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June 11, 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:

TIAA-CREF Individual & Institutional Services, LLC (“T-C Services”) appreciates the opportunity to comment on the above-referenced FINRA rule change proposal. Our comments focus upon the effect of the proposed consolidated rule’s monthly statement requirement on the retirement plan industry, and to a lesser extent, the proposed incorporation of the New York Stock Exchange guidance on summary statements.

By way of background, 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. This system represents approximately 3.7 million participants, and as of March 31, 2009, administers over \$350 billion.

T-C Services respectfully submits that the proposed rule should not be approved in its current form because it is inconsistent with the Securities Exchange Act of 1934 (“Exchange Act”). Set forth below are the bases for T-C Services’ objections to the proposed rule in its current form. We would welcome the opportunity to engage in a dialogue to discuss modifications to the proposed rule that will serve to make it consistent with the Exchange Act and other regulatory schemes that govern the retirement plan industry while preserving FINRA’s efforts to advance investor interests.

Overview of Comments

T-C Services has significant concerns with the proposed monthly statement requirement of the consolidated rule as it relates to account activity effected by or on behalf of retirement plans (as defined in Section I below) and participants of such retirement plans. For the

¹ TIAA is a New York stock life insurance company that pursuant to its charter operates without profit to itself or its stockholder, the TIAA Board of Overseers (a New York not-for-profit corporation).

reasons set forth below, and described more fully under Section I, we believe the requirement should remain quarterly with respect to such activity.

- Quarterly reporting is the retirement plan industry legal standard. A monthly requirement is at odds with other rules governing the retirement plan industry, including laws enacted by Congress.²
- Retirement plan accounts are long term savings vehicles and their account activity lends itself to quarterly reporting.
- The cost of monthly statements outweighs any incremental benefit to retirement plan participants. T-C Services estimates moving to monthly statements would result in an additional \$16 million in printing and postage expense per year and increase the proportional costs of TIAA-CREF “at cost” investment products offered to retirement plans. The additional costs flow through to shareholders of such products.
- Retirement plan participants already possess the means to obtain more current account information than offered by monthly account statements — on a daily basis — for example, through secure on-line account access, call centers staffed by registered representatives and automated phone systems.
- The proposal will require T-C Services use approximately 60 million more sheets of paper each year.³ This is equivalent to 7200 trees or 300 tons of paper annually⁴ — almost half destined for landfills according to Environmental Protection Agency estimates.⁵

Should FINRA nonetheless believe that monthly account statements are necessary for retirement plans and consistent with the provisions of Section 15A(b)(6) of the Exchange Act, T-C Services requests FINRA consider the following modifications and clarifications:

- Clarify that the monthly statement requirement applies *only* to securities positions, money balances or account activity that a general securities member carries or holds and *not* to the member’s securities business as a whole.
- Permit a customer’s continuous secure electronic access to account information to substitute for monthly statements upon initial and annual notice to the customer, or alternatively, allow member firms to condition the customer’s right to receive monthly statements upon consent to electronic delivery.

² See Rule 10b-10(b) of the Exchange Act, Section 105 of the Employee Retirement Income Securities Act of 1974, as amended by Section 508(a) of the Pension Protection Act of 2006, 12 CFR Part 12 and 12 CFR Part 551.

³ Today, T-C Services currently generates approximately 2.5 million printed quarterly statements with an average length of 3 pages to participants.

⁴ See www.conservatree.com/learn/EnviroIssues/TreeStats. Conservatree, a non-profit organization dedicated to converting paper markets to environmental papers, uses a ballpark methodology for calculating how many trees are needed to make a given amount of paper. A rough average of 24 trees are needed to produce a ton of printing and writing papers (based on a mixture of softwoods and hardwoods 40 feet tall and 6 to 8 inches in diameter and assuming the kraft chemical (freesheet) pulping process is used to produce the paper). Another way to look at this ballpark estimate is that one tree makes approximately 16.67 reams of copy paper or 8,333.3 sheets of paper. This methodology is based on a methodology described in *Recycled Papers: The Essential Guide* by Claudia Thompson (Cambridge, MA: MIT press, 1992) based on reports on an estimated calculation by Tom Soder, then a graduate student in the Pulp and Paper Technology Program at the University of Maine.

⁵ See www.epa.gov/region09/waste/features/rpc which estimates that “approximately 44 million tons — or 48% — of the paper generated in this country ends up in landfills.”

- Provide firms with at least 12 months from the effective date of the finalized rule to implement potentially costly and significant formatting and systems changes.

