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July 13, 2009

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

Re: Release No. 34-59921; FINRA File No. SR-FINRA-2009-028
Rule Change to Adopt FINRA Rule 2231 in the Consolidated FINRA Rule Book

Dear Ms. Murphy:

By this letter, TIAA-CREF Individual & Institutional Services, LLC (“T-C Services”)¹ supplements its previous comment regarding the rule change proposal (“Proposal”) submitted by FINRA to the Securities and Exchange Commission (“SEC” or “Commission”) on June 11, 2009, to require, among other things, monthly statements. T-C Services again thanks the Commission for the opportunity to comment on the Proposal.

We have reviewed the comment letters received by the Commission on the Proposal during the comment period (“Letters”).² After a review of the Letters, we are even more convinced the monthly statement requirement of the Proposal is inconsistent with the requirements of Sections 6 and 15A of the Securities Exchange Act of 1934, as amended (“Exchange Act”), and thus should not be approved by the Commission pursuant to Section 19 of the Exchange Act. In this regard, we welcome the opportunity to meet with the Commission staff and FINRA to discuss potential alternatives to monthly customer statements that satisfy FINRA’s investor protection concerns in a less burdensome and more effective manner.

The Letters largely are critical of the monthly statement requirement and, as a result, call into question its merits. FINRA’s justification for the requirement consists only of the following two sentences:

FINRA believes the proposed amendment better reflects current industry practice as a significant number of members already send customers monthly account statements through their clearing firms. FINRA believes that receipt of monthly statements will allow customers to review their statements in a timely manner for errors, possible identity theft or other potential problems.³

Additionally, FINRA’s statement on burden on competition indicates only that “FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.”⁴ Such cursory

statements appear to fall well short of satisfying the instructions in Form 19b-4 that the Proposal be supported by a “detailed” and “specific” statement and a detailed analysis on the impact on competition.⁵ We also note that FINRA did not solicit comments on the Proposal prior to filing it with the Commission.⁶

Additionally, each Letter refutes in some way FINRA’s assertion that monthly statements are the industry norm. Several examples of lines of business currently using quarterly reporting were provided, including the retirement plan, 529 college savings plan, and mutual fund industries.⁷ Moreover, several Letters note that customers already have access to more current account information than that contained in quarterly statements.⁸ All Letters, except one, express concern with the associated cost burdens of monthly reporting as weighed against the benefits to customers⁹ (and several Letters express concern that monthly statements could result in more costly brokerage products and services as the additional costs associated with member firm compliance will likely be passed onto customers¹⁰). The Letters also highlight the inconsistency between the monthly statement proposal and several other pre-existing regulatory requirements.¹¹ In total, the Letters illustrate that the burdens that would be imposed on member firms by the proposed monthly statement requirement substantially outweigh any incremental benefits to investors, even assuming such benefits exist.

Accordingly, in light of various issues raised in the Letters, we do not believe that FINRA has demonstrated that the monthly statement requirement of the Proposal meets the requirements of the Exchange Act, including demonstrating that the Proposal:

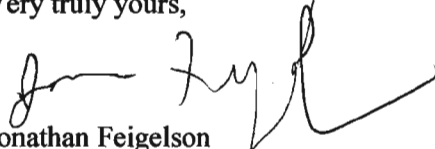
- Is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers¹²; and
- Does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹³

As emphasized in the case law¹⁴, the Commission must analyze carefully the potential effects of approving the Proposal to satisfy its statutory obligations and only should approve the Proposal if the Commission is convinced the Proposal is consistent with the Exchange Act.

Accordingly, we recommend that the Commission evaluate whether the cost and other burdens associated with the monthly statement requirement and inconsistencies of the requirement with other pre-existing regulatory requirements are necessary to protect investors and the public interest; or whether there are more effective and efficient ways to achieve the same objectives. For the reasons set forth above, as well as our prior comment and the Letters, we believe the Commission cannot conclude, on this record, that the proposal should be approved consistent with the applicable statutory standard.

If you have any questions, please do not hesitate to contact me at (212) 916-4344.

