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December 1, 2014

Via Email Only

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

RE: Regulatory Notice 14-37: Rule Proposal to Implement the Comprehensive Automated Risk Data System

Dear Ms. Asquith,

I write to support FINRA's proposed Comprehensive Automated Risk Data System ("CARDS") and to encourage FINRA to maintain an appropriate amount of skepticism about arguments advanced by some of the proposal's detractors.

Much of the current opposition falls within a long history of financial intermediaries overstating the costs and risks of proposed regulatory measures to delay reforms. For example, many securities firms argued against the elimination of fixed brokerage commissions before 1975, claiming that it would harm small securities firms and retail investors.[1] Afterward, it became clear that these concerns were largely unfounded.[2] More recently, the likelihood of significantly increased compliance costs was also materially overstated by securities firms opposing the Dodd-Frank Wall Street Reform and Consumer Protection Act.[3]

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[1] *See* Hans R. Stoll *Revolution in the Regulation of Securities Markets: An Examination of the Effects of Increased Competition* in CASE STUDIES IN REGULATION: REVOLUTION AND REFORM, 29-48 (Leonard W. Weiss & Michael W. Klass, eds, 1981).
[2] *Id.*
[3] *See* Wulf A. Kaal, *Hedge Fund Manager Registration Under the Dodd-Frank Act*, 50 SAN DIEGO L. REV. 243, 315 (2013) (explaining that despite significant pre-enactment concerns, the compliance costs imposed by Dodd-Frank have had only a modest impact on the hedge fund industry).

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The tradition of interested persons overstating the possible risks and costs of regulatory intervention continues today. In a recent editorial, the INVESTMENTNEWS chastised the financial services industry for stoking "fear in an effort to cloud or divert attention from real issues."[4] It recognized that much of the opposition to CARDS is simply groundless and argued that "hiding behind a beneficent canard of client protection is deplorable – and ultimately counterproductive" because it "adds to the distrust the industry is drowning in."[5]

Yet a measured amount of distrust and healthy skepticism may be appropriate. The tendency of financial intermediaries to over-emphasize the costs and risks of reform has been identified as a mechanism intermediaries use to shape their regulatory environments. In a forthcoming article, Kathryn Judge, a professor at Columbia Law School, argues that "the greater the economic stake of financial intermediaries, the more skeptical policymakers should be of their assertions about the potential costs or risks associated with a proposed policy change."[6] FINRA should keep this principle and history in mind as it evaluates the public comments. Going forward, FINRA should appropriately discount any investor protection or cost concerns raised by financial intermediaries who would benefit from less effective FINRA oversight and enforcement.

Very Truly Yours,

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[4] INVESTMENTNEWS, *Client Protection Ruse Needs To Stop*, INVESTMENTNEWS (Nov. 16, 2014), *available*: http://www.investmentnews.com/article/20141116/REG/141119928/client-protection-ruse-needs-to-stop.

[5] *Id.*

[6] Kathryn Judge, *Intermediary Influence, at* 46 (Aug. 11, 2014). University of Chicago Law Review, Forthcoming; Columbia Law and Economics Working Paper No. 477. Available at SSRN: http://ssrn.com/abstract=2430163.