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December 1, 2014

Via e-mail: *pubcom@finra.org*

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

RE: Regulatory Notice 14-37, Comprehensive Automated Risk Data System: FINRA Requests Comment on a Rule Proposal to Develop the Comprehensive Automated Risk Data System

Dear Ms. Asquith:

Wells Fargo Advisors, LLC (“WFA” or the “Firm”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Rule Proposal to Implement the Comprehensive Automated Risk Data System (“CARDS” or the “Proposal”), set forth in Regulatory Notice 14-37.¹

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. It employs approximately 15,189 full-service financial advisors in branch offices in all 50 states and 3,472 licensed financial specialists in

¹ Regulatory Notice 14-37, Comprehensive Automated Risk Data System: FINRA Requests Comment on a Rule Proposal to Implement the Comprehensive Automated Risk Data System. September 2014.
<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p600964.pdf>.

6,610 retail bank branches in 29 states.² WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. Wells Fargo’s brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC, (“WFAFN”) and First Clearing, LLC, (“FCC”), which provides clearing services to 76 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all brokerage operations. WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

INTRODUCTION

WFA is dedicated to helping clients achieve their financial goals and has been a leading advocate of doing what is right for the client.³ Consequently, as stated in WFA’s March 2014 comment letter (the “March Comment Letter”)⁴ to Regulatory Notice 13-42: Concept Proposal to Develop the Comprehensive Automated Risk Data System (“Concept Release”),⁵ WFA supports the ongoing efforts of FINRA and the financial services industry to leverage technology to more effectively and efficiently serve the investing public.

WFA appreciates the consideration FINRA has given to public and industry comments and commends FINRA for the positive modifications FINRA has made to the CARDS concept. Indeed, the Proposal’s stated aim to focus examination resources is consistent with its goals of enhancing investor protection and ensuring market integrity.⁶ CARDS as currently proposed, however, continues to represent a paradigm shift in regulation that has the potential to erode investor trust in broker-dealers and the United States securities markets. WFA believes a more narrowly tailored initiative would present an opportunity for FINRA to achieve its stated goals while addressing many of the publicly expressed concerns encumbering CARDS.

This letter is not intended to recapitulate in detail the issues raised in our March Comment Letter regarding the advisability of CARDS. Instead, this letter will briefly review certain

² Wells Fargo & Company (“Wells Fargo”) is a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance across the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses.

³ See Correspondence from Robert J. McCarthy to Elizabeth M. Murphy, dated July 5, 2013, regarding File No. 4-606; Release No. 34-69013; IA-3558; Duties and Investment Advisers; <http://www.sec.gov/comments/4-606/4606-3127.pdf>. See Correspondence from David M. Carroll to Elizabeth M. Murphy, dated August 30, 2010, regarding File No. 4-606 - Study Regarding Obligations of Brokers, Dealers, and Investment Advisers; <http://www.sec.gov/comments/4-606/4606-2592.pdf>.

⁴ See Correspondence from Robert J. McCarthy to Marcia E. Asquith, dated March 21, 2014, regarding Regulatory Notice 13-42: Comprehensive Automated Risk Data System-FINRA Requests Comment on a Concept Proposal to Develop the Comprehensive Automated Risk Data System, <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticerequestscomment/p473399.pdf>.

⁵ Regulatory Notice 13-42, Comprehensive Automated Risk Data System: FINRA Requests Comment on a Concept Proposal to Develop the Comprehensive Automated Risk Data System. December 2013. <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p413652.pdf>.

⁶ Reg Notice 14-37, 3, 16.

challenges still confronting CARDS and focus on the practical hurdles of the implementation timeline and potential alternatives.

In particular, WFA continues to be concerned about four broad issues:

- (i) The potential impact on the public's trust and confidence in the securities markets and the broker-dealer community resulting from the ongoing transmission of account information for aggregation and storage in a central data repository.
- (ii) The potential transformation of FINRA's role to that of an ongoing supervisor.
- (iii) The cumulative effect of CARDS when combined with other regulatory efforts will siphon substantial member firm resources, squeezing out investments in technology that could enhance broker-dealer surveillance and the customer-broker experience.
- (iv) An implementation timeline that does not permit sufficient time to develop, test and implement compliant systems. If FINRA receives approval to implement CARDS, WFA recommends FINRA establish an implementation date that provides broker-dealers sufficient time to institute the necessary changes, which WFA believes should be no earlier than two years from the date of SEC approval.

