



## PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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July 30, 2020

Ms. Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Re: SR-FINRA-2020-020; Proposed Rule Change to Adopt FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer)

Dear Ms. Mitchell,

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities disputes. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities dispute resolution forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA") relating to both investor protection and disclosure. As such, PIABA frequently comments upon proposed rule changes in order to protect the rights and fair treatment of the investing public.

PIABA submits this comment because the bar association believes the proposed rule is an important and necessary step in fighting a particular form of abuse – where registered representatives take advantage of customers to have themselves installed as the customers' beneficiaries or trustees over the clients' assets. However, PIABA also believes a more uniform approach should be taken as to registered persons' required reporting when such an appointment takes place.

### **Background**

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "'34 Act"), FINRA is filing with the U.S. Securities & Exchange Commission ("SEC" or the "Commission") a proposed rule change to adopt Rule 3241 to provide uniform procedures when a registered person is named a customer's beneficiary or asked to hold a position of trust for a customer. The public comment period runs through July 30, 2020.

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### Comments

As FINRA notes, conflicts of interest frequently arise in situations where registered representatives are named as beneficiaries or hold positions of trust. Senior and cognitively impaired investors are particularly vulnerable, and problems may not be discovered by family members for years. PIABA members have encountered countless situations when representing investors or investors' families where a registered representative was given effectively complete authority to do with an investor's money or accounts whatever the registered representative wanted with virtually no oversight. This has resulted in many situations where vulnerable investors have been victimized when a trusted advisor invests a client's money in a broker's outside business activity, uses the client's money to invest in high commission products, or, sometimes even simply stealing the client's money. That includes taking a client's money by becoming a beneficiary of the client's estate, which is a crucial issue that the proposed rule addresses. Requiring advisors to disclose their interests – whenever they learn of them – will inform the registered person's supervisors of such a relationship and should increase the scrutiny and oversight to which those accounts are subjected. PIABA also sees meaningful benefit in the proposed rules' mandate that a supervising brokerage firm would have more information available when supervising transactions in an account for which the firm is on notice the registered person has a financial interest.

PIABA agrees the adoption of new Rule 3241 creating a uniform, national standard to govern registered persons holding positions of trust will better protect investors and provide consistency across member firms' policies and procedures. However, PIABA believes the proposed rule should go further and also prescribe a **uniform** written notice provision rather than permitting individual member firms to specify the required form of written notice for its registered persons. Lastly, PIABA agrees that a detailed assessment must be done, upon notification of the registered person's appointment, to determine and assess the potential risks created by the registered person's assuming beneficiary status or acting in a trust capacity. Such review should be mandatory and would add a necessary layer of protection for vulnerable clients and their families.

### Conclusion

For these reasons, PIABA supports the increased disclosure and supervisory requirements imposed under proposed FINRA Rule 3241, but we would also like to see uniformity in the notice provisions. The potential for conflicts of interest, when non-immediate family member registered persons are in positions as beneficiaries, trustees, etc. requires as many procedural safeguards as practicable for FINRA to fulfill its stated mission of investor protection.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel B. Edwards". The signature is fluid and cursive, with a long horizontal stroke at the end.

Samuel B. Edwards, President  
Public Investors Advocate Bar Association