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**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 13-42: Comprehensive Automated Risk Data System – FINRA Requests Comment on a Concept Proposal to Develop the Comprehensive Automated Risk Data System**

Dear Ms. Asquith:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Concept Proposal to Develop the Comprehensive Automated Risk Data System (“CARDS,” or “Proposal”), set forth in Regulatory Notice 13-42.<sup>1</sup>

Currently, FINRA’s examination program employs a risk-based on-site process that examines the books and records of member firms, collecting information on a firm-by-firm basis.<sup>2</sup> FINRA notes in the Proposal certain inefficiencies and limitations of the current program that, in its view, inordinately tax member firm resources, limit FINRA’s ability to properly focus its examination resources and inhibit it from assessing business conduct patterns and trends across the industry.<sup>3</sup> FINRA posits the collection of customer account information, customer

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<sup>1</sup> 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/notices/p413652.pdf>.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.*

account activity and security identification information on a standardized, automated and regular basis through the CARDS system as a solution to “reduce burdens on firms”<sup>4</sup> while at the same time permitting FINRA to “appropriately focus examinations on problematic areas.”<sup>5</sup> WFA submits this letter to outline its views regarding the Proposal.

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.4 trillion in client assets. It employs approximately 15,414 full-service financial advisors in branch offices in all 50 states and 3,328 licensed financial specialists in 6,610 retail bank branches in 39 states.<sup>6</sup> 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 88 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 retail investors need to pursue these goals.

WFA is dedicated to helping clients achieve their financial goals and has been a leading advocate of doing what is right for the client.<sup>7</sup> WFA is therefore supportive of the ongoing efforts of FINRA and the financial services industry to leverage technology to more effectively and efficiently serve the investing public. The Proposal’s stated aim of using advanced technology to focus examination resources is consistent with FINRA’s goal of investor protection. FINRA’s proposed means of achieving those goals, however, is a meta-surveillance system that goes far beyond this stated premise.<sup>8</sup> CARDS represents a paradigm shift in regulation posing significant policy and practical problems which carry potentially counter-productive and unintended consequences. Consequently, WFA believes the Proposal should not be adopted in its current form.

Currently, member firms establish books and records systems appropriately tailored to the member firm’s activities while FINRA, and other securities regulators, design risk-based examination programs to examine those records. At its core, CARDS threatens to flip this dynamic on its head. CARDS would force member firms to substantially restructure their carefully designed business infrastructures and existing clearing and vendor relationships so they

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<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), 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.

<sup>7</sup> 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>.

<sup>8</sup> Notice at 3.

are tailored to FINRA's goals for CARDS as opposed to supporting member firm and client activities. Moreover, by placing near real time data in the hands of FINRA staff, CARDS could alter the dynamics of FINRA's relationship to members, potentially forcing FINRA into member firms' day-to-day supervisory activities. WFA believes FINRA should reconsider the Proposal and more narrowly tailor the focus of any initiative to improving FINRA's examination process rather than to building a new surveillance system.

Furthermore, FINRA has not articulated examination findings or a change in the investment environment that would necessitate such a radical shift in regulatory authority. FINRA seeks instead to more efficiently employ its analytical abilities.<sup>9</sup> In fact, WFA notes FINRA's surveillance capabilities are already being bolstered by recent and upcoming data collection enhancements, such as the 2013 expansion of the Order Audit Trail System ("OATS"), the Consolidated Audit Trail ("CAT"), Blue Sheets, Large Trader and the Supplemental Statement of Income ("SSOI").<sup>10</sup> The cumulative effect of CARDS combined with these other regulatory efforts would be to siphon substantial member firm resources, squeezing out investments in technology that could enhance broker-dealer surveillance and the customer-broker experience.

Notwithstanding its objections to the Proposal, WFA believes the financial services industry and regulators must adapt to evolving markets and technology to better serve the investing public. WFA stands ready to work with FINRA to develop a workable and efficient means of achieving that goal.

WFA discusses in greater detail below certain significant challenges presented by the Proposal in its current form. Foremost among these concerns is 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. The Proposal also raises issues related to the nature of FINRA's analysis of the data requested and a potential transformation of FINRA's role to that of a direct supervisor. As a practical matter, WFA is concerned, among other things, that the effort to reach standard, industry-wide definitions of critical data fields is a significant undertaking which will impede any implementation of the Proposal. In addition, WFA believes CARDS will complicate introducing and clearing firm relationships and the division of supervisory responsibilities among each. Finally, CARDS materially impacts the cost structures of introducing brokers and clearing firms, which may ultimately change the pricing model for the industry, affect the functionality of the broker-dealer business model and negatively impact our clients.

