



Securities Arbitration Clinic
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March 20, 2014

Via E-mail to pubcom@finra.org

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

**Re: CARDS - Regulatory Notice 13-42
Proposed Rule to Develop a New Comprehensive Automated Risk Data System**

Dear Ms. Asquith:

Thank you for the opportunity to comment on the concept proposal to develop a new Comprehensive Automated Risk Data System (“CARDS”). We are writing this comment on behalf of the Securities Arbitration Clinic at St. John’s University School of Law. The Securities Arbitration Clinic is part of the St. Vincent De Paul Legal Program, Inc., a not-for-profit legal services organization.

The Securities Arbitration Clinic represents aggrieved investors and is committed to investor education and protection. The Clinic has a strong interest in investor protection, including the rules governing and ensuring supervision of investor accounts. Accordingly, this

comment will discuss some of the advantages and disadvantages of CARDS from an investor's perspective.

The Clinic ultimately supports the idea of CARDS and its mission to uncover potential illegal transactions and misconduct by firms and broker-dealers. CARDS is needed for numerous reasons, especially during a time when insider trading, churning, and pump and dump schemes are far too common in the industry.¹ CARDS will help alert FINRA to these practices and facilitate prevention and reprimanding of wrongdoers. Increased surveillance of the financial industry will allow FINRA to detect larger, industry-wide patterns of illegal sales practice activity. Running analytics on this information will help FINRA identify red flags and prevent potential financial disasters, which will serve to protect investors and ensure the integrity of financial markets. Test runs of CARDS have already uncovered suspicious activity in firms.²

Further, over time, CARDS will make the data collection process more efficient. It will limit or completely eliminate situations where examiners show up “blind” to examinations. By having information before examinations, examiners will be able to focus on specific issues and make better use of their time. The initial phase of CARDS will seek information that is requested during the course of examinations—information firms currently supply FINRA with. Rather than forcing firms to redirect personnel, or hire temporary staff to assist with supplying the information, an automatic data feed would handle most compliance requirements. The automatic feed would also remove human intervention and discretion during the process, allowing FINRA to receive unfiltered information. Firms will be prevented from “picking and choosing” information sent to FINRA.

¹ FINRA, *Regulatory Notice 13-42*, 2 (Dec. 2013), <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p413652.pdf> [hereinafter “*Regulatory Notice 13-42*”].

² *Id.* at 4.

While we are generally supportive of CARDS, we also have concerns. The following will highlight our two primary concerns: costs associated with the system and confidentiality of information.

First, we are unsure of what costs the program will entail. Increased costs are a concern because they will likely be passed on to investors. However, we believe that firms may potentially save some of the cost and time associated with preparing for cycle and cause examinations. This will benefit investors, upon whom costs are passed on. With respect to FINRA, its staff has indicated that the data acquisition process has been quite burdensome during test runs.³ We assume that FINRA will work to resolve this issue and develop a cost efficient and sustainable method of assigning adequate human resources to properly oversee the system and analyze data.

Second, FINRA does not appear to be bound to confidentiality by any statute, agreement, or other type of obligation. FINRA is not bound by Regulation S-P regarding the protection of customer and consumer nonpublic personal information, as the regulation applies to financial institutions such as broker-dealers, investment companies, and registered investment advisers.⁴ Ultimately, it is not clear if FINRA is subject to a heightened duty to protect investor information.

Despite this concern, FINRA does have self-imposed confidentiality obligations. For instance, FINRA protects personal confidential information of those involved in FINRA Dispute Resolution proceedings.⁵ FINRA encrypts electronic messages and digital files, trains staff on the importance of protecting such sensitive data, verifies the recipients of case materials,

³ *Id.* at 10 n.3.

⁴ Privacy of Consumer Financial Information (Regulation S-P), 17 CFR pt. 248 (2000).

⁵ *Protecting Personal Confidential Information*, <http://www.finra.org/ArbitrationAndMediation/Arbitration/Rules/NoticestoArbitratorsParties/P123999> (last visited Feb. 27, 2014).

removes private confidential information from appearing on public award letters, and stores and disposes of case materials in a manner that protects confidentiality.⁶ FINRA also recently updated its Firm Gateway Records Request and Information Request systems, which provide secure encrypted channels for document requests.⁷ FINRA has consistently done a commendable job protecting the information it receives from firms as our research has not discovered any instances of a data breach. We assume FINRA will continue to safeguard information with the same type of resolve.

Notably—as other comments illustrate—some investors and firms are concerned with privacy and risks of security leaks and hacking. These concerns have come to the forefront in light of the recent National Security Agency (NSA) controversy, and the breaches of confidential information held by retailers such as Target Corporation. We shared this invasion of privacy concern; however, FINRA addressed this with its March 4, 2014 update. A relevant portion of the update states, “[a]fter considering the written comments on the CARDS concept proposal . . . FINRA has concluded that the CARDS proposal will not require the submission of information that would identify to FINRA the individual account owner, particularly, account name, account address or tax identification number.”⁸ This update demonstrates FINRA’s commitment to addressing concerns of the public and protecting investor privacy.

Considering the magnitude of privacy concerns, it is reasonable to assume that concerned investors will remain skeptical. In the update, FINRA has provided only a brief statement to alleviate these concerns, however, while we understand this skepticism and believe that FINRA could have elaborated on how it intends to ease these concerns, we believe sufficient protection

⁶ *Id.*

⁷ *Regulatory Notice 13-42*, *supra* note 1, at 11 n.9.

⁸ FINRA, *Update Regarding Regulatory Notice 13-42—Comprehensive Automated Risk Data System* (March 2014), <http://www.finra.org/Industry/Regulation/Notices/2013/P451243>.

of investor privacy is feasible because of existing practices in the industry. The transmission of information through CARDS can involve some type of unique identifier, and this should prevent the likelihood that private confidential information will be compromised.

We hope that FINRA develops a system that is palatable to all concerned parties. We would like CARDS to be a successful system that helps limit instances of misconduct and suspicious sales practice activity in the financial industry. The goal is to protect investors from falling prey to dishonest firms and registered persons, and to keep the markets free from patterns of suspicious activity. Accordingly, we are supportive of the concept of the proposal.

Thank you for your time and consideration on this matter.

Sincerely,

/s/
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/s/
Spiros Avramidis

/s/
Thomas Engelhardt

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