



Gregory B. McShea
Senior Vice President
General Counsel

JANNEY MONTGOMERY SCOTT LLC
Office of General Counsel
1717 Arch Street
Philadelphia, PA 19103
215.665.6086
T 800.526.6397
F 215.665.0824
gmc Shea@janney.com
www.janney.com

December 1, 2014

Via e-mail: pubcom@finra.org

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

Re: Regulatory Notice 14-37

Dear Ms. Asquith:

Janney Montgomery Scott LLC (“Janney”) appreciates the opportunity to comment on FINRA Regulatory Notice 14-37 (Comprehensive Automated Risk Data System). Janney is a full service financial services firm based in Philadelphia with approximately 100 offices along the East Coast and as far west as Ohio. Janney has enjoyed a proud 182 year history of providing investment services to retail investors and, today, through over 700 financial advisors, manages over 300,000 client accounts. As such, Janney is keenly aware of its regulatory obligations and is committed to providing investment products and solutions to its clients that are suitable and designed to help them meet their financial goals. To that end, Janney supports FINRA’s efforts to enhance investor protection and help restore and maintain investor confidence. In this regard, the interests of Janney and FINRA are aligned.

Regulatory Notice 14-37 (the CARDS concept), however, fails on several fronts and should be withdrawn. First, it fails to objectively and concretely balance the extraordinary costs that member firms (and in turn their clients) will incur to implement and maintain CARDS with the unsubstantiated benefits to be gained by the adoption of such a sweeping rule. Second, and most importantly, it fails to adequately recognize the actual and perceived privacy and security risks of maintaining such a massive database of investor information.

Janney is an active member of the Securities Industry and Financial Markets Association (“SIFMA”) and is in agreement with the comments regarding CARDS that SIFMA has previously provided to FINRA in its letters dated March 21, 2014 and July 1, 2014, as well those set forth in SIFMA’s letter in response to Regulatory Notice 14-37. For the reasons provided herein, as well as those discussed in SIFMA’s letters, FINRA should not proceed with CARDS.

The Costs of CARDS Outweigh the Perceived Benefits

If adopted, there is little debate that member firms will incur significant additional costs to implement CARDS. These costs outweigh the perceived benefits that appear to be based on conjecture rather than documented fact. For example, FINRA claims as a benefit that it “believes that [CARDS] could strengthen compliance efforts at many firms”, and that CARDS would serve to “reduce burdens on firms and lower costs due to, among other things, eliminating intermittent, and sometimes frequent and extensive, information requests from FINRA.” We respectfully disagree. We do not believe CARDS will serve to reduce burdens on member firms, quite the contrary. In addition to the expense of implementing and administering CARDS (which is vast), we expect CARDS will result in numerous false positives that FINRA will be compelled to pursue. Member firms will necessarily respond by dedicating additional valuable time and resources running to ground these false positives, distracting them from addressing real client questions and concerns.

Further, the additional expenses (including soft and hard costs) associated with CARDS will have a disproportionately greater impact on smaller and regional firms than larger firms where the impact of CARDS’ related costs may be more easily absorbed. As a result, an initiative like CARDS has an anti-competitive feature to it. Inevitably, member firms will be compelled, at least in part, to transfer these additional costs onto customers. If that is unfeasible, by increasing the cost of doing business, particularly so for smaller firms, CARDS will incentivize broker dealers to convert to registered investment advisors, where CARDS would not apply and where the regulatory burdens are not viewed as economically prohibitive. There exists the distinct possibility that regulatory initiatives like CARDS will make the broker dealer business simply too expensive for smaller firms to remain viable and thereby result in member firms exiting the business altogether.¹

In response to member concerns, FINRA has promised that it will look to retire the AEP and INSITE systems. As noted in SIFMA’s letter, these benefits are illusory. Rather than scrap AEP (an expensive and time consuming initiative in its own right), we would suggest that FINRA reconsider enhancing AEP and other systems to address FINRA’s concerns rather than require member firms to, yet again, devote significant resources in order to develop a brand new system.

