

VIA ELECTRONIC MAIL

March 20, 2014

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

RE: FINRA Regulatory Notice 13-42

Dear Ms. Asquith:

On December 23, 2013 FINRA published a request for comment on Regulatory Notice 13-42 (“RN 13-42”). RN 13-42 describes a concept proposal for FINRA to develop a new Comprehensive Automated Risk Data System (“CARDS”). The system would allow FINRA to automatically collect account, activity, and security identification information from broker-dealer accounts held at clearing firms on a daily or weekly basis. FINRA stated that the purpose of CARDS is to identify risks in order to target surveillance and examination programs, assist FINRA in assessing business conduct patterns and trends in the industry, and to assist firms with their compliance and supervisory programs. FINRA also stated that CARDS would reduce the amount of information requests firms would receive from FINRA.

Commonwealth Financial Network[®] (“Commonwealth”) is an independent broker-dealer and SEC-registered investment adviser with home office locations in Waltham, Massachusetts and San Diego, California. The firm has more than 1,600 producing registered representatives (“advisors”) who are independent contractors conducting business throughout the United States.

Commonwealth appreciates the opportunity to comment on CARDS. While we are very supportive of FINRA’s goals towards investor education and protection, in light of the data security and privacy implications, account profile standardization challenges, narrow focus on clearing firm accounts, and substantial and potentially overwhelming costs that are inherent in the proposal, as more fully discussed below, we urge FINRA to pursue other means to accomplish its goals.

CARDS Concept Proposal

As discussed in RN 13-42, “Initially, FINRA envisions using CARDS to collect specific retail customer information—i.e., information contained in required books and records—from clearing and self-clearing firms on a regular schedule. Introducing firms would be required to provide their clearing firms with specified information they control so that clearing firms can provide this information to FINRA in conjunction with other information the clearing firm provides. FINRA would use the information to run analytics that identify potential red flags of sales practice misconduct (e.g., churning, excessive commissions, pump and dump schemes, markups, mutual fund switching), as well as help FINRA identify potential business conduct problems with member firms, branches and registered representatives.”

We understand and appreciate that FINRA has revised the initial CARDS proposal so that it will “not require the submission of information that would identify to FINRA the individual account owner, particularly, account name, account address or tax identification number.” However, Commonwealth continues to have the following significant concerns in relation to the proposal.

Data Security and Privacy Implications

While FINRA’s decision to omit the personal identifying information of a client’s name, account address and tax identification number is a welcome modification to the proposal, we remain concerned that the collection of other confidential client information, such as account numbers and dates of birth, together with information detailing extensive and specific purchases and sales transaction data, additions and withdrawals, securities and account transfers, and account balances will continue to leave clients vulnerable to potentially massive information security breaches by unauthorized third parties. Should such a breach occur, we question whether FINRA is prepared to accept all of the risks and related liabilities that would result from such an event, regardless whether such breach occurs during the data transmission process between the clearing firm and FINRA, or through direct access to FINRA’s systems by unauthorized persons or due to other internal information security failures. We urge FINRA to give serious consideration to whether the implications of a massive data security breach that could lead to widespread investor harm or loss of confidence in the markets is worth the risk of collecting such data on a continuous and massive scale.

If FINRA decides to proceed with CARDS, FINRA should, at the very least, limit the “date of birth” information to the “year of birth” only. Doing so would help eliminate a specific and confidential client data point while still providing FINRA with sufficient information about the client’s age in order to perform its reviews. In addition, FINRA should require clearing firms to mask a portion of the account number prior to the transmission of data from the clearing firm to FINRA to reduce the potential exposure to investors that could result in the event their account numbers or account data are compromised in any way.

Account Profile Standardization Challenges

Among the data points CARDS proposes to require clearing firms to transmit to FINRA is the investment objective for each respective account as part of the account profile. While existing rules require broker-dealers to maintain an account record that includes, among other things, the account’s investment objectives, each broker-dealer currently has the ability to develop and define their own investment objective terms in the conduct of their respective businesses. There are no requirements that the terms and definitions of investment objectives used by firms across the financial services industry must be standardized or uniform, and the reality is that investment objective terms and definitions vary widely throughout the industry.

