



December 1, 2014

Via email to pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, D.C. 20006-1506

Re: FINRA Regulatory Notice 14-37: Rule Proposal to Implement the Comprehensive Automated Risk Data System ("CARDS")

Dear Ms. Asquith:

Fidelity Investments¹ ("Fidelity") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") Regulatory Notice 14-37 (the "Rule Proposal" or the "Proposal").² The Rule Proposal seeks comment on the implementation of CARDS, a rule-based program that would allow FINRA to collect on a standardized, automated and regular basis, customer account information, account activity and security identification information that a brokerage firm maintains as part of its books and records. FINRA obtained preliminary feedback on CARDS through a Concept Proposal^{3,4} on which Fidelity provided comments.⁵

Fidelity submits this letter on behalf of National Financial Services LLC ("NFS"), a Securities and Exchange Commission ("SEC") registered clearing firm and FINRA member, and its affiliate, Fidelity Brokerage Services LLC ("FBS"), a SEC registered introducing retail broker-dealer and FINRA member. Fidelity is well situated to provide comments on the

¹Fidelity is one of the world's largest providers of financial services. Fidelity provides investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 10,000 financial intermediary firms. Fidelity generally agrees with the views expressed by the Securities Industry and Financial Markets Association ("SIFMA"), Financial Information Forum ("FIF"), and the U.S. Chamber of Commerce ("Chamber") in their comment letters to FINRA. We submit this letter to supplement the SIFMA, FIF, and Chamber letters on specific issues.

²See FINRA Regulatory Notice 14-37; Comprehensive Automated Risk Data System (September 2014) available at: <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p600964.pdf>. Unless otherwise defined in this letter, capitalized terms have the meanings ascribed to them in the Proposal.

³See FINRA Regulatory Notice 13-42; *Comprehensive Automated Risk Data System* (December 2013) available at: <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p413652.pdf>.

⁴See *FINRA Update Regarding Regulatory Notice 13-42* (March 4, 2013) available at: <http://www.finra.org/Industry/Regulation/Notices/2013/P451243>

⁵Fidelity comment letter available at:

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticereports/p473351.pdf>

Proposal because NFS is one of six “pilot” firms that has and continues to provide certain information to FINRA, pursuant to a FINRA request, to allow FINRA to refine and develop CARDS data specifications. Moreover, Fidelity’s comments reflect the views of both a clearing firm and an introducing broker-dealer that will be affected by the Proposal.

Fidelity appreciates the deliberative approach FINRA has taken with respect to CARDS. We acknowledge FINRA’s efforts to gather thoughtful and detailed feedback on the initiative through the Concept Proposal and interactive sessions with member firms, both individually and through trade organizations. FINRA has modified its initial approach to CARDS in response to this feedback, and the Rule Proposal addresses many industry and investor concerns, including several concerns that Fidelity outlined in a comment letter to FINRA on the Concept Proposal.⁶ While we appreciate these modifications, given the significant impact CARDS will have across the brokerage industry, we believe that a number of concerns warrant continued discussion as CARDS progresses through the regulatory rulemaking process. These concerns focus on the following areas:

- *The Purpose of CARDS:* FINRA’s use of CARDS as an account level surveillance system risks disrupting individual firm supervisory efforts, and diverting compliance and supervisory resources, to the detriment of firms and their customers. FINRA should eliminate customer account level data from CARDS;
- *The Security of CARDS Data:* Even without personally identifiable information (“PII”), CARDS data has an intrinsic value in and of itself that makes it attractive to cyber-attacks. FINRA should remain sensitive to data security issues associated with CARDS;
- *The Costs of CARDS:* CARDS will impose significant costs on the brokerage industry and is an additional regulatory database that broker-dealers must implement and maintain. In light of FINRA’s existing surveillance and data gathering protocols, with the risks that CARDS will duplicate firms’ existing supervisory obligations and the challenges of effectively managing a massive database of brokerage customer information, we do not believe that FINRA has sufficiently demonstrated that the incremental benefit of CARDS as proposed will outweigh its burdens to firms and to the marketplace;