WFA discusses the aforementioned challenges in greater detail below, and also attaches an addendum directly addressing the enumerated questions posed by FINRA in the Proposal.

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<sup>9</sup> *Id.* at 3.

<sup>10</sup> Gittleman, Stuart. "'Big data' Tools Will Improve Regulatory Oversight, FINRA's di Florio says" *Reuters*, February 25, 2014. <http://blogs.reuters.com/financial-regulatory-forum/2014/02/25/big-data-tools-will-improve-regulatory-oversight-finras-di-florio-says/>, (noting that FINRA has recently employed sophisticated analytics to better focus exams and that CAT would further enhance its analysis).

## **I. CARDS Risks Undermining Public Investor Trust and Confidence in United States Securities Markets.**

Although FINRA recently announced that CARDS will not seek personally identifiable information (PII),<sup>11</sup> this development is unlikely to quell investor concern about the account information that CARDS would still collect. Indeed, CARDS would collect, store and retain an unprecedented amount of sensitive financial client data in a non-governmental central data repository.<sup>12</sup> Furthermore, it remains unclear whether FINRA intends to link accounts across firms, and if so, how this would be accomplished without PII. 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.

Retail investor commenters have already expressed great unease with the concept that account information would be transmitted, aggregated and stored in a central database, potentially accessible to governmental authorities.<sup>13</sup> This concern is not without cause given recent revelations regarding government collection of telephone and internet metadata records.<sup>14</sup> In addition, CARDS information may very well be sought by other regulators, law enforcement officials, other governmental and non-governmental entities and the plaintiffs' bar as part of class actions and arbitrations.

WFA anticipates public concern may magnify as FINRA moves forward with implementation of CARDS, potentially resulting in an erosion of investor trust and confidence in the securities markets of the United States and the broker-dealer community. The perception of additional governmental or quasi-governmental access to account information and increased threats to the security of such data could ironically 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). 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.

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<sup>11</sup> Update Regarding Regulatory Notice 13-42 – Comprehensive Automated Risk Data System, <http://www.finra.org/Industry/Regulation/Notices/2013/P451243>.

<sup>12</sup> *Id.* Although CARDS will not seek “account name, account address or tax identification information” it may still seek sensitive data such as account numbers.

<sup>13</sup> See Public Comments Submitted in Response to FINRA Regulatory Notice 13-42. <http://www.finra.org/Industry/Regulation/Notices/2013/P412658>.

<sup>14</sup> See Greenwald, Glen. “NSA Collecting Phone Records of Millions of Verizon Customers Daily” *The Guardian*. June 5, 2013; <http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>.

### **A. The Aggregation of Customer Information Poses Privacy Concerns.**

The security of personal private information is at the forefront of the public's consciousness due to recent high profile breaches of personal information.<sup>15</sup> 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.

The Securities and Exchange Commission ("SEC" or "the Commission") has taken a strong stance concerning the security of nonpublic customer data. Under Regulation S-P (Privacy of Consumer Information), a financial institution must not disclose nonpublic personal information about a consumer to nonaffiliated third parties unless the institution provides certain notice and opportunity to opt-out.<sup>16</sup> When the SEC adopted CAT, it mandated all employees of the central repository "use appropriate safeguards" to ensure the confidentiality of data.<sup>17</sup> In addition, the SEC recently announced cybersecurity preparation to enhance market resiliency as one of its priorities for 2014.<sup>18</sup> The Commission will also host a roundtable to discuss cybersecurity issues on March 26, 2014.<sup>19</sup>

With the backdrop of WikiLeaks publication of N.S.A. information, and the data breaches at Barclays, Target and other major retailers, it is vital for FINRA to identify the safeguards it intends to implement for protection of account data. It is naïve to assume the aggregation of an investor's account information will not be a target for unauthorized access. Moreover, notwithstanding FINRA's plan not to collect PII with CARDS, questions remain about whether such sensitive data as account numbers and date of birth could be mined by an enterprising hacker to ascertain PII. Any leak of CARDS information would damage the relationship between the investor and the broker-dealer, spurring a chilling effect on investor use of brokerage firms. In addition, a leak could have privacy implications for member firms as it could expose trading patterns thereby giving competitors an unfair advantage.

### **B. FINRA Should Elaborate CARDS Plan to Avoid a Security Breach.**

Related to the collection and oversight of retail client information is the security of the information once collected by FINRA. A leak of client information through a technology breach

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<sup>15</sup> See 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](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>.

<sup>16</sup> 17 CFR Part 248

<sup>17</sup> SEC Rule 613(e)(4), 17 CFR §242.613(e)(4).

