TIAA CREF
FINANCIAL SERVICES FOR THE GREATER GOOD®

Teachers Insurance and Annuity Association of America
College Retirement Equities Fund
730 Third Avenue
New York, NY 10017-3206
212 490-9000 800 842-2733

Jon Feigelson
Senior Vice President, General Counsel & Head of Corporate Governance
(212) 916-4344
(212) 916-5952 fax
jfeigelson@tiaa-cref.org

August 9, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Consolidated Audit Trail;
Release No. 34-62174; File No. S7-11-10

Dear Ms. Murphy:

TIAA-CREF Individual & Institutional Services, LLC ("T-C Services")[1] appreciates the opportunity to comment on proposed new Rule 613 (the "Proposal") under Section 11A(a)(3)(B) of the Securities Exchange Act of 1934, as amended ("Exchange Act"). Through the Proposal, the Securities and Exchange Commission ("Commission") seeks to require national securities exchanges and national securities associations (collectively, "SROs") to jointly develop a national market system ("NMS") plan with the goal of providing regulators with "efficient access to a more robust and effective cross-market order and execution tracking system."[2] Through the NMS plan, a real-time end-to-end consolidated audit trail of each order effected in NMS securities would be created and stored in a central repository using data reported by each market participant that touches the order.

T-C Services is a registered broker-dealer that has entered into a fully-disclosed clearing arrangement with a nationally recognized clearing firm. Through this arrangement, T-C Services introduces transactions to its clearing firm for execution, clearance, settlement and custody.

T-C Services supports the Commission's objectives in implementing a rule which would require the establishment and maintenance of a consolidated audit trail and recognizes that current audit trail rules may not provide regulators with sufficient visibility into market activity. We offer our comments on two discrete questions raised in the Proposal:

- Should correspondent/introducing broker-dealers ("Introducing Brokers") be able to rely on their clearing firms to report on their behalf?

[1] T-C Services is a registered broker-dealer that is wholly owned by Teachers Insurance and Annuity Association of America ("TIAA"). T-C Services and TIAA are members of the TIAA-CREF group of companies which comprise one of the world's largest retirement plan systems. For over 90 years, TIAA-CREF has helped people in the academic, research, medical and cultural fields plan for and live through retirement.

[2] Proposal at page 1.

- Should SROs be allowed to make data from the central repository available to third parties, such as for academic research?

In short, we believe Introducing Brokers should be permitted to rely on their clearing firms for reporting purposes. Requiring separate reporting by Introducing Brokers and clearing firms will result in duplicative reporting, most notably in circumstances where the Introducing Broker executes, clears and settles and custodies transactions with a clearing firm under a fully-disclosed clearing agreement. We also believe there are substantial privacy, data security and competitive issues associated with making central repository data available to third parties on a wholesale basis. We generally support, however, the provision of generalized masked data to academics for educational purposes.

A. Reporting by Introducing Brokers that Execute, Clear, Settle and Custody Transactions with a Clearing Firm Should Be Optional to Avoid Unnecessary Burdens on Introducing Brokers.

Under the Proposal, all SRO member firms would be required to submit to the centralized repository, on a real time basis, the following information for each trade ("Reportable Information"): (1) customer name and address, customer account information[3] and a unique customer identifier; (2) the broker-dealer unique identifier for each report sent to the central repository for a reportable event; (3) the date, time (in milliseconds) and material terms[4] of an order when the order is received or originated, including a unique order identifier; (4) information regarding the routing of an order;[5] and (5) information regarding modification to the material terms of an order or partial or full cancellations of an order,[6] and partial or full execution of an order.[7]

In a fully-disclosed clearing arrangement, the clearing firm will possess all or the majority of the Reportable Information where the introducing broker depends on the clearing

---

[3] Customer account information would include, but not be limited to: (a) the account number; (b) account type (e.g., options); (c) customer type (e.g., retail, mutual fund, broker-dealer proprietary); (d) the date the account was opened; and (5) the large trader identifier (if applicable).

[4] Material terms would include, but not be limited to: (a) NMS security symbol; (b) type of security; (c) price(s) (if applicable); (d) size (displayed and non-displayed); (e) side (buy/sell); (f) order type; (g) whether long, short, or short exempt if a sell order; (h) locate identifier for short sale; (i) open/close indicator; (j) time in force (if applicable); (k) whether solicited or unsolicited; (l) whether the account has a prior position in the security; (m) for listed options, option type (put/call), option or root symbol, underlying symbol, strike price, expiration date and open/close; and (n) any special handling instructions.

[5] Such information would include: (a) the unique order identifier; (b) the date and exact time (in milliseconds) when the order was routed and received; (c) the unique identifier of the SRO member routing the order; (d) the unique identifier of the SRO or SRO member that receives the routed order; (e) the identity and nature of the department or desk to which an order is routed if a broker-dealer routes the order internally; and (f) the material terms of the order.

[6] Such information would include: (a) the unique order identifier; (b) date and time (in milliseconds) that an order modification or cancellation was originated or received; (c) the identity of the person responsible for the modification/cancellation instructions; (d) the price and remaining size of the order, if modified; and (e) any other modifications to the material terms of the order.

