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Investor Advocacy Clinic

October 10, 2018

VIA EMAIL TO PUBCOM@FINRA.ORG

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006

Re: Special Notice: Financial Technology Innovation in the Broker-Dealer Industry

Dear Ms. Mitchell:

Thank you for inviting comments on the July 30, 2018 Financial Technology Innovation Special Notice. As technology advances, it is imperative for industries to regularly, practically, and responsibly innovate their own practices. The securities industry is no different. This industry touches a person's life in a significant and impactful way. It is critical that FINRA handle advances in financial technology responsibly, as millions of investors rely on the industry's integrity when they invest.

We work with wronged investors who otherwise could not obtain legal representation because their claims are too small. Therefore, the focus of this comment is on the individual investor's considerations regarding emerging technology emphasizing consumer protection and each member firm's duties to investors. We focus our comments on issues relating to data aggregation and artificial intelligence and their impact on retail investors.

I. Data Aggregation may Benefit Consumers if Appropriately Supervised

A data aggregation service offers fast, convenient, and consolidated access to a user's entire financial portfolio. Users can access a complete snapshot of their asset-to-debt ratio and instantly access the interests and fees associated with their accounts and holdings. Instant access to information assists the average investor in many ways. For example, fee information gives the investor an opportunity to understand various charges on his or her accounts. The instant access that data aggregation provides can also help consumers and supervisors recognize illegitimate or fraudulent charges. This may collectively save consumers millions of dollars and prevent disputes.

The primary concern regarding this technology is data privacy. FINRA must consider what duty the aggregation services owe to consumers. To link their accounts to a data aggregator, investors must provide their passwords and account information. Should a data aggregator experience a data breach, the breaching party will gain access to an investor's entire suite of password and account information. Currently, FINRA does not regulate data aggregators, leaving consumers open to having their accounts accessed or their identity stolen without an identifiable FINRA-sanctioned recourse.

FINRA has an opportunity to remedy these problems. FINRA should provide guidance to customers that will help them avoid becoming victims of a data breach. FINRA can use its current investor outreach tactics to reach investors and warn them of these potential issues. FINRA should also require member firms to provide information to investors. Not only can FINRA help explain these questions to investors, but it can also shed light on the industry's interests and how they differ for those of the investor.

FINRA has previously assisted with consumer education on this topic. The Investor Alert *Know Before You Share: Be Mindful of Data Aggregation Risks* provides investors with easily-understood advice, such as the recommendation to ensure the aggregator follows certain procedures such as data encryption.[1] FINRA should provide more alerts to consumers on this topic while ensuring the information is easily comprehensible.

FINRA can take further steps in remedying these problems. For example, FINRA can use its power as a private regulatory agency to implement and maintain minimum standards. If a data aggregator maintains FINRA's trusted minimum standards, they may be deemed "FINRA Approved" thereby instilling confidence in their product and creating a benchmark of acceptable practices. This seal of approval could allow consumer remedies in the event of a breach of standards.

II. Members' use of Artificial Intelligence Must be Coupled with Human Insight and Supervision

The use of artificial intelligence (AI) is a hot topic of late, presenting benefits and risks. There are inherent concerns about accountability when the human element is absent or invisible to consumer investor. As mentioned in the Special Notice, FINRA Rule 3110 requires member firms to abide by strict supervisory standards. A member firm must still supervise a bot in making investment recommendations. It is dangerous to rely on a computer to make a very human, deeply personal decision such as what to do with a customer's hard-earned money.

FINRA can address part of this issue by requiring all transactions contain human involvement. It is critical that even if AI is used as one aspect of advising and investing a consumer's money, a member and an associated person be responsible for any unsuitable investments that a firm makes on a customer's behalf. A broker or firm should not be able to avoid responsibility based on AI advice, and a proper supervision by a human with the technological expertise to understand the technology and underlying algorithms is essential for investor protection.

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[1] FINRA, KNOW BEFORE YOU SHARE: BE MINDFUL OF DATA AGGREGATION RISKS, http://www.finra.org/investors/alerts/know-you-share-be-mindful-data-aggregation-risks (Last visited Oct. 2, 2018).

CONCLUSION

Overall, FINRA's move toward a technologically advanced and innovative future is admirable and crucial as a new generation of investors and brokers enter the market. Data aggregators should be monitored for the benefit of the investors, FINRA, and its members. FINRA should continue to work to educate consumers on the risks of using data aggregators. Member firms should be responsible for the actions of bots and ensure they are properly overseen by humans with the requisite technological competence.

Thank you for allowing our Clinic to participate and comment on these interesting and important topics.

Best regards,

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