail below, we believe that the majority of introducing firms do not currently maintain customer profile information with clearing firms. Creating systems to standardize and deliver this information to clearing firms is likely to involve a huge, lengthy and costly effort.

Data Standardization: Necessary for CARDS to Function Properly, but Unlikely to be Achieved

The Concept Release describes the data elements that FINRA seeks to collect and analyze through the CARDS system. They consist of two basic types of information: transaction data (e.g., security name, transaction date, dollar amount) and customer investment profile information.

Lack of Standardization is Pervasive, Practically Impossible to Overcome

The primary use of customer investment profile information is to determine whether or not a transaction recommended by a broker-dealer or representative is suitable for the customer based on ten specific factors that are enumerated in FINRA rule 2111, including age, income tax status, investment objectives, liquidity needs, and investment time horizon. While all broker-dealers are required to collect these data elements and consider them in determining the suitability of transactions recommended to customers, firms use different terminology to describe each element and different methods of gathering them. For example:

- With regard to the customer's investment time horizon, some firms record the information as "1 year or less", "1 to 5 years", or "greater than 5 years". Other firms use different time frames.
- With regard to the customer's investment objectives, some firms use terms such as "capital preservation "income", "growth", and "speculation". Other firms use different descriptions, and others combine terms to indicate that the customer has multiple or mixed objectives.
- With regard to risk tolerance, many firms employ a "High/medium/low" description, while other use numerical values from 1 to 10 or some other ranking system.
- Many firms collect customer profile information through multiple systems, or in different ways, depending upon account or transaction type. In many cases, this information is collected on application or subscription forms rather than through electronic systems. Collecting this information in a single system would involve an enormous expenditure of human resources and funding.

In order for FINRA to perform any type of meaningful analysis on the volume of information that CARDS appears to seek, all of this data would need to be standardized. This would require all firms to collect exactly the same elements in the customer profile and define them in the same way. Adoption of a rule that requires broker-dealers to collect and describe customer profile information in a specified way is both undesirable and a very long way from where the industry stands today. FINRA has long expressed the view that member firms should use a risk-based approach and adopt systems to monitor the suitability of transactions based on their own business models. Mandating the use of a single standardized set of suitability elements flies directly in the face of this long-standing position. In addition, in order to allow FINRA to utilize this data on the scale that CARDS envisions, it would be necessary to take all existing customer profile information and convert it to any newly adopted standard. At present, FINRA member firms maintain millions of customer accounts that have been opened and maintained over many years. Any rule which mandates standardization of existing customer profile information would involve a massive, time-consuming, and expensive effort.

Burden on Clearing Firms to Collect and Transmit Data in Standardized Format

As described in the Concept Release, CARDS would require the collection and transmission of data by clearing firms. Many broker-dealers are introducing firms in fully-disclosed clearing arrangements, in which clearing firms perform execution, settlement, and custodial services on their behalf. While many introducing firms employ clearing firm platforms to collect customer investment profile information, we believe that the majority maintain their own internal systems for collecting this information. If the CARDS system relies primarily on clearing firms to transmit data to FINRA, it would require that either all introducing firms employ clearing firm systems to collect and record customer profile information, or, alternatively, that clearing firms "map" existing information from introducing firms into a standard format for delivery to FINRA. Either would require a large and expensive undertaking by FINRA member firms and would be inconsistent with FINRA's longstanding guidance to member firms about supervision and oversight of suitability.

CARDS Could Discourage Use of Additional Data in Suitability Reviews

Similar issues could arise with respect to the scope of information collected by member firms as part of the suitability review. Depending on their business model, customer base, and investment product offerings, many firms make use of customer suitability information other than or in addition to that required under FINRA Rule 2111. By considering such additional information, such firms are able to conduct more holistic analyses of individual customers' circumstances. In such situations, however, analysis of the data collected by CARDS could lead to incorrect conclusions. As a result, these firms might be hesitant to continue using such additional data elements as part of their suitability process because of the added burden of having to disprove the CARDS-based analysis, and the risk of potential liability when a suitability determination is not consistent with the conclusion that would have been reached if only CARDS data were considered. Furthermore, if brokers are no longer willing to consider these additional data elements, their customers could be prevented from engaging in a transaction that would be suitable based on their overall financial situation but might not appear to pass muster based on the limited scope of data available to CARDS.