Moreover, while some broker-dealers choose to use an account record profile system that their clearing firm may have developed and may make available for correspondent firms’ use, which system may or may not include the capture of account specific investment objective terms and/or definitions, many other broker-dealers, including Commonwealth, have implemented their own account record profile systems to supplement the capture and storage of account record profile information using terms and/or definitions developed by the respective broker-dealers. Complicating this matter even further is the fact

that some firms, including Commonwealth, maintain relationships with more than one clearing firm each of which captures and maintains account profile data in their own native formats. Broker-dealers should not be required to employ different account profile records based upon the respective clearing firms with which they conduct business. Given the diversity and variations of complexity among broker-dealers and their respective clientele, it is critical that broker-dealers continue to have the flexibility to develop and implement account record profiles in formats that are commensurate with their specific business models. The lack of standardization in account profile data across the industry, in particular but not limited to account investment objective terms and definitions as identified in CARDS, would appear to create substantial challenges for clearing firms and their correspondent firms and for FINRA.

It is also important to recognize that the overall issue of account record profile standardization is not limited to the investment objective and date of birth components of the account profile as described in CARDS. While RN 13-42 references investment objective and date of birth as examples of the account profile data expected to be transmitted by clearing firms to FINRA, the fact that these data points are offered in RN 13-42 as examples of account record profile data that clearing firms will be required to transmit to FINRA implies that FINRA may require clearing firms to capture and transmit other components of the client's account record profile in the future. Under Exchange Act Rule 17a-3(a)(17), which became effective in May 2003, in addition to investment objective and date of birth broker-dealers are required to obtain other specific account record data from their clients, including telephone numbers, employment status, annual income and net worth. FINRA Suitability Rule 2111, which became effective in July 2012, expanded the data elements of a client's account profile even further to include tax status, investment experience, investment time horizon, liquidity needs, and risk tolerance. As is the case with investment objectives, there is no standardization among broker-dealers or their clearing firms as to the means by which firms capture the employment status, annual income and net worth components of Rule 17a-3(a)(17), or the tax status, investment experience, investment time horizon, liquidity needs, or risk tolerance components of Rule 2111.

The implications of requiring broker-dealers to use their respective clearing firms' account record profile systems, either to satisfy the specific investment objective component discussed in CARDS, or potentially to include one or more of the other required components of a comprehensive account record profile as required by Rules 17a-3(a)(17) and 2111, are significant. Broker-dealers were required to devote considerable time, effort and resources to enhance their account record profile systems in order to capture the specific account record profile data elements required by Rule 17a-3(a)(17). When FINRA later implemented Rule 2111, firms were required to enhance their account record profile systems again to capture and store additional data elements. If either FINRA or the respective clearing firm requires broker-dealers to use their respective clearing firms' account record profile systems, in the clearing firm's native format, it will force broker-dealers to either adopt their clearing firm's account record profile data elements on a wholesale basis, to the extent such profile systems even capture all of the data elements required by Rules 17a-3(a)(17) and 2111, or to maintain at least two separate and distinct account profile data bases that when combined satisfy the full scope of Rules 17a-3(a)(17) and 2111.

Any scenario that would result in an obligation for broker-dealers to undertake a process of updating their client profiles in order to accommodate an account profile standardization effort as a result of CARDS would cause broker-dealers to have to repaper all or substantially all of the existing account profiles they have on record for their clients. Such a massive repapering effort to accommodate the

account profile information proposed in CARDS would be unreasonable, extremely costly and unduly burdensome for broker-dealers, financial advisors and their clients, and would not provide any meaningful or corresponding protections to investors.

