



CENTER FOR CAPITAL MARKETS
C O M P E T I T I V E N E S S

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March 20, 2014

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

**Re: FINRA Regulatory Notice 13-42: FINRA Requests Comments on a
Concept Proposal to Develop the Comprehensive Automated Risk Data
System**

Dear Ms. Asquith:

The U.S. Chamber of Commerce (“Chamber”) is the world’s largest business federation representing over three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. The CCMC strongly believes that regulatory and enforcement actions should be based upon sound evidence and data and, accordingly, we welcome this opportunity to provide comment on the concept proposal (“Proposal”) issued by the Financial Industry Regulatory Authority (“FINRA”) on December 23, 2013 regarding the Comprehensive Automated Risk Data System (“CARDS”).

The CCMC commends FINRA for seeking input from the public and regulated entities on this initiative. We welcome the notable contrast between FINRA’s decision to engage the public in this process through a concept proposal and the recent decision by the Consumer Financial Protection Bureau to embark on a large scale credit card data collection program without the benefit of any necessary input from consumers or the regulated entities.

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While efforts to streamline and standardize this data collection are laudable, the CCMC remains very concerned that any wholesale changes to the way in which broker-dealers provide data to FINRA will come at a significant cost not only to broker-dealers, but also to their customers. There must also be recognition that broker-dealers are also facing a substantial increase in data requests and collections following the 2008 financial crisis and the ongoing implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Therefore, the need for any additional data on a more frequent basis must be demonstrated to ensure a proper balance between appropriate regulatory and enforcement oversight, the increased burden to the marketplace, and the risks associated with collecting, maintaining, and transmitting such huge volumes of sensitive data. Additionally, given that CARDS would likely result in a substantial increase in the volume of data that FINRA collects, we are concerned that FINRA may not currently have sufficient guidelines and procedures in place to safeguard such a large quantity of sensitive information. We believe that these issues are deserving of additional attention before the implementation of CARDS is advanced.

To this end, we urge FINRA to follow closely the principles laid out in its September 2013 “Framework Regarding FINRA’s Approach to Economic Impact Assessment for Proposed Rulemaking” (“Framework”). At the outset, we believe that FINRA must first clearly define the issue with its existing data collection and examination program and what gaps it is seeking to address. While FINRA notes in the Proposal that current requests for financial data from firms are often episodic and can consume a significant amount of time and resources for firms to comply, it has not demonstrated why this is problematic and how implementing the CARDS program and imposing more regular reporting for all entities instead of those that warrant investigation is the best solution. Looking ahead, failing to demonstrate why the existing framework requires an update via the CARDS initiative will ultimately undermine any cost-benefit analysis that FINRA will undertake, as discussed in greater detail below. This will also skew perceptions of any alternative approaches that FINRA may be considering, including potential modifications to the current data collection system that could address some of the shortcomings identified in the Proposal. Given these concerns (and others) that FINRA has yet to adequately address, we believe that seeking further public comment on an actual rule proposal

following this concept release along with additional, relevant details and data would allow for more informed feedback from the regulated community.

Anticipated Benefits of the Proposal

For more than three decades, cost-benefit analysis has been a fundamental tool of effective government. We appreciate FINRA's recent efforts to make robust cost-benefit analysis a priority for the organization. In particular, we note FINRA's hiring of a chief economist to enhance its economic analysis of rules and the release of the Framework in September. Despite these commendable efforts, however, questions remain about FINRA's efforts to pursue thorough cost-benefit analysis for the CARDS program.

Specifically with respect to anticipated benefits, the Proposal repeatedly emphasizes that CARDS would reduce regulatory costs and burdens by reducing episodic reporting for individual firms selected for scrutiny. However, we find this assertion lacking for multiple reasons. First, the Proposal fails to provide any meaningful data on the benefits of CARDS in comparison with the manual, one-time reports that FINRA now collects. Given this lack of data, it is currently unclear whether the "standard technology interface" envisioned under the CARDS initiative would actually provide a benefit to firms in light of the costs firms would need to expend to adopt and maintain a new platform. Although the Proposal states that streamlining through CARDS "would be expected" to have a beneficial effect, it is impossible for FINRA to quantify the extent of this beneficial effect when specifics are not provided.

Along similar lines, the Proposal also notes that the introduction of CARDS will coincide with a review of parallel reporting requirements so as to eliminate reporting redundancies. We agree with the sentiment that CARDS, if implemented, will necessitate the elimination of certain redundant reporting. Nevertheless, we believe it will be necessary for FINRA to expressly identify these overlapping requirements (and their associated burdens) early in the process so that the benefits of CARDS can be quantified.