Analysis of Data Collected by CARDS Would Be Based On Incomplete Information

The Concept Release states that one of the objectives in adopting CARDS is to allow FINRA to perform automated review of customer transaction activity to determine if it is suitable. As discussed above, suitability is an inherently flexible concept, which makes use of the factors set forth in FINRA Rule 2111 and others that firms may deem appropriate. One of the primary factors in determining whether a given transaction is suitable is other investment holdings of the customer. In order to determine if a given recommendation is suitable, a reviewer (in this case, the CARDS system) would need to have a complete picture of the customer's securities and other investment holdings. CARDS, however, would not allow for consideration of all aspects of a particular customer's complete financial situation. As noted above, this would interfere with some customers' ability to complete appropriate transactions.

CARDS' Focus on Single Account Data Inconsistent With Holistic View of Customers

As described in the Concept Release, CARDS would only allow for analysis of customer profile data with respect to a single account. An analysis based on such limited information is likely to differ materially from the suitability analysis conducted by firms that view suitability determinations on a holistic or "household" basis, which may include several different related accounts. Regulatory Notices 11-02 and 12-25 specifically recognize and endorse the idea of broker-dealers developing their own risk-based systems to assess and monitor suitability of transaction activity by account, customer, or related group. It would seem that the process envisioned by CARDS would not be capable of incorporating the processes used by different firms, and would represent a step backward in encouraging firms to design their own processes to assess and monitor suitability of transactions or strategies.

Many Securities, Including Variable Annuities, Not Held in Clearing Firm Accounts

Furthermore, many securities owned by customers are not held in accounts maintained with clearing firms. Under CARDS, clearing firms would only have to transmit data regarding securities holdings in accounts maintained for customers of introducing firms. Many securities, such as variable insurance products, "alternative investments" (hedge funds, private equity investments, and direct participation programs, for example) are either not certificated or are held at custodians other than clearing firms. Many customers also own mutual funds that are held directly by a fund sponsor or other entity as custodian. Since none of these securities appear in accounts held at clearing firms, the CARDS system would be operating with incomplete and often misleading information about the investment holdings of a given customer or account. For example, based only on a view of the securities in a given account, a transaction may appear to represent an unusually large portion of a customer's assets or net worth. It is our belief that a substantial percentage and perhaps even a majority of customers who maintain accounts with FINRA members have investment holdings that are not in accounts maintained at clearing firms. Analysis of the data collected by the CARDS system could lead to a large number of erroneous conclusions about the suitability of individual transactions. At a minimum, this would create a considerable amount of wasted effort and an undesirable burden on both FINRA and member firms. In addition, many customers also maintain accounts with more than one FINRA member. If the CARDS system is not able to associate these accounts in some way, the same potential for inaccurate conclusions would be present.

Information about Insurance Transactions Owned by Insurers, May Not Be Maintained by Broker-Dealers

One of the key assumptions underlying the Concept Release is FINRA's belief that "the vast majority of the information that CARDS would collect is already stored in automated format at clearing and self-clearing firms and services bureaus." However, this assumption is inconsistent with the recordkeeping requirements of the federal securities laws (and FINRA's own rules on the subject) applicable to firms selling insurance products and the manner in which such firms operate, and does not accurately reflect the limited role FINRA member firms typically play in variable insurance product transactions. In addition, in briefly addressing the distinctions among clearing/self-clearing firms versus introducing firms, the Concept Release does not (a) distinguish the recordkeeping requirements that apply to each type of firm engaged in the sale of variable insurance products, or (b) address the limited requirements applicable to firms that engage in application-way sales or do not introduce accounts.

Even in instances where clearing/self-clearing firms carry accounts, whether of their own customers or of customers of introducing firms, insurance securities are typically not carried in customer accounts. They are usually sold to customers through an application that is forwarded to the issuing insurance company and the ownership of the security is registered on the books of the insurance company. In addition, many firms do not have customer *account* information because they do not carry or introduce customer accounts.[3] Their sales activity is entirely through applications and they do not receive, acquire or hold customer securities or funds for the accounts of customers.[4] When firms do not establish or carry customer accounts they also do not have certain anti-money laundering obligations –

