

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 Reg. Notice 13-42: Comprehensive Automated Risk Data System (CARDS)

Dear Ms. Asquith:

This letter is submitted on behalf of the National Society of Compliance Professionals, Inc. (the “NSCP”) in response to FINRA’s requests for comment on a concept proposal to develop the Comprehensive Automated Risk Data System (CARDS). CARDS is a rule-based program that would allow FINRA to collect on a standardized, automated and regular basis, account information, as well as account activity that a firm maintains as part of its books and records. FINRA Regulatory Notice 13-42 (the “Notice”) is intended to obtain the views of firms and others at the initial stage of determining how FINRA should obtain broader information to advance its supervision of firms and their associated persons.

About NSCP:

NSCP is a non-profit membership organization with approximately 2,000 securities industry professionals dedicated to developing education initiatives and practical solutions to compliance-related issues. Our members work in the compliance areas of broker-dealers, investment advisers and private fund firms and come from firms of all sizes. To our knowledge, NSCP is the largest organization of securities industry professionals in the United States devoted exclusively to compliance.

Our remarks reflect NSCP’s fundamental mission, which is to set the standard for excellence in the securities compliance profession. This commitment is exemplified by, among other things, the time and resources NSCP, and the industry professionals whose volunteer services it marshals, have devoted in the past seven years to the development of a voluntary certification and examination program for compliance professionals.¹

¹ Persons who complete NSCP’s certification program qualify for the “Certified Securities Compliance Professional” (CSCP) designation.

Our mission is directed at the interests of compliance programs and compliance professionals. We accordingly support a regulatory scheme that: (1) promotes practices that support market integrity and the interests of investors; (ii) creates clarity as to a firm's obligations to provide a reasonable system of supervision; (iii) promotes requirements that enable compliance officers to create reasonable workable programs; and (iv) avoids requirements or mandated tasks that are more costly or less efficient in realizing a regulator's public policy objectives, thereby increasing the difficulty facing a compliance officer in the discharge of his or her duties.

Request for Comments. In the Notice, FINRA requests comment on various aspects of its CARDS proposal, including:

- The ways in which FINRA's first phase of implementation of CARDS could be structured to best achieve its stated goal, which is focusing on business conduct for retail accounts;
- The costs and benefits associated with developing, implementing and maintaining the systems that would be necessary to comply with the reporting requirements of CARDS, and whether the primary sources of economic impact would differ based on the size of the firm or differences in the business model; and
- Whether the data that would be reported pursuant to CARDS is currently maintained in a standardized form, and how much effort would be required to standardize the data to ensure comparability.

Comments. At the outset, we want to emphasize that NSCP's comments on the CARDS proposal are intended to reflect NSCP's unique and crucial mission in the securities industry, which is to promote the role of compliance and more specifically, the role of the compliance professional. NSCP's primary goal in commenting on any regulatory proposal is to assist regulators in understanding the potential impact of a proposal on the compliance profession, whether it be with respect to the use of resources directed to compliance, the training and credentials of compliance professionals, or the role of the compliance professional in trying to ensure compliance by the member firm with federal, state and SRO laws and rules.

With this background in mind, NSCP members focused on FINRA's stated goals for CARDS, as well as issues that will likely impact the realization of those goals, all through the lens of how best to further the goal of compliance by all FINRA-member firms. In sum, and without knowing at this stage of the proposal many of the details that will need to be worked out as the concept is developed further, we believe that FINRA's goals are well-intended but that more thinking and planning needs to be undertaken by FINRA in at least the following areas:

FINRA's Use of Information. The first area we want to address concerns FINRA's intended use of the information it proposes to collect on retail transactions. Our interest is ensuring that, however FINRA chooses to use this information, such use neither materially disrupts what would ordinarily be the operation of a firm's system of supervision, nor place a compliance officer at a disadvantage in terms of that person's ability to help prevent, detect and correct compliance issues.

We acknowledge that the use of “big data” can be helpful to regulators and that as technology evolves and makes so many “new” things possible, securities regulators must consider how best to use the new technologies. Even so, we urge FINRA to consider potential unintended consequences to compliance programs, i.e., how FINRA intends to use the data could have negative unintended consequences for the compliance programs of member firms, if the use of the data undercuts member firms’ own compliance efforts.

