



Via electronic mail at pubcom@finra.org

December 1, 2014

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

Re: Comprehensive Automated Risk Data System: FINRA Requests Comment on a Rule Proposal to Implement the Comprehensive Automated Risk Data System (“CARDS”), Regulatory Notice 14-37 (Sept. 2014)

Ms. Asquith:

The Financial Services Roundtable (“FSR”)¹ respectfully submits these comments on the September 2014 Rule Proposal by the Financial Industry Regulatory Authority (“FINRA”), entitled “Comprehensive Automated Risk Data System” (“CARDS”).² As

¹ *As advocates for a strong financial future*TM, FSR represents the largest integrated financial services companies providing banking, insurance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America’s economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

² Comprehensive Automated Risk Data System, FINRA Requests Comment on a Rule Proposal to Develop the Comprehensive Automated Risk Data System, Regulatory Notice 14-37 (“Regulatory Notice 14-37”), *available at* <http://www.finra.org/Industry/Regulation/Notices/2014/P600964>.

designed, CARDS would greatly expand FINRA’s collection and housing of information about the more than 110 million customers of the brokerage industry.³

While FSR appreciates that FINRA has addressed some of the concerns discussed in our comment letter on the initial CARDS proposal⁴ and has represented that its new proposal “reflects the comments” received on the concept proposal,⁵ we believe that many significant issues remain. We respectfully request that FINRA reconsider these issues and not implement CARDS without making substantial revisions consistent with the analysis in this letter.

Executive Summary

According to Regulatory Notice 14-37, CARDS would require all firms within its ambit to “submit data on a regular, automated basis.”⁶ CARDS would be implemented gradually, in two distinct phases (with any later phases subject to an additional rulemaking).⁷ During the first phase, FINRA would require carrying or clearing firms to submit, in a standardized format, specific information relating to their securities accounts and to the securities accounts for which they clear. During the second phase, FINRA also would require fully-disclosed introducing firms to submit specified data elements to FINRA (either directly, or via a third party).⁸ FINRA intends to use the information, in conjunction with certain analytics, to identify potentially problematic practices and uncover issues that might require greater scrutiny.⁹

³ See Karen Donovan, *Arbitration Works, Says SIFMA; No it Doesn’t, Says PIABA*, WEALTH MANAGEMENT.COM, (Oct. 4, 2007), <http://wealthmanagement.com/legal-compliance/arbitration-works-says-sifma-no-it-doesn-t-says-piaba> (estimating the number of brokerage accounts in the United States to be more than 111 million).

⁴ The FSR’s previous comment letter addressing CARDS is available at <http://www.finra.org/Industry/Regulation/Notices/Comments/P473352>.

⁵ Regulatory Notice 14-37 at 1.

⁶ Regulatory Notice 14-37, at 3.

⁷ *Id.* at 5.

⁸ *Id.* at 1.

⁹ *Id.* at 16.

FSR's comments on CARDS can be summarized as follows:

- FINRA's possession of private customer data is likely to undermine customer confidence and drive customers away from broker-dealers to other financial services industry participants.
- CARDS could create serious (potentially insurmountable) compliance problems under foreign and state privacy laws.
- FINRA has not sufficiently addressed the data security concerns associated with CARDS.
- FINRA's cost-benefit analysis is too limited, as it fails to account for the costs involved in data standardization and for the aggregate costs firms have had to shoulder to implement other regulatory systems. We urge FINRA to conduct a more robust cost-benefit analysis to avoid inflicting financial harm on firms and their customers.
- If, notwithstanding our comments, FINRA decides to implement CARDS as proposed, it should set the implementation date no earlier than three years after the Securities and Exchange Commission (the "Commission") approves the program.

Introduction

FSR supports FINRA's role as a regulator and as a bulwark against unlawful behavior, and it applauds FINRA's efforts on those fronts. We believe that FINRA's current enforcement methods are effective at identifying and punishing wrongdoing. In this light, we urge FINRA to reconsider the CARDS proposal, because we believe CARDS would undermine customer confidence in firms, generate unnecessary expenses for firms, and undermine firms' ability to serve their customers.