If CARDS is implemented, it will increase customer cost, reduce customer choice, and incent brokers to leave the business for a less regulated regime, all of which run contrary to FINRA’s stated goal of enhancing investor protection and restoring confidence. CARDS will also have the perverse effect of turning the industry’s compliance oversight responsibilities on its head. As others have commented, rather than monitoring whether or not member firms have policies and procedures that are reasonably designed to comply with the law and prevent

¹ Per FINRA’s website, as of October 2014, we note that the ranks of broker dealers have diminished by 13% (615 member firms) since 2009. We suspect this is in some way attributed to the increased regulatory burdens placed on broker dealers. Ironically, customer complaints received by FINRA from 2009 to 2013 have decreased by 53%, once again calling into question the sensibility of a retail surveillance tool such as CARDS.

violations of the law (a foundation of FINRA member regulation), FINRA will step into the shoes of member firms and their compliance programs and perform front-line compliance monitoring at the firm level. Is this (or should it be) FINRA's responsibility? Is this the highest and best use of FINRA resources? We think not.

Privacy and Security Risks are Real; and the Risks are Great

We concur with the extensive feedback that SIFMA and others have offered concerning the data security and privacy risk implications of CARDS. To this point, FINRA's response to these concerns has essentially been to "trust us". Regarding data security and privacy, Regulatory Notice 14-37 provides only what FINRA believes to be the case, to wit:

- "that CARDS would not contain information that ... would reasonably enable a potential hacker to determine the identity of an account's owner";
- "that such a security risk would be low"; and
- "that the investor protection benefits that would come from CARDS, and FINRA's increased ability to reduce fraudulent and abusive behavior, significantly outweigh the remote risk of a security breach."

We respectfully disagree. As others have commented, we don't believe it will be a matter of *if* there is a security breach, but a matter of *when*. For such a sweeping, expensive, and risky proposal, the investing public and member firms deserve more fact-based information in support of CARDS than a data security assessment based simply on what FINRA believes to be the case. Anything less would be irresponsible for FINRA, its member firms, and the investing public they both serve.

Lastly, we have grave concerns with respect to the many risks and exposures created by CARDS. There are numerous, legitimate unanswered questions that SIFMA and others have asked – many of which point to the same concept -- what happens when there is a breach? Who bears the risk? We think it particularly important to note that it is not just legal and financial risks at stake. Perhaps more importantly, a firm's reputational risk (and future viability) could be on the line. Until these risk and liability questions can be thoughtfully resolved, CARDS should not proceed.

Conclusion

Janney shares FINRA's goals of investor protection and confidence, and we recognize the perceived convenience a system like CARDS, if implemented, might provide FINRA. We further recognize and appreciate that FINRA has been open and receptive to industry feedback, and that FINRA has sought input from a core group of member firms as its sounding board, in addition to piloting CARDS with several firms. While FINRA has responded to certain items in response to industry feedback, the tenor of FINRA's communication and feedback with the industry has prematurely concluded that CARDS was a fait accompli and needed for FINRA to fulfill its mission. We question the necessity and desirability of CARDS in the first instance.



Marcia E. Asquith

December 1, 2014

Page 4

Indeed, if one of FINRA's stated goals is to restore investor confidence (presumably coming out of the credit crisis in 2008), we question whether CARDS is the right tool to meet that goal. The 2008 credit crisis and ensuing lack of investor confidence, we submit, was not the result of retail suitability compliance issues, but rather the result of broader systemic and interconnected liquidity problems that CARDS cannot and will not solve for.

CARDS will be unduly burdensome to address FINRA's stated objectives, lacks an adequate cost benefit analysis to justify the time, cost and expense associated with such a proposal, and significantly underestimates the privacy and security risks associated with CARDS. For these reasons, Janney cannot support Regulatory Notice 14-37. Rather, it is our recommendation that FINRA consider other alternatives to fulfill its objectives through the use of existing systems and technologies (perhaps as augmented to meet additional data elements) that will further its goals without the cost and risk of CARDS.

We thank FINRA for the opportunity to comment on the CARDS proposal and look forward to continuing to work with FINRA and the rest of the industry to devise a solution that is satisfactory for all. If you have any questions, please feel free to contact the undersigned directly.

Sincerely,

A handwritten signature in black ink, appearing to read "G. McShea".

Gregory B. McShea