WFA discusses in greater detail below some of the challenges posed by CARDS in its current iteration and potential alternatives that may engender support from the investing public and concerned constituencies. WFA also attaches responses to the Proposal's enumerated questions as an addendum to this letter.

I. CARDS Risks Undermining Public Investor Trust and Confidence in United States Securities Market.

While CARDS will not collect personally identifiable information ("PII"), this development is unlikely to fully quell investor concerns given the magnitude of investor information sought. CARDS would still collect, store and retain an unprecedented amount of sensitive financial client data in a central data repository.⁷ The transmission, aggregation and storage of retail investor information of this scale raise serious public policy concerns regarding privacy and the risk of a security breach. As a result of these policy concerns, investing funds through a broker-dealer may likely become a less attractive option to investors.

The perception of additional governmental or quasi-governmental access to account information and increased threats to the security of such data could incentivize retail investors to move their investments to entities outside the jurisdiction of FINRA where they may believe their personal information receives greater protection (*i.e.*, the less regulated advisory model).⁸

⁷ Although CARDS will not seek "account name, account address or tax identification information" it may still seek sensitive data such as account numbers. Reg Notice 14-37, 5.

⁸ See generally FINRA 2013 Year in Review and Annual Financial Report, at 8 stating "[w]hile FINRA is not part of the government, we are authorized by Congress to take action to ensure that investors are protected. We do the front-line work for the SEC under that agency's oversight".
<http://www.finra.org/web/groups/corporate/@corp/@about/@ar/documents/corporate/p534386.pdf>.

Members of the United States Congress have also begun voicing their concerns regarding the risks to investors' privacy that CARDS presents.⁹

WFA recommends that before moving forward with CARDS, FINRA conduct focus groups and investor surveys to better ascertain the level of concern from retail investors and how the Proposal could impact where such investors place their funds.¹⁰

Related to the collection and oversight of client information is the security of the information once collected by FINRA. The security of personal private information is at the forefront of the public's consciousness due to the incidence of high profile breaches of personal information at major retailers such as Home Depot and Target; financial services groups such as Barclays and JP Morgan; and, government agencies such as the National Security Agency.¹¹ The mere perception that CARDS might make retail client information more vulnerable to fraudsters could impact how retail investors view the brokerage community and where they choose to invest their funds.

CARDS will collect, transmit and aggregate sensitive data such as account numbers and date of birth as well as unique account profile attributes indicating whether the account participant is related to an employee, a control person for a public company, a politically exposed person or an employee of another broker-dealer.¹² This information presents re-identification risks, as an enterprising hacker or unscrupulous employee could reverse engineer this data to mine for PII.¹³

⁹ Representative Scott Garrett, Chairman of the Financial Services Subcommittee on Capital Markets and Government-Sponsored Enterprise recently voiced his skepticism of CARDS stating "I remain far from convinced that this new, costly, and burdensome proposal is needed. Moreover, I question whether the purported benefits will justify the significant costs. But even beyond the costs of the proposed rule, significant privacy concerns still linger, especially when the data are combined with other data in FINRA's database. Before moving forward with this proposal, there needs to be a much better explanation of why this burdensome rule is necessary in the first place and what steps are being taken to protect investors' personal financial information." Garrett: FINRA CARDS Proposal Short of a Full Deck, Press Release, October 14, 2014. <http://garrett.house.gov/media-center/press-releases/garrett-finra-cards-proposal-short-of-a-full-deck>.

¹⁰ WFA recognizes FINRA recently conducted an investor survey regarding additional regulatory protections, but urges FINRA to conduct focus groups and investor surveys specific to CARDS and its impact on investor decisions.

¹¹ See "The Home Depot Reports Findings in Payment Data Breach Investigation." November 6, 2014.

<https://corporate.homedepot.com/MediaCenter/Documents/Press%20Release.pdf>; Swearingen, Jake. "Why the JP Morgan Data Breach Is Like No Other" *The Atlantic*. October 3, 2014.

<http://www.theatlantic.com/business/archive/2014/10/why-the-jp-morgan-data-breach-is-like-no-other/381098/>;

Young, Sarah. "Barclays Launches Investigation after Customer Data Leak." *Reuters*. February 9, 2014.

<http://www.reuters.com/article/2014/02/09/us-barclays-data-idUSBREA1808020140209>; Sanger, David E., and Eric Schmitt. "Snowden Used Lost-Cost Tool to Best N.S.A." *New York Times*. February 8, 2014.

http://www.nytimes.com/2014/02/09/us/snowden-used-low-cost-tool-to-best-nsa.html?_r=0; Timberlake, Cotton.