In particular, FSR continues to be concerned about four broad issues. First, the public's concern about governmental and private entities collection of private data militates against adopting CARDS. Second, state and foreign privacy laws could create potentially insurmountable compliance burdens. Third, the danger of compromises in data security also militates against adopting CARDS. Fourth, we believe FINRA's cost-benefit analysis is inadequate, because it fails to take into account impairment of the customer experience and recent compliance costs firms have had to shoulder to implement other regulatory systems.

Finally, given the substantial systems modifications that many firms will need to make, we believe FINRA should implement CARDS no earlier than three years after Commission approval of the program.

Privacy and Privacy Law Concerns

As designed, CARDS would collect far-ranging personal financial data on each broker-dealer's customers. Given widespread public concern about governmental and private entities' collection and use of individuals' data in light of recent revelations concerning the National Security Agency and other government entities,¹⁰ we believe customers would hold the firm responsible for any harm derived from transmitting the customers' personal financial data to CARDS or from FINRA's handling of those data, especially because customers' tend to be unfamiliar with FINRA and view firms as the "face" of the broker-dealer industry. As a result, a program like CARDS, is likely to damage firms' relationships with their customers and drive away many customers. Indeed, since customers have many options concerning how to invest their money (from registered investment advisers and mutual funds to bank products), they are especially likely to eschew broker-dealers in favor of market participants whose regulators do not collect and review such an extensive amount of personal data.¹¹

FINRA has noted that it operates a comprehensive security program to mitigate privacy threats, and that its program is compliant with privacy laws and regulations.¹² FSR appreciates that CARDS will no longer demand certain personally identifiable information. However, a customer's age, investment objectives, net worth, risk tolerance and trading activity¹³ are still highly personal, and FINRA's mere possession of such extensive information about the firms' customers is likely to be a source of continuing concern of the firms' customers. Indeed, concern about CARDS's violation of customers' privacy with its collection of information on every single transaction and related suitability data was a consistent theme of individual investors' comment letters on the prior CARDS regulatory notice.¹⁴

¹⁰ See, e.g., The Republican Newsroom, *Poll: 57% fear U.S. government will use NSA data to harass political opponents* (Jun 14, 2013, 11:59 PM), http://www.masslive.com/politics/index.ssf/2013/06/poll_57_fear_us_government_wil.html (citing a Rasmussen poll indicating widespread fear that government-collected data will be used for punitive political purposes).

¹¹ See, e.g., Comment Letter of Don Brock on Regulatory Notice 13-42 ("As a result of FINRA Notice 13-42, I intend on closing all domestic brokerage accounts and investing elsewhere.").

¹² Regulatory Notice 14-37 at 6.

¹³ *Id.* at 9.

¹⁴ See, e.g., Comment Letter of Gary A. Besley on Regulatory Notice 13-42 (stating that FINRA's "proposed monitoring of private accounts [...] is an invasion of privacy").

More generally, CARDS pushes far beyond FINRA's traditional, privacy-protective, approach to regulation. Traditionally, FINRA's rules have been designed to curb bad broker-dealer behavior and protect investors. Similarly, FINRA's systems have been designed to examine broker-dealers on the basis of *specific evidence* indicating possible misconduct or wrongdoing. With CARDS, by contrast, FINRA would be involved in each and every customer and broker-dealer trading decision, regardless of any specific indication of misconduct or wrongdoing. Thus, CARDS would represent a paradigm-shift that would upend the relationship among FINRA, firms and firms' customers, to the detriment of customer privacy.

