



ST. JOHN'S
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Via Email To pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington, D.C. 20006-1505

**Re: 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**

Dear Ms. Mitchell:

The St. John's University School of Law Securities Arbitration Clinic (the "Clinic") would like to thank you for the opportunity to comment on Regulatory Notice 19-36, in which 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. The Clinic is a curricular offering where students represent public investors of limited means in disputes against their investment brokers.¹ Our clients are often seniors who have entrusted their retirement savings to brokers and their firms. We see firsthand what can go wrong when that trust is violated.

In summary, FINRA proposes to adopt Rule 3241, which seeks to limit a registered person from being named a customer's beneficiary or from holding a position of trust for or on

¹ For more information, please see <http://www.stjohns.edu/law/securities-arbitration-clinic>.

behalf of a customer. Under this proposed rule, a registered person could only hold a position of trust for or on behalf of a customer if the broker does not gain financial benefits from the position of trust, except for reasonable fees that are customary, and if the registered person also obtains approval from their member firm.

As a result, Rule 3241 would require member firms to conduct a reasonable analysis of the potential risks created by a registered person acting in a position of trust and to reasonably determine whether a registered person should be approved to hold such a position. Additionally, member firms would be required to have written procedures to comply with Rule 3241 and to keep all records of approvals granted under this rule for at least three years following the termination of a registered person acting in a position of trust.

This rule is an effort by FINRA to protect investors from abusive and predatory practices that may arise from a broker being appointed to a position of trust and then abusing that position by taking advantage of the relationship between the broker and the investor. The Clinic is greatly concerned with brokers gaining the trust of their customers and then abusing that trust by being appointed as a beneficiary, trustee, or power of attorney. Therefore, the Clinic applauds FINRA's efforts to increase investor protection through Rule 3241.

The Clinic not only supports Rule 3241 because it would mitigate harm caused by brokers abusing positions of trust, but also because the Clinic believes member firms are in the best position to identify and prevent this type of harm, since member firms have the capability to evaluate, monitor, and restrict their broker's conduct.

FINRA has taken other steps to prevent misconduct that may arise from brokers holding positions of trust. Thus, Rule 3241 is just another step to further address potential misconduct in this area. However, the Clinic believes FINRA should further expand or take even further steps beyond Rule 3241 to ensure investor protection. For example, the Clinic has seen brokers obtain positions of trust with customer shortly after being terminated by their firms. For example, one broker was named as a power of attorney over the customer's accounts after he had been terminated by the firm. Others have obtained other authorization to access and trade the customer's accounts, sometimes investing the customer's funds in fraudulent schemes. The Clinic understands that investors have access to BrokerCheck to get information about brokers, including their employment status and reason for termination. However, most investors still do not know about BrokerCheck or what BrokerCheck does. Therefore, the brokers themselves or their prior firms are the customers' primary source of information. Most firms will not disclose information pertaining to the termination of brokers, likely because of concerns about potential liability.

When a broker is terminated for cause, that information should be made known to clients, without the client having to do their own due diligence through BrokerCheck. Moreover, if the firm receives notification that a customer has appointed a terminated broker to a position of trust, the firm should be obligated to affirmatively disclose to the customer the reason for the broker's termination. Thus, the Clinic believes FINRA should expand Rule 3241

or propose additional rules that would require member firms to disclose termination information to investors who may continue to rely on that individual.

In conclusion, the Clinic supports FINRA's proposal as an additional means of addressing abusive and predatory actions by brokers in positions of trust. The steps proposed by FINRA will help ensure that investors are protected and that their relationship of trust with their broker is not abused. However, the Clinic encourages FINRA to consider additional amendments that would require member firms to disclose information about a broker's employment status and reason for termination that would otherwise be available on BrokerCheck.

Thank you for the opportunity to comment on these important proposals.

Respectfully Submitted,

/s/
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Legal Intern

/s/
Christine Lazaro, Esq.
*Director of the Securities Arbitration Clinic
and Professor of Clinical Legal Education*