"Neiman Marcus to Target Data Breaches Imperil U.S. Retailers." *Bloomberg*. January 11, 2014.

<http://www.bloomberg.com/news/2014-01-11/neiman-marcus-says-some-customer-credit-cards-may-be-compromised.html>.

¹² In Proposed Phase II, CARDS requires the collection of data elements relating to account profile information. This includes, among other things, flags indicating whether the account participant is related to an employee, a control person for a public company, a politically exposed person or an employee of another broker-dealer. Reg Notice 14-37, 9.

¹³ Even though PII will be removed from CARDS data, FINRA holds other data sets that do contain PII, such as electronic blue sheets. If FINRA's electronic security is compromised, the PII in these other data sets could be accessed and then easily married with CARDS data to create a detailed record of an investor's trading

Although FINRA states it would apply the many security controls and protocols it already has in place¹⁴, it is naïve to presume the aggregation of an investor's account information will not be a high profile target for unauthorized access.

Consequently, such a threat may outweigh any potential improvement in exam efficiency FINRA would theoretically derive from acquiring and storing the information identified in the Proposal. To more fully evaluate this potential risk, WFA reiterates FINRA should reach out to the public through focus groups or surveys.

II. FINRA's Evolving Role as Supervisor.

FINRA states CARDS will be used to automate FINRA's "data collection and run regular and ad hoc analytics."¹⁵ FINRA also notes CARDS will enable it to "analyze customer dealing activities within individual firms, at particular branch offices, and with specific registered representatives, as well as compare one firm's customer activities against those of its peers."¹⁶

FINRA further observes CARDS would not supplant firms existing legal, supervisory and compliance programs, and firms would remain responsible for detecting and preventing "problems based on the full information firms hold."¹⁷ Nevertheless, the transmission of transactional, positional and related customer suitability data on a regular, ongoing basis will undoubtedly pressure FINRA to move toward more direct supervision of customer activity, if not immediately, then over time. WFA continues to believe it is unrealistic for FINRA to possess information upon which to conduct ongoing risk-based reviews of customer data and not avail itself of that data.

WFA urges FINRA to consider an initiative in which it collaborates with member firms individually, sharing its analytics and algorithms, to create an environment where investor protection is enhanced within the broker-dealer rather than through analysis at the central repository.¹⁸

At the same time, notwithstanding the massive amount of information FINRA seeks through CARDS, such data will provide limited context for FINRA's analysis.¹⁹ The absence of a holistic view of a customer's account may skew FINRA's analysis, yielding false positives. As a result, and based on Wells Fargo's experience with other regulators, member firms may be peppered with additional queries outside the structured exam process.

activity. CARDS data could also be married with publicly available records such as SEC filings disclosing corporate insider trades or with other stolen data sets such as the trove of customer information obtained from Home Depot and Target when their electronic security systems were compromised to readily re-identify a party.

¹⁴ Reg Notice 14-37, 6.

¹⁵ *Id.* at 16.

¹⁶ *Id.*

¹⁷ *Id.* at 13.

¹⁸ WFA's suggestion as to collaboration between FINRA and a member firm should be limited to FINRA sharing data and analytics based on the respective firm's information for a client and not information gathered by FINRA from other member firms.

¹⁹ FINRA will not have access to the additional facts and circumstances maintained outside the information transmitted to FINRA via CARDS (*e.g.*, pending marriage/divorce/retirement/inheritance, household assets, wills, specifics of a trust, health conditions, financial goals, beneficiaries, share of client wallet/assets).

III. CARDS Proposed Implementation Period Presents Practical Hurdles.

The Proposal identifies an implementation period of nine months from the date of SEC approval for carrying or clearing firms to be required to submit CARDS information under Phase I, and six months thereafter for fully-disclosed introducing firms.^{20, 21} The actual implementation period, though, is compressed further given required system and compatibility testing prior to production. Furthermore, FINRA's intent for firms to begin collecting data pursuant to CARDS on the date of SEC approval transforms the SEC approval date into a *de facto* implementation date.

WFA posits the proposed implementation period vastly underestimates the time and resources necessary to code, build and implement a wholly new system to collect, aggregate and transmit an unprecedented amount of customer data. WFA believes a more appropriate approach would be for FINRA to establish an implementation period via a rule amendment after SEC approval. This approach would provide firms the opportunity to analyze the final rule requirements and provide feedback to FINRA regarding a reasonable timeframe to build, test and implement CARDS. WFA also believes FINRA should not require firms to collect or transmit data that pre-dates the implementation date to ensure a more effective platform introduction.