Equally problematic, state and foreign privacy laws might well make it illegal for firms to transmit to FINRA the financial and transactional information CARDS would demand. Thus, some firms may be incapable of complying fully with CARDS.¹⁵ Many European Union nations, for example, have strict prohibitions on the circumstances under which financial information may be disclosed to foreign entities.¹⁶ Analogously, attempts by broker-dealers to comply with their social media-monitoring obligations led to great industry confusion regarding the conflict between the social media rules and state privacy laws.¹⁷ Even in cases where FINRA rules would preempt state privacy laws or foreign laws are technically inapplicable, CARDS could create a regulatory maze, leaving broker-dealers perpetually uncertain as to how they will comply with actually or ostensibly conflicting legal requirements and régimes, raising compliance costs, and subjecting firms to new, expensive legal challenges. Increased compliance complexity could prove especially burdensome for smaller firms, raising barriers to entry, creating an uneven playing field and damaging competition to the detriment of consumers.¹⁸

¹⁵ *C.f.* Comment Letter of the European Banking Federation and the Swiss Bankers Association on the Proposed Large Trader Reporting System, *available at* <http://www.sec.gov/comments/s7-10-10/s71010-92.pdf>. (explaining how the conflict between the Commission's large trader reporting system requirements and the requirements of non-U.S. privacy laws makes simultaneous compliance impossible).

¹⁶ *C.f.* Robert S. Ladd, *Swiss Miss: The Future of Banking Secrecy Laws in Light of Recent Changes in the Swiss System and International Attitudes*, 20 *Transnat'l L. & Contemp. Probs.* 539 (2011-2012) (2009) (discussing the Swiss banking secrecy laws and the difficulty of getting financial information out of Switzerland).

¹⁷ *See, e.g.*, Scott E. Rahn and Michael Lawrence, *California Declines FINRA "Friend Request": The Impact of State Social Media Privacy Legislation on Broker-Dealers' Ability to Comply with FINRA Rules*, *Securities Litigation & Enforcement News: Current Legal Developments in the Broker-Dealer Arena* (Nov. 16, 2012), *available at* <http://www.gtlaw.com/News-Events/Publications/Alerts/165600/California-Declines-FINRA-Friend-Request-The-Impact-of-State-Social-Media-Privacy-Legislation-on-Broker-Dealers-Ability-to-Comply-with-FINRA-Rules>.

¹⁸ *C.f.* Juliet Chung, *Compliance Costs Rise at Hedge Funds* (Oct. 17, 2013, 7:39 AM), <http://blogs.wsj.com/moneybeat/2013/10/17/compliance-costs-rise-at-hedge-funds/> (noting that rising

In light of these considerations, FSR recommends that FINRA provide a safe harbor from any requirement to collect or furnish data or other customer information when a firm reasonably believes that doing so could violate state or foreign privacy or data disclosure laws. If FINRA nevertheless adopts CARDS in its current form, we urge FINRA to release a compliance guide addressing how firms can simultaneously comply with ostensibly or actually conflicting regulatory and legal requirements.

Data Security Concerns

The public also has heightened concerns regarding the data security measures taken by governmental entities and private companies that house their personal information.¹⁹ While FSR appreciates FINRA's acknowledgement of these concerns in the latest release, FSR does not believe FINRA has adequately addressed them. In particular, FINRA has not provided much detail regarding the "high security standards" it will use to protect private information or about the security protocols it will employ for handling this large amount of confidential data. For example, will system controls be based on passwords or on more robust authentication processes? What measures will FINRA take to ensure that its technical support processes do not lead to data leaks by the technical employees who have access to those data?²⁰ How will FINRA ensure that transmissions from firms to FINRA and from FINRA to the Commission will be secure? We are not, of course, requesting that FINRA provide highly sensitive information regarding the security system such as might create a road-map for a hacker, but it would be helpful to know, in at least a general form, the nature of the "high security standards."

Given the increasing sophistication of computer hackers (including state-sponsored actors²¹) and the difficulty of ensuring that systems are ever completely safe,

compliance costs for hedge funds and an increasing regulatory complexity are raising barriers to entry burdening smaller participants in the hedge fund industry).