<sup>18</sup> See Securities and Exchange Commission's National Exam Program's Examination Priorities of 2014 at Page 2. Released January 9, 2014. <http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2014.pdf>.

<sup>19</sup> SEC press release announcing cybersecurity roundtable, <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540793626>.

or unauthorized access could have significant ramifications to our clients, the broker-dealer community and the securities markets in general. Although FINRA states CARDS will “incorporate current and effective information security methods,”<sup>20</sup> the Proposal does not detail how it will ensure the security of the information. Member firms recognize the need to assure customers their most sensitive information remains secure, and, as a result, have made substantial investments to safeguard customer information from unauthorized access. The transmission, aggregation and storage of customer information with FINRA risks eroding the safeguards firms maintain.

For example, when a broker-dealer contracts with a third party with whom data will be shared, the broker-dealer considers whether the necessary controls are in place; the frequency of the data sharing; and, how the data will be stored long-term, including periodic testing of the controls. FINRA has not articulated how these assurances will be satisfied with CARDS. WFA recommends FINRA discuss how it plans to implement data protection practices, including encryption, privacy policies, controls for access by employees and sub-contractors, storage, transmittal, masking and data retention and destruction. FINRA should outline how long it intends to store the data collected, and how it will maintain facilities that assure safeguarding of the information for the term of retention through destruction. Similarly, FINRA should clarify the length of time member firms would be required to retain CARDS related data.

In addition, the risk of a data breach raises the issue of investor recourse. If data is leaked from the central repository, investors and firms need indemnification for any damages flowing from the breach, similar to the recourse available to investors from their broker-dealer.

Among the stated goals of the Proposal are increased investor protection and the assurance of market integrity. However, given the breadth and depth of unique investor data sought to be aggregated and the lack of clarity as to investor security, the threat to investor privacy may undermine these goals. Furthermore, such 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, and recommends FINRA pursue a formal rule filing of CARDS. A formal rule filing will grant other interested parties and the public a greater opportunity to understand the purpose of CARDS and voice concerns regarding privacy and protection of their personal information. It also will allow other constituencies, such as the SEC, to offer their views.

## **II. FINRA Should Detail its Methodology for Analyzing CARDS Data.**

In the Proposal, FINRA states CARDS will be used to collect specific retail customer information, *i.e.*, information contained in required books and records, from clearing and self-clearing firms on a regular schedule.<sup>21</sup> FINRA notes it will use the information collected to run

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<sup>20</sup> Notice at 6.

<sup>21</sup> *Id.* at 2.

analytics that identify potential red flags of sales practice misconduct and potential business conduct problems with member firms, branches and registered representatives.<sup>22</sup>

However, the frequency and breadth of the data CARDS seeks carries certain risks. The access to such near real-time data could cast FINRA in the role of direct supervisor. At the same time, limitations of the data raise concerns that FINRA will not have the necessary context to fairly evaluate the data. FINRA should make clear its intent for the use of CARDS data.

#### **A. CARDS Could Place FINRA in the Role of Supervisor.**

FINRA believes CARDS will focus examinations by helping to identify potentially problematic sales practices. FINRA also notes CARDS would not supplant firms existing supervisory and compliance programs, and firms would remain responsible for detecting and preventing “problems based on the full information firms hold.”<sup>23</sup> Nevertheless, the transmission of transactional, positional and related retail customer suitability data on a near real-time basis will undoubtedly pressure FINRA to move toward direct supervision of all activity, if not immediately, then over time. WFA believes 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.

CARDS provides an avenue through which FINRA may transform its role from that of an overseer to a direct ongoing supervisor. It remains unclear whether this shift to supervision by FINRA will alter, or eventually supplant, the regular examination process. For example, will FINRA eliminate the Branch Office Risk Assessment Matrix (“BORAM”) and other automated submission vehicles as being superfluous? Further, it is unclear how the additional transactional data sought by FINRA would not otherwise be available and identified during the normal examination process.

Additional policy concerns include the measures FINRA will take if a red flag is identified and whether a firm will be privy to the results of FINRA’s analytics.<sup>24</sup> FINRA has also not defined its responsibility regarding suspicious activity report (“SAR”) filing and whether it will share that information with a member firm. 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.<sup>25</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.* at 7 *stating* FINRA recognizes its analytics would help firms’ compliance and supervisory programs, and suggests it “could share its analyses, including performance benchmarks, with firms...”

<sup>25</sup> 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.