First, while we understand that FINRA will be analyzing the same data as housed within each individual member firm, FINRA will be deploying analytical capabilities not available to most member firms. Accordingly, absent having access to the results of FINRA’s analysis, a firm would be unable to address proactively any issues that arise from that analysis. In an ideal framework, in the event material information concerning a single firm were to surface through CARDS analysis, a firm should be able to have the opportunity to benefit from such information to address issues through its system of supervision, and to accordingly empower further the compliance officer’s efforts to address compliance matters.

Should FINRA choose instead to invoke the enforcement process under circumstances where the firm was at an information disadvantage, the ability of the well-intentioned firm to remediate any compliance issue would be compromised. We submit respectfully that the compliance efforts of any given firm should be evaluated only on information reasonably available to the firm; otherwise, compliance professionals will be subject to second guessing and the possibility that a regulator may substitute its judgment for the judgment of the compliance professional, because the regulator has the means to analyze data in a manner not available to the member firm.

We accordingly urge FINRA to embrace a paradigm, where, absent any evidence of imminent harm to investors, the member firm and its compliance officer have the opportunity in the first instance to address and correct any issues discovered through FINRA’s analysis of CARDS data. Such a paradigm would support and reinforce a member firm’s supervisory capability, which is a bedrock principle underlying how securities business is regulated under the Exchange Act and FINRA rules.

Second, we respectfully submit that FINRA should focus its use of this information on macro patterns to inform its risk assessment of firms and to detect patterns in the industry. If FINRA were instead to focus mainly on individual transactions in individual firms, compliance officers would face the risk of spending materially more time addressing Rule 8210 requests, as opposed to identifying and remediating compliance problems.

We accordingly believe appropriate uses for the data collected through CARDS include FINRA detecting patterns of business conduct on an individual firm and industry wide basis and then sharing its findings (i) with the industry, through the publication of CARDS “Member Firm Updates,” (to suggest a name), and (ii) with individual firms, such as during the course of regulatory exams. These uses of the information would assist member firms in their own compliance efforts, without penalizing member firms unreasonably for failing to detect abuses or potential abuses by their associated persons which were detected by FINRA’s algorithms.

In other words, NSCP sees the goal of CARDS as correctly being focused on influencing *prospective* behavior of the firms, as opposed to being used to discipline firms or their compliance professionals on a retrospective basis. Second-guessing compliance professionals on the basis of

analytic metrics not available to the member firm would undermine the work of compliance professionals in a way that would subject them to unreasonable scrutiny and make an already challenging job almost unsustainable.

Costs Measured Relative to Compliance Benefit. While cost is certainly an issue of concern to the industry at large, our concern is the potential loss of available resources to support compliance where the costs associated with implementing and administering CARDS are not narrowly tailored to address FINRA's regulatory interest. Accordingly, NSCP respectfully urges that FINRA embrace an unwavering commitment to study the projected costs of CARDS, in terms of both initial build costs and the cost of continuing maintenance and upgrades, and to be sensitive to avoiding outcomes where marginal, new, and potentially unnecessary costs are incurred to the detriment of a firm's ability to more fully fund compliance efforts.

NSCP anticipates that the costs to build the CARDS system and maintain it in perpetuity could be extremely high, and for this reason, believes that FINRA needs at a minimum to consider: (i) whether costs and features are necessary or "nice to have," (ii) how it will fund the costs, and (iii) how each member firm will bear the cost. The cost issue is important to compliance professionals because compliance resources at member firms are (i) budget items that must be planned for well in advance, and (ii) more importantly, compliance budgets are not unlimited; choices have to be made with respect to the best use of member firm resources. If, for example, member firms need to hire additional technology personnel in order to design, install, and maintain front-end systems that are compatible with CARDS, this cost needs to be considered and compared to other alternatives. NSCP would have great concerns if the effort to implement CARDS results in a diminishment of resources available within member firms to spend on their own (non-CARDS) surveillance and compliance efforts. In this regard we note that member firms currently deploy many compliance resources on daily surveillance, which is, reviewing reports of *daily* transaction activity. We would not want to see this type of surveillance de-graded because member firm resources have to be re-directed to providing data to CARDS.