¹⁹ See, e.g., Brian Fung, *The bright side to the Target Hack? It's getting Congress moving*. (Jan 10, 2014, 3:36 PM), <http://www.washingtonpost.com/blogs/the-switch/wp/2014/01/10/the-bright-side-to-the-target-hack-its-getting-congress-moving> (discussing possible Congressional action in the wake of revelations concerning Target systems being hacked); see also Devin Dwyer, *Exclusive: Security Risks Seen at HealthCare.gov Ahead of Sign-Up Deadline*. (Dec 20, 2013, 6:36 AM), <http://abcnews.go.com/blogs/politics/2013/12/exclusive-security-risks-seen-at-healthcare-gov-ahead-of-sign-up-deadline/> (discussing unanticipated security concerns arising in the context of implementation of the Affordable Care Act computer systems).

²⁰ *Id.*

²¹ See, e.g. Edward Wong, *Hacking U.S. Secrets, China Pushes for Drones*, N. Y. Times, Sep. 20, 2013 at A1, available at http://www.nytimes.com/2013/09/21/world/asia/hacking-us-secrets-china-pushes-for-drones.html?_r=0 (discussing Chinese governmental actors' attempts to hack secure U.S. systems); see also Executive Order no. 13636, *Improving Critical Infrastructure Cybersecurity*, DCPD-201300091 (Feb. 12, 2013) (discussing, *inter alia*, the need for "improved

FSR recommends FINRA not adopt CARDS in its current form. FINRA’s own discussion of its examination priorities notes the increases in the “frequency and sophistication” of cyber-attacks on the “nation’s largest financial institutions,” aimed at stealing “sensitive customer data.”²² FSR appreciates that FINRA believes its own systems will not be attractive to unscrupulous internal personnel or to hackers bent on stealing data, because such persons cannot access or cause movements of cash or securities or obtain information sufficient to ascertain the identity of a customer. However, though the data in FINRA’s systems alone may be insufficient for a hacker to steal relevant information or otherwise do harm,²³ those data could be aggregated with other information available to the hacker, increasing the re-identification risk.²⁴ In addition, the mere presence of large amounts of data, all in a single system, could provide a powerful incentive for unscrupulous persons to attempt to gain unauthorized access.²⁵

Even if data could be fully secured, the mere perception that sensitive financial information could be leaked, abused or misappropriated is likely to undermine customer confidence, while subjecting firms to liability to their customers if there were a data breach. Customers concerned about data security, like those concerned about data privacy, might well choose to take their business away from broker-dealers and give it to other market participants (such as registered investment advisors) with whom they believe their data to be more secure. FSR is concerned about the reputational damage that the industry and FINRA itself would suffer and the customer claims and complaints

cybersecurity” to protect the “economic security” of the United States in light of the growing “cyber threat to critical infrastructure”).

²² Letter from FINRA on FINRA’s 2014 Regulatory and Examination Priorities (Jan. 2, 2014), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p419710.pdf>.

²³ Regulatory Notice 14-37 at 6.

²⁴ Comment Letter of the American Civil Liberties Union on Regulatory Notice 13-42 (“[R]esearch has demonstrated that even nominally de-identified information can frequently be re-identified when crossed [sic] referenced with other public databases. The danger seems particularly acute in the case of detailed financial information.”)

²⁵ Exchange Act Release No. 34-67457 (May 26, 2010), n. 357 (quoting a comment letter regarding the consolidated audit trail stating that “Although the SEC has a strong record of protecting investor privacy, the very presence of potentially billions of unique customer identifiers tied to personal information in a central repository would create a substantial risk of misuse and identity theft”); see also Ken Dilanian, *Several cybersecurity initiatives lost after Snowden’s NSA leaks.*, L.A. Times (Feb. 1, 2014, 6:51 PM), <http://www.latimes.com/nation/la-na-snowden-cyber-20140202,0,5845248.story#axzz2sH4wRrMD/> (noting that U.S. entities have found it enormously difficult to thwart the “daily onslaught” of hacking attempts aimed at stealing Americans’ financial data from banks, telecommunications systems, and other institutions).

that would arise from a FINRA data security breach,²⁶ but FINRA does not address these risks in the regulatory notice.

