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December 1, 2014

Ms. Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006

**Re: FINRA Regulatory Notice 14-37: FINRA Requests Comment on a Rule Proposal to Implement 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 rule proposal ("Proposal") issued by the Financial Industry Regulatory Authority ("FINRA") on September 30, 2014 regarding the Comprehensive Automated Risk Data System ("CARDS").

While the CCMC appreciates the open and transparent process by which FINRA is soliciting public feedback on CARDS, we continue to have serious concerns over this initiative, and would refer FINRA to our March 2014 comment letter in response to the CARDS Concept Proposal.[1] We believe that FINRA has still failed to provide a clear definition and quantification of the problem that CARDS is meant to address, and that the Proposal lacks an adequate explanation as to why the current system of data collection hinders FINRA's ability to regulate broker-dealers

[1] *See* CCMC March 20th, 2014 comment letter on CARDS Concept Proposal http://www.centerforcapitalmarkets.com/wp-content/uploads/2014/03/2014-3.20-Chamber-Comment-FINRA-CARDS-FINAL.pdf

and carry out its mission. We also continue to have very serious concerns regarding the potential costs of implementing CARDS, particularly if—as the Proposal contemplates—some broker-dealers will be forced to hire third party vendors in order to assist them with compliance. Such costs will undoubtedly end up being passed on to customers of broker-dealers and the investing public.

Broker-dealers and the investing public also deserve clear answers as to how information collected by CARDS would be protected from unauthorized access. Even though CARDS will allow FINRA to collect significantly more information than it currently does, the Proposal fails to offer assurances that broker-dealers will be protected from the liability and reputational risks associated with a breach of such information.

Accordingly, we believe FINRA should forego further consideration of the CARDS initiative until some of these fundamental questions have been addressed. A formal economic analysis must also be conducted to determine whether the purported benefits of CARDS will outweigh the significant costs it is likely to impose. We also believe it would be beneficial for FINRA to seek feedback from various stakeholders on potential alternatives to CARDS that would not raise some of the serious concerns that the CCMC and others have expressed regarding this initiative.

**Anticipated Benefits of the Proposal**

As stated above and in our March 2014 comment letter, we believe that CARDS is likely to impose substantial costs on broker-dealers and, in turn, the investing public. We note that to date FINRA has only conducted an Interim Economic Impact Assessment, and has yet to conduct a formal cost-benefit analysis on CARDS. We encourage FINRA to complete a robust cost-benefit analysis of CARDS and, in doing so, to follow closely its September 2013 guidelines for economic analysis of rules.[2]

The Proposal states that CARDS would produce benefits reducing burdens on firms once initial investments have been made to implement CARDS, but fails to

[2] FINRA "Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking" Released September 2013

provide any analysis or quantification to support such an assertion. The CCMC continues to believe that moving towards a system that requires regular submissions of data to FINRA on a monthly basis will produce significant new sources of costs for firms and their customers. These costs could come in the form of broker-dealers re-allocating internal resources, hiring new internal resources solely to comply with CARDS, or in the hiring of a third party vendor to assist them with compliance. Either way, more evidence is needed to show that burdens on regulated entities will actually be reduced once CARDS is implemented.

One major concern that the CCMC has is the potential for CARDS to create costly and unnecessarily duplicative requests for data from broker-dealers. To that end, we are encouraged that FINRA has identified two current reporting systems—INSITE and the Automated Exam Program (AEP) that could potentially be retired if CARDS were to be implemented. However, we believe that prior to any further action on CARDS, FINRA should provide broker-dealers with detailed timeframes and deadlines for how those systems would be gradually phased out.

FINRA similarly needs to quantify the asserted benefits CARDS will have for the broker-dealer customers it says will benefit from the CARDS system and the additional monitoring it will permit. We understand that FINRA conducted an investor survey earlier this year to gather data that could be used in support of the CARDS initiative. However, the questions included in this survey were extremely vague and in no way could have made survey participants aware of the significance of the CARDS program and the potential threats to their personal and account information. We believe that FINRA must conduct further outreach to investors in order to assess whether these customers desire the added protection FINRA claims CARDS will provide, or if they are more concerned about the privacy and security implications of such a massive data collection.

## Anticipated Costs of the Proposal

As we noted in our comment letter on the Concept Proposal, we remain concerned that FINRA is looking at the potential cost of CARDS on a firm—by—firm basis, and not taking into account the aggregate cost to the regulated industry as a whole. While large broker-dealers may already be the subject of frequent data requests by FINRA and have dedicated a number of resources to complying with such requests, many small or regional broker-dealers may be forced to dedicate a disproportionate amount of resources in order to comply with CARDS. Taking into account this broader, industry-wide perspective, the burdens associated with CARDS are potentially enormous.