Once costs are deemed to be truly necessary, as a matter of transparency, we propose that FINRA's budget for the project should be disclosed to member firms during the initial planning stage, and then, based on that budget, there should be an open discussion regarding how FINRA intends to fund the project, *e.g.*, whether the cost of the project will result in increased member firm assessments. As part of the cost analysis, we suggest that FINRA estimate the cost per year to member firms of varying sizes and business models, over time, *e.g.*, for the first five years of operation. Since this is unlikely to be a one size fits all type of project, with every member firm being impacted in the same way, taking such steps could assist firms in planning how to absorb the cost, and considering more thoughtfully how to allocate member firm resources to compliance and other business needs. It would be useful for firms to be able to at least estimate what technology resources – in terms of both human capital and expenditures on research and development and systems – introducing and clearing firms might need to expend. We appreciate that these questions may be difficult to answer but the difficulty shows how critical it is for FINRA to engage in very detailed advance planning. NSCP believes this is the type of dialogue that needs to be undertaken before the proposal proceeds.

Also, with respect to costs, we note that efforts should be made to avoid non-value added costs, such as could be incurred if firms were required to develop, implement and maintain systems to satisfy

data transmission requirements resulting from the Consolidated Audit Trail (CAT) project, in addition to the CARDS project. Since the data elements of CATS are fairly well developed, perhaps FINRA could undertake and make public a “gap” analysis (similar to the gap analysis comparing OATS to CATS) to determine what data elements may be redundant if included in CARDS.

Data Standardization and Security Issues. NSCP has the following comments regarding data standardization and security issues.

Implementation of systems installations of the scale of CARDS will be costly and resource intensive for member firms. With respect to standardization, feedback from NSCP member firms indicates that firms will face significant challenges in standardizing data in a manner that satisfies the comparability goals of CARDS. For example, the investment objective conventions of CARDS are unlikely to match the conventions used by all firms, as firms’ current investment objective categories vary significantly from both a quantitative and qualitative perspective. Firms’ attempts to standardize their data to match conventions established by CARDS could lead to confusion amongst firms and/or degradation of the data provided. Accordingly, FINRA’s approach to development of data conventions that are understandable for firms, and easy for firms to implement, is extraordinarily important. We ask that the opportunity for meaningful dialogue and input be available to the member firm community.

With respect to security of the information provided to FINRA, there are multiple issues; a high level of security must be associated with data feeds from introducing firms to clearing firms, storage at clearing firms, transmission to FINRA, storage at FINRA, and disposal (after some period of time) of the data. We trust FINRA plans to design and price a system that protects all the transmissions involved, as well as storage at the clearing firms and FINRA. These costs would need to be factored into FINRA’s overall budget for CARDS.

NSCP would also like to comment on FINRA’s announcement that it would not, as part of CARDS, collect personally identifiable information (PII). NSCP believes FINRA’s decision in this regard was a necessary one and is helpful – but the fact that PII will not be collected will not, in our opinion, deter would-be hackers. In fact, we suspect that the challenge of hacking a system that is the repository for all exchange-traded U.S. securities transactions will simply be too attractive a target for criminals. Accordingly, we assume FINRA will plan for building, and incurring the cost to build and maintain, best in class information security systems and protocols. We also would appreciate FINRA’s assurance that no member firm will bear, either individually or as a result of its FINRA membership, the cost associated with complying with any applicable federal or state law that is triggered by any form of hacking or unintentional release of CARDS information. FINRA’s crisis management plan for dealing with a security breach should also be made public as part of the CARDS proposal.

Concluding Comments. Based on the issues discussed above, and in view of the potential impact to the member firm community,

- We strongly recommend that FINRA convene roundtables or working groups specific to different types of impacted firms – *e.g.*, small firms, medium-sized firms, large firms, clearing firms, and introducing firms – to address costs, compliance resources, and data compatibility issues, among other matters; and

- We ask that the cost estimates and analysis undertaken by FINRA be made public as part of the planning process so that member firms and particularly those in the compliance profession have an opportunity to consider the potential cost estimates in the context of member firm resources.

We understand that FINRA is only at the initial stages of development of CARDS and that it will receive a substantial number of comments and suggestions in response to the Notice's request for comments. We look forward to providing further input in the future regarding this proposal. NSCP would welcome the opportunity to answer any follow-up questions that FINRA has on this submission. Questions regarding the foregoing should be directed to the undersigned at (860) 672-0843.

Very truly yours,



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