Given the data security concerns outlined above, FSR recommends that FINRA use existing or already contemplated systems (like INSITE or the Commission's CAT repository) to avoid creating a new repository of highly sensitive information.²⁷ Alternatively, in light of FINRA's confidence in its security measures, FINRA could indemnify firms for leakage of or unauthorized access to their data or to their customers' data.

Cost-Related Concerns

Concerns Regarding Costs and Benefits Generally

While it is impossible to know precisely how to quantify the costs and benefits associated with CARDS, it is likely that the expense to individual firms will be enormous. According to Regulatory Notice 14-37, the preliminary per firm cost estimates to develop CARDS systems and procedures range from approximately \$390,000 to \$8.33 million, and the annual cost to maintain these systems ranges from approximately \$76,000 to \$2.44 million.²⁸ Estimates of expenditures in the hundreds of thousands or millions of dollars may seem trivial for some firms, but cost items like these, especially on the heels of many other large regulatory initiatives, leave little in the budget for upgrades to the customer experience, risk management and compliance, areas that FINRA should consider to be as important as incremental regulatory and supervisory gains.

Further, FINRA would impose the enormous costs necessary to render firms' systems CARDS-compliant after the industry has already updated or built systems to comply with the Order Audit Trail System ("OATS") (in 1998),²⁹ ACT (in 1998),³⁰

²⁶ *C.f.* Lauren Coleman-Lochner and Lindsey Rup, *Target Seen Losing Customers in Wake of Card Data Breach*. Bloomberg, (Dec. 25, 2013 12:01 AM), <http://www.bloomberg.com/news/2013-12-24/target-seen-losing-customers-in-wake-of-card-data-breach.html> (discussing Target Corporation's loss of customers in the wake of a credit card data breach).

²⁷ *C.f.* Tom Foremski, *How secure are the National Security Agency spy lines?* ZDNET, (Jun. 12, 2013, 10:19 PM), <http://www.zdnet.com/how-secure-are-the-national-security-agency-spy-lines-7000016752/> (arguing that increasing centralization of sensitive data facilitates hacker theft of those data).

²⁸ *Id.* at 19.

²⁹ Order Audit Trail System (OATS), <http://www.finra.org/Industry/Compliance/MarketTransparency/OATS/>.

INSITE (in 2001),³¹ the Trade Reporting and Compliance Engine (“TRACE”) (in 2002),³² Large Trader Identification (in 2011)³³ and the Enhanced Blue Sheets System (in 2012),³⁴ and immediately before the industry will have to shoulder the costs of making their systems compliant with Consolidated Audit Trail (“CAT”) requirements. While FSR appreciates that regulators must develop new systems in order to serve as effective watchdogs, the implementation of a large variety of systems over this time period indicates that FINRA might not be sensitive to the aggregate costs – of money and of time – that compliance with a flurry of new systems requirements imposes on firms. Moreover, FSR is concerned that FINRA will soon come to see CARDS itself as outdated, in need of replacement by another expensive system.

In addition, FSR requests that FINRA specify the assumptions it used to generate the CARDS cost estimates, because FSR is concerned that FINRA may be overlooking several sources of additional expense in its cost projections. Specifically, FSR is concerned that FINRA is dramatically underestimating the burden of CARDS’s data specification requirements on firms. FINRA should confirm that firms of all kinds and sizes have ready access to the information CARDS would demand, and that it would not be burdensome for firms to supply information in the standardized form FINRA contemplates. While FSR appreciates FINRA’s plan to implement CARDS in “phases” to attempt to alleviate the implementation burden,³⁵ FSR does not believe the phased approach would do much to lighten the burden, because firms will still eventually have to update or rebuild their systems to comply.