A. CARDS Implementation Period is Unreasonable Compared to Other Regulatory Initiatives.

CARDS is one of, if not, the most complicated financial reporting regimes ever proposed. Other significant and less complicated regulatory reporting initiatives have taken far longer to be fully implemented than FINRA's proposed CARDS implementation timeline.

Indeed, the data currently reported through the Automated Exam Program ("AEP"), which would be a subset of CARDS, took approximately 12 months for WFA to build, test and implement. By way of further example, the Order Audit Trail system ("OATS") collects a total of six record types and 261 data fields.²² By contrast, CARDS seeks to collect 21 record types and 399 data fields.²³ OATS, like CARDS, was implemented in phases. However, Phase I of OATS was not effective until one year from the date of approval, and, in total, OATS, as originally proposed, took 33 months to implement, with an additional 2.5 months to accommodate a new code requirement.²⁴ Similarly, FINRA's OTC Reporting Facility ("ORF")

²⁰ Reg Notice 14-37, 13.

²¹ CARDS data will be submitted to FINRA in two phases. The Proposed Phase I would limit the collection of information to only that data that resides at carrying or clearing firms. This would include information relating to securities and account transactions, holdings, account profile information (excluding PII) and securities reference data for all securities accounts. The Proposed Phase I would not include submission by a carrying or clearing firm of the data elements relating to account profile information for securities accounts it carries or clears on a fully-disclosed or omnibus basis. Reg Notice 14-37, 9.

²² See OATS Reporting Technical Specifications, May 9, 2014,

<http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p502075.pdf>.

²³ See Draft CARDS Data Dictionary and Record Layout updated October 8, 2014,

<http://www.finra.org/Industry/Compliance/RegulatoryFilings/CARDS/index.htm>.

²⁴ See NASD Notices to Members-FOCUS Filing Dates, March 2000,

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p004184.pdf>; NASD Notices to Members-NASD Regulation Delays Implementation Date of Phase III of OATS from October 21, 2000, to

migration required nearly a two year implementation period, while the SEC's Large Trader initiative took slightly over two years to implement.²⁵

Given the uncertainty as to the details of the final rule, WFA cannot identify a specific timeframe to implement CARDS with confidence. Based on the Proposal, though, processes such as mapping data; archiving and storage protocols; validation; and, transmission and reconciliation may take two years or longer, notwithstanding other significant work such as system testing, security and governance protocols and capturing historical data. These phases alone suggest nine months is an unreasonable time period, and WFA recommends FINRA set an implementation date no earlier than two years after SEC approval of the program.

B. The Proposal Adds Complexity from the Concept Release.

The Proposal includes data requests in addition to those set forth the Concept Release. For example, CARDS requests data related to all the firm's securities accounts. "Securities Account" is defined to include all retail and institutional customer accounts, as well as proprietary, depository, custodial, clearance, items in transfer and similar non-customer accounts.²⁶

The addition of non-customer accounts such as clearance, dealer, error, average price and omnibus to data proposed in the Concept Release could potentially double the number of records to be submitted. It is unclear for what purpose the collection of this data serves, as non-customer account data does not appear to provide insight into sales practice issues. Given the magnitude and apparent lack of utility of the data, WFA requests FINRA exclude these accounts from CARDS.

C. Historical Data Costs Outweigh the Benefits.

Pursuant to the Proposal, "carrying or clearing firms would be required to submit historical purchase and sales transaction information for the time period between the date of SEC approval of CARDS and the date on which the firms begin submitting CARDS information to FINRA."²⁷ These same firms would be required to submit suitability information on the date which firms begin submitting CARDS information to FINRA.

WFA conservatively estimates it generates approximately 1.8 million records daily that would need to be submitted to FINRA. Nine months' worth of historical data, based on this estimate, would equate to approximately 324 million records aggregated from multiple sources.

December 15, 2000, September 2000,
<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p004188.pdf>; OATS
Announcements-Archives.

<http://www.finra.org/Industry/Compliance/MarketTransparency/OATS/Announcements/P11875.1>.

²⁵ See FINRA Announcement: Reporting OTC Equity Trades to New FINRA OTC Reporting Facility (ORF) Platform, December 2012, <http://www.finra.org/Industry/Compliance/MarketTransparency/ORF/Notices/p197379>; FINRA Reminder: OTC Trade Reporting Facility (ORF) Migration (11/5/14) *reminding* firms of the November 17, 2014, effective date, <http://www.finra.org/Industry/Compliance/MarketTransparency/ORF/Notices/P601546>; see also Morrison-Foerster Client Alert, "SEC Delays Effectiveness of Large Trader Reporting for Some Broker-Dealers" August 15, 2013, <http://media.mofo.com/files/Uploads/Images/130815-SEC-Delays.pdf>.