[7] Such information would include: (a) the unique order identifier; (b) execution date and time (in milliseconds); (c) capacity of the entity executing the order (principal, agency, riskless principal); (d) execution price; (e) size of execution; (f) unique identifier of the SRO or SRO member executing the order; (g) whether the execution was reported pursuant to an effective transaction reporting plan or the OPRA plan, and the time of such report.

firm for execution, clearance, settlement and custody. In such cases, the clearing firm will maintain relevant transactional data and records and also performs transactional regulatory reporting such as Electronic Blue Sheets filings.

The associated clearing and carrying agreement is, at its heart, an outsourcing arrangement specifically permitted by SRO rules[8] through which the introducing broker-dealer and clearing firm agree to divide and assume responsibility for various aspects of account establishment and order placement, execution, clearance and settlement processes. Such arrangements are largely driven by economics. It is very costly to establish a self-clearing operation, including retaining and hiring experienced personnel, implementing and maintaining necessary technology to perform and supervise execution, clearance, settlement and custody operations, compliance with associated regulatory requirements and other associated costs such as SRO and clearing corporation memberships. Introducing/clearing arrangements remove barriers to entry by facilitating the division of labor between the parties. It necessarily follows that the parties should be able to assign responsibility for the submission of Reportable Information to the central repository (rather having to submit duplicative reporting).

To take a contrary position and require Introducing Brokers to report information in addition to their clearing firm will only dilute the economic benefits realized by Introducing Brokers through such clearing arrangements and may result in increased costs to customers. Moreover, we do not believe there is appreciable benefit to the Commission, FINRA or the markets in general in mandating reporting by Introducing Brokers. Through Section 11A of the Exchange Act, Congress expressly articulated its findings that "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure," among other things, "economically efficient execution of securities transactions" and "fair competition among brokers and dealers." We do not believe that requiring reporting of Introducing Brokers achieves either of these objectives.

It is incumbent upon the Commission to take account of associated competitive burdens. In authorizing the Commission to use its authority to facilitate the establishment of a national market system for securities, Congress envisioned the Commission would engage in a careful study, including creating advisory committees and employing outside experts, prior to initiating changes. If the Commission intends to require reporting by Introducing Brokers, it should do so only after taking such steps and concluding that the benefits outweigh the burdens.

B. Third Parties Should Not Be Permitted to Access Customer or Firm Specific Information Held in the Central Repository.

While we understand that there may be educational and social value in providing certain third parties, such as academics, with access to information stored in the central repository, and charging associated access fees may help offset some of the costs associated with the set up and ongoing maintenance of the central repository, the information stored through the central repository will include sensitive customer information and SRO member information. As such, third parties should not be provided access to customer-specific information that may be viewed

[8] NASD Rule 3230

as personally identifiable or firm-specific information that could be used for competitive advantage.

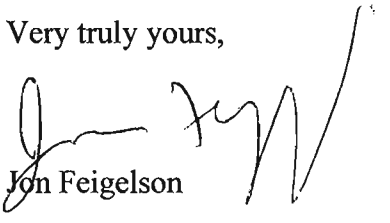
As a general matter, we support the provision of blind aggregate industry-wide data to a limited universe of third parties for use in educational endeavors (i.e., academics); provided that SROs are required to implement and maintain reasonable gate keeping mechanisms for controlling access to the data and adequate controls to protect the information. Additionally, any data provided should be subject to a license agreement that dictates the acceptable uses of the information and can be terminated at will by the SRO if the data is used in a manner inconsistent with the license.

Additionally, the SROs operating the central repository should be subject to the same privacy and data protection standards as those contained in the federal and state laws, rules and regulations[9] to which broker-dealers are subject. Specifically, SROs should be required to implement and maintain effective compliance programs that are reasonably designed to: (1) insure the security and confidentially of personally identifiable and firm-specific information; (2) protect against any anticipated threats or hazards to the security or integrity of such information; and (3) protect against unauthorized access to or use of such information. Additionally, SROs should be held responsible for compliance with data breach notification requirements under state laws where data held in the central repository and other systems used by SROs or the third parties has been comprised. SRO members should not be held responsible, and should be indemnified by the SROs, for any associated breach of their customer or firm information in such circumstances.

* * *

If you have any questions, please do not hesitate to contact me at 212.916.4344 or Pam Lewis Marlborough, Associate General Counsel, at 303.626.4535.

Very truly yours,



Jon Feigelson

cc: Robert Cook, Director, Division of Trading and Markets
Katherine England, Assistant Director, Division of Trading and Markets
Kathleen L. Casey, Commissioner
Elisse B. Walter, Commissioner
Luis A. Aguilar, Commissioner
Troy A. Paredes, Commissioner
Mary L. Schapiro, Chairman

[9] *See* Regulation S-P, 17 CFR Part 248, Release No. 34-42974. Additionally, the vast majority of states, as well as the District of Columbia, Puerto Rico and the Virgin Islands, have enacted laws that govern how privacy breaches must be addressed. Many require notice to the affected parties. *See* www.ncsl.org for more information.