³⁰ Nasdaq to Incorporate Trade Acceptance and Reconciliation Service into Automated Confirmation Transaction Service, NASD Notice to Members 98-40, *available at* <https://www.finra.org/Industry/Regulation/Notices/1998/P004794>.

³¹ INSITE Reporting Requirements, SEC Approves NASD Rule Proposal Requiring Member Clearing and Self-Clearing Firms to Report Prescribed Data, Special NASD Notice to Members 01-84, *available at* <http://www.finra.org/Industry/Regulation/Notices/2001/P003511>

³² Corporate Debt Securities Transactions Subject to Reporting and Dissemination: NASD Issues Interpretive Guidance to the Trade Reporting and Compliance Engine Rules, Notice to Members November 2002, *available at* <http://www.finra.org/Industry/Regulation/Notices/2002/P003437>.

³³ Commission Release No. 34-64976, *available at* <http://www.sec.gov/rules/final/2011/34-64976.pdf>.

³⁴ Electronic Blue Sheet (EBS) Submissions, FINRA and ISG Delay Effective Date for Enhanced Electronic Blue Sheet Submissions, Regulatory Notice 12-36, *available at* <http://www.finra.org/Industry/Regulation/Notices/2012/P137896>

³⁵ Regulatory Notice 14-37 at 9.

Likewise, CARDS would mandate firms provide a host of information regarding *non-customer* accounts, such as clearance, depository and transfer accounts.³⁶ We estimate that requiring firms to submit information about such accounts would nearly double the amount of data firms would have to submit and the quantity of transactions with FINRA in which they would have to engage, greatly increasing expenses. It is far from clear that such additional costs are justified, because it is not clear how access to this information would help FINRA identify sales practice abuses or pursue other customer-protective ends. We believe FINRA should either refrain from demanding non-customer account information if it implements CARDS, or, at a minimum, explain why this information is necessary for FINRA to achieve its regulatory objectives.

Moreover, FSR is concerned that FINRA has not addressed the burden CARDS will place on the day-to-day conduct of firms' business affairs. Currently, FINRA examines a given firm's records essentially "as is," with only slight modifications necessary for certain examination submissions (such as the Branch Office Risk Assessment Matrix). With CARDS, by contrast, "standardization" means, essentially, that firms are tasked with redesigning their books and records systems to accommodate FINRA, a process that could prove costly and technically challenging. For example, many firms retain significant portions of the information CARDS would request in PDF format or even in paper form and do not store such information electronically; information held in such formats is not always easy to convert into an electronic format that would comply with CARDS's submission requirements. Although FSR appreciates that CARDS would allow firms to submit some information in a variety of formats,³⁷ the burden associated with reconfiguring other pieces of information into a CARDS-compliant form could be substantial.

Furthermore, the design that suits the CARDS system is not necessarily the design that best supports firms' providing services to customers. Indeed, firms take great pains to store information in a format that best helps them meet their individual customers' needs and goals. As a consequence, it would be difficult for FINRA to use CARDS to make meaningful cross-firm comparisons of data elements such as "account objective," "risk tolerance," and "investment time horizon," because different firms tend to have unique definitions of these data elements.³⁸ Indeed, FINRA implicitly recognized the value of firms having leeway to define certain elements when it adopted its new

³⁶ *Id.* at 7, fn. 3.

³⁷ *Id.* at 12.

³⁸ *Id.* at 12.

suitability rule in 2012.³⁹ The suitability rule allows firms, within reasonable limits, to determine the meaning of “investment profile,” “investment objectives” and similar terms.⁴⁰ More fundamentally, there is an irresolvable tension between the standardization demands of CARDS and the health of firm-customer relationships. Good firm-customer relationships demand that firms be able to use their knowledge about a particular customer to set the parameters of a suitability analysis and to determine the factors that go into analyzing the elements of that analysis. However, to the extent firms individuate their analyses (and therefore deviate from CARDS standardization requirements), FINRA’s ability to conduct cross-firm comparisons would be impaired.