²⁶ Reg Notice 14-37, 7, fn 3.

²⁷ *Id.* at 13.

WFA believes the costs of collecting and submitting historical CARDS data outweigh any potential customer protection benefits. Therefore, WFA urges FINRA to consider a time period for collection of historical data that is less than the proposed nine months and that commences on the date of implementation.

IV. The Costs of CARDS in Context.

WFA submits the costs of implementing CARDS must be considered as part of the mosaic of significant regulatory initiatives impacting the financial services industry.

The feasibility of implementing CARDS in the contextual backdrop of an industry with multiple regulatory reporting efforts already underway may lead to a different cost/benefit conclusion. Regulators already have robust surveillance capability through multiple data collection efforts, including the development of the Consolidated Audit Trail (“CAT”), Blue Sheets, Large Option, Integrated National Surveillance and Information Technology Enhancements (“INSITE”) and OATS, which expanded its reporting in 2013.²⁸ WFA notes the SEC has even warned against duplicative efforts in its policy, “Planning for Future System Efficiencies,” which calls for the elimination of rules and systems that are rendered duplicative by CAT.²⁹

WFA is particularly concerned that the cumulative effect of CARDS when combined with other regulatory efforts would be to unnecessarily siphon substantial member firm resources, squeezing out investments in technology that could enhance broker-dealer surveillance and the customer experience.

CARDS and resulting costs could be particularly burdensome to smaller, self-clearing broker-dealers and smaller introducing brokers. Small broker-dealers have been under economic and regulatory pressure in recent years. As a result, some small firms have chosen to withdraw from FINRA membership and register as investment advisers, which in turn may lead to less FINRA oversight.³⁰ The burdens associated with CARDS could accelerate this trend, undermining FINRA’s investor protection objectives.

FINRA has alluded to possible expansion of CARDS to include the presently excluded data elements. Future expansion will lead to additional costs to design, build and modify extremely complex systems and data sets, and suggest CARDS will be an ongoing expense from a staffing and infrastructure perspective.

²⁸ This list does not even include other costly initiatives affecting broker-dealers such as the Volcker Rule, which may further impact the cumulative effect of regulatory costs thrust upon broker-dealers, and any other Dodd-Frank promulgations.

²⁹ SEC Release No. 34-67457, File No. S7-11-10, Consolidated Audit Trail, July 18, 2012, at 12, <http://www.sec.gov/rules/final/2012/34-67457.pdf>.

³⁰ The number of FINRA registered broker-dealers has fallen by 15% since 2008 with declines each year. <http://www.finra.org/newsroom/statistics/>. According to data from Cerulli and Associates the number of registered representatives with independent broker-dealers fell by an average of 4.1% in the five year period ending in 2012 while the number of registered investment adviser representatives rose by an average of 4.4% during the same period.

WFA believes FINRA should not extend CARDS beyond retail accounts and consider granting relief from CARDS reporting for broker-dealers whose activities are primarily limited to serving institutional customers and whose dealings with retail customers primarily involve sophisticated/accredited investors.

In summary, WFA believes CARDS will thinly stretch the industry's resources, causing substantial costs that ultimately may be borne by the customer, without a substantial offsetting benefit to the examination process. In addition, member firms preparing to implement CARDS requirements will likely incur costs that could squeeze out investments in other technologies which would assist firms in their own surveillance initiatives and enable them to improve customer service.

V. FINRA Has a Number of Alternatives to CARDS It Could Leverage.

WFA believes there are a number of more cost effective alternatives FINRA could leverage to advance customer protections and ensure market integrity. One would be to model the SEC's approach of conducting Risk Analytics Examinations wherein firms provide information in the format in which it is retained by the member firm. SEC Chair Mary Jo White has stated the SEC's examination teams now "have tools that enable [the SEC] to analyze the metrics of a business that are not available to the people who run it...Some of [the SEC's] new tools should allow [it] to detect and inform [firms] about activities, trends, and issues of which" even the member firm may be unaware.³¹

Another potential alternative would be to combine the existing near real time data analysis capability of National Securities Clearing Corporation ("NSCC") to identify potential market integrity issues with FINRA data from existing Supplemental Statement of Income ("SSOI") reporting that identifies areas of higher risk firm activity. After identifying matters that require further review, FINRA could request more detailed information from specific broker-dealers. Yet another option would be to leverage current and planned reporting enhancements, such as the aforementioned CAT, Market Information Data Analysis System ("MIDAS"), expanded OATS reporting, SSOI and INSITE³², prior to implementing a wholesale change in the regulatory regime.