We would also emphasize that the costs of CARDS compliance will not ultimately lie with FINRA-regulated clearing and introducing firms. Eventually, introducing firms and the investing public will be forced to absorb these costs. As commenters pointed out in response to the Concept Proposal, firms are rarely able to absorb such costs without them ultimately being passed on to investors in the forms of higher fees or lower service quality. The economic analysis conducted by FINRA should include a robust analysis of the costs that will be ultimately borne by the investing public, in particular retail investors.

FINRA should also provide clarification as to how it intends to standardize data in order to ensure compatibility. Moving the entire broker-dealer industry to a "one-size-fits-all" data collection regime will lead to complications that could make implementation of CARDS much more difficult than currently envisioned. FINRA should make clear from the very beginning how exactly it intends to standardize data in order to reduce any unintended consequences. FINRA must also consider and quantify the extent to which the CARDS system will require segmentation of creation of new data sets that regulated firms do not currently keep and that serve no business purpose other than feeding the CARDS system. For example, do regulated entities currently keep datasets on clients that do not include the "sensitive" personal information FINRA says it will not collect, but that do have the data FINRA does intend to regularly gather during both the initial and subsequent phases of the CARDS implementation.

**Concerns over Security**

While we commend FINRA's March 2014 announcement that "sensitive" personally identifiable information (PII) will not collected by CARDS, the CCMC remains very concerned about the protection of data and of customer information under CARDS. We believe that broker-dealers deserve further assurances that such personal information will not be put at increased risk as a result of compliance with CARDS or use of the standardized platform that CARDS will mandate. FINRA says it will not collect any "sensitive" personal identifying information such as account names, account addresses and Social Security numbers. But it does envision in the second phase of CARDS implementation that brokerage firms will have to provide FINRA information on clients that identity thieves would find valuable, including individual investment time horizon, investment objective, risk tolerance, clients' net worth, and clients' birth year.

Broker-dealers must be assured that if FINRA's systems are breached and this data is exposed or if FINRA's systems are the source of viruses that infect a submitting company's systems that they will not face liability for data security events outside of their control. FINRA must also be aware that customer information can be especially vulnerable at the points of *transmission* between broker-dealers and FINRA or at any other time the information moves from one system to another. This creates another potential opening for customer information to compromised, and should be fully considered as FINRA examines customer privacy concerns.

FINRA also states in the Proposal that it believes *"the investor protection benefits that would come from CARDS…significantly outweigh the remote risk of a security breach."* [3] We find this claim troubling for two reasons. First, FINRA has not provided any quantified analysis stating what it believes the benefits are in terms of investor protection. Secondly, given the vast amount of data that will be collected under CARDS, even a small scale security breach could produce serious consequences and outweigh any purported benefits of the program.

Additionally, the economic harm related with a data breach goes beyond just what it costs FINRA or a broker-dealer to repair their systems or create new account information. There are also significant reputational risks to broker-dealers whose customer account information could be hacked under the CARDS system. The recent data breaches of a number of American companies show just how badly a company's reputation can be harmed in such a scenario. This reputational harm could be especially damaging to broker-dealers, who rely largely on the trust of their customers that invest their savings with them.

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[3] Proposal, page 6

As we noted in our comment on the Concept Proposal, we believe that as FINRA contemplates whether to implement CARDS or a similar program, it should explicitly identify what security measures (and the costs associated with maintaining such measures) are necessary to safeguard the information that it will be collecting. FINRA should make clear the measures it will take to protect this data and the measures it intends to compel industry to take to safeguard it. FINRA should evaluate such measures *before* firms are required to begin collecting information or making regular submissions to FINRA. We have recently seen with some of the travails of Obamacare enrollment website the unfortunate consequences of failing to address in detail and test such security plans before data is collected.

**Potential Alternatives to CARDS**

Given the serious reservations that a number of commenters have expressed over CARDS, we believe it would be beneficial for FINRA to examine alternatives to CARDS that would not raise these same issues. For example, FINRA could seek input on developing a modified version of CARDS that does not include detailed brokerage customer account information. This could potentially allow FINRA to meet its goal of increasing investor protection while minimizing the privacy and costs concerns related to CARDS. In doing so, we would encourage FINRA to continue to identify current systems (e.g. INSITE or AEP) that could be retired if such an alternative were to be adopted in order to mitigate unnecessary costs and duplication.

FINRA could also consider adding another set of inputs to the Consolidated Audit Trail (CAT) system as an alternative to CARDS. Such an approach could help FINRA achieve its mission of increasing its investor protection but not raise many of the cost and privacy concerns mentioned above.

**Conclusion**

While we are encouraged by FINRA's public engagement on this important issue, we remain deeply skeptical that the CARDS initiative will fulfill FINRA's goal of better protecting investors and will produce benefits that outweigh the costs of implementation and maintenance. We believe that a more complete quantification of the problem that FINRA is trying to address – coupled with concrete steps needed to protect information collected by CARDS and a robust economic analysis – is needed before FINRA makes any decisions about moving forward on this initiative. We look forward to maintaining an ongoing dialogue and appreciate the opportunity to comment on this proposal.

Sincerely,

David Hirschmann