⁶For example, among other items, FINRA no longer requires three PII fields (account name, account address and taxpayer identification number); FINRA has committed to employ certain industry-standard security system and privacy control reviews (SSAE 16 SOC 2 & 3 reports); FINRA has committed to retire certain duplicative reporting systems (INSITE and AEP); FINRA has provided introducing firms flexibility in how CARDS data can be transmitted to FINRA; FINRA has clearly stated that there are no changes in law or responsibility concerning clearing firm obligations; FINRA has separated suitability information into Phase II of CARDS and is allowing firms to provide this information in their own non-standardized format; FINRA has excluded held-away assets; and FINRA has committed to process any future changes to CARDS through the Self-Regulatory Organization (“SRO”) rulemaking process outlined in Section 19(b) of the Securities Exchange Act of 1934.

- *Alternative Approaches to CARDS*: FINRA should consider alternative approaches to CARDS that still meet its goals to enhance investor protection while minimizing burdens to member firms, such as eliminating the request for customer account level data from CARDS and/or incorporating a modified version of CARDS into the SEC's Consolidated Audit Trail ("CAT"); and
- *CARDS Implementation Timeframe*: FINRA's proposed implementation time period for CARDS is too short and coincides with other significant initiatives, such as CAT. FINRA should extend the proposed implementation time period during which firms will be required to begin submitting CARDS data to FINRA.

Each of these points is discussed in further detail below.

CARDS Purpose

The securities laws and extensive FINRA rules are centered on an obligation for broker-dealers to supervise their own operations. FINRA rules require FINRA member firms to establish and maintain a system of written procedures to supervise the activities of their personnel that are reasonably designed to achieve compliance with the federal securities laws and FINRA rules. FINRA's new consolidated rules governing supervision, effective this month, tightened the existing supervisory standards already imposed on member firms by existing FINRA rules and guidance.⁷ FINRA regularly examines member firms for compliance with its supervision rules.

In Regulatory Notice 14-37, FINRA notes that "CARDS is not intended to, nor will it, duplicate" the supervisory programs that firms administer. "Granular oversight to ensure compliance or prevent and detect problems with individual customers and transactions remains the central role of a firm's compliance and supervisory programs." In the same Regulatory Notice, FINRA asserts that CARDS will enhance FINRA's ability to "identify patterns of transactions that indicate bad behavior on the part of a particular broker-dealer, branch office or registered representative, and monitor more effectively for problem areas such as pump and dump schemes, suitability, churning, mutual fund switching and concentrations of high-risk securities."

We question the need for FINRA oversight of brokerage customer account level data in CARDS, if such data is already subject to FINRA supervision rules at a broker-dealer level. We believe that FINRA's use of CARDS as an account level surveillance system is duplicative of the compliance and supervisory functions that already exist at broker-dealers and that are already addressed and examined under comprehensive securities regulations. Moreover, FINRA's use of

⁷See FINRA Regulatory Notice 14-10 (March 2014) Consolidated Supervision Rules *available at*: <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p465940.pdf>

CARDS as an account level surveillance system risks disrupting individual firm supervisory efforts, and diverting compliance resources, to the detriment of the firm and its customers.

Under CARDS, FINRA will collect underlying account data from millions of brokerage customer accounts. We believe that it will be difficult for FINRA to rationalize this massive amount of data in the aggregate. Moreover, given its investor protection focus, FINRA staff is likely to view this data with skepticism, even if there is no underlying issue. As a result, we believe that FINRA staff will pose new layers of questions, potentially from “false positive” results on customer account data, that the firm, who is already obligated to supervise these accounts, will need to answer. We anticipate that firms will need to allocate additional resources, or divert existing resources, to handle these new FINRA inquiries resulting in a misallocation of firm resources and increasing costs to broker-dealers. Given that firms are already obligated to supervise customer accounts, and are regularly examined by FINRA on this obligation, we do not understand the additional regulatory benefit CARDS will offer in this area.