## **B. CARDS Data Will Pose a Danger that FINRA's Analysis Lacks Context.**

Notwithstanding the massive amount of data FINRA seeks through CARDS, such data will provide limited context for FINRA's analysis. Specifically, 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) that are considered routine aspects of supervisory reviews by member firms. It also remains unanswered the extent to which FINRA will consider a member firm's suitability analysis as it evaluates CARDS data.

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. This increase in queries has an inverse relationship with the cost effectiveness of the Proposal, requiring firms to hire additional personnel to timely respond.

## **III. Data Standardization Issues Must be Resolved.**

FINRA is proposing the submission of data in a standardized form that is not consistently maintained across the industry. Recent experience with regulatory initiatives where standardized data sets are collected highlight the difficulty with such an endeavor and show the challenges associated with standardization of industry terms is not unique to CARDS. All recent significant industry-wide, data-gathering initiatives have encountered difficulty with the establishment of uniform definitions for common industry terms.

For example, the definition of a Legal Entity Identifier ("LEI") set forth in the SEC's Large Trader Reporting Requirement has been the subject of much debate.<sup>26</sup> Similarly, with CAT, the industry has been unable to define a unique customer identifier, whether that identifier will be stored or whether it will travel with the transaction data and how the identifier will be linked to other identifiers and transactions.<sup>27</sup> FINRA's Day Trader Pilot also encountered issues with transmission of historical data because the terms were not clearly defined and had to be re-defined as the pilot ensued.

WFA is concerned CARDS will encounter the same issues with data standardization. For example, it is unclear how FINRA will define basic terms like "retail" and "beneficial owners." The industry lacks a standard process to collect information across all retail securities firms. Since each firm may define such terms, or identify accounts meeting these definitions with different parameters, the practical challenges to the brokerage community of designing systems to transmit consistent data across the industry are considerable.

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<sup>26</sup> See SIFMA website discussing Legal Entity Identifier (LEI). [https://www.sifma.org/committees/asset-management-group/asset-managers-forum-\(amf\)/issues/legal-entity-identifier-\(lei\)/](https://www.sifma.org/committees/asset-management-group/asset-managers-forum-(amf)/issues/legal-entity-identifier-(lei)/).

<sup>27</sup> See Owens, Andre, *et al.*, "SEC Adopts the Consolidated Audit Trail Rule" WilmerHale, LLP. October 1, 2012. <http://www.wilmerhale.com/pages/publicationsandnewsdetail.aspx?NewsPubId=112818>.

Therefore, before implementation of CARDS or any similar initiative, WFA believes it is imperative to standardize the industry language. The EDM Council authored the Financial Industry Business Ontology<sup>28</sup> (“FIBO”), which is being released under the governance of the Object Management Group (“OMG”). FIBO enables firms to maintain existing terminology in their data schemas and link that terminology to a commonly understood conceptual ontology of financial industry terminology. FIBO could reflect very precisely the meaning of terms in FINRA requirements so members could link their unique terminology to equivalent FIBO concepts. If FINRA pursues CARDS, WFA encourages FINRA to explore FIBO as one alternative to language standardization.

FINRA, itself, attributes the burdensome nature of its collection of data from the individual firms to the “lack of standardization and automation,” as identified during one of its proofs of concept.<sup>29</sup> Without resolution of this issue, and given the significant increase of data entailed with fully implementing CARDS, adoption of the Proposal assuredly will prove to be unreasonably burdensome to both FINRA and its member firms.

#### **IV. CARDS Will Complicate Clearing Firm Relationships with Introducing Brokers.**

The Proposal states that clearing firms, on behalf of introducing brokers, and self-clearing firms would submit the information in their possession necessary to comply with the CARDS information submission requirements.<sup>30</sup> WFA believes the infrastructure necessary to collect and transmit CARDS data to FINRA will be so costly it could affect the business and pricing models for clearing firms and introducing broker-dealers. These costs may ultimately be borne by the client. It could also create confusion regarding the supervisory responsibilities of the introducing broker and the clearing firm.<sup>31</sup>

To avoid this confusion, FINRA should clearly and precisely define where supervisory and reporting responsibilities lie. For example, FINRA should confirm that clearing firms will not be responsible for supervising introducing broker client activity despite any additional suitability information being transmitted to the clearing firms. It is also unclear how FINRA will ensure introducing brokers provide the required data to the clearing firms and how it will rectify incomplete submissions to clearing firms.<sup>32</sup> The Proposal also does not address whether introducing brokers who clear through multiple firms would submit data through each clearing firm.

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<sup>28</sup> “FIBO is a collaborative effort among industry practitioners, semantic technology experts and information scientists to standardize the language used to precisely define the terms, conditions, and characteristics of financial instruments; the legal and relationship structure of business entities; the content and time dimensions of market data; and the legal obligations and process aspects of corporate actions.” <http://www.edmcouncil.org/financialbusiness>.

