

March 21, 2014

VIA ELECTRONIC MAIL

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

Re: FINRA Regulatory Notice 13-42: Comprehensive Automated Risk Data System

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to Regulatory Notice 13-42, "Comprehensive Automated Risk Data System" (the "Notice"). The Notice requests comments on a concept proposal to develop the Comprehensive Automated Risk Data System ("CARDS"). According to the Notice, FINRA would collect vast quantities of information from broker-dealer firms related to securities accounts, transactions and customers in a standardized, automated format on a periodic basis through CARDS. FINRA's stated purpose for collecting the data would be to "run analytics that identify potential red flags of sales practice misconduct . . . as well as help FINRA identify potential business conduct problems with members firms, branches and registered representatives."

COMMITTEE COMMENTS

The Committee appreciates the opportunity to comment on the CARDS concept proposal. The Committee has a number of very significant concerns about CARDS and its ability to enhance investor protection and firm oversight while imposing reasonable burdens on member firms.

¹ The Committee was formed in 1982 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of securities, banking, and tax policies regarding annuities. For three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury, Department of Labor, as well as the NAIC and relevant Congressional committees. Today the Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's member companies represent more than 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

Burdens Created by CARDS Production

Due to the grand scope of the CARDS program, it seems highly likely that the costs imposed on clearing firms and introducing firms will be substantial. Re-engineering existing data feeds, creating new data feeds, and molding the data into a standardized format are undeniably major information technology projects that will require substantial time, resources, hardware and software to solve. In addition, once the CARDS program is implemented, system modifications and changes to data points will inevitably create additional costs. It seems reasonable to anticipate that these additional costs will be passed along downstream from clearing and introducing firms and ultimately land at the feet of investors. The Committee is very concerned that the costs associated with building out the CARDS system will greatly outweigh the benefits. Stated simply, CARDS seems much more like a “want” than a “need” from a regulatory perspective. The Committee believes that FINRA should not proceed with CARDS until there has been a comprehensive and transparent analysis of the costs that will be associated with CARDS and an assessment of its impact on member firms and investors.

Data Security and Privacy Concerns

The Committee believes that data security and privacy concerns related to the CARDS proposal are extremely daunting. While recognizing that FINRA already stores considerable amounts of sensitive data, and assuming that FINRA has world-class technology security practices, recent data security breaches impacting the government, major retailers and financial services enterprises teach us that nothing is really safe. In addition, the Committee believes that, when compared to existing information collected and protected by FINRA, the information under the CARDS proposal is many orders of magnitude more important, sensitive and voluminous. With respect to FINRA’s decision to eliminate certain personal identifiers from CARDS, the Committee believes that is unlikely to prevent the remaining information from being an attractive, and useful, target for hackers.

The Committee was perplexed by the scarcity of information on data security and privacy issues in the Notice. The Notice provides only the following description related to those issues, which seems cursory and incomplete: “CARDS would incorporate current and effective information security methods to protect this information.” In addition to the full cost analysis that should be completed by FINRA before any proposal is re-introduced, the Committee believes that FINRA should not move forward with the CARDS proposal unless it provides detailed information on how the CARDS-related data will be protected during transmittal and after it arrives at FINRA. Related, the Committee also believes that FINRA should review and consider the issues of legal liability to member firm customers, and under all applicable breach notification laws, for any data breaches. In that regard, the Committee believes that FINRA should clearly set forth, to its member firms and to the investing public, its assessment of the responsibilities, if any, borne by member firms, applicable third party vendors involved in the transmission or storage of data, and FINRA itself for remedying a breach of the CARDS-related data.

CONCLUSION

The Committee appreciates the opportunity to comment on the CARDS proposal. Please do not hesitate to contact Eric Arnold (202.383.0741) or Cliff Kirsch (212.389.5052) if you have any questions regarding this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: 
Eric Arnold

BY:  *EAA*
Cliff Kirsch

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG Life & Retirement
Allianz Life
Allstate Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
ING North America Insurance Corporation
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Symetra Financial Corporation
The Transamerica companies
TIAA-CREF
USAA Life Insurance Company