To avoid duplication with member firms’ compliance and supervisory efforts and functions, FINRA should eliminate detailed customer account level data from CARDS. We believe that a version of CARDS that does not contain detailed customer account level information can still meet FINRA’s goals to enhance investor protection and help restore and maintain investor confidence, while also addressing concerns that CARDS present an additional, unnecessary and burdensome layer of regulation.

Security of Brokerage Customer Account Data

We have continued concerns regarding the privacy and security of customer account data submitted to and maintained by FINRA as part of its CARDS initiative. The Rule Proposal excludes the collection of PII of brokerage customers, including account name, account address, and tax identification number. FINRA believes that without PII, “CARDS would not contain information that would enable accounts to be linked across firms or that would reasonably enable a potential hacker to determine the identity of an account’s owner.” FINRA also asserts that, unlike financial firm account databases, “access to CARDS would provide no ability for potential hackers to access or cause movements of either cash or securities” FINRA acknowledges the risk of CARDS data being exploited, but believes this risk “would be small.”

We believe that CARDS data has an intrinsic value in and of itself that makes it attractive to cyber-attacks. While FINRA will no longer require firms to submit a customer’s name, address or tax identification number under CARDS, the Rule Proposal still calls for a wide spectrum of customer specific information to be submitted to FINRA. We believe this customer account level information is attractive as a stepping stone through which potential hackers may obtain further information regarding specific customer accounts and use this information, in combination with other publically available information, to perpetrate fraud.

We offer the following example of how potential hackers might be able to piece together non-PII CARDS data to obtain a brokerage customer’s identity. From a review of the draft,

publically-available CARDS data specifications, we believe that a potential hacker could make a direct link between compromised CARDS data and publically available data on BrokerCheck.⁸ Through linking compromised CARDS data and BrokerCheck information, a potential hacker could develop a roadmap of the personal financial profile and accounts related to FINRA registered brokers. We offer this example to underscore the importance of safeguarding all customer account information submitted to FINRA via CARDS, regardless of whether it is PII.

FINRA has outlined several security protocols it plans to follow with respect to CARDS data and notes that it is “committed to the highest level of security when it comes to CARDS and the information that would be collected.” Among other items, CARDS data would be encrypted in transmission and after receipt in a way that would not permit anyone to read or interpret the data without the proprietary encryption keys. Moreover, access to the raw data would be limited to a few select full-time technical employees, whose access to the data would be carefully tracked and monitored. We believe that these safety protocols are a good first step and, as an entity that routinely works with vendors to assess their technology security risks, we are committed to working with FINRA to discuss additional considerations for the security of brokerage customer information within CARDS.

FINRA notes that it is “committed to assessing its security and privacy controls and practices against appropriate compliance standards, including by obtaining Service Organization Controls (“SOC”) 2 and 3 reports, to further demonstrate the integrity of its controls relating to security, availability, processing integrity, confidentiality and privacy.” SOC 2 and 3 Reports are comprehensive audits performed by an independent third-party that test the adequacy of an entity’s information security controls around data, among other items. The scope of the SOC 2 and 3 reports is typically defined by the entity requesting the audit. That is, SOC auditors test the controls they are asked to test and do not test the controls they are not asked to test.

A potential limitation to SOC 2 and 3 Reports is that controls that are not part of the audit remain untested. With respect to CARDS, these untested controls present unexplored potential vulnerabilities in the transmission and storage of CARDS data. FINRA notes that it intends to undertake these assessments “prior to the implementation date for CARDS.” We believe that FINRA should share the proposed scope of their SOC 2 and 3 Reports with the SEC prior to the assessments being undertaken to further enhance the security of CARDS data.

FINRA acknowledges the “risk of a security breach” of CARDS data and describes the likelihood as “remote”. Given the publicity surrounding CARDS, publication of the draft data specifications, and the attractiveness of this data to potential hackers, we do not believe that the risk of a data breach is as remote as FINRA suspects. We re-iterate a request made in our

⁸BrokerCheck is derived from the Central Registration Depository (CRD[®]), the securities industry online registration and licensing database. Information in CRD is obtained through forms that brokers, brokerage firms and regulators complete as part of the securities industry registration and licensing process. BrokerCheck features professional background information on approximately 1.3 million current and former FINRA registered brokers.

comments on the Concept Proposal for FINRA to clearly articulate its CARDS data breach response plan. Even without PII, it is important for FINRA to disseminate a clearly articulated data breach response plan at the start of CARDS. This is because, depending on the information ultimately requested under CARDS, introducing broker-dealers and/or clearing firms may have independent contractual notice obligations for a data security breach occurring at FINRA.