For example, FINRA could leverage the more cost effective alternative of adding data elements to CAT rather than requiring firms to build two separate and massive reporting systems at the same time. Firms will face a tremendous burden to meet the bandwidth of both CARDS and CAT. Moreover, CAT will be available for all SROs and Exchanges while CARDS is limited to only providing data to FINRA.

FINRA has previously expressed support for enhancing existing systems versus mandating the creation of new systems. Particularly, in its comment to the SEC regarding CAT, FINRA

³¹ "Remarks at National Society of Compliance Professionals National Membership Meeting," delivered by SEC Chair Mary Jo White, Oct. 22, 2013, <http://www.sec.gov/News/Speech/Detail/Speech/1370539960588>.

³² Gittleman, Stuart. "'Big data' Tools Will Improve Regulatory Oversight, FINRA's di Florio says." *Reuters*. February 25, 2014, *noting* that FINRA has recently employed sophisticated analytics to better focus exams and that CAT would further enhance its analysis. <http://blogs.reuters.com/financial-regulatory-forum/2014/02/25/big-data-tools-will-improve-regulatory-oversight-finras-di-florio-says/>.

noted “if the SEC moves forward with mandating the creation of an entirely new system, rather than enhancing existing audit trail requirements, there likely will be negative unintended consequences during this interim development period, which may last several years. It will be difficult to justify any changes or enhancements to existing systems, given the technological challenges and significant resource allocation that will be necessary to develop and implement a brand new system.”³³

CONCLUSION

WFA appreciates the opportunity to respond to FINRA’s Proposal. Although WFA remains opposed to the initiative as proposed, WFA remains willing to aid FINRA in achieving its goals. WFA welcomes additional opportunities to respond as the Proposal evolves. If you would like to further discuss this issue, please contact the undersigned at 314-955-2156, or robert.j.mccarthy@wellsfargoadvisors.com.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

CC: Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Via e-mail: rule-comments@sec.gov

³³ See FINRA Comment Letter from Marcia E. Asquith, FINRA Secretary, to Elizabeth Murphy, SEC Secretary, regarding Securities Exchange Act Release No 62174-Proposed Rule Regarding a Consolidated Audit Trail (File No. S7-11-10), dated August 9, 2010, fn 15, <https://www.sec.gov/comments/s7-11-10/s71110-48.pdf>.

*Appendix to WFA’s Comment Letter regarding Notice 14-37
December 1, 2014*

| FINRA Questions Set Forth in Regulatory Notice 14-37 | WFA Response |
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| <p>1. In proposing the rule to implement CARDS, FINRA has sought to incorporate the feedback received since issuing the concept proposal, discuss the details of its examination and surveillance objectives, and explain how the CARDS initiative and rule proposal strive to obtain data to achieve those objectives in a direct and efficient manner. FINRA welcomes comments on other approaches to achieve the CARDS objectives that would be similarly or more effective.</p> | <p>There are a number of potential alternatives to CARDS. One would be to adopt the SEC’s approach of conducting Risk Analytics Examinations wherein firms provide information in the format in which it is retained. This is somewhat analogous to FINRA’s proof of concept wherein data was provided to FINRA in the manner and report formats maintained by the participating firms. Another would be to combine the existing near real time data analysis capability of NSCC to identify potential market integrity issues, with FINRA data from existing SSOI reporting that identifies areas of higher risk firm activity. After identifying matters that require further review FINRA could request precise information from specific broker-dealers in a standardized format. Yet another option would be to leverage current and planned reporting enhancements, such as CAT, MIDAS, OATS reporting (which went into effect in 2013) and INSITE, prior to implementing a wholesale change with CARDS.</p> |
| <p>2. In addition to the economic impacts identified in the Interim Economic Impact Assessment, are there other significant sources of economic impacts associated with CARDS, including anticipated costs and benefits, to carrying or clearing firms, or introducing firms? What are these economic impacts and what factors or firm characteristics contribute to these impacts? What would be the magnitude of costs associated with developing, implementing and maintaining the systems and procedures to submit CARDS information under the proposed rule? What factors or business attributes contribute to the costs associated with the proposal, such as size of the firm or differences in business model?</p> | <p>The primary costs are those associated with designing, building, implementing and maintaining systems that could extract the relevant information, assuming all of it is retained and maintained in an electronic format; periodic enhancements will also cause ongoing costs. Furthermore, organizing the data to be submitted, storing it and transmitting it to FINRA will represent incremental and ongoing costs.</p> <p>Clearing firms will face additional costs for submitting data on behalf of introducing firms that the clearing firms do not already have in their possession in connection with Phase II. Firms would incur costs to build and maintain the infrastructure to facilitate reconciliation issues and to respond to the increased volume of regulatory inquiries. WFA anticipates the Proposal would necessitate a re-working of systems and business relationships between clearing firms and their introducing brokers, which could change the pricing model for both clearing and introducing firms, and precipitate additional legal and other costs as clearing firms may need to</p> |