<sup>29</sup> Notice at 10, FN 3.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> Similarly, CARDS will complicate member firms’ relationships with service bureaus, such as Beta.

<sup>32</sup> *See* Notice at 5, *stating* “[c]learing firms would not be responsible for ensuring the accuracy or completeness of the information provided to them by their introducing firms for submission to FINRA in compliance with the program.”

The Proposal acknowledges that clearing firms may not have all the introducing firm data that CARDS may require.<sup>33</sup> Indeed, clearing firms do not currently receive all of the information requested under the Proposal from introducing brokers. Many securities products are not held, custodied or transacted at a clearing firm (e.g., Annuities, Direct to Fund mutual funds, Direct Participation Programs, Private Investments in Public Equity (“PIPEs”), non-traded Real Estate Investment Trusts (“REITs”), Precious Metals, Private Placements via Regulation D and any other products offered on a subscription basis). The Proposal is also requesting submission of non-trade activity and suitability information. The retention of such data varies widely depending upon the clearing relationship, the introducing broker’s practice and the nature of the specific investment product. In the case of certain transactions, the clearing firm may not have a customer record at all (e.g., a direct to fund IRA with no other account held with the introducing broker).

The Proposal outlines that “[c]learing firms would not be responsible for ensuring the accuracy or completeness of the information provided to them by their introducing firms for submission to FINRA in compliance with the program.”<sup>34</sup> However, the Proposal also states firms “would continue to have the obligation to conduct oversight to prevent and detect problems based on the full information firms hold.”<sup>35</sup> As set forth above, WFA is concerned that without specific clarification from FINRA, the additional data transmitted to the clearing firms would impose heightened supervisory requirements on clearing firms.

It is also unclear whether submission of introducing broker CARDS data will be via straight through processing, or whether clearing firms will be required to perform additional validations. If the latter, FINRA needs to define the additional obligations on clearing firms, including whether they have liability for incorrect data submissions and how to reconcile their books and records. Furthermore, since data will need to be transmitted after business hours, it is important that FINRA clarify whether staff will be available after hours to rectify errors and address transmission issues. Finally, WFA is concerned that FINRA would view transmission or data errors as worthy of enforcement referrals, which could severely impact service, cost and pricing models.

A requirement for introducing brokers to transmit additional information to clearing firms creates an environment in which the clearing firm is acting as a books and records custodian for the introducing broker. Such a shift in responsibilities complicates the retention policies of clearing firms and contemplates potentially indefinite storage requirements of both the data received from the introducing broker as well as records of the firms’ transmissions through CARDS. Consequently, clearing firms could be facing significant costs associated with maintaining facilities to securely store the data.

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<sup>33</sup> *Id.* at 6.

<sup>34</sup> *Id.* at 5.

<sup>35</sup> *Id.* at 7.

## **V. CARDS Will Increase Costs for Clearing Firms, Introducing Brokers and Investors.**

Although the ambiguity in the Proposal makes a specific cost estimate difficult, WFA does not believe CARDS will reduce present regulatory costs and burdens on member firms. On the contrary, it will increase those costs at a time other significant regulatory initiatives are underway, reducing a firm's ability to improve their own surveillance systems, innovate and enhance the customer experience.

CARDS carries material cost increases associated with designing, building, implementing and maintaining systems that could extract the relevant information from different platforms (assuming the data is maintained in electronic format). In addition, organizing the data into a standardized format, storing the information (perhaps indefinitely) and transmitting the formatted data to FINRA will represent incremental and ongoing costs. WFA is concerned that FINRA is significantly underestimating the costs to member firms of implementing CARDS. Furthermore, FINRA's proof of concept does not appear relevant to understanding the costs of designing and implementing CARDS because it is our understanding broker-dealers did not have to redesign and build new systems to participate.

Any marginal relief recognized by the introducing broker is merely a shift of costs to the clearing firm. If clearing firms will now be responsible for submitting introducing broker data not already in their possession, clearing firms will incur significant costs associated with building systems to comply with the Proposal. Additionally, clearing firms would absorb significant costs associated with reconciliation of the introducing broker data. Given the scope and frequency of the data transmission, and potentially indefinite storage requirements, clearing firms could be facing weighty costs associated with maintaining facilities to securely store the data. Clearing firms would also face additional legal and other costs associated with restructuring their relationships with introducing broker-dealers.

The contemplated changes 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 leading to less FINRA oversight.<sup>36</sup> The burdens associated with CARDS could accelerate this trend, undermining FINRA's investor protection objectives.

