September 21, 2018

<u>ELECTRONICALLY SUBMITTED</u>

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506

Re: Request for Requests Comment on Financial Technology Innovation in the Broker-Dealer Industry

To Whom It May Concern:

Envestnet Yodlee ("Yodlee") appreciates this opportunity to share our perspective in response to the Financial Industry Regulatory Authority's ("FINRA") request for comments regarding what role it should play in assisting broker-dealers and investors with regard to data aggregation issues. As the leading financial account aggregation platform provider globally with nearly two decades in the industry, Yodlee strongly believes in the ability of technological innovation to safely empower investors by increasing competition and providing broader access to technology-based financial tools that drastically improve investors' financial wellbeing.

Yodlee is a business-to-business, consumer/investor-permissioned financial data aggregation and analytics platform that enables financial institutions and financial technology firms alike to provide investors with innovative new products and services that can help them improve their finances. These customers use the Yodlee platform to connect millions of retail and small businesses and individual consumers and investors with their own financial data to provide financial wellness solutions. These applications can, for example, provide a single platform to track, manage, and improve investor financial health across a host of different banks and financial institutions, provide financial advice, and offer access to credit.

Customers also use Yodlee's platform to establish the authenticity of account holders in real time, along with improving the real-time affordability checks required by providers of credit. Yodlee's customers include 12 of the 20 largest banks in the United States and top global banks in more than 20 countries, including Bank of America, Goldman Sachs, Wells Fargo, and American Express. Leading global financial innovators like Kabbage and PayPal are also Yodlee's customers.

FINRA's decision to seek public comment on data aggregation is timely. The growth of the financial technology sector has presented investors with tools that can promote competition, improve market stability, and meaningfully help improve financial wellness. Permissioned, third-party access to investor data enables personalized, data-driven financial advice to the benefit of investors and their responsible advisors. Yodlee's responses to FINRA's specific questions about its role in addressing issues related to the increased use of data aggregation services and any technology or compliance challenges presented by attempts to develop consolidated statements in association with data aggregation are below.

1. FINRA is requesting comments on what role, if any, FINRA should play to assist broker-dealers and investors in addressing issues raised by the increased use of data aggregation services in the financial industry.

With respect to addressing data aggregation concerns arising between broker-dealers and investors, Yodlee supports FINRA playing an increased role in resolving these issues consistent with the perspectives taken on consumer-permissioned data access by both the Bureau of Consumer Financial Protection ("BCFP") and the Department of the Treasury ("Treasury"). In a report recently published by Treasury, *A Financial System That Creates Opportunities: Nonbank Financials, Fintech, and Innovation*, released on July 31, 2018, the department makes clear its position that consumers must be able to permission access to their financial data to take advantage of technology-based tools.

FINRA is well aware that advances in technology have already changed and continue to change the way investors approach their financial and wealth management. Today's fintech innovations are taking place with such pace that they challenge the current regulatory framework—not just specific regulations themselves, but also the foundations of our regulatory architecture. Moreover, some innovations call into question which agency or regulatory authority is or ought to be the primary regulator of a fintech application – uncertainty further bolstered by a very fragmented regulatory regime.

Yodlee strongly believes with the BCFP and Treasury positions taken over the last two years that every consumer has the right to access their own financial data whenever and wherever -- and through whichever tools or third-parties they wish -- so long as they affirmatively grant consent to do so. Investor trust in the ecosystem is fundamental to adoption. Yodlee also therefore believes that investors must be affirmatively protected with the highest standards of data security when using third-party tools. A strong data security framework is the foundation on which data-driven innovation and entrepreneurship will continue to flourish. Across the various countries in which it operates, Yodlee holds the consistent position that any party that is a holder of an investor's data should ultimately hold the responsibility for protecting that investor from harm resulting from the breach or misuse of that data.

Yodlee believes all stakeholders must participate under defined standards for conduct, safety, and governance in the collection, processing, storage, and use of an investor's data. Moreover, Yodlee believes strongly in collaboration between government and industry, which will produce standards based off the input of all stakeholders. To build an ecosystem in which responsibility for notifying and making investors whole is easily understood, FINRA should consider the institution of traceability as part of future data standards it considers.