Very truly yours,



Jonathan Feigelson
SVP, General Counsel

cc: Chairman Schapiro
Commissioner Kathleen L. Casey
Commissioner Elisse B. Walter
Commissioner Luis A. Aguilar
Commissioner Troy A. Paredes

James Brigagliano, Esq.
Daniel Gallagher, Esq.

Brandon Becker, Esq.

¹ T-C Services is a registered broker-dealer that is wholly owned by Teachers Insurance and Annuity Association of America ("TIAA").¹ 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 The Letters were submitted by member firms, industry groups and law firms representing a wide range of broker-dealers (See Letters from Sterne Agee Group, Inc. ("SAG"), TD Ameritrade Holding Corporation ("TD"), Edward Jones, Charles Schwab & Co., Inc. ("Schwab"), First Southwest Company ("FSC"), TIAA-CREF Individual & Institutional Services, LLC (for purposes of end note citation, "TIAA-CREF"), Investment Company Institute, ("ICI"), Financial Services Institute, Inc. ("FSI"), Securities Industry and Financial Markets Association ("SIFMA"), College Savings Foundation ("CSF"), Sutherland Asbill & Brennan LLP on behalf of the Committee of Annuity Insurers ("Sutherland")).

³ Proposal, 74 Fed. Reg. at 23913.

⁴ *Id.*

⁵ Form 19b-4 requires a statement with respect the basis and purpose of the proposed rule change and indicates that the statement "should be sufficiently detailed and specific to support a finding under Section 19(b)(2) of the [Exchange] Act and the rules and regulations thereunder applicable to the self-regulatory organization." Among other things, Form 19b-4 indicates that statement should:

Describe the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change will resolve these problems, the manner in which the proposed rule change will affect various persons (e.g., brokers, dealers, issuers, and investors), and any significant problems known to the self-regulatory organization that persons affected are likely to have in complying with the proposed rule change . . . why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient.

Note also that Form 19b-4 requires the following description concerning the burden on competition:

State whether the proposed rule change will have an impact on competition and, if so, (i) state whether the proposed rule change will impose any burden on competition or whether it will relieve any burden on, or otherwise promote, competition and (ii) specify the particular categories of persons and kinds of businesses on which any burden will be imposed and the ways in which the proposed rule change will affect them. If the proposed rule change amends an existing rule, state whether that existing rule, as amended by the proposed rule change, will impose any burden on competition. If any impact on competition is not believed to be a significant burden on competition, explain why. Explain why any burden on competition is necessary or appropriate in furtherance of the purposes of the [Exchange] Act. . . The statement concerning burdens on competition should be sufficiently detailed and specific to support a Commission finding that the proposed rule change does not impose any unnecessary or inappropriate burden on competition.

See also Sections 6(b)(5) and (8) and 15A(b)(6) and (9) of the Exchange Act.

⁶ Proposal, 74 Fed. Reg at 23913.

⁷ *See* Letters from TIAA-CREF, SIFMA, CSF and ICI. The term “529 college savings plan” refers to college savings plans that meet the requirements of Section 529 of the Internal Revenue Code.

⁸ *See* Letters from TIAA-CREF, TD, FSC, SIFMA, SAG and Schwab.

⁹ *See* all Letters except CSF.

¹⁰ *See* Letters from TIAA-CREF, SIFMA, FSI, ICI, Sterne Agee and Sutherland.

¹¹ *See* Letters from TIAA-CREF, FSI, CSF, FSC, ICI, Schwab, SIFMA and Edward Jones.

¹² *See* Sections 6(b)(5) and 15A(b)(6) of the Exchange Act and Instructions to Form 19b-4.

¹³ *See* Sections 6(b)(8) and 15A(b)(9) of the Exchange Act and Instructions to Form 19b-4.

¹⁴ *See Chamber of Commerce of the USA v. SEC*, 412 F.3d 133 (D.C. Cir. 2005), *Timpanaro v. SEC*, 2 F.3d 453 (D.C. Cir. 1993), *Clement v. SEC*, 674 F.2d 641 (7th Cir. 1982).