Additionally, we ask FINRA to clarify that the use of prominent disclosure within summary statements that aggregate accounts held or serviced by multiple parties is adequate to satisfy, or may be used in lieu of, the proposed requirement that the “beginning and end of each separate statement (e.g., summary, brokerage, mutual fund, banking, insurance, etc.) be clearly distinguishable by color, pagination or other distinct form of demarcation.

I. The Consolidated Rule Should Maintain Quarterly Reporting for Retirement Plans

We request FINRA maintain quarterly account reporting for accounts held by or for the benefit of the following types of retirement plans (“Retirement Plans”) and participants of such plans (“Participants”):

- Employee pension plans covered by the Employee Retirement Income Securities Act of 1974, as amended (“ERISA”);
- Plans described in Internal Revenue Code (“IRC”) sections 401(a), 401(k), 403(b), 408(k), 408(p) and 457(b);
- Government and church plans defined in IRC section 414;
- Deferred compensation plans of state and local governments and tax-exempt organization under IRC section 457(f);
- Nonqualified deferred compensation arrangements established or maintained by employers or plan sponsors; and
- Individual retirement accounts and annuities described in IRC section 408.

A. Quarterly Reporting is the Legal Standard within the Retirement Industry

Multiple service providers frequently provide services to Retirement Plans and Participants—including broker-dealers, banks and trust companies. As a result, the quarterly statements seek to comply with various regulatory schemes:

- Alternative periodic reporting requirements of Rule 10b-10(b) under the Exchange Act and its no-action and exemptive relief progeny;
- Plan sponsor requirements under Section 105 of ERISA, as amended by the Pension Protection Act, with respect to Retirement Plans subject to ERISA⁶; and
- Applicable banking regulations where plan assets are held by a bank or trust company.⁷

These various regulations recognize quarterly statements as the requirement, and as such, the proposal would add an inconsistent standard to the mix. The proposed monthly statement requirement would also place member firms at a competitive disadvantage as compared to banks and trust companies that sometimes perform the same functions under applicable banking exemptions and are subject only to quarterly statement requirements.⁸

⁶ *Id.* at 2.

⁷ 12 CFR Part 12 which applies to national banks and 12 CFR Part 551 which applies to thrifts largely tracks the confirmation and statement requirements, including the alternative periodic reporting provisions, of Rule 10b-10 of the Exchange Act.

⁸ *Id.* at 7.

Additionally, the alternative periodic reporting provisions under Rule 10b-10(b) are key provisions on which broker-dealers that service the Retirement Plan industry commonly rely to confirm certain recurring transactions.

The provisions of Rule 10b-10(b) permit broker-dealers to provide quarterly account statements in lieu of immediate confirmations with respect to transactions effected pursuant to a periodic plan or an investment company plan.⁹

Moreover, there is a long line of SEC exemptive relief where certain technical requirements of the alternative periodic reporting provisions could not be met by the applicant but the administrative burdens and costs associated with providing immediate confirmations outweighed the benefits that would accrue to investors from receiving such confirmations.¹⁰ In fact, the SEC recently reaffirmed that there are situations where the cost of more frequent confirmation statements is not justified for certain recurring transactions.¹¹

B. Retirement Account Activity is Better Suited to Quarterly Reporting

The characteristics of Retirement Plan transactions should not necessitate monthly statements. The majority of transactions are routine and recurring in nature (*e.g.*, salary reductions, employer contributions, mutual fund dividend reinvestment, automated asset allocation and systematic withdrawals). Moreover, the objective of a Retirement Plan is saving for retirement (*i.e.*, long-term investment). The menu of investments available to Participants of many types of Retirement Plans is typically constrained and selected by the Retirement Plan sponsor. Withdrawals and distributions prior to retirement or as a result of disability, hardship or termination of employment are typically limited by Retirement Plan rules and Internal Revenue Code provisions.

In instances involving non-recurring transactions (such as internal and external transfers and distributions at retirement), broker-dealers provide immediate confirmations under the provisions of Rule 10b-10. Requiring monthly reporting in such circumstances would be redundant, especially if such activity is reported again on a quarterly basis.