Safeguarding our customers' financial information is something Fidelity thinks about every day. We view cybersecurity as an increasing risk to our firm and our industry and efforts to safeguard customer information continuously challenging. Hackers are getting better at compromising institutions as quickly as --if not quicker than-- institutions are getting better at protecting themselves. Recent cybersecurity events demonstrate how difficult it is for institutions to stay one step ahead of cybercriminals. We share this common goal with our competitors. The brokerage industry cannot let up on the intensity of its cybersecurity efforts.

We believe that CARDS raises the risk of a potential data breach not only at FINRA, but also at member firms. FINRA has made CARDS draft data specifications publically available on its website. This publication has enabled member firms to understand better the scope of information that FINRA hopes to collect under CARDS. Unfortunately, the public dissemination of this data has also provided potential hackers a better understanding of the specific data fields that will be available at member firms and through which they can potentially search for specific accounts.

Cybersecurity of financial transaction and holding information has long been a matter of brokerage industry and regulatory concern. Indeed, FINRA has, and continues to, scrutinize brokerage firm cybersecurity practices. Each year, FINRA publishes its regulatory and examination priorities to highlight significant risks and issues that could adversely affect investors and market integrity in the coming year. In response to the frequency and sophistication of cyber-attacks, cybersecurity has appeared on FINRA's examination priorities list for the past several years. In its 2013 Examination Priorities letter, FINRA stated that "The frequency and intensity of threats, such as denial of service attacks and the number of data security breaches, raises concerns that the securities industry is vulnerable to disruption and unauthorized access to customer account information."⁹

Given that cybersecurity threats have increased significantly over the past several years, from the perspective of both member firm and FINRA data security infrastructures, we question FINRA's current need for the brokerage industry to build a large data repository of customer account level information. If FINRA proceeds with CARDS, we believe that FINRA's collection of customer account level information, particularly in light of the cyber security risk associated with such data in a single location, has not been shown to be necessary to a regulatory effort to understand market wide trends. As such, we are concerned that any benefit associated with capturing such information has not been demonstrated to outweigh the risk.

⁹FINRA's Annual Regulatory and Examination Priorities Letters are *available at*:
<http://www.finra.org/Industry/Regulation/Guidance/P122861>

The Costs of CARDS

In the Rule Proposal, FINRA lists a number of anticipated benefits of CARDS, including enhanced supervision, investor protection and market integrity. For example, FINRA asserts that CARDS would enable it to identify and respond to high-risk areas and suspicious activities that it might not identify through its current surveillance and examination programs. We agree that these are worthy benefits; however given the significant costs to implement and maintain CARDS, we question whether these incremental benefits, if realized, are worth such high costs.

FINRA is currently collecting information about the anticipated direct costs to firms, and other economic impacts associated with CARDS, from several clearing, self-clearing and introducing firms. Based on the information FINRA has collected to date from a limited number of clearing and self-clearing firms, the preliminary estimates *per firm* of costs 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.¹⁰

In addition to member firm costs to implement and maintain CARDS, FINRA itself will incur costs to implement and maintain CARDS. FINRA's preliminary estimate for its own cost to develop CARDS technology systems and processes ranges from \$8 million to \$12 million over a three year period. Although FINRA notes that "There would be no direct impact to member firms associated with this investment", as an SRO, we believe that it is reasonable to assume that FINRA will pass along its costs of developing and maintaining CARDS to member firms in the form of increased fees, such as an increase in FINRA's Trading Activity Fee ("TAF").¹¹ We question whether a potential increase in member fees is included in FINRA's cost benefit analysis for CARDS. Moreover, given that many firms may elect to pass CARDS induced fee increases along to their customers, the cost of CARDS is likely to have a direct impact to brokerage customers.