We are concerned that in order to make the data FINRA receives from clearing firms through CARDS more useful, that 1) FINRA may choose to require standardized account record profile terms and definitions across the industry; 2) FINRA may mandate that broker-dealers use their respective clearing firm's existing account profile record systems rather than the broker-dealer's own existing systems; 3) clearing firms may mandate that their correspondent firms use the clearing firm's existing account record profile systems as a means to avoid incurring more substantial development costs due to the implementation of CARDS; 4) FINRA may mandate that clearing firms develop the means to capture each of their respective correspondent firms' existing investment objective terms and definitions, and potentially other account record profile data as well, in which case the costs of such development would almost certainly be passed on to the respective correspondent firms and ultimately to investors; or 5) in the event that FINRA decides not to require broker-dealer firms to provide account investment objectives and other non-standardized account record profile information to clearing firms, that FINRA will instead increase the volume and scope of information requests it sends to broker-dealers in order to obtain the account record profile data it requires to cause its reviews of account transactions and positions to be meaningful.

Narrow Focus on Clearing Firm Accounts

It is common practice for clients to maintain multiple accounts at various financial institutions through a specific broker-dealer of record that, when combined together, make up the client's overall investment portfolio that is intended to help clients meet their overall investment objectives and goals. Given CARDS' narrow focus on clearing firm accounts at the exclusion of direct "application-way" accounts, often a substantial component of a client's overall investment portfolio particularly at independent contractor firms such as Commonwealth, the account level data that FINRA will receive will not provide a thorough or accurate picture of a client's overall investment portfolio allocation from which to draw reasonable and informed conclusions. It is also common for clients to direct their financial advisors to provide advice and to manage their accounts at a household level rather than viewing each individual account in a vacuum.

Due to the narrow focus of CARDS on clearing firm accounts only, FINRA will not capture all of the account level or household level data that is necessary and relevant to draw meaningful conclusions about whether a client's assets are managed in accordance with the client's overall investment objectives and goals. This will almost certainly result in false flags that FINRA will need to review, and it will likely result in unnecessary and time-intensive information requests sent to broker-dealers with little if any material benefit for investors.

Costs

In order for clearing firms and broker-dealers to comply with CARDS, substantial and costly systems development will need to be undertaken by firms. As discussed above, clearing firms and many broker-dealers have built their own respective data systems, each in their own native format, and the cost of standardizing those systems among clearing firms and their respective correspondent firms will be

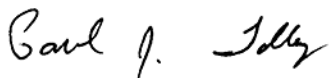
unreasonably high. Many broker-dealers have also developed their own comprehensive account record profile systems to meet the specific account profile requirements of Rules 17a-3(a)(17) and 2111, the individual components of which are not standardized but are rather customized firm to firm. CARDS will require firms such as Commonwealth to either maintain at least two separate account profile databases to meet its needs and the needs of the firm's advisors and clients, or to adopt their respective clearing firms' account profile systems on a wholesale basis even though the data points and descriptions will not match the broker-dealer's existing records or business model. Either of these options will prove to be extremely costly and unduly burdensome for firms to implement. Further, the costs of any undertaking that results in firms having to "repaper" each account profile to meet any resultant standardization requirements would also be costly and unduly burdensome for firms, advisors and their clients.

According to RN 13-42, "To respond to information requests, firms have indicated that they often must divert critical staff from their primary responsibilities, hire temporary staff, outsource the fulfillment effort to a third party or request special support from clearing firms. Though currently necessary to fulfill FINRA's responsibilities, individual information requests increase costs to firms, disrupt firms' business activities and slow FINRA examinations and inquiries." While the intent of CARDS is noble, because of the remaining data security and privacy implications, the lack of data standardization across firms, CARDS' narrow focus on clearing firms at the exclusion of direct accounts and portfolio "householding", and the extensive implementation costs that will be incurred by clearing firms and broker-dealers, we are concerned that CARDS, as proposed, may cause substantial and widespread investor harm in the event of a massive data security breach, and that it will not only fail to materially reduce the volume of information requests directed to firms as intended, but in fact will increase the volume of information requests as a result of FINRA's inability to view a client's entire investment portfolio in accordance with each account's investment objectives in accounts held across multiple custodians through the respective broker-dealer.

Commonwealth therefore urges FINRA to either withdraw the CARDS proposal or make substantial modifications to the proposal to address the concerns outlined in this letter.

Respectfully,

COMMONWEALTH FINANCIAL NETWORK



Paul J. Tolley
Senior Vice President
Chief Compliance Officer