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Submitted electronically to pubcom@finra.org

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

> **Re: Special Notice – FINRA Requests Comment on Financial Technology Innovation in the Broker-Dealer Industry**

Dear Ms. Mitchell:

On behalf of our members, the Insured Retirement Institute ("IRI")[1] appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority ("FINRA") in response to FINRA's Special Notice dated July 30, 2018 (the "Special Notice"), on financial technology ("FinTech") innovation in the broker-dealer industry. IRI supports FINRA's proactive approach to engage industry participants to discover how FinTech can be harnessed to enhance investor protection and market integrity. We applaud FINRA's Innovation Outreach Initiative, which has opened the dialogue between FINRA and the securities industry to better understand how FinTech will forever impact financial services.

IRI and our members are in the midst of a long-term effort to improve the client experience. As part of that project, we have been considering how FinTech and data sharing can increase the speed and efficiency of the annuity sales and service process. Through this process, we have found that uncertainty as to how regulators such as FINRA might apply or interpret existing regulations to new technologies often serves as a significant barrier to innovation for many broker-dealer firms. We are dedicated to helping our members address these concerns through a collaborative effort to develop appropriate protocols to enhance the investor experience with new available technologies.

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[1] IRI is the only national trade association that represents the entire supply chain of the retirement income industry. IRI has more than 500 member companies, including major life insurance companies, broker-dealers, banks, and asset management companies. IRI member companies account for more than 95 percent of annuity assets in the United States, include the top 10 distributors of annuities ranked by assets under management, and are represented by more than 150,000 financial professionals serving over 22.5 million households in communities across the country.

We wholeheartedly believe that FinTech can help us meet regulatory obligations while simultaneously enhancing the client experience. To ensure that the full potential of FinTech is unleashed, we request that FINRA and other regulatory bodies (e.g. NAIC, SEC) continue to engage broker-dealers and members of the securities industry to keep this dialogue open. We believe that this is critical to the success of our industry and will help to protect consumers from new players who may use FinTech inappropriately to skirt regulations. We applaud your efforts in bringing forth this discussion.

In this letter, we will address two of the issues identified in the Special Notice: First, we will offer our thoughts as to how regulators can help broker-dealers navigate new regulatory challenges presented by the increased use of data aggregation techniques. Second, we will provide support for the development of a machine-readable rulebook, which could leverage artificial intelligence to make regulatory compliance less complex and more efficient.

I. Data Aggregation

In the Special Notice, FINRA recognizes that many investors are already using data aggregation services to consolidate their financial data in a single source. Data aggregation services allow investors to collect information from multiple service providers (broker-dealers, banks, credit card issuers, etc.) and view it in single location or application. The increase in utilization of these services demonstrates that investors find them useful, and that they provide significant benefits by allowing users to have a single "dashboard" where they can access information about multiple accounts. Given this desire from investors, FINRA should encourage FinTech providers to continue to develop aggregation services and should also be thoughtful about imposing restrictions on those activities.

That being said, there are areas in which FINRA should provide either guidelines or additional clarity for member firms who participate in aggregation arrangements. The degree to which guidance or clarity is necessary depends on the aggregation arrangement.

Moreover, in considering whether to provide guidance or undertake rulemaking in this space, FINRA should consult and coordinate with regulators who have jurisdiction over other areas of the financial services industry to ensure consistency and a level playing field for all industry participants. Imposing new rules or requirements on FINRA-regulated firms in the absence of corresponding rules or requirements on others would run the risk of unintentionally putting broker-dealers at a competitive disadvantage.

a. Data Scraping / Application Programming Interfaces

As FINRA noted in the Special Notice, there are different methods of obtaining customer data, including "scraping" of data through the use of customer usernames and passwords, and the use of Application Programming Interfaces ("APIs"). While we recognize that scraping is a widespread practice, we believe that the practice of scraping creates several issues that FINRA should address through guidance.

Scraping presents data security concerns that are avoided when data is aggregated through APIs. APIs establish a direct link between the suppliers of the data (such as broker-dealers) and aggregators, and require protocols for how data is obtained and used. More importantly, APIs allow providers and aggregators of data to allocate responsibility for the use of customer data. However, in many cases, the

providers of customer data (such as broker-dealers) have customer data aggregated by third parties through data scraping, rather than through API agreements. In these instances, the source of the data may not even know that a third party has been authorized to scrape and aggregate consumer data.