The Proposal covers Phase I of CARDS and focuses on business conduct for retail accounts.<sup>37</sup> FINRA is considering ways to structure its approach to retail accounts by limiting the first phase of CARDS to a select group of firms and/or a collection of a subset of

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<sup>36</sup> 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.

<sup>37</sup> Notice at 6.

information.<sup>38</sup> Although FINRA appears to be contemplating the possible expansion of CARDS in subsequent phases to additional firms or information, no indication has been provided that any such expansion would extend beyond retail accounts. 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 addition, it is unclear whether the system required to comply with Phase I will be utilized for future phases, or whether additional design costs will be incurred with the expansion. FINRA anticipates system revisions on a 12- to 18-month cycle.<sup>39</sup> Continual updates flowing from the cyclical revisions 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. The cost structures may be further impacted if FINRA decides to view errors in transmitted data as enforcement issues.

The potential ongoing surveillance will be particularly burdensome by increasing costs on a continuous basis for both introducing brokers and clearing firms. WFA anticipates a material increase in personnel to maintain and enhance the systems, to facilitate reconciliation issues and to respond to ongoing inquiries, including false positives.

A cost analysis of CARDS cannot ignore the contextual backdrop of an industry with multiple regulatory reporting efforts underway. Regulators already have robust surveillance through multiple data collection efforts, including CAT, Blue Sheets, Large Option, Integrated National Surveillance and Information Technology Enhancements (“INSITE”) and OATS, which expanded its reporting in 2013.<sup>40</sup> 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.<sup>41</sup> Should FINRA move forward with CARDS, WFA urges FINRA to combine CARDS with CAT to avoid burdensome duplication.

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 for the system requirements of CARDS 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.

## Conclusion

WFA appreciates the opportunity to respond to FINRA’s Proposal. WFA believes CARDS as currently structured diminishes the public investor’s privacy, potentially eroding trust and

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<sup>38</sup> *Id.*

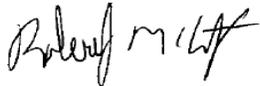
<sup>39</sup> *Id.* at 9.

<sup>40</sup> 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.

<sup>41</sup> SEC Release No. 34-67457, pg. 12.

confidence in the securities markets and imposing significant costs of implementing and maintaining the CARDS system. Although WFA remains opposed to the initiative as proposed, WFA remains willing to aid FINRA in achieving its goals. If FINRA should move forward with this Proposal, WFA believes the most appropriate course of action is to proceed within the formal notice and rulemaking process. WFA welcomes additional opportunities to respond as the Proposal evolves. If you would like to further discuss this issue, please contact the undersigned at robert.j.mccarthy@wellsfargoadvisors.com or 314-955-2156.

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](mailto:rule-comments@sec.gov)

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<b>FINRA Questions Outlined in <a href="#">Regulatory Notice 13-42</a></b>		<b>WFA’s Response</b>
<b>1</b>	Are there alternative methods for FINRA to achieve its goals as articulated?	There are a number of potential alternatives. 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 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 precise information from specific broker-dealers in a standardized format. Yet another option would be to leverage current and planned reporting enhancements, such as Consolidated Audit Trail (“CAT”), Market Information Data Analysis System (“MIDAS”), expanded Order Audit Trail System (“OATS”) reporting (which went into effect in 2013) and Integrated National Surveillance and Information Technology Enhancements (“INSITE”), prior to implementing a wholesale change.
	If so, what are those alternatives and why might they be better suited?	See above.
	Are there other information collection methods FINRA should consider either as an alternative, or as a supplement, to CARDS?	See above.
<b>2</b>	What would be the primary sources of economic impact, including the potential	The primary costs are those associated with designing, building, implementing and maintaining systems that could extract the relevant

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	costs and benefits, to clearing, self-clearing and introducing firms in developing, implementing and maintaining the systems that would be necessary to comply with the reporting requirements of CARDS?	information from different platforms (for purposes of this response we are assuming all the required data is retained and maintained in electronic format). In addition, organizing the data into a standardized format, storing the information (perhaps indefinitely) and transmitting the formatted data to FINRA will represent incremental and ongoing costs. There could also be significant costs to our Clearing Firm if the firm became responsible for submitting introducing broker data not already in its possession (please also see response to Item #6 below). There would also be substantial costs associated with reconciliation of data. Given the magnitude of this data, and potentially indefinite storage requirements, clearing firms could be facing significant costs associated with maintaining facilities to securely store the data. Also, there are the ongoing costs of the periodic system enhancements suggested by FINRA (see response to question 7 below).
	What systems would potentially have to be modified and what would be the anticipated costs?	See above.
	Would the primary sources of economic impact differ based on the size of the firm or differences in the business model?	Yes. CARDS would necessitate a re-working of systems and business relationships between clearing firms and their introducing brokers. This could change the pricing model for both clearing and introducing brokers.
<b>3</b>	In addition to systems modifications, what other potential changes to firms' infrastructure would be necessary?	WFA would anticipate additional legal and other costs as clearing firms may need to restructure their relationships with introducing broker dealers (please also see response to question 6 below).
	For example, would firms need to hire additional personnel either on a temporary or full-time basis to implement CARDS?	Yes. To build and maintain the infrastructure, to facilitate reconciliation issues and to respond to increased regulatory inquiry volumes.