Importantly, we have observed with increased frequency requests by SROs for broker-dealers to build and/or make enhancements to data repositories which are only available to a single SRO. Among others, FINRA has proposed CARDS, data from which would be available only to FINRA; the Chicago Board Options Exchange ("CBOE") and C2 Options Exchange ("C2") recently released a Regulatory Circular¹² requiring new substantive categories of data collection and storage which would be available only to the CBOE and C2; and the Municipal Securities Rulemaking Board ("MSRB") has solicited comment on a concept proposal relating to

¹⁰FINRA Regulatory Notice 14-37 at page 19.

¹¹The TAF includes costs associated with performing examinations, financial monitoring, and FINRA's policy, rulemaking, interpretive, and enforcement activities. The TAF is only one of the member regulatory fees FINRA assesses to recover the costs of supervising and regulating firms. FINRA's primary member regulatory pricing structure also includes the Gross Income Assessment fee, the Personnel Assessment and the Branch Office Assessment, as well as the processing of new and continuing membership applications.

¹²CBOE Regulatory Circular RG14-139; C2 Regulatory Circular RG14-040 (October 1, 2014) (collectively, "the Regulatory Circular") available at: <https://www.cboe.com/publish/RegCir/RegCir/REG14-139.pdf> Update at: https://www.cboe.com/framed/PDFframed.aspx?content=/publish/RegCir/REG14-154.pdf§ion=SEC_ABOUT_CBOE&title=CBOE%20-%20CBOE

the development of a new central transparency platform as a successor to the MSRB's Real-time Transaction Reporting System.¹³ A stated goal of each of these regulatory initiatives is to both enhance investor protections and lessen the burden on member firms with regard to regulatory requests for information. However, this fragmented approach to securities industry data collection means that member firms are asked to supply specific data to multiple different regulatory systems with no coordination or communication across them.

We believe that the cumulative impact of multiple regulatory data collection systems on the broker-dealer industry has not been fully recognized. Not only is the implementation of new regulatory reporting requirements a drain on broker-dealer resources, but the need to ensure continual, timely, and accurate reporting to these platforms requires firms to continue to expend resources to maintain these systems. The use of firm resources to develop and maintain new regulatory systems means that such resources cannot be used for the development and support of new customer-driven or firm-driven changes to brokerage products and services.

While we agree with the principles of investor protection and transparency, we are concerned that the benefit of CARDS as currently proposed has not been demonstrated to exceed its costs to the industry and the marketplace. It is not clear, in light of existing capabilities and proposals such as CAT, whether there is sufficient incremental benefit to warrant FINRA moving forward with CARDS as proposed. When one factors in (i) the risk that FINRA's focus on account level activity may disrupt the effectiveness of "on-the-ground" compliance and supervisory efforts at firms, (ii) the significant existing data gathering and reporting capabilities already featured at FINRA that can be used to detect market irregularities, (iii) the opportunity to leverage CAT fully, and (iv) the challenge for FINRA to effectively manage massive warehouses of customer data, we respectfully do not believe that, under the totality of the circumstances, an effective, incremental return on this investment has been shown.

Ultimately, this allocation of resources harms the competitiveness of the brokerage industry and the ability of firms to continue to operate as broker-dealers in light of the significant regulatory costs of doing business. We believe that the regulatory costs of doing business as a broker-dealer versus other types of financial professionals has been a factor in the steady decline in the number of registered broker-dealers in recent years.¹⁴ Although FINRA has modified aspects of CARDS, and has stated that it intends to retire certain systems such as INSITE and AEP as firms start submitting information required as part of CARDS, we believe that these potential cost savings are not significant given the overall costs of CARDS.¹⁵

¹³MSRB Regulatory Notice 2014-14 Request for Comment on Enhancements to Post-Trade Transaction Data Disseminated Through a new Central Transparency Platform *available at:*