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[3] The term "account" is not defined in the federal securities laws or rules; however, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") defined the term in its Customer Identification Program rules adopted in 2003. *See, e.g.*, Customer Identification Programs for Broker-Dealers, 68 Fed. Reg. 25,113 (May 9, 2003). An "account" is a "*formal relationship with a broker-dealer* established to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, *and* to hold securities or other assets for safekeeping or as collateral." 31 CFR §§ 103.122(a)(1)(i), 103.122(a)(4)(i) (emphasis added). *See also,* NASD Notice to Members 03-34 (June 2003). *And see,* FinCEN "Question & Answer" guidance published on December 12, 2006; http://www.fincen.gov/final_bank_insurance_agent_faq_12122006.html; FinCEN's and the Commodity Futures Trading Commission's April 20, 2007 guidance about the CIP obligations of futures commission merchants ("FCM"), http://www.fincen.gov/statutes_regs/guidance/html/cftc_fincen_guidance.html.

[4] These firms operate under the (k)(2)(i) exemption from the reserve requirements of SEC Rule 15c3-3. The exemption recognizes that because the firms do not carry customer securities or funds in accounts that they are not liable to the customer for the delivery or return of customer securities or funds.

those obligations reside with the issuer.[5] Thus, the records related to the insurance security are those of the issuer, not the FINRA member firm.

Under SEC and FINRA recordkeeping rules, firms are required to maintain certain customer level information[6] and transaction information,[7] but other data is only required to be maintained with respect to "accounts."[8] Thus, a selling firm will have a copy of the customer's initial application, but unless it carries the insurance security in a customer account, it will not have current or updated information about the security or the underlying investments. In addition, unless the selling firm is involved in or recommends rebalancing investment options, replacements, exchanges, surrenders, loans and withdrawals, among other transactions, it will not have current information about the insurance product and may be barred by privacy laws from obtaining such information from the insurance companies.

In addition, FINRA Rule 8210 specifically limits FINRA's jurisdiction in connection with exams, investigations or similar proceedings to a "member, person associated with a member, or any other person subject to FINRA's jurisdiction" while providing FINRA the ability to inspect books and records "in such member's or person's possession, custody or control." As explained above, the substantial bulk of variable insurance product customer information is often maintained by the issuer, not the FINRA-member firm. Such information, beyond initial transaction records maintained on blotters, is not required to be maintained by a firm, nor is it under a firm's "possession, custody or control" within the meaning of FINRA rules. Accordingly, firms engaged in variable insurance product transactions may be able to provide FINRA with initial transaction records, but the substantial bulk of customer information is maintained solely by issuers, which are not subject to FINRA's jurisdiction.

Based on all of the foregoing points, IRI believes firms should not be required to solicit information from issuers that they are not otherwise required to create or maintain under the federal securities laws or FINRA's rules for the purpose of turning it over to FINRA.

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[5] See, footnote 3, supra.

[6] *E.g.,* FINRA Rule 2111 requires FINRA members to obtain suitability information when they make a recommendation to a customer.

[7] *E.g.*, SEC Rules 17a-3(a)(1) (purchase and sale blotter), 17a-3(a)(6)(i) (order tickets) and 17a-3(a)(8) (confirmations).

[8] See, e.g., FINRA Rule 2090 (Know Your Customer) and SEC Rule 17a-3(a)(17) (customer account suitability information).

Potential Shifting of Regulatory Compliance Standards

If FINRA implements CARDS in the manner described in the Concept Release, we are concerned that firms might effectively be required to meet a supervision standard beyond what is currently required and beyond what many firms can realistically achieve based on the resources available to them without any meaningful impact on FINRA's goal of enhancing investor protection. Under the Securities Exchange Act of 1934, broker-dealers are liable for the failure to reasonably supervise associated persons who violate the federal securities laws. FINRA requires that each member firm establish and maintain a system to supervise the activities of its registered and associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations. The key word in these supervisory requirements for broker-dealers is "reasonably."

As required by applicable laws and rules, member firms structure and carry out their supervisory and compliance responsibilities by taking into consideration the nature of its business. The compliance departments of the member firms vary in size based on such considerations. Generally speaking, FINRA has far greater resources available to it to review and analyze data than most member firms. With these greater resources and with the proposed access to far greater data than any individual broker-dealer will have, FINRA may be able to identify issues that a particular member firm may not have been able to uncover based on the personnel and systematic resources it has available which would otherwise have been deemed reasonable.