Finally, we believe that the Proposal could cause confusion to the extent that FINRA apparently intends to use CARDS, in part, to share its analysis with reporting

firms. The Proposal explicitly establishes that CARDS would not replace the legal, compliance, and supervisory programs that firms administer, but would responding firms be obliged to incorporate FINRA's feedback into their programs once this analysis is shared? If so, the benefit that the Proposal envisions through shared analysis could quickly become an additional burden on the regulated community.

On the whole, we believe that reevaluating the Proposal, providing the data used to inform its creation, and explaining how FINRA intends to implement it will be the most effective way for FINRA to receive meaningful comments from the public regarding anticipated benefits. Despite the fact that the Proposal is not yet in "rule" form, the lack of specifics provided at this stage is surprising given the agency's statement that "FINRA is committed to a thorough analysis of existing as well as any future reporting requirements." An actual proposal would provide FINRA the opportunity to reconcile this inconsistency.

Anticipated Costs of the Proposal

Much like the anticipated benefits of the Proposal, the costs that FINRA envisions as part of CARDS implementation are similarly lacking in specifics and support through data. There is no question that current requests for financial data are often episodic and compliance can require significant amounts of time and resources for individual firms selected for scrutiny. However, as noted above, transitioning to a standardized data collection program would require all firms to upgrade their technology systems in order to meet FINRA's specifications. Such an upgrade would impose new and significant costs on a larger number of businesses, and could be particularly costly for firms that are currently not the subject of frequent FINRA data requests. As FINRA moves forward with its analysis of the CARDS initiative, regardless of whether a proposal is issued, these burdens must be quantified.

FINRA must also clarify how it intends to standardize data collected by member firms to ensure compatibility. Firms currently use a wide variety of data formats, account types, and data elements based on different business models, types of clients served, and (in some instances) reliance on legacy systems of third party service providers. FINRA should carefully consider standardization given the potential impact of CARDS to the quality of supervision and the significant technology, testing, and implementation costs of such an initiative.

The Proposal also suggests that clearing or self-clearing firms may be required under CARDS to submit information to FINRA on a weekly or even daily basis. Such frequent submissions to FINRA would undoubtedly produce substantial ongoing costs for firms and in some cases may require them to hire full-time personnel just to comply with CARDS. The capital and resources expended on such compliance will be taken away from other, more productive areas of these firms. Again, FINRA should commit to specifying the costs it foresees for firms before advancing the proposed implementation of CARDS any further.

On a more fundamental level, the manner in which the Proposal frames the expected economic impacts of CARDS indicates that FINRA should revise the scope of any cost-benefit analysis it will undertake to consider costs in the aggregate. The Proposal appears to focus on the costs to individual firms from which one-off data requests are occasionally sought under the current system. By focusing on individual firms subject to data requests, the Proposal underemphasizes projected costs to the regulated industry as a whole, which includes a large number of firms that are not currently targeted for reporting on a frequent basis as they would be under CARDS. From this broader, industry-wide perspective, the burdens associated with CARDS are comparatively enormous. In the end, this discrepancy between the burden on individual companies subject to one-time data requests and the burden on all entities regulated by FINRA in the aggregate could have a profound impact on the “baseline” against which the Securities and Exchange Commission (“SEC”) will be bound to measure the economic consequences of the CARDS program before it is approved.¹

Beyond these broader issues, the Proposal also fails to appreciate where the costs of CARDS will ultimately lie. The Proposal posits that costs will be borne by FINRA-regulated clearing and introducing firms, despite evidence that costs are more likely to be borne by introducing firms and, eventually, by the investing public. As other commenters have suggested, introducing firms are rarely able to absorb ongoing costs without increasing costs to investors or lowering service quality, while clearing firms themselves do not normally allow for material absorption of costs for

¹ See SEC, “Current Guidance on Economic Analysis in SEC Rulemakings,” Mar. 16, 2012 (providing that proposed SEC regulations and proposed regulations from a self-regulatory organizations (including FINRA) are subject to “the basic elements of good regulatory analysis [which include] the definition of a baseline against which to measure the likely economic consequences of the proposed regulation”).

introducing firms.² FINRA should commit to updating the Proposal to reflect this scenario and provide additional analysis of the costs and consequences that investors and the public will face as costs are passed along.

Other Economic Impacts of the Proposal

On March 4, 2014, FINRA posted a notice on its website 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.” While we commend FINRA for its general responsiveness to submitted comments and willingness to clarify certain aspects of the Proposal, significant data security concerns remain unaddressed. The CCMC believes that broker-dealers deserve clear answers regarding what type of customer information will be collected under CARDS and, more importantly, how it will be protected from unauthorized access. In particular, although FINRA has clarified that certain personal identifiable information will not be compiled, broker-dealers deserve additional assurances that such information will not be compromised or put at increased risk as a result of compliance with CARDS or deployment of the standardized platform FINRA mandates.