<http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2014-14.ashx>

¹⁴As of 2004 year end, the number of registered broker-dealers was 6,339. As of 2011 year end, the number of registered broker-dealers had declined to 4,709. Source: Security and Exchange Commission's *Financial Responsibility Rules for Broker Dealers Final Rule*, 78 FR 163 (August 21, 2013) at 51870 *available at:*

<http://www.gpo.gov/fdsys/pkg/FR-2013-08-21/pdf/2013-18734.pdf>. As of July 2014, there were 4,137 FINRA member firms. Source: FINRA Statistics and Data *available at:* <http://www.finra.org/Newsroom/Statistics/>

¹⁵For example, FINRA proposes to take a current annual AEP data submission requirement and, by including this data in CARDS, require submission of this data on a monthly basis.

Proposed Alternatives

As discussed above, we are concerned with the purpose, data security and costs of CARDS. We understand that with CARDS, FINRA is ultimately trying to better assess risks at broker-dealers. We believe that FINRA can meet this goal by using CARDS to observe trends in the market over a period of time, rather than as an account level surveillance system over broker-dealers. To help alleviate data security concerns and reduce CARDS costs, we believe that FINRA should modify CARDS to eliminate customer account level information and /or incorporate a modified version of CARDS into existing regulatory systems, such as CAT. We discuss these two proposed alternatives below.

FINRA should not require customer account level data in CARDS

As noted above, FINRA has modified its initial approach to CARDS and no longer requires firms to provide FINRA certain customer account level data, such as a customer's name, address and taxpayer identification number. However, the Proposal still requires firms to submit a significant amount of customer account level data to FINRA. For example, among other items, the Proposal requires that firms provide FINRA fifteen (15) data elements relating to account profile information, including, but not limited to, investment time horizon, investment objective, risk tolerance, net worth, birth year, control person for a public company flag and servicing representative information.¹⁶

We believe that FINRA can still meet its goal to enhance investor protection by reducing the amount of brokerage customer account level data required by CARDS. By keeping CARDS data at a broker-dealer aggregate level, we believe that FINRA can use CARDS to observe trends in the market over a period of time. This approach would address concerns that FINRA's use of CARDS as an account level surveillance tool is duplicative of existing supervisory functions at member firms. Moreover, if brokerage customer account level data was reduced in CARDS, we believe that CARDS data security and cost concerns would likely proportionately decline.

FINRA should consider CARDS as a Phase of CAT

On July 11, 2012, the SEC voted to adopt Rule 613 under Regulation NMS requiring the national securities exchanges and FINRA to submit an NMS plan ("Plan") to the SEC to develop, implement, and maintain a consolidated audit trail that collects and accurately identifies every order, cancellation, modification and trade execution for all exchange-listed equities and options across all U.S. markets.¹⁷ The primary goal of SEC Rule 613 is to improve the ability of the SEC, the national securities exchanges and FINRA to oversee trading in the U.S. The national securities exchanges and FINRA developed the Plan and submitted it to the SEC on

¹⁶Under the Proposal, both "servicing representative(s) identifier" and "registered representative CRD number" are required data elements. We question whether these two data element are duplicative of each other.

¹⁷Securities and Exchange Commission, Final Rule, Consolidated Audit Trail, 77 FR 45722 (August 1, 2012) available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-01/pdf/2012-17918.pdf>

September 30, 2014.¹⁸ On this same day, FINRA announced that it was soliciting comments on its CARDS Rule Proposal.¹⁹

In response to commenters who questioned why FINRA is moving forward with CARDS at the same time that CAT is being developed by a group of regulatory entities (including FINRA), the Rule Proposal notes that “Fundamentally, CAT and CARDS collect different information” and that an analysis by FINRA staff of any potential overlap between the data fields proposed to be collected by CARDS and CAT indicated that there was limited overlap. We believe that the degree of overlap between CARDS data and CAT data can be debated based on the actual measurements used.²⁰

Less debatable is the fact that CAT and CARDS are both large-scale, customer data gathering initiatives that are not coordinated regulatory efforts. The absence of coordination is exacerbated by the separate efforts of other regulators (i.e. the CBOE, C2 and MSRB) seeking their own data gathering initiatives. Putting aside these other initiatives, the implementation efforts at member firms for CAT and CARDS will be significant and will likely occur at the same time. The same systems development teams that will implement CARDS will also likely be used to implement CAT and will also be required to maintain both systems going forward.