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4	To what extent do firms believe that they would rely upon third parties to fulfill their reporting obligations?	WFA anticipates it would rely on its clearing firm affiliate First Clearing, LLC (“FCC”) to directly satisfy its participation in the CARDS system, while acknowledging that FCC will itself rely on 3 <sup>rd</sup> parties (such as security pricing vendors) as sources for some of the data to be submitted to FINRA.
	Should FINRA specify supervisory obligations for firms that enter into agreements with third parties to fulfill the firms’ reporting requirements related to CARDS?	WFA does not have a firm position on this.
	How could FINRA use CARDS to reduce firm use of personnel or third parties to fulfill examination and reporting requirements?	WFA does not see a path that would reduce firm use of personnel to fulfill examination and reporting requirements. WFA already has a team of professionals designated to facilitate examination requests. Quite the opposite, WFA believes ongoing maintenance, reconciliation and the potential for additional inquiries may well require permanent additions to staff.
5	To what extent do introducing firms currently maintain customer profile and suitability information with their clearing firms?	The retention of customer profile and suitability information for introducing broker-dealers varies widely depending upon the clearing relationship, the introducing broker’s practices and the nature of the specific investment product. In the case of certain transactions, the clearing firm may not have a customer record at all ( <i>e.g.</i> , a direct to fund IRA with no other account held with the introducing broker). (See question 6 below).
	If introducing firms maintain such information with the clearing firm, to what extent do introducing firms use the clearing firms’ data fields in providing the information to the clearing firms?	Varies considerably (see above); however, this may be better answered by purely introducing broker firms.

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<p>If the clearing firms’ data fields are not used, how do introducing firms provide the information to their clearing firms? What would be the potential costs to introducing firms in providing the data elements required by CARDS to their clearing firms?</p>	<p>See above.</p>
<p>If the data is not currently maintained in a standardized form, how much effort would be required to standardize the data to ensure comparability?</p>	<p>WFA believes this would be an enormous effort. This standardization concern is not unique to CARDS. All significant industry-wide initiatives have encountered difficulty with clarifying basic industry terms. For example, the definition of a Legal Entity Identifier (“LEI”) set forth in the SEC’s Large Trader Reporting Requirement has been the subject of much debate. Similarly, with the Consolidated Audit Trail (“CAT”), the industry has been unable to define a unique customer identifier, whether that identifier will be stored or whether it will travel with the transaction data and how the identifier will be linked to other identifiers and transactions. FINRA’s Day Trader Pilot also encountered issues with transmission of historical data because the terms were not clearly defined and had to be re-defined during the pilot. If the industry cannot agree on the meaning of basic industry terms with the aforementioned projects, WFA is concerned CARDS will encounter the same issues with standardization.</p> <p>WFA believes it is imperative to standardize industry language, and encourages FINRA to explore Financial Industry Business Ontology (FIBO) as a means to language standardization.</p>
<p>Although CARDS contemplates the transmission of information from clearing firms to FINRA, would</p>	<p>Under the current business model and data architecture, clearing firms would not have access to all of the data FINRA seeks from introducing brokers. For clearing firms to submit the data on behalf of the</p>

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	introducing firms find it more efficient and cost effective to transmit the specified information (or portions thereof) directly to FINRA?	introducing firms, a modification of introducing broker and clearing firms’ relationships will be required. (see also response to question 6 below).
<b>6</b>	The information provided to FINRA would include, at a minimum, account, account activity and security identification information. Is this information collected and maintained for all types of customers and products?	No, it is not. With respect to most introducing brokers clearing through FCC, FCC does not have all of the account data and transaction data FINRA seeks. For example, many complex products are not held, custodied or transacted at a clearing firm (e.g., Annuities, Direct to Fund mutual funds, Direct Participation Programs, Private Investments in Public Equity (“PIPEs”), non-traded Real Estate Investment Trusts (“REITs”), Precious Metals, Private Placements under Regulation D and generally any other product offered on a subscription basis). In addition to the potentially significant costs associated with building-out the systems of clearing firms to comply with the proposal, the additional recordkeeping requirements for clearing firms would transform the pricing of the services provided by clearing firms.
	To what extent is this information currently maintained in an automated format?	See above.
	To what extent is the information stored at clearing and self-clearing firms versus service bureaus?	See above.