If FINRA decides to implement CARDS, we suggest that FINRA itself build a system capable of aggregating and manipulating the data firms submit, and that FINRA allow firms to submit their data “as is,” without any technical or other modifications.

Costs Related to More Frequent Inquiries and Examinations

In Release 14-37, FINRA reiterates its view that CARDS would eliminate extensive information requests and on-site examinations.⁴¹ However, FSR is concerned that CARDS will in fact result in a huge influx of new regulatory inquiries and in longer examinations as FINRA personnel pour over the CARDS data, resulting in a significant increase in work and expense for firms to satisfy FINRA personnel that perceived improprieties do not exist. Although the likely escalation of inquiries to firms would enable FINRA to demonstrate that it was taking a close look at all the data at its disposal if a perceived market or regulatory failure occurred, the industry could have difficulty coping with the greatly increased expenses associated with responding to the deluge of inquiries. FINRA does not consider these additional costs in assessing CARDS. Nor is it clear that CARDS would actually have a beneficial supervisory and regulatory impact. Currently, examinations are targeted, based on particular pieces of information located within a particular context. FINRA’s possession of the enormous amounts of additional data CARDS would call for, by contrast, is likely to cause examiners to be swamped with data, unable to distinguish real indicators of bad behavior from false positives, and hence, more likely to miss possible indicators of misconduct.

³⁹ See generally FINRA Rule 2111 and the “Components of Suitability Obligations” supplementary material, available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9859.

⁴⁰ FINRA Rule 2111(a).

⁴¹ *Id.* at 14.

Even if, as FINRA emphasizes, CARDS would lead to greater investor protection,⁴² that does not necessarily justify imposing burdensome requirements and expenses on firms, expenses that inevitably get passed on to customers and requirements that can undermine the firms' ability to serve customers effectively. Customer protection is a laudable goal, and we recognize that many customers are willing to shoulder additional costs for increased protection.⁴³ However, the value of each marginal increase in customer protection is one that must be balanced against equally compelling interests: customer privacy and data security; preservation of the customer-firm relationship; and maintenance of the financial health of firms.

Finally, cost-effective regulation and customer protection are not mutually exclusive. For the reasons outlined above, FINRA's current approach of examining firms on an individual basis grounded in particular indicators of possible misconduct is both less costly to firms and more likely to uncover misconduct than CARDS would be with its wide, indiscriminating net.

Implementation Date

FINRA proposes that carrying or clearing firms be required to submit their data to CARDS approximately nine months after the Commission approves CARDS.⁴⁴ FSR believes the implementation period is unrealistic, as firms cannot begin to implement the necessary systems before CARDS is formally adopted and the contours of its requirements (including establishing standardized data elements) are clear. Based on firms' experience implementing new regulatory systems, such as OATS and Large Trader Identification, FSR believes that most firms would require roughly three years to bring their systems into compliance with CARDS. This longer time period is justified, in part because CARDS would involve a much greater regulatory and system overhaul than did OATS or Large Trader and in part because many firms would likely need to begin implementing CAT's requirements simultaneously with CARDS's requirements.

⁴² Regulatory Notice 14-37 at 16.

⁴³ FINRA News Release, November 6, 2014: FINRA Investor Survey Reveals Strong Support for Additional Regulatory Protections, <http://www.finra.org/Newsroom/NewsReleases/2014/P601548>.

⁴⁴ Regulatory Notice 14-37 at 13.

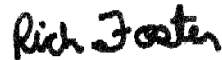
Conclusion

Given the concerns identified in this letter, FSR respectfully requests that FINRA not implement CARDS without substantial revisions consistent with the analysis presented above.

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FSR appreciates the opportunity to submit comments on FINRA's proposed Comprehensive Automated Risk Data System. If it would be helpful to discuss FSR's specific comments or general views on this issue, please contact me at Richard.Foster@FSRoundtable.org.

Sincerely Yours,



Richard Foster
Vice President & Senior Counsel
for Legal and Regulatory Affairs

Financial Services Roundtable