Given this overlap, we believe that FINRA should coordinate CARDS with CAT to minimize burdens to FINRA member firms who are asked to implement both initiatives, or at the very least delay implementation of CARDS until CAT is fully functional. For example, we still question why a modified version of CARDS, without brokerage customer account level information, could not be incorporated into a future phase of CAT. The potential integration of CAT and CARDS would serve two purposes. First, it would incorporate certain brokerage customer account information into the broader network of data available to FINRA, further enhancing FINRA’s investor protection efforts. Second, with CAT as a central utility, more regulators could view modified CARDS data in a universal format, avoiding the need for individual regulators to create their own data repositories for this information.

Compliance and Supervisory Functions

In the Rule Proposal, FINRA notes that it intends to provide firms access to their own CARDS data in a way that would facilitate the firms’ use of the data as part of their compliance efforts. FINRA believes that CARDS would enable firms to better manage compliance through

¹⁸See <http://www.sec.gov/divisions/marketreg/cat-nms-plan-letter.pdf>

¹⁹FINRA Solicits Comment on Proposed Rule to Implement CARDS, FINRA news release, September 30, 2014.

²⁰For example, both CARDS and CAT will require firms to develop a data feed, subject to specifications established in each rule, for security purchase and sale information. If the data specifications for security purchase and sale information were harmonized between CARDS and CAT, firms would only need to implement a single set of data requirements. Among other items, a single set of data specification benefits both regulators and firms in that it maintains data consistency across systems and maintenance efforts are less expensive, less burdensome and more efficient to fulfil.

shared information -- in a feedback and report card approach -- provided to firms based on FINRA's analyses.

As mentioned above, we believe that FINRA's use of CARDS as an account level surveillance system is duplicative of the compliance and supervisory functions that already exist at broker-dealers and that are already addressed and examined under comprehensive securities regulations. However, if CARDS ultimately requires firms to submit brokerage customer account level information, Fidelity believes that a feedback and report card approach with CARDS data would be most helpful to member firms if FINRA clearly discloses certain information associated with the report card. For example, FINRA should disclose the criteria upon which firms will be evaluated, and the methodology surrounding the peer group against which a firm is measured, in order to provide member firms a more fulsome understanding of the data. Moreover, even if a firm has a relatively good report card, it may still be subject to multiple regulatory inquiries. We believe that FINRA should be transparent regarding the trigger point for such inquiries.

Records Required and Future Updates to CARDS

The Proposal would require the submission, under a phased approach, to FINRA of prescribed data relating to certain categories of information for all the firm's securities accounts to the extent the data is part of a firm's books and records. The Rule Proposal includes the first two phases of CARDS. FINRA states that any later phases of CARDS would be subject to additional rulemaking and attendant public comment.

Seemingly routine operational changes required by market venues and SROs can often have a significant effect on a broker-dealer's business. The implementation of these operational changes often requires a very significant investment of technology dollars and human capital. Moreover, these changes are often subject to short implementation time periods that do not present an opportunity for a discussion of issues and concerns and can potentially expose the markets and investors to unnecessary risk.

We concur with FINRA that any new books and records required to be retained pursuant to CARDS should be submitted through the rigors of the established process outlined in Section 19(b) of the Securities Exchange Act of 1934 for SRO rulemaking. We believe that this formal rulemaking process will allow the industry to openly discuss new CARDS requested data elements with FINRA and/or offer reasonable alternatives for data elements that are difficult for firms to obtain. The transparency of the SRO rulemaking process will allow customers of broker-dealers to understand what information concerning their brokerage accounts will be transmitted to FINRA and allow them to comment on the use of, and safeguards for, this information. In addition to new records, we believe that any changes to the use of CARDS, including the use of data by other regulators, should be subject to additional rulemaking and attendant public comment.