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| FINRA Questions Set Forth in Regulatory Notice 14-37 | WFA Response |
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| | restructure their relationships with their introducing brokers. Finally, WFA anticipates expenses to build and maintain the infrastructure, to facilitate reconciliation issues and to respond to an increased volume of regulatory inquiries. |
| <p>3. To what extent do fully-disclosed introducing firms anticipate using a third party to report the Select Account Profile Data Elements under phase 2? What would be the sources and magnitude of costs to introducing firms associated with providing these data elements to FINRA through a third party? What would be the costs associated with providing these data elements directly to FINRA? Do introducing firms currently store these data elements in standardized electronic form in their systems? If not, how costly would it be for introducing firms to standardize the required data in order to transmit it to FINRA directly or through a third party?</p> | <p>Introducing brokers generally do not have a standardized format for obtaining and reporting the data FINRA seeks as part of Phase II. As such, introducing brokers will have to build a system to record and report this information. The magnitude of the costs associated with building the system to record and report this data on an ongoing basis and to add such data to the historical purchase and sales transaction information FINRA also seeks cannot be fully ascertained until the Proposal is finalized. The costs could be substantial, presenting significant challenges for introducing brokers to fully comply.</p> |
| <p>4. To what extent do carrying or clearing firms anticipate using a third party to report CARDS information under phase 1? What would be the sources and magnitude of costs to these carrying or clearing firms associated with providing the required information to FINRA through a third party? To what extent do clearing firms anticipate transmitting the Select Account Profile Data Elements on behalf of their introducing firms in phase 2? What would be the sources and magnitude of costs to clearing firms associated with transmitting these data elements on behalf of introducing firms?</p> | <p>As set forth above, WFA anticipates it would rely on its clearing firm affiliate FCC to satisfy its participation in CARDS. FCC will itself rely on third parties, such as security pricing vendors, as sources for some of the data to be submitted to FINRA. WFA anticipates the costs associated with FCC's submission of the data requested under Phases I and II to be significant, requiring a reworking of the current pricing model between clearing firms and introducing brokers.</p> |

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| <p>5. What are the costs incurred by firms today in responding to FINRA sweeps and other initiatives designed to address emerging risks to investors? What are the sources of these costs? What factors or business attributes contribute to the costs?</p> | <p>WFA does not anticipate CARDS will reduce firm costs associated with responding to examination requests and reporting requirements. Quite the opposite, WFA believes the ongoing maintenance of the system to record and report CARDS data, the validation and reconciliation of such data and the potential for additional inquiries resulting from the submission of the vast amount of data called for by CARDS on a monthly basis may well require permanent additions to staff.</p> |
| <p>6. What economic impact, including costs and benefits would accrue to the investing public by this proposal? How do investors evaluate enhanced investor protection? What would be the magnitude and primary sources of costs associated with the proposed rule to investors? What factors or attributes would contribute to the costs borne by different segments of the public associated with the proposal?</p> | <p>The investing public will ultimately bear the costs of implementing CARDS either through increased fees or through the diversion of firm resources that otherwise would be used for their benefit. Moreover, the burden of CARDS to smaller broker-dealers may be so significant they will not be able to remain members, further limiting the investor's choice of a broker-dealer. These costs to the investing public lack a discernable associated benefit as FINRA has not articulated exam findings that show its current system of supervision is inadequate.</p> |
| <p>7. The rule proposal would require the submission to FINRA of customer and noncustomer account numbers. Should FINRA allow firms to submit unique identifiers rather than account numbers? What would be the costs and benefits of allowing firms to submit unique identifiers rather than account numbers?</p> | <p>WFA anticipates the use of unique identifiers would add enormous costs as well as another layer of complexity to CARDS without eliminating the potential for re-identification. For example, publicly available information, including SEC filings, would allow a cybercriminal to re-identify a client's account without an account number solely on the basis of a known number of shares traded and the date the trade took place, which are details publicly reported in corporate insider filings.</p> <p>If a unique identifier is adopted, FINRA should leverage the identifiers used for CAT, creating a global unique identifier that supports CAT, CARDS and any future regulatory endeavor.</p> |