Acknowledging that certain sensitive firm information may be compromised under the CARDS framework, the proposal does not specify who would bear liability for such a breach. Accounting for the possibility of a data breach is crucial not only for quantifying the benefits of a standardized system, but also for assessing the costs to firms who could be held accountable for loss of or unauthorized access to data provided via CARDS. These considerations are particularly relevant given recent examples of the government’s failure to effectively manage and protect large-scale data collections.³

Generally, we believe that as FINRA contemplates whether to establish CARDS or a similar program, it should first identify what security measures are

² See, e.g., Comments from Paul Meehl, submitted Jan. 3, 2014.

³ Recent breaches include the accidental leaking of the private data of 2,400 Americans through Minnesota’s Affordable Care Act exchange. See Elise Viebeck, *Report: Minn. ObamaCare employee accidentally leaked sensitive data*, THE HILL, Sept. 13, 2013, <http://thehill.com/blogs/healthwatch/health-reform-implementation/322203-report-minn-obamacare-employee-accidentally-leaked-sensitive-data>.

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necessary to safeguard the information it will be asking broker-dealers to collect and transmit. FINRA should also evaluate what measures should be put in place *before* firms are required to use any mandated platform to collect or make regular submissions of information. Achieving sufficient security measures and establishing who will bear responsibility for them should not be an ongoing “work in progress” after FINRA has already compelled firms to collect and transmit large volumes of data on a regular basis.

It is also crucial to emphasize that initiatives such as CARDS do not take place in a vacuum and that other information collections outside the scope of FINRA’s concept proposal that are being imposed on the regulated community could complicate implementation of CARDS or at least increase the cost of it absent careful coordination and planning among regulators. Given the overwhelming amount of interaction and data associated with proposals such as the consolidated audit trail (“CAT”) and the national examination analytics tool (“NEAT”), we hope that FINRA will closely coordinate the development and implementation of CARDS with these initiatives. Concern about the aggregate impact of these overlapping data requirements is compounded by the fact that beyond the uncertainty about CARDS, industry does not currently have a complete picture of what the CAT proposal will require or its associated costs. Thus it is impossible to know if implementation of one of these regimes will compliment or work at cross purposes with implementation of the other. Unless these initiatives are carefully planned and coordinated alongside one another, FINRA’s imposition of the CARDS program on an industry already struggling to understand CAT and NEAT could create more problems and substantially increase the burden to broker-dealers.

On a final note, we urge FINRA to evaluate the overall economic impact of the CARDS program to the broker-dealer industry. The number of registered broker-dealers has declined by approximately one-third over the past ten years.⁴ We believe that a reason for this decline is the significant amount of regulation imposed on broker-dealers in what is already a low margin business when compared to other

⁴ As of year-end 2004, the number of registered broker-dealers was 6,339. As of year-end 2011, the number of registered broker-dealers had declined to 4,709. Financial Responsibility Rules for Broker-Dealers, 78 Fed. Reg. 51824, 51870 (Aug. 21, 2013) (to be codified at 17 C.F.R. pt. 240). As of February 2014, there were 4,138 FINRA member firms. FINRA Statistics and Data, *available at* <http://www.finra.org/Newsroom/Statistics/>.

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financial professionals. The CARDS program has the potential to further layer compliance costs on an industry that is already losing members.

Conclusion

While we are encouraged that FINRA has chosen to engage the public at this early stage, the CCMC believes that a number of issues in the Proposal are underdeveloped and deserving of added attention and detailed explanation before a rule to implement CARDS is submitted to the SEC for review. As a general matter, soliciting comments will enhance FINRA's ability to conduct a comprehensive cost-benefit analysis, identify appropriate data security measures, and consider appropriate alternatives. However, the comments received on the current Proposal will remain incomplete until the issues outlined above are addressed in greater detail and additional information is provided to the public. As such, and in light of the fact that FINRA already identified issues warranting *ad hoc* updates to the Proposal via notices posted on its website,⁵ we believe that a more robust actual proposal of the concept release with a new comment period will facilitate a more informed rulemaking. We look forward to continuing our engagement in this process as you move forward.

Sincerely,



David Hirschmann

⁵ See FINRA, "Update Regarding Regulatory Notice 13-42—Comprehensive Automated Risk Data System," posted Mar. 4, 2014 (as discussed above).