While APIs are subject to prearranged agreements that limit the scope of the data sharing, scraping raises additional data security issues because it funnels consumer data to the aggregator on a limitless basis. This allows data scraping to collect an immense amount of data over long periods of time. Once registered for a data scraping service, a consumer may have his or her account information collected by the data aggregator long after the consumer stops using the service. The data collection is even likely to continue after the consumer has deleted the application. A breach involving a data aggregator engaged in scraping would create a serious potential for consumer confusion about the source of a breach, as consumers frequently register for a data aggregation service but later forget about their account.

Although scraping is widespread, FINRA should consider whether it is advisable to allow FINRA member firms to knowingly participate in data collection arrangements that involve data scraping without some form of regulatory oversight. To protect consumers from identity theft and privacy, it would be better for FINRA member firms to use APIs that limit the scope of the data sharing and establish prearranged protocols that can be readily disclosed to the consumer. However, we also recognize that there are legitimate uses for data scraping, and therefore, we would encourage FINRA to consider adopting new rules designed to establish appropriate parameters for firms that do choose to engage in data scraping. Such parameters could, for example, address the ability of the aggregation tool to (a) identify data points sourced via scraping, and (b) reflect the last date/time of update for each account when multiple accounts are aggregated through various means.

> ***IRI's Recommendation:*** FINRA and its fellow financial services regulators should consider the security concerns presented by data scraping when determining whether and how to regulate the use of data collection arrangements that involve data scraping.

b. Dashboard Services

In addition to data collection practices, FINRA should also consider broker-dealer firms' obligations with respect to "dashboard" services that compile data about multiple accounts in a single location. These services can provide consumers with a holistic view of their financial well-being. FINRA should carefully consider any potential negative consequences that might arise from imposing restrictions or requirements on these valuable services.

Although "dashboard" services provide significant benefits for consumers, FINRA should consider how disclosures could make these services more transparent to consumers. For instance, If FINRA members offer customers services that involve data aggregated from multiple parties, they should be required to provide appropriate disclosure to customers regarding their practices. The CFPB has already published guidelines for protection of customers in instances where data is aggregated by third parties, and FINRA could use the CFPB guidance as a template when creating their own guidelines.[2]

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[2] http://files.consumerfinance.gov/f/documents/cfpb_consumer-protection-principles_data-aggregation.pdf

> ***IRI's Recommendation:*** FINRA and its fellow financial services regulators should provide
> guidance as to the information FINRA member firms should disclose to their clients regarding
> data aggregation services that include multiple sources of data. The CFPB's guidance could serve
> as a template for such guidelines.

c. Consolidated Account Reports

The Special Notice also discusses issues relating to preparation and delivery of Consolidated Account Reports (CARs). While there are many different types of CARs, most involve aggregation of data regarding investments or other financial information from more than one source. Currently, there is some regulatory ambiguity about the disclosures to be provided with respect to CARs produced from multiple sources of data.

FINRA Notice 10-19 provides guidance to firms on how to ensure that physical CARs are not inaccurate, confusing or misleading, but the notice does not directly address digital CARs. To resolve this ambiguity, FINRA should extend Notice 10-19 to include digital dashboards or other visual representations. Doing so would clarify the appropriate disclaimers for online and physical CARs. Furthermore, these disclaimers should alert customers to the fact that data is being acquired from multiple sources, state whether and to what extent any participant in the service vouches for the accuracy of the data presented, and how customers can correct or otherwise address any inaccuracies.

Notice 10-19 also recommends that registered representatives obtain a signed acknowledgment that their client has been received the relevant disclosures and understands the nature and limitations of the consolidated reports. However, the Notice does not address the frequency with which such acknowledgments should be obtained. We would encourage FINRA to provide additional guidance on this point.

Finally, we note that some consolidated reports give the registered representative the ability to enter clients account information manually. This practice presents more risks, such as the entry of inaccurate information, and we believe it would be appropriate and beneficial for FINRA to provide guidance to address this risk.

> ***IRI's Recommendation:*** FINRA should clarify that Notice 10-19 extends to digital CARs and
> ensure that all disclosures included in CARs alert customers to the fact that the data contained
> in the CAR was acquired from multiple sources. The disclosures should also alert the customer
> to the extent any service vouches for the accuracy of its data and how the customer can correct
> inaccuracies. FINRA should also provide guidance as to the recommended frequency with which
> registered representatives should obtain signed client acknowledgments regarding receipt and
> understanding of consolidated reports.

II. Taxonomy-Based Machine-Readable Rulebook

IRI supports the development of a taxonomy-based machine-readable rulebook that will improve industry oversight and operational efficiencies. We encourage FINRA to support the development of the

next generation rulebook, and a common taxonomy for regulatory reports so that a wide range of documents can be consistently produced following a common machine-readable rulebook.