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| <p>8. Should FINRA consider an exception to the reporting requirements for firms that do not engage in any retail activity? Should FINRA consider an exception to the reporting requirements for firms that engage in limited retail activity? If so, what threshold should FINRA consider for limited retail activity and what is the basis for such threshold? What are the costs and benefits for any proposed threshold associated with limited retail activity?</p> | <p>The Proposal is focused on identifying sales practice abuses. As such, firms that do not engage in retail activity, or in limited retail activity, should be exempt from the CARDS reporting requirements. The costs of building a system to record and report all of the data sought by the Proposal and the ongoing burden of maintaining such a system, including responding to the additional regulatory inquiries arising from the regular review of the volume of reported information, should not be borne by firms that principally service institutional accounts. Should FINRA submit a proposed rule to the SEC, the rule should clearly state it is limited to retail accounts.</p> |
| <p>9. The rule proposal would require the transmission of information regarding money movements. What would be the costs and benefits of requiring firms to regularly transmit information relating to money movements?</p> | <p>The relevance of this information to FINRA's stated goal of improving its surveillance and examination programs is unclear. Moreover, reporting information regarding money movements would increase the costs of implementing CARDS exponentially and is another piece of data that could aid a cybercriminal in re-identifying an account with a firm client.</p> |
| <p>10. FINRA intends to retire INSITE and AEP as firms start submitting the information as part of CARDS. What would be the costs to firms associated with retiring their existing AEP and INSITE systems? What would be the magnitude of annual cost savings and the factors that contribute to these cost savings? Are there other collections of data that FINRA should consider retiring upon successful implementation of CARDS? What are those systems, and what would be the anticipated costs savings associated with retiring those systems?</p> | <p>The savings to WFA from retiring INSITE and AEP will be minimal. A more significant source of savings would be to leverage an existing or already proposed electronic data collection system like CAT rather than incurring the costs of building an entirely new system to record and report the information called for by CARDS.</p> |

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| <p>11. FINRA plans to provide feedback to firms based on FINRA's analyses of CARDS information. Further, FINRA plans to provide firms with access to their own data in a way that would facilitate their use as part of their compliance efforts. What information would be most beneficial to firms in meeting their compliance and supervisory obligations? What benefits might arise from sharing relevant data and analyses with firms?</p> | <p>It is difficult for WFA to identify benefits derived from CARDS as currently proposed.</p> |
| <p>12. Some commenters have asserted that carrying or clearing firms would pass all costs associated with the proposal onto introducing firms. Other commenters have asserted that all the costs would ultimately be borne by investors. Is there sufficient competition among carrying or clearing firms to limit their ability to pass on costs? Is there sufficient competition among introducing firms to limit their ability to pass on costs? What evidence supports these comments?</p> | <p>Beyond the information provided in response to Question No. 6 above, it is difficult for WFA to identify the impact on competition from CARDS as currently proposed.</p> |
| <p>13. FINRA contemplates that the collection of information to be required by this proposal would enhance efficiency in other programs. In what other ways could FINRA use the information contemplated in this proposal to better protect investors and enhance market integrity? What would be the value of using the information collected in those ways?</p> | <p>It is difficult for WFA to identify other uses for CARDS data at this stage of the Proposal.</p> |

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| <p>14. Do carrying or clearing firms believe that nine months following SEC approval of CARDS requirements would be a reasonable time period within which to start submitting CARDS information to FINRA under phase 1? Do fully-disclosed introducing firms believe that within 15 months of SEC approval of CARDS requirements would be a reasonable time period within which to start submitting CARDS information to FINRA under phase 2?</p> | <p>CARDS is one of, if not, the most complicated financial reporting regimes ever proposed. Other significant and less complicated regulatory reporting initiatives such as AEP, OATS, ORF and Large Trader have taken far longer to be fully implemented than FINRA's proposed CARDS implementation timeline. Given the uncertainty as to the details of the final rule, WFA cannot identify a specific timeframe to implement CARDS with confidence.</p> <p>Based on the Proposal, though, processes such as mapping data, archiving and storage protocols, validation and transmission and reconciliation may take two years or longer, notwithstanding other significant work such as system testing, security and governance protocols and capturing historical data. The timeframe of these processes alone suggest nine months is an unreasonable time period. WFA recommends FINRA set an implementation date no earlier than two years after SEC approval of a rule and such implementation date be decided and announced after adoption of the rule pursuant to a rule amendment.</p> |