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7	<p>FINRA expects that as applicable securities laws and FINRA rules evolve and are amended to include additional books and records requirements, it would revise CARDS' data specification elements to include that information. FINRA is contemplating assessing whether revisions to the data elements would be necessary on a 12- to 18-month cycle. What would be the feasibility of a 12- to 18-month cycle and what could impact that feasibility? What could be the potential economic impact of a 12- to 18-month revision cycle?</p>	<p>This depends upon the length of implementation as the cycle for budget planning purposes can begin 6-8 months prior to the beginning of a calendar year. However, continual updates means more costs to design, build and modify extremely complex systems and data sets which would inevitably lead to a higher ongoing staffing and infrastructure expenses.</p>
8	<p>FINRA is considering submissions of the required information to FINRA on a regular schedule (such as weekly or daily) in a format that would permit FINRA to run analytics for a particular day during the period being reported. Should FINRA require a longer or shorter period of time for submission of the information to FINRA?</p>	<p>Although WFA opposes CARDS as currently proposed, WFA could support sending data with any agreed upon frequency across the industry. If FINRA moves forward with CARDS, our best recommendation would be daily processing.</p>
	<p>Given the proposed purpose for collecting the information, what would be an appropriate schedule for submission of the information to FINRA?</p>	<p>Given that FINRA is requesting daily transactional and pricing information, WFA recommends a daily process for transmitting data to FINRA.</p>

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	<p>What would be the costs and benefits of a longer versus a shorter reporting schedule for submission of the information to FINRA?</p>	<p>A shorter reporting schedule, specifically daily, allows WFA/FCC to transmit data to FINRA the same day it is consuming the data. This eliminates storage, forward processing and related costs. However daily processing also requires that FINRA be ready to support processing in a manner similar to industry utilities, such as DTCC, which have the processing power and processing support to process a day within a day.</p>
	<p>What would be the costs and benefits of requiring different submission schedules depending on the information to be provided to FINRA? For example, what would be the costs and benefits if FINRA were to require monthly submission of account information, but daily submission of account activity information?</p>	<p>As previously noted, WFA believes that submissions to FINRA would be most straightforward if they follow the nature of the data being requested – for example – daily transactions and prices submitted to FINRA on a daily basis. While account updates can and do occur on a daily basis, many such updates are not directly related to transactions. Therefore, WFA believes account information can have a different reporting frequency without significant change to the costs incurred to provide this data to FINRA.</p>
	<p>For example, what would be the costs and benefits if FINRA were to require monthly submission of account information, but daily submission of account activity information?</p>	<p>See above.</p>
<p><b>9</b></p>	<p>FINRA is considering a phased approach to implementing CARDS. It envisions that the first phase of CARDS would focus on business conduct for retail accounts. What are the ways in which the first phase could be structured to best achieve the goal of focusing it on business conduct for retail accounts?</p>	<p>WFA believes it is possible to support a phased implementation approach once industry-wide agreement is achieved on the definitions of “retail” accounts and other terms, while at the same time recognizing this may lead to an interim condition that FINRA is not seeing all the data related to a specific customer, depending on the definition of “retail.”</p>

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<b>10</b>	For purposes of the initial phase of CARDS, would firms be able to clearly distinguish between retail customers and others?	This depends upon the agreed upon definition of “retail” customers.
	What systems changes, if any, would be necessary to allow firms to limit the submission of information to retail account activity?	See above.
	What would be the economic impact on firms, including the costs and benefits of limiting the initial phase of CARDS to the submission of information relating to retail account activity only?	See above.
	Is it easier or harder to limit reporting to retail account activity?	See first response to question 10 above.
	What other types of account activity should or should not be included in an initial phase of implementation?	No other types of activity should be collected until validating the collection of information outlined in the proposal.
	How should historical information versus new accounts be treated under a phased approach?	WFA would prefer that current data be initially provided to determine the effectiveness of the system.
	<b>11</b>	Following FINRA’s analyses of the datasets firms provide, would it be beneficial for firms to receive the data with performance benchmarks?
	If so, should FINRA make that data available directly or through vendors or clearing firms?	The data should be made available directly to firms.