February 11, 2014

Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington DC 20006-1500

Dear Ms Asquith,

I am pleased to submit my comments regarding NTM 13-42 : Concept Proposal for the Comprehensive Automatic Risk Data System ("CARDS") currently contemplated by FINRA.

I appreciate FINRA's ongoing search for better ways to ferret out undesirable characters in the brokerage business. Unfortunately, mankind has never eliminated crooks and scallywags, and is likely to do so in the near future. However, I cannot support FINRA's current attempt to do so.

FINRA wishes to collect a much more comprehensive array of personal client information and brokerage operations, and create a "risk based" surveillance program. With the nose of the camel under the tent, what piece of data is not relevant in the quest to determine "risk"? How may each of these pieces of data be used and interpreted, and accessed, and analyzed?

There is no industry in the western world that would be subject to such intrusive "big brother" inspection of how each firm conducts its business, or to the choices of its customers. At the same time, as we have seen with the current NSA scandals, there is no stopping the thirst of government (or in this case, quasi-government) to intrude on private information in the name of a "good cause".

I think it is imperative to understand that brokerage firms have much more data than trades. Brokerage accounts, like bank accounts, can tell how people spend their money: buy new cars, travel, and what charities and candidates they support. What stops the regulator who wants to make sure that a check is not written to a broker, decide not to look at other customer activities? The only way to prevent the creep of privacy invasion, is not to allow it in the first place. If private firms misuse information, they will be punished by either regulators, the marketplace, or both. Who punishes a regulator for misusing power? We have seen this quite recently with the IRS. Additionally, what recourse does the industry have against FINRA if it

does not safeguard, or if it misuses customer information? Who bears the cost of the loss of privacy for the client? What is the brokerage firm's redress? There is not question of what data is available, as most of it is. Who does it belong to, and who has the obligation to protect it?

FINRA will look for "risk". The question becomes, "what is risk?" Risk to whom or for whom? "Risk" is in the eye of the beholder, and now FINRA says that it is definitively able to articulate and write specific programs using customer private information to ferret out "risk". However, the role of FINRA is not to define or find risk, it is to create an orderly market, and protect the customer from wrong-doing. FINRA's role is not to define risk.

FINRA states in its release that in a pilot program, FINRA was able to identify a firm that was selling a "new high risk product" where it was not historically engaged. I must ask, "High risk for whom?"
Was it illegal for this firm to sell this new product? Or was this an opportunity for FINRA to conduct a fishing expedition, request documents, investigate to find out simply that the firm was selling a new "high risk product"? The answer is that the "product" is not the "problem". It is a vehicle created to fill some niche. "Products" can be very creatively used in low-risk ways, by people who study them and understand them.
Will brokers who have deep and special knowledge of specialized products be monitored or singled out because FINRA does not like the "Product" they have special knowledge of? If a "product" falls out of favor, as they all do sometime, will these specialists be now on FINRA's "watch list" for "high risk"?

FINRA also says they spotted "suspicious pump and dump activity". Was this merely "suspicious", or did they really find wrong-doing? Were the "risks" FINRA perceives real or merely "suspicious?" If a whole industry is reporting their every move to a regulator, how can one conduct business? How will new products be created? How might new and innovative ways be created, as the new data will have to retrofit systems created in 2014? How much "suspicious activity" will be found, creating a heavier burden for the industry than we had before?

Will firms that use clearing firms be unnecessarily targeted, while "direct firms" have a pass?

The cost to the ever-dwindling clearing firm population will be heavy. The cost of FINRA building evermore infrastructure to hover over the industry's every move will continue to drive up costs. More small firms will be driven out of business with ever heavier regulatory scrutiny (already down to

around 4400) Less creativity and innovation will take place. There are now fewer firms in this country with a growing population and more disappearing all the time. FINRA appears to not understand the free-fall in the numbers of broker/dealers, and the extreme burden they already put on the industry. Fewer and fewer people are able to afford access to sound financial advice as these costs rise. This is not sound public policy.

I have, in the past, had regulators request emails from firms where I have worked. They have misinterpreted the content of those emails, and have taken enormous time, money and effort to investigate nothing. I cannot imagine the amount of misinterpretation that might happen with hundreds of unskilled first year lawyers all wanting to "find a scalp" so they can be promoted, sifting though mountains of data looking for something they can prosecute. There MUST be a bad guy in their someplace.

As for client risk, will FINRA decide what that "risk" should be? For some clients, risk is volatility, for others, it is running out of money, for others still, risk is running out of time. When a client answers they want "capital appreciation" in a statement of objectives, and proceeds to instruct the broker to invest in income securities, will this "mismatch" signal that the broker has created a risk for the client? Who will decide this? How often will FINRA permit a deviation of this type? Will it be reported to management? Will FINRA become the de-facto manager of all brokers and all accounts? Will FINRA dictate to each client that they must invest within the guidelines that are absently checked on a new account form, and forgotten? Will FINRA punish brokers who follow their clients' verbal, but not written wishes? Will clients be permitted to have wishes, or will every portfolio contain the same "safe" investments that FINRA has deemed are not "risky". Will brokers avoid suggesting what is right for the client to avoid showing up on some "risk" report?

And what about clients with multiple accounts at multiple firms? Regulators could know much more about a client's total position than any one broker. Will FINRA decide that the broker "should have known" something that he did not? Many securities rules already create a "Nanny" atmosphere. Individuals cannot invest in certain private securities, because they "don't have enough money"-say regulators. But the casino, and the boat salesman both are permitted to take the money from the client. Will this take account monitoring to a new level? Not this year, not next year, as FINRA will protest, but the next regime who has a different attitude about client "protection" . Who prevents the ever clear march forward of overburdensome regulation? What check or balance can be put in place?

I discussed this proposal with an active trader the other day. He had been following a stock and just happened to buy it just before a takeover announcement. He said that, in 30 years, this was the 2nd time that he had had "just dumb luck" to have bought the stock just before an announcement. He fears that FINRA would have such data in their databases, and immediately pursue him as if he had insider information. With this much information, will they?

FINRA asks what other data should they gather? I respond, clearly. Get FINRA out of their offices, and out from behind their computers. Go out and "know your customer", the way the industry has to know theirs. Have the District Business Conduct Committees re-engage in the disciplinary process. Let peers judge peers. Encourage owner-operated firms. An owner, with his own capital and livelihood on the line is much more likely to do the right thing than firms owned by faceless, nameless shareholders.

Rewrite rules that favor capital formation, and customer choice. Preventing customers from defining risk for themselves forces them to look for this away from brokerage firms-where they do "get taken".

I sincerely hope that FINRA will reconsider this concept, and the SEC will not approve FINRA's proposed CARDS Rules and will deny this system to be implemented in any way.

Sincerely.

Caroline Austin
Dallas, Texas
Formerly licensed for 33 years