Additionally, we do not believe the inconsistencies between the proposed monthly statement requirement and the quarterly reporting standards of other regulatory regimes to which the

⁹ A "periodic plan" is defined in the Rule as "any written authorization for a broker acting as agent to purchase or sell for a customer a specific security or securities (other than securities issued by an open end investment company or unit investment trust registered under the Investment Company Act of 1940), in specific amounts (calculated in security units or dollars), at specific time intervals and setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them). An "investment company plan" means "any plan under which securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940 are purchased by a customer (the payments, being made directly to, or made payable to, the registered investment company, or the principal underwriter, custodian, trustee, or other designated agent of the registered investment company), or sold by a customer pursuant to: (i) an individual retirement or individual pension plan qualified under the Internal Revenue Code; (ii) a contractual or systematic agreement under which the customer purchases at the applicable public offering price, or redeems at the applicable redemption price, such securities in specific amounts (calculated in security units or dollars) at specific time intervals and setting forth the commissions or charges to be paid by such customer in connection therewith (or manner of calculating them); or (iii) any other arrangement involving a group of two or more customers and contemplating periodic purchases of such securities by each customer through a person designated by the group" provided certain enumerated disclosures and steps are taken under the Rule.

¹⁰ See Variable Annuity Life Insurance Company of America ("VALIC") (March 1, 1979, November 24, 1979, January 28, 1982, December 20, 1985 and August 15 and August 23, 1991); College Retirement Equities fund ("CREF") (May 1, 1988 and January 31, 1990); Integrated Capital Services, Inc. (January 30, 1987); The Mutual Life Insurance Company of New York (May 23, 1985); Mutual of America Life Insurance Company (December 6, 1984); and Equitable Life Assurance Society of the United States and AXA Advisors, LLC (October 20, 2004).

¹¹ See Legg Mason Services, LLC (April 7, 2009) extending no-action relief to Legg Mason Services, LLC as class relief.

retirement industry is subject can be reconciled solely by excepting certain recurring transactions subject to Rule 10b-10(b) from the proposed monthly reporting provisions of the proposed consolidated rule. Such a limited carve-out would have the confusing effect of requiring three layers of reporting. Participants would receive disjointed reporting based on differing transaction types: immediate confirmations and monthly account statements for non-recurring activity, and quarterly statements for recurring activity subject to Rule 10b-10(b). Quarterly, rather than monthly, reporting is best suited with respect to all activity occurring within a Retirement Plan account (recurring and non-recurring) given the long-term nature of the available investments and plan objectives.

C. More Current Alternatives to Monthly Statements Already Exist

Periodic account statements are outdated the day after they are generated—particularly so in fast moving or volatile markets. Customers who desire current account information usually have at least three means to obtain such information on demand: on-line account access, call centers staffed by registered representatives and automated phone systems.¹² By way of support, internet access is nearly universal today. By one estimate, 72.5 % of the population in the United States has access to the Internet alone.¹³

Internet and telephone channels also are better equipped to provide participants with up-to-date information regarding their accounts and to help customers handle possible errors, identity theft or other potential problems. As an alternative to requiring monthly statements, FINRA could encourage member firms to include disclosure on their quarterly statements apprising customers of the availability of Internet or telephone channels for obtaining the most current information.

D. The Proposal is Expensive and Also Carries a Notable Environmental Impact

T-C Services estimates that the printing and postage costs of mailing eight additional statements per year will be approximately \$16 million. Additionally, the summary statement requirements may necessitate a longer statement, which could push the additional cost of 8 additional statements to more than \$20 million per year. Given that many TIAA-CREF investment products are managed on an at cost basis, additional costs flow through to Participants.

Besides the above hard costs, the proposal's toll on environmental resources is significant. The estimates noted at the beginning of this comment letter—60 million additional pages each year—illustrate the significance of the potential impact of the monthly statement requirement. The estimates, however, do not take into account a potentially longer statement that could result from the proposed demarcation requirements with respect to summary statements. Even an increase of one page for each statement to accommodate such demarcation requirements will further compound the environmental impact. By way of example, adding one more page to each statement will require T-C Services consume an additional 20 million sheets of paper annually.

II. If Not Amended to Exclude Retirement Plans, the Proposal Should be Modified

¹² Typically, the information available through on-line and phone channels is current at least as of market close on the previous day.

¹³ See www.clickz.com using information obtained from the Central Intelligence Agency Fact Book.

In the event FINRA nonetheless determines to adopt the proposed amendments, we urge FINRA to consider the following modifications and clarifications:

A. The Monthly Statement Requirement Should Apply Only to Those Portions of a Member Firm's Business that Involve Carrying Customer Accounts or Holding Customer Funds or Securities

FINRA proposes that the monthly statement requirement would be conditioned on a member's classification as a "general securities member" as currently set forth in NASD Rule 2340. A "general securities member" is defined therein as:

Any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a). Notwithstanding the foregoing definition, a member that does not carry customer accounts and does not hold customer funds or securities is exempt from the provision of the section.

A plain reading of the exception to the definition would indicate that if a member carries customer accounts and/or holds customer funds or securities with respect to any portion of its brokerage or securities business, then the statement requirements apply to all of its brokerage and securities business.

