



**VIA ELECTRONIC MAIL**

January 10, 2020

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

**Re: Regulatory Notice 19-36 – Registered Person Being Named a Customer’s Beneficiary or Holding a Position of Trust for a Customer**

Dear Ms. Piorko Mitchell:

On November 11, the Financial Industry Regulatory Authority (FINRA) published its request for public comment on a proposed rule to limit a registered person from being named a customer’s beneficiary or holding a position of trust for or on behalf of a customer (Proposed Rule).<sup>1</sup> The Proposed Rule would prohibit a registered person from being named a beneficiary or receiving a bequest from a customer’s estate, or holding a position of trust on behalf of a customer who is not an immediate family member, unless the registered person provides written notice and receives written approval from their firm.

The Financial Services Institute<sup>2</sup> (FSI) appreciates the opportunity to comment on this important proposal. FSI and its members are committed to preventing the financial abuse and exploitation of vulnerable adults and support the safeguards established by the Proposed Rule. We offer more detailed supportive feedback below.

**Background on FSI Members**

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 160,000 independent financial advisors, which account for approximately 52.7 percent of all producing

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<sup>1</sup> Regulatory Notice 19-36, FINRA Requests Comment on a Proposed Rule to Limit a Registered Person from Being Named a Customer’s Beneficiary or Holding a Position of Trust for or on Behalf of a Customer (November 11, 2019) available at: <https://www.finra.org/rules-guidance/notices/19-36>.

<sup>2</sup> The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

registered representatives.<sup>3</sup> These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).<sup>4</sup>

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$48.3 billion of economic activity. This activity, in turn, supports 482,100 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$6.8 billion annually to federal, state, and local government taxes. FSI members account for approximately 8.4% of the total financial services industry contribution to U.S. economic activity.<sup>5</sup>

### **Discussion**

FSI appreciates the opportunity to comment on the Proposed Rule. FSI is committed to the prevention of elder financial abuse and has created tools to assist members in identifying and reporting such abuse.<sup>6</sup> FSI and its members support FINRA's efforts to protect vulnerable adults from exploitation and undue influence by bad actors. The Proposed Rule does this by providing appropriate safeguards for firms and financial advisors while providing reasonable carveouts for immediate family members and allowing firms to make reasonable determinations in the case of existing relationships.

Specifically, the Proposed Rule establishes clear parameters for firms and financial advisors to follow. The Proposed Rule would prohibit a registered person from being named a beneficiary or receiving a bequest from a customer's estate or holding a position of trust on behalf of a customer who is not an immediate family member, unless the registered person provides written notice and receives written approval from their firm. Further, the Proposed Rule correctly requires that when acting as an executor or trustee or holding a power of attorney on behalf of a customer, a registered person shall not derive financial gain from acting in such capacity other than from fees and charges that are reasonable and customary for doing so.

The Proposed Rule would also require firms to establish written procedures to comply with the duty to perform a reasonable assessment and determination before approving a financial

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<sup>3</sup> Cerulli Associates, Advisor Headcount 2016, on file with author.

<sup>4</sup> The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

<sup>5</sup> Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2016).

<sup>6</sup> FSI's Elder Abuse Prevention Resource Center, available at [www.financialservices.org/elderabuse](http://www.financialservices.org/elderabuse).

advisor's request. This assessment would take into consideration several factors such as: potential conflicts of interest; the length and type of relationship between the financial advisor and customer; whether the facts and circumstances indicate that the customer has a physical or mental impairment; any indication of improper activity, conduct or undue influence; and the size of any bequest relative to the size of the customer's estate. Many firms already have similar policies and procedures in place to protect investors, financial advisors, and the firms themselves. The Proposed Rule clarifies the parameters that should be included in firms' policies and procedures, but appropriately allows member firms the flexibility to tailor the process to their unique business model.

The Proposed Rule appropriately does not penalize advisors who are not aware until a client passes that they have been named a beneficiary but requires them to seek approval once they know they have been named. Financial advisors often form close relationships with longstanding clients. As mentioned above, their strong ties to their communities and neighbors make them uniquely situated to help those clients plan for and achieve their investment goals. Further, financial advisors are often the first to notice signs of possible cognitive decline or elder abuse and are best positioned to report it. Often financial advisors do not know that they have been named a customer's beneficiary. The Proposed Rule appropriately applies when the registered person learns of his or her status. Further, the Proposed Rule allows firms to take into account whether the request involves a long standing friend and does not apply to immediate family members. The Proposed Rule defines 'immediate family' broadly enough that we do not think there will be unintended consequences, however, we suggest that the final definition clarify 'cousin' to mean first cousins only rather than second or more distant cousins.

### **Conclusion**

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,

A handwritten signature in blue ink that reads "Robin Traxl". The signature is fluid and cursive, with a large, stylized "R" at the beginning.

Senior Vice President, Policy & Deputy General Counsel