



January 10, 2020

Submitted via e-mail: pubcom@finra.org

FINRA

1735 K Street, NW

Washington, DC 20006

Re: FINRA Notice 19-36

To Whom It May Concern:

Thank you for the opportunity to provide feedback on Proposed New Rule 3241. The proposed rule would limit a registered person from being named a customer's beneficiary or holding a position of trust for a customer. SIFMA appreciates the importance of this proposal in promoting trust and confidence in the securities industry and support FINRA's efforts to protect customers through the implementation of this proposed rule.,

It is important to ensure the investing public understands the purpose of the rule and the potential conflict of interest. We would recommend FINRA make available resources, similar to those designed around FINRA Rules 2165 and 4512, that member firms may share with their customers explaining the rule and reasons for additional scrutiny to promote investor confidence. Our comments below focus on areas where additional clarification could be helpful.

I. SIFMA supports the proposal to require written notice and approval when certain registered individuals are named as a beneficiary or to positions of trust subject to exceptions

We agree that a registered individual being named as his or her customer's beneficiary, trustee, power of attorney or holding other positions of trust could present potential conflicts of interest and should therefore be disclosed to the firm for review subject to certain exceptions. We agree with this approach rather than having a strict prohibition of such arrangements.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

II. SIFMA supports requiring written notice and approval only for registered individuals who have a customer's securities account assigned to them

The FINRA proposal would require a registered person to decline being named a beneficiary of a customer's estate or receiving a bequest from a customer's estate unless the registered person first provides notice to and receives written approval from the member firm. As FINRA recognizes in its proposal, many of our firms currently enforce policies limiting registered persons' ability to be named in such capacities. While this proposal will ensure that all firms put in place such a policy, we agree with limiting the scope to those situations when a customer has or has had a securities account assigned to the particular registered individual and would appreciate clarification to ensure that existing firm restrictions are consistent with the proposed new rule.

For purposes of being named to a position of trust with respect to client assets, we appreciate FINRA's attempt to ensure that appropriate and common relationships, such as those of an immediate family member, are clearly exempted from the rule. We also appreciate the inclusive definition of immediate family member, which includes those individuals that registered persons financially support.

We support that this proposed rule would not apply to registered persons not involved in the handling of the account of public customers, including, but not limited to, permissively registered associated persons of the member firm. The definition of "customer" in the Supplementary Material states the customer must be "assigned" to the registered person, which would appear to exclude permissive registrants and other categories of registered persons. We believe that the grant of a beneficial interest or the designation of a registered person not involved in the handling of the accounts of public customers to a position of trust by such customers does not give rise to the same concerns as situations involving registered persons actively engaged in the handling of accounts of public customers.

Additionally, we would ask FINRA to clarify that the new rule only applies to those registered persons when it is an account they service or manage as broker of record, as opposed to any advisor named as a beneficiary to any client's account. The proposed rule states it covers a customer that has, or in the previous six months had, a securities account **assigned** to the registered person. We ask that FINRA provide clarification that the proposed rule only applies to those registered persons who are named in such a capacity and manage(d) the client's account. This would focus the proposed rule's application to the types of conflicts intended to be addressed.

III. SIFMA agrees the requirements should apply after FA's knowledge of beneficiary designation

While we appreciate that the proposed rule acknowledges that there may be situations where a registered person is unaware that they have been named as a beneficiary, we would like clarification that the registered person has a reasonable time-frame to notify the firm. The proposed rule would apply when the registered person learns of his or her status as a customer's beneficiary or appointment to a position of trust for or on behalf of a customer. Learning of the status would trigger the obligation, but then a reasonable time period would be appropriate for reporting that relationship.

IV. FINRA should provide guidance on relationships in place prior to the final rule and expectations on reviewing those existing arrangements

We ask FINRA to provide clear direction about relationships that are effective today including whether all positions and scenarios covered under the rule would be subject to review under the new standards or whether some would be considered out of scope or “grandfathered” due to existing prior to the rule. While many firms have current policies to address registered individuals in positions of trust with customers, some may not address all arrangements covered under the rule. We are concerned it will be challenging and time-consuming to conduct a full-scale retroactive review of all accounts across an organization, and would suggest FINRA provide clear guidance on which pre-existing relationships are covered and also sufficient time for compliance to allow for applicable existing accounts and arrangements to be reviewed and approved through internal supervisory and operational controls once the rule becomes effective.

V. There should be an exception for trustee relationships under the firm’s business model

Once a registered person has been named either as a beneficiary or to a position of trust with a client, the Member firm needs to perform a reasonable assessment of the relationship and make a reasonable determination of whether to approve.

We would appreciate clarification from FINRA that the proposal is not intended to cover firms acting in their capacity as a trustee in their trust lines of business. Some member firms have business lines in which they intentionally take on these positions of trust. We are assuming that FINRA is focusing on individual registered persons who would be put in a position of trust in their personal capacity, not as a result of a firm authorized and approved business capacity.

VI. Conclusion

Thank you for the opportunity to comment. Please let us know if we can answer any questions.

Sincerely,

A handwritten signature in cursive script that reads "Lisa J. Bleier". The signature is written in black ink and is positioned above the typed name and title.

Lisa J. Bleier
Managing Director