The concept of traceability conveys that any party, broker-dealer or otherwise, accessing an investor's data with their permission is identified through unique, coded headers embedded in the authorization call that the party uses to access the investor data required to fuel its service. Accordingly, every entity to which an investor has permissioned their data is identifiable. In the event of a data breach, this chain of identifiers can be used as forensic evidence to trade the source of the breach to the party that was responsible for it.

Accountability is a principle that logically follows traceability. A successful regime will implement traceability as a means of ensuring that any party responsible for a breach of investor credentials is liable for any financial loss incurred by the investor. To ensure this is the case, Yodlee suggests that FINRA pursue the goal of ensuring every party that holds investor data is able to make their customers whole in the event a breach of their systems results financial loss. In other geographies, this has been accomplished through a combination of capital and minimum levels of liability insurance commensurate with the potential risk each party presents to investors in the case of a security event. Under a system in which both traceability and accountability are implemented, all parties involved in a breach would be aware of what entity was responsible and would have assurances that the responsible party is held liable for any losses, thus addressing the key hurdle that traditional financial institutions and broker-dealers now face under the existing statutory and regulatory framework when their investors elect to use third-party tools.

Currently, there are no overarching statutory, regulatory, or market standards in the United States with regard to investor authentication, and, with regard to the data consumption protocol used by aggregators to transmit the end user's data, with their permission, to their application of choice, there are several different methods used in the ecosystem today. To authenticate, end users typically provide their online banking credentials, either to the third-party application provider delivering them the service or product they have selected, or, through redirection, to their financial institution, which in turn issues an access token to the third party and the aggregator with which it partners. Once the investor is authenticated, the aggregator may use any of several data consumption methods to retrieve the financial data required for the use case.

In the case where no direct data feed is available, aggregators employ proprietary software to capture the data required for the use case from the end user's native online banking environment. This data consumption method is commonly referred to as "screen scraping." In many cases, this option is the only way investors can utilize aggregation services. In a recent FINRA investor alert titled, *Know Before You Share: Be Mindful of Data Aggregation Risks,* FINRA cautions investors on the perceived risks of screen scraping, while pointing to the growing use of Application Programming Interfaces ("APIs") being employed by financial institutions to aggregators.[1] In some cases, these direct feeds are specifically designed for aggregators and third parties to utilize for the purpose of providing products or services to their customers; however, in the current ecosystem, the vast majority of U.S. financial institutions have not deployed direct feeds. Typically, smaller financial institutions lack the capital required to build and maintain these access points. Accordingly, screen scraping remains the only method of gathering consumer-permissioned data for many U.S. investors.

[1] Know Before You Share: Be Mindful of Data Aggregation Risks. (2018, March 29). Retrieved September 3, 2018, from http://www.finra.org/investors/alerts/know-you-share-be-mindful-data-aggregation-risks

Because there is no legal requirement in the United States stipulating that a financial institution or broker-dealer must make the investor's financial data it holds available to a third party in the event their customer provides express consent for the institution to do so, investors' ability to take advantage of the benefits offered by third-party, technology-based tools rest almost entirely with the inclination of their financial institutions. Not all financial institutions are disposed to allow third-party tools, some of which compete directly with their own products and services, complete access to their customers' data. In its recent report, the Treasury notes, for example, that "access [to financial data] through APIs was frequently and unilaterally restricted, interrupted, or terminated by financial services companies."[2]

The market is therefore fundamentally dislocated. The ability of investors to utilize third-party technology tools is dependent on the financial services provider(s) with which they do business, with disparate outcomes for Americans who use different broker-dealers. The unevenness of this playing field could materially worsen as many large U.S. financial institutions and broker-dealers seek to impose on investors their view of how the ecosystem should function in the form of bilateral agreements with aggregation firms. As such, Treasury makes the following recommendation:

> *Treasury sees a need to remove legal and regulatory uncertainties currently holding back financial services companies and data aggregators from establishing data sharing agreements that effectively move firms away from screen-scraping to more secure and efficient methods of data access. Treasury believes that the U.S. market would be best served by a solution developed by the private sector, with appropriate involvement of federal and state financial regulators. A potential solution should address data sharing, security, and liability.*

Yodlee supports this recommendation and encourages FINRA to further engage with the private sector to identify solutions that meet these standards, and, importantly, to ensure, as Treasury recommends in its report, collaboration and coordination with the various other regulatory bodies with jurisdiction over consumer financial data. Lack of regulatory coordination will ultimately result in uneven outcomes for consumers and investors.

2. Relatedly, FINRA also requests comments on any technology or compliance challenges presented by attempts to develop consolidated statements in association with data aggregation.

Across our thousands of use cases, Yodlee finds the biggest impediment to consolidated statements for investors is restrictions to permissioned data access. Barriers erected by some financial institutions, either in the form of technological obstacles or limitations in data fields made available to third parties with the investor's consent, make it difficult or impossible to compile comprehensive statements. Accordingly, FINRA could alleviate these challenges by adopting the BCFP's approach to data access for third party aggregators as recommended in the Treasury report.

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[2] *A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation*. (2018, July 31). Retrieved September 3, 2018, from https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf

The report clarifies that the "definition of 'consumer' in Title X of Dodd-Frank includes not only an individual, but 'an agent, trustee, or representative acting on behalf of an individual.[3]' This definition is best interpreted to cover circumstances in which consumers affirmatively authorize, with adequate disclosure, third parties such as data aggregators and consumer fintech application providers to access their financial account and transaction data from financial services companies." The report goes on to make the following recommendations:

> *The Bureau should affirm that for purposes of Section 1033 [of the Dodd-Frank Wall Street Reform and Consumer Protection Act], third parties properly authorized by consumers…fall within the definition of "consumer" under Section 1002(4) of Dodd-Frank for the purpose of obtaining access to financial account and transaction data.*
>
> *Treasury recommends that regulators such as the SEC, Financial Industry Regulatory Authority, DOL, and state insurance regulators recognize the benefits of consumer access to financial account and transaction data in electronic form and consider what measures, if any, may be needed to facilitate such access for entities under their jurisdiction.*

Although the regulatory fragmentation and sheer size of the U.S. financial services system has resulted in fintech innovation outpacing a sufficiently compatible regulatory regime, Treasury's call for all of the agencies in this space to align behind the Department's interpretation of Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act is an important step towards a level playing field. FINRA's adoption of this interpretation and subsequent facilitation between broker-dealers and investors on the issue will prevent investors from facing these challenges on consolidated statements in the future.

Conclusion

Yodlee applauds the Department's efforts on compiling its recent report with many recommendations that we believe will strengthen fintech industry and promote innovation, while at the same time empowering consumers and investors and providing a benchmark for regulators to follow the its lead. Coordination on these issues is key, and the Department has provided a thorough roadmap for a future regulatory framework that seeks to provide clarity rather than continued divergence. Yodlee encourages FINRA to utilize Treasury's recommendations as a guidepost when considering any action and find agreement in the report's and BCFP's previous comments on data access.

While millions of American investors are already utilizing third-party tools to improve their financial wellbeing, more can and should be done to harness the power of innovation and to give Americans full control of their own financial data. Data aggregation issues regarding access, compliance, security, and innovation should be addressed collaboratively by FINRA, broker-dealers, and third-parties in order to better serve investors and ensure that the United States remains globally competitive in this ecosystem. Yodlee encourages FINRA to approach innovations in financial technology as an opportunity to tailor regulation to ensure that it both protects investors but also enables them to access their full financial portrait through innovative

[3] 12 U.S.C. § 5481(4).

products and services to improve their financial wellbeing. Thank you again for the opportunity to provide comments on this important matter.

Sincerely,

Steven Boms
On behalf of
Envestnet Yodlee