Relatedly, FINRA has specified 249 core data items in CARDS draft data specifications, several of which appear to go beyond current regulatory requirements. For example, within the draft data specifications' Securities Account Suitability tab is a field titled "Account participant related to employee of another broker dealer flag". We believe that FINRA's current rules require member firms to maintain information on family accounts that are owned or controlled by a person who is associated with a broker-dealer. We do not believe that this requirement extends broadly to require member firms to maintain information on family accounts for anyone "related to an employee of another broker-dealer." Similarly, another proposed CARDS data element is a "Politically Exposed Persons" ("PEPs") identifier. We believe that a PEPs identifier goes beyond the current regulatory requirements issued by FinCEN, which currently only requires a determination of political status for private banking accounts. We view these two particular data fields as new books and records requirements requested by FINRA in the Proposal. Given that many firms today may not have this data, we question its utility and request the opportunity for further comment on these new data elements prior to CARDS approval.

Implementation

FINRA has revised CARDS to be implemented in phases. The first phase of CARDS, to be implemented 9 months after SEC approval, would consist of information already kept by carrying and clearing firms. The second phase of CARDS, to be implemented 15 months after SEC approval, would seek data such as investment time horizons, risk tolerance, net worth, year of birth and broker commissions typically held by introducing firms. Moreover, a carrying or clearing firm would be required to submit historical purchase and sales transaction information for the time period between the date of SEC approval of CARDS and the date on which the firms begin submitting CARDS information to FINRA. FINRA has requested purchase and sales transaction information during this time period "because the collection of this information would allow FINRA to run analytics on the information as soon as CARDS is implemented, thereby making it a valuable analytical tool from the outset."

FINRA should extend the implementation timeframe within which firms would be required to start submitting CARDS information to FINRA. As a threshold matter, CARDS data specifications will need industry-wide vetting and design discussions. While some initial analysis can occur in the rule proposal phase, technology teams can only begin to discuss design and development of CARDS in earnest upon final rule approval. The design and development of CARDS at a firm level will include discussions on the mapping and logic to be applied to the data and, given the size of the specifications, we anticipate this phase itself will take more than 6 months. In total, we believe that this initial effort will take significantly longer than the proposed 9 months, particularly if SEC approval occurs at year end, a time of technology code freezes at many member firms. Accordingly, we believe that FINRA should extend the implementation date for Phase 1 to 18 months and for Phase 2 to 24 months to allow firms to define all the sources, create all the necessary feeds, and build the operational controls to implement CARDS.

Moreover, we believe that FINRA should extend the requirement for a carrying or clearing firm to submit historical purchase and sales transaction information for the time period

between the date of SEC approval of CARDS and the date on which the firms begin submitting CARDS information to FINRA. In order for firms to meet this proposed requirement, systems work would need to begin now and given the status of CARDS as a rule proposal, we believe that this final systems work is premature. Instead, we believe that a requirement for firms to begin to submit historical purchase and sales transaction information on customer accounts should start on the implementation date of Phase 1 or coincide with the implementation of this information for CAT.²¹

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Fidelity thanks FINRA for considering our comments. We would be pleased to provide any further information and respond to any questions that you may have.

Sincerely,



Norman L. Ashkenas
Chief Compliance Officer
Fidelity Brokerage Services, LLC



Richard J. O'Brien
Chief Compliance Officer
National Financial Services, LLC

cc:

Mr. Richard Ketchum, Chairman and Chief Executive Officer, FINRA
Mr. Robert Colby, General Counsel, FINRA
Mr. Steve Joachim, Executive Vice President, Transparency Services, FINRA

Mr. Stephen Luparello, Director, Division of Trading and Markets, Securities and Exchange Commission
Mr. David S. Shillman, Associate Director, Division of Trading and Markets, Securities and Exchange Commission

²¹As noted in footnote 17 *infra*, historical purchase and sale information is also a requirement of CAT. We believe that both regulators and member firms would benefit if the data specifications for security purchase and sale information were harmonized between CARDS and CAT.