



# PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

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*Via Email Only*  
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November 20, 2014

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

**Re: Regulatory Notice 14-37, Comprehensive Automated Risk Data System**

Dear Ms. Asquith:

Thank you for the opportunity to comment on the above-referenced Regulatory Notice (“RN”). In this RN, FINRA requested public comment on a concept proposal to develop the Comprehensive Automated Risk Data System (“CARDS”). I write on behalf of the Public Investors Arbitration Bar Association (“PIABA”), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority (“FINRA”) relating to both investor protection and disclosure.

As stated in our comment to Regulatory Notice 13-42, PIABA is generally supportive of the CARDS concept proposal. PIABA writes to comment on potential positive and negative consequences that could result from implementation of CARDS.

Since the CARDS system relies upon the input of customer suitability data at the broker-dealer level, PIABA fears that the input of incorrect customer suitability data could compromise the effectiveness of the CARDS system as a regulatory tool and skew the resultant data collected by FINRA. Unfortunately, the incorrect classification of public investors at the firm level is not uncommon. Investors are frequently categorized improperly as “speculative” or “aggressive,” when they are actually “conservative” or “moderate.” Such instances have been regularly documented in enforcement proceedings against registered representatives and their supervisors. *See In re: Prime Capital Services, Inc.*, 2010 SEC LEXIS 2086 (2010); *In re: Bresner, et al.*, 2013 SEC LEXIS 3511, 2013 WL 5960690 (2013). Therefore, uniform risk tolerance and investment objective definitions seem essential to ensuring CARDS’ effectiveness.

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Some firms have adopted risk profiles that can be confusing and misleading to public investors, which facilitates sales practice misconduct. See *In re Richard G. Cody*, 2010 WL 1937033 at n. 7 (May 10, 2010) (observing that new account form's investment objective objection were "income," "long-term growth," and "short-term trading," while risk exposure options were "low," "moderate," "speculation," and "high risk"); *In re Stephen W. Wilson*, 2010 WL 3598591 (Apr. 14, 2010) (broker recommended "conservative" and "moderately aggressive" portfolios promising 9-12% estimated rates of return and could not articulate his underlying methodology); *In re David Lerner Associates*, FINRA Disc. Proc. No. 2009020741901 (Oct. 22, 2012) (broker described speculative, over-concentrated, and illiquid REITs as "moderately conservative").

RN 14-37 references standardizing the use and definitions of risk tolerances and investment objectives in connection with the adoption of the CARDS system, but does not indicate that such a system would be widely implemented. Such a standardized system would further the goal of investor protection by providing industry-wide consistency on these crucial suitability factors. Coupled with uniform plain language explanations of each term, this consistency should allow investors a better opportunity to understand the meaning of the risk tolerances and investment objectives presented to them on suitability questionnaires. It would also permit FINRA to readily detect potentially fraudulent completion of suitability questionnaires by registered representatives by identifying specific firms/branches with disproportionately high instances of high risk investment objectives and/or risk tolerances selected.

PIABA supports FINRA's stated position that CARDS is not intended to and will not supplant the legal, compliance and supervisory programs firms administer. However, PIABA remains wary that member firms may use the presence of the CARDS system against public investors in arbitrations where no enforcement action was taken against the broker and/or firm. PIABA is concerned that firms may argue to the arbitration panels that inaction on the part of FINRA in light of the CARDS system is evidence that there was no improper conduct. It is therefore important that arbitrators be instructed that CARDS is not a transaction-by-transaction based exception program and that firms' compliance and supervisory programs remain responsible for oversight to prevent and detect problems.

PIABA supports the use of unique customer identifiers and anonymized personally-identifiable customer information within CARDS, as referenced in Request for Comment 7. The increasingly frequent instances of high profile computer hacking has shown that sensitive personal information, especially financial data, is increasingly vulnerable. The use of unique identifiers rather than customer account numbers will provide an extra level of much needed security to individual investors. FINRA should also require that member firms adopt "best practices" security and encryption protocols for information technology and data transmission. These measures strike an appropriate balance between giving FINRA the tools and technology it needs to achieve its legitimate market surveillance and regulatory goals while protecting public investors' privacy and proprietary interests.

Once more, PIABA appreciates the opportunity to comment on the CARDS concept proposal, and looks forward to working with FINRA on its implementation.

Very Truly Yours,



Joseph C. Peiffer, PIABA  
President