



January 10, 2020

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

Dear Ms. Mitchell:

The American Securities Association (ASA)¹ welcomes the opportunity to comment on the Financial Industry Regulatory Authority's (FINRA) proposed Rule 3241 – Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer ("Proposal").² ASA supports the Proposal and appreciates the careful work FINRA conducted to address an important investor protection issue.

The relationship between retail investors and their investment advisor is built on trust. The ASA strongly supports efforts by FINRA and the Securities and Exchange Commission (SEC) to enforce rules that prevent unscrupulous actors from taking advantage of their clients, particularly those who are elderly, vulnerable, or may not have the capacity to make sound decisions on their own. These practices are shameful and they only serve to impugn the reputation of the entire financial services industry.

As the Proposal notes, one area of necessary oversight for firms and regulators are cases in which registered representatives of brokerage firms have been named as a customer's beneficiary, executor, trustee, or as a power of attorney for the customer. While such designations can be common practice for instances in which the registered representative is a family member, there is also the potential for abuse.

The Proposal is careful not to prohibit a registered representative from being named a beneficiary or holding a position of trust with a customer in certain instances. For example, where a longstanding friend or non-immediate family member of a broker wishes to name the broker as a beneficiary or have them serve as power of attorney at a certain point in time. There are valid reasons for these arrangements to exist, and FINRA should not seek an outright prohibition on such designations.

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

² Regulatory Notice 19-36



The Proposal would require FINRA member firms to have sufficient procedures in place to protect against wrongdoing, and that firms are made aware in writing that a customer wishes to name a representative as a beneficiary *prior* to such a designation being made. These are reasonable requirements that would not upset legitimate cases where a broker is to be named a beneficiary or granted a position of trust.

We are pleased that the Proposal recognized that many firms already have some type of policy in place to limit or prohibit beneficiary designations that do not involve a familial relationship. We believe that the Proposal strikes the correct balance as it would not prohibit firms from implementing their own more stringent policies than outlined under Rule 3241, but it does provide some baseline expectations for what firms should do to prevent abuses.

FINRA member firms are in the best position to identify ‘red flags’ in this area and would be further empowered to do so under the Proposal.

In response to one of the questions put forth in the Proposal, we believe that for most firms, the Proposal would not fundamentally alter current practices or significantly increase the costs of compliance. However, it would help crack down on those instances where unscrupulous actors within the industry try to exploit existing loopholes within the regulatory framework.

We believe that the Proposal will ultimately benefit and protect investors and look forward to working with FINRA as this initiative moves forward.

Sincerely,

Christopher A. Iacovella
Chief Executive Officer
American Securities Association