Many member firms have multiple business lines which include varied brokerage and securities products and services. A firm may carry customer accounts or receive or hold customer funds or securities in connection with one business line, product or service, but not another.

As such, we request confirmation the rule will apply only to those portions of a member firm's business which trigger this classification.¹⁴

B. The Rule Should Provide More Flexible Delivery and Formatting Options

The proposal should allow member firms to meet the monthly requirement if they provide customers with secure continuous on-line access to account information at least equal to that which would be contained in the proposed monthly statement. FINRA should consider the flexible approach taken by the Department of Labor ("DOL") with respect to the periodic statement delivery requirements of Section 105 of ERISA. The DOL has permitted secure electronic channels to act as a substitute for physical delivery of the required statements under the following circumstances and with adequate initial and annual notice:

[With respect to] pension plans that provide participants continuous access to benefit statement information through one or more secure web sites, the Department will view the availability of pension benefit statement information through such media as good faith compliance with the requirement to furnish benefit statement information,

¹⁴ Rule 15c3-1(a)(2)(i) provides that "a broker or dealer shall be deemed to receive funds, or to carry customer or broker or dealer accounts and to receive funds from those persons if, in connection with its activities as a broker-dealer, it receives checks, drafts, or other evidences of indebtedness made payable to itself or persons other than the requisite registered broker-or dealer carrying the account of a customer, escrow agent, issuer, underwriter, sponsor, or other distributor of securities. A broker or dealer shall be deemed to hold securities for, or to carry customer or broker or dealer accounts, and hold securities of those persons if it does not promptly forward or promptly deliver all of the securities of customers or of other broker dealers received by the firm in connection with its activities as a broker or dealer."

provided that participants and beneficiaries have been furnished notification that explains the availability of the required pension benefit statement information and how such information can be accessed by the participants and beneficiaries. In addition, the notification must apprise participants and beneficiaries of their right to request and obtain, free of charge, a paper version of the pension benefit statement information required under section 105. Such notification should be written in a manner calculated to be understood by the average plan participant, furnished in any manner that a pension benefit statement could be furnished under this Bulletin, and furnished both in advance of the date on which a plan is required to furnish the first pension benefit statement pursuant to section 105(a)(1)(A)(i) and (ii) of ERISA and annually thereafter.¹⁵

Alternatively, FINRA should permit member firms to condition a participant's right to a monthly statement upon the participant consenting to receive the statement electronically.

T-C Services also requests FINRA consider allowing greater flexibility in the manner in which member firms may demarcate account information on summary statements. Clarifying that member firms may demarcate various accounts reflected on summary statements through prominent disclosures, rather than physical separation (e.g., color or pagination differences), would help firms reduce statement length and associated production, mailing and postage costs. Such a clarification will not only benefit service providers to Retirement Plans that produce combined statements, but also may assist in controlling cost increases that may be passed through to Participants.

D. Member Firms Should be Given At Least 12 Months From the Effective Date of the Final Rule to Comply with New Requirements

If the monthly statement requirements are adopted, member firms that do not currently generate monthly statements will need substantial lead time to implement necessary systems changes. Similarly, member firms that currently generate summary statements but are not currently subject to the NYSE rule book and its interpretations also will need ample time to reformat their summary statements. Member firms that service the Retirement Plan industry will need to coordinate with other service providers who rely on the summary statement to fulfill their regulatory obligations to ensure consensus on approach. Therefore, we respectfully request that FINRA provide firms with at least 12 months to implement the proposed monthly and summary statement requirements to ensure that the substantial changes proposed by the rule are adequately addressed from a systems and design perspective. In the intervening period, Participants will remain able to obtain the most current account

¹⁵ See Department of Labor Field Assistance Bulletin No. 2006-03.

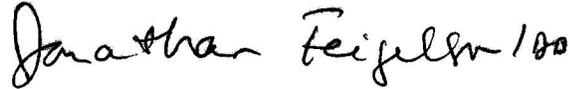
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information by contacting a call center representative, accessing an automated phone system or viewing the account through secure on-line access.

* * *

If you have any questions, please do not hesitate to contact me at (212) 490-9000.

Very truly yours,

A handwritten signature in black ink that reads "Jonathan Feigelson" followed by a stylized flourish or initials.

Jonathan Feigelson
SVP, General Counsel

cc: U.S. Securities and Exchange Commission
Chairman Mary L. Schapiro
Commissioner Kathleen L. Casey
Commissioner Elisse B. Walter
Commissioner Luis A. Aguilar
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