



FINANCIAL SERVICES  
FOR THE GREATER GOOD®

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October 13, 2009

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

Re: Release No. 34-60669; FINRA File No. SR-FINRA-2009-058  
Rule Change to Adopt FINRA Rule 2232 (Customer Confirmations) in the  
Consolidated FINRA Rule Book

Dear Ms. Murphy:

TIAA-CREF Individual & Institutional Services, LLC (“T-C Services”)<sup>1</sup> welcomes the opportunity to offer our comments regarding the above-referenced FINRA rule change proposal (“Proposal”) submitted to the Securities and Exchange Commission (“Commission”) on September 14, 2009.

T-C Services supports FINRA’s efforts to adopt a new, consolidated customer confirmation rule that is consistent with the requirements of Rule 10b-10 of the Securities Exchange Act of 1934, as amended (“Exchange Act”).

We are concerned, however, that the extension of the settlement date disclosure requirements of New York Stock Exchange (“NYSE”) Rule 409(f) to all FINRA member firms for all securities transactions (“Settlement Date Proposal”) provides no discernable benefit to investors while being extremely burdensome for member firms to implement. As such, we believe the Settlement Date Proposal is inconsistent with the requirements of Section 6 and 15A of the Exchange Act, and thus should not be approved by the Commission pursuant to Section 19 of the Exchange Act.<sup>2</sup>

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We are uncertain how investors, particularly mutual fund and variable annuity investors, would benefit from the required incorporation of settlement date information on confirmations. Consistent with Rule 10b-10 disclosure requirements, the most relevant transactional data for fund and variable annuity investors is the transaction date and price obtained on the transaction date, *i.e.*, the net asset value or equivalent.<sup>3</sup> As a result, member firms that primarily effect mutual fund and variable annuity transactions have developed systems that operate on a transaction date basis, rather than settlement date basis. We believe that the settlement date is not relevant to such investors for confirmation purposes. Of course, they can obtain such information on request.

FINRA does not specifically address the need for this proposal within the context of mutual funds or variable annuities, or otherwise. Instead, FINRA broadly offers that the Proposal is “consistent with FINRA’s investor protection mission.”<sup>4</sup> The rationale for how the disclosure of settlement date information on confirmations provides investors with necessary protections that are not available today is not set forth in the Proposal. We note again that settlement date information can be obtained by investors upon request today.

Moreover, we do not believe that FINRA adequately appreciates the costs to non-NYSE member firms of implementing the Settlement Date Proposal. We believe the impact to such member firms, especially member firms that primarily sell or distribute mutual funds and variable annuities, and their affiliates will be significant. T-C Services, like many fund selling agents and distributors, is not an NYSE member and its systems do not currently have this capability.

Compliance with the proposal, if adopted, will require extensive statement reformatting and associated systems work. T-C Services estimates that if the Settlement Date Proposal is adopted as proposed, it could cost our firm between \$11 million and \$15 million to implement. From a systems perspective, reporting of settlement date information on confirmations does not simply involve incorporating a new data feed. Analyses and testing of various inter-related systems also must be performed to ensure they will not be adversely impacted. Such efforts can carry significant costs and time commitments. Data storage and retrieval costs must be factored in as well. Similarly, the need for other service providers to update their systems to accommodate settlement date reporting must also be considered.

The impact to member firms of the Settlement Date Proposal should not be discounted, especially at a time of unprecedented cost pressures on member firms. Moreover, such costs can ultimately reduce returns to investors by increasing a product’s overall fee structure.

We note that FINRA did not solicit comments prior to filing the Proposal.<sup>5</sup> With regard to costs, FINRA has stated 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.”<sup>6</sup> Such cursory statements do not meet Form 19b-4 requirements that a proposal be supported by a “detailed” and “specific” statement and a detailed analysis on the impact on competition.<sup>7</sup>

Importantly, there are alternatives that avoid these costs but still make settlement date information available to investors. Today, investors can request the information from the member firm (or mutual fund or variable annuity issuer) customer care center if such information is desired, as noted above. If FINRA and the Commission believe the benefits of such information to investors outweighs the associated burdens to member firms, FINRA should consider taking a similar approach to the Settlement Date Proposal as is currently required under Rule 10b-10 for the time of transactions (and is encompassed in existing NASD Rule 2230 regarding the same). Namely, firms should be given the flexibility to either provide settlement date information on the confirmation or include disclosure that such information is available upon request.

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In brief, we believe settlement date information is not material for investors in mutual funds and variable annuities. Moreover, such investors already have access to such information on request. In addition, there is a reasonable alternative available, short of confirmation disclosure, to address any concern regarding whether investors are aware of such information. Accordingly, FINRA must carry a heavy burden to demonstrate why, during a period of financial market fragility, it is worth the cost and risk to mechanically transpose a settlement date confirmation disclosure obligation for stocks and bonds to mutual funds and variable annuities. FINRA has not met that burden either through the process of its proposed rule change filing or the substance of its proposal.

Accordingly, we do not believe that FINRA has demonstrated that the Settlement Date Proposal meets the requirements of the Exchange Act. As emphasized through case law, the Commission must carefully analyze the potential effects of approving the Proposal to satisfy its statutory obligations and should only approve the Proposal if the Commission is convinced the Proposal, including the Settlement Date Proposal contained therein, is consistent with the Exchange Act.<sup>8</sup>

Additionally, if FINRA and the Commission believe that there are benefits to investors that outweigh the burdens to member firms, we urge consideration of the alternative set forth in this letter. If FINRA and the Commission nonetheless believe the Settlement Date Proposal is justified, T-C Services requests that member firms be allowed at least a two year implementation period, once the rule is adopted, to comply with the requirements. We believe this time period is appropriate given the substantial systems work faced by non-NYSE member firms and potential need for concomitant systems work by other service providers. In making this observation, however, we emphasize that we do not believe the proposal should be adopted. A phase-in period only will mitigate some of the transitional damage. It will not turn a wrong decision into a right decision.

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

Very truly yours,

/s/ Jonathan Feigelson

Jonathan Feigelson  
SVP, General Counsel

cc: Chairman Schapiro  
Commissioner Kathleen L. Casey  
Commissioner Elisse B. Walter  
Commissioner Luis A. Aguilar  
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<sup>1</sup> 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. This system serves approximately 3.5 million participants with approximately \$374 billion in combined assets under management (as of June 30, 2009).

<sup>2</sup> In this regard, we note that Form 19b-4 requires a statement concerning 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, the Form 19b-4 instructions indicate that the 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 [Exchange] 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.

The Form 19b-4 instructions also require the following description with respect to 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.

<sup>3</sup> For variable annuities the equivalent is the accumulation unit value.

<sup>4</sup> Proposal, 74 Fed. Reg at 48109.

<sup>5</sup> Proposal at 48109.

<sup>6</sup> See note 2.

<sup>7</sup> See note 2.

<sup>8</sup> 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 (7<sup>th</sup> Cir. 1982).