A machine-readable rulebook with embedded taxonomies transforms aggregated data through a tagging process into metadata that enables users to conduct streamlined searches based on areas such as business lines, activities and themes. This technology will expand accessibility of the FINRA rulebook to a wider audience including registered investment and insurance companies, private funds, regulators and service providers, and will improve consistency of regulations and speed of compliance. In the long term, taxonomy-based rulebooks should be standardized to meet the needs of US and international financial markets. In the future, financial regulators across the globe should adopt standardized taxonomies to examine and manage increased volumes of cross-market transactions with greater efficiencies.

Data aggregation and automation of data mapping can result in reliable production of repeatable reporting processes for large volumes of data. Artificial Intelligence (AI) holds great potential for machine-readable capability, but accuracy of AI managed data must be validated. Today, humans read drafts of reports and edit these manually because there is no common taxonomy. Integrating AI is critical to gain maximum efficiencies. This would require the development of software designed to read the common formats and integrate with a standard AI interface to generates reports on exceptions, subject to human validation. This process will avoid systematic errors and improve efficiency for both regulators and industry participants.

With the new FINRA rulebook in place, the next step is to develop a single taxonomy that could yield efficiencies across multiple regulators. This future common taxonomy could create a consistent and cohesive data set for regulators, fund companies and service providers. IRI anticipates there will be initial challenges in identifying overlap of regulations, and it will be necessary to establish common language and definitions. However, once the common technology is in place, there should be little effort in maintaining and updating by regulators. Similarly, for fund/service providers, it will be necessary to engage in initial one-time efforts to consolidate data to apply the common taxonomy, but once these are in place, taxonomy maintenance would be necessary, and the level of maintenance would be impacted by the level and frequency of changes from regulators.

Even if development of a consistent, harmonized taxonomy across US and international regulators is not feasible in the short term, the development of a machine-readable FINRA rulebook would be valuable because it would allow automated, searchable capabilities for US regulators as well as quicker time to find answers to basic questions such as how to determine which regulations apply to a specific filing or report. A single-source rulebook would allow market participants to easily query and receive automated responses and eliminate manual tracking of regulatory changes. This type of rulebook would be a first step towards eventually allowing participants to use advanced data aggregation and artificial intelligence technology to comb through thousands of pages of new regulations and decipher what elements are applicable.

Automation of machine-readable rulebooks supported by data aggregation and artificial intelligence is complex and deserves much greater detailed definition than this comment letter allows, but automation is the future. IRI appreciates FINRA's commitment to working with industry participants to develop a

new machine-readable rulebook through the creation of an embedded taxonomy to help market participants better process applicable requirements.

> ***IRI's Recommendation:*** FINRA should develop a next generation rulebook with embedded taxonomies to leverage data aggregation and artificial intelligence to improve industry oversight and improve operational efficiency.

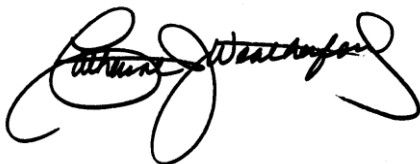### III.   Future Forum for Discussions on FinTech Issues

IRI also urges FINRA to explore the possibility of establishing a future forum for the industry to engage with a broad range of industry regulators, including FINRA, the SEC, the NAIC, and NASAA. This would enable industry participants to bring new issues to regulators' attention and obtain guidance when regulatory questions arise. Establishing this type of forum would also facilitate collaboration between regulators and provide for greater regulatory consistency across the industry. It would also reduce the number of redundant undertakings by financial regulators grappling with the same FinTech challenges. Providing a future forum for industry participants to collaborate with regulators will encourage FinTech innovation that aligns with FINRA's two core goals of investor protection and market integrity.

> ***IRI's Recommendation:*** FINRA should consider establishing a future forum with other financial regulators for industry participants to bring new FinTech issues to regulators' attention and obtain additional guidance on FinTech compliance in a consistent manner across the financial services industry.

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Thank you for the opportunity to comment, and we are eager to continue discussions about how FINRA can leverage FinTech to enhance protection for investors and market integrity for an improved client experience. We hope the information and recommendations provided in this letter are helpful. If you have questions about anything in this letter, or if we can be of any further assistance in connection with this important effort, please feel free to contact IRI's Vice President and Counsel for Regulatory Affairs, Jason Berkowitz (jberkowitz@irionline.org). Thank you for your consideration.

Sincerely,

Catherine J. Weatherford
President & CEO
Insured Retirement Institute