It is unknown at this point whether FINRA will use the results of its analysis of data collected through CARDS only on a prospective basis (i.e., to work with firms to improve their supervisory and compliance procedures on a going forward basis), or also on a retrospective basis (i.e., to hold member firms responsible for past violations of compliance and supervisory responsibilities that were not prevented despite the existence of supervisory systems that are reasonably designed to achieve compliance). If used retrospectively, this would effectively create a requirement that firms have systems in place that can guarantee full compliance with applicable securities laws and regulations. This is an unattainable standard, but firms would be compelled to develop systems and procedures designed to avoid running afoul of CARDS, and would have to devote significant time and resources to unnecessarily defending appropriate transactions identified as potentially unsuitable by CARDS based on incomplete information. Most significantly, we believe this would negatively impact consumers whose efforts to effectively manage their finances would be hamstrung by the regulatory burdens imposed on their advisors.

Potential Undermining of the Role of the Principal in Supervision and Transactional Reviews

We are also concerned that CARDS could undermine the role of the registered principal in managing compliance with FINRA rules and reviewing the suitability of recommendations made by their firm's registered representatives. Principals must be duly licensed, and make their suitability determinations based on their own personal experience, their knowledge of the relevant product(s), their familiarity with the representative, and a holistic view of the customer. If a particular customer feels a recommendation was not suitable or otherwise fell short of the requirements under FINRA rules, the customer has recourse to complain to the firm or to FINRA, or pursue an arbitration claim against the firm.

However, if CARDS is implemented, principals may feel compelled to begin considering how CARDS-data will be analyzed in a particular instance to ensure that the recommendation meets that arbitrary standard rather than focusing on actually ensuring the suitability of the recommendation based on the factors noted above. While the computer algorithms FINRA would use to analyze data collected through CARDS may have some value as a regulatory tool, those algorithms are no substitute for, and should not replace, the vital role of the registered principal in assessing whether a recommendation is suitable for a specific individual investor.

Encouraging Regulatory Arbitrage

The announced goal of CARDS is to enhance investor protection by giving FINRA additional capability to assemble and analyze data with respect to transaction activity on behalf of customers. We note, however, that many FINRA members firms are also dually-registered as investment advisers or have affiliated entities that conduct business as Registered Investment Advisers ("RIAs"). The majority of individual financial advisors affiliated with our broker-dealer members are Investment Adviser Representatives ("IARs") of these RIA entities and offer both traditional brokerage services and advisory services to their customers. We have heard a growing refrain from our members about the differences between the regulatory schemes applicable to broker-dealers and investment advisers, and their belief that it is considerably more burdensome to operate as a FINRA member than as an RIA. If CARDS is adopted, it would represent a significant additional burden for broker-dealers that would not be imposed on investment advisers, and will likely cause many broker-dealers, individual IARs, or both, to choose to operate only as investment advisers. If this occurs, it would have the unintended and paradoxical effect of lessening investor protection by encouraging firms to leave FINRA membership simply to escape the increased regulatory burden.

Conclusion

While the effort to enhance investor protection by completely re-engineering the regulatory structure may have good intentions, large market issues exist that must be considered. Well intentioned regulation can sometimes result in unintended consequences. The chief concern regarding any potential rulemaking is that if it is unnecessary, or if it is designed or implemented poorly, it could result in increased cost and decreased access to investment professionals for many investors. The greatest impact would likely be on middle class and small-balance investors who may be less likely to save for retirement and other goals without the assistance of a financial advisor. At a time when most Americans are not saving enough for their retirement, a rule that results in less saving could devastate the ability of middle class investors to have a comfortable retirement. In addition, a poorly implemented proposal would result in significant and unwarranted job loss in the financial services industry, particularly among financial professionals who serve investors with smaller accounts, at the very time when financial advice is most needed due to the baby boomers entering retirement.

We appreciate the opportunity to present our members' views on the Concept Release, and we hope you will seriously consider the issues we have raised in this letter. Please feel free to contact me, Lee Covington, Senior Vice President & General Counsel (202-469-3002) or Jason Berkowitz, Vice President of Regulatory Affairs & Compliance (202-469-3014), if we can provide additional information or to further discuss these issues.

Sincerely,

Catherine J. Weatherford
President & CEO

Cc: Daniel M. Sibears, Executive Vice President, Regulatory Operations/Shared Services
Jonathan Sokobin, Sr. Vice President, Office of the Chief Economist
Victoria L. Crane, Associate General Counsel, Office of General Counsel