



PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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February 14, 2022

Via email to: pubcom@finra.org
Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: **FINRA Regulatory Notice 21-43**
(FINRA proposed amendments to FINRA Rule 3240 and Retrospective Rule Review report)

Dear Ms. Piorko Mitchell:

I write on behalf of the Public Investors Advocate Bar Association (“PIABA”), an international, not-for-profit, voluntary bar association that consists of attorneys who represent investors in disputes with the securities industry. Since its formation in 1990, PIABA’s mission has been to promote the interests of the public investor by, among other things, seeking to protect such investors from abuses in the arbitration process, seeking to make the arbitration process as just and fair as possible, and advocating for public education related to investment fraud and industry misconduct. Our members and their clients have a fundamental interest in the rules promulgated by the Financial Industry Regulatory Authority (“FINRA”) that govern the practices of brokers and broker-dealer firms.

PIABA welcomes the opportunity to comment on the proposed amendments to FINRA Rule 3240 and the retrospective rule review report. In October 2019, PIABA commented on FINRA’s retrospective review that, among other things, sought feedback on the effectiveness of FINRA Rule 3240 which is a prohibition on borrowing from or lending to customers. PIABA’s position was, and largely remains what we previously described:

Rule 3240 has been effective in protecting investors and public interest, specifically by addressing potential misconduct relating to associated persons of broker-dealer firms borrowing from or lending money to customers. Specifically, the Rule has served to deter fraud and manipulative practices involving senior investors’ retirement savings by prohibiting such conduct. PIABA believes that, in situations where one of the enumerated exceptions apply, the current rule is broad enough to cover those instances in which lending or borrowing money from customers may be

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acceptable. Importantly, such situations first require appropriate disclosures and pre-approval by the broker-dealer firm, which is crucial to ensuring compliance with the Rule.

In this follow-up rule review, PIABA emphasizes that the obvious conflicts of interest and possibilities for abuse when registered representatives borrow or lend money to clients are major problems. FINRA Regulatory Notice 21-43 seemingly strengthens Rule 3240 and PIABA supports the effort. In fact, the simple step of changing the name of the rule from “Borrowing from or Lending to Customer” to “*Prohibition on Borrowing from or Lending to Customers*” makes FINRA’s position on the topic very clear. (Emphasis added). There should be no doubt that these arrangements between registered persons and customers are not allowed in the financial services industry. The name change would leave no doubt. Violators of the rule have no excuse.

More specifically, strengthening the rule to broaden it and apply it to borrowing or lending arrangements that pre-exist the broker-customer relationship is a good amendment. Conflicts of interest would exist in the relationship irrespective of whether or not a lending arrangement existed before or after the broker-customer relationship is established. PIABA supports making clear that if a broker is already in a non-exempt lending relationship with a person that said person may not become a client.

Similarly, PIABA supports extending the definition of customer to those with existing accounts *and* those who had accounts with a registered person in the previous six months. In fact, based on the time it takes to unwind some position a registered representative might recommend, PIABA suggests that FINRA extend the proposed cooling off period to one year or more.

It is also a good idea to make clear that the prohibition extends to not just the registered person themselves but also to a person or entity related to the registered person. The same or very similar conflict of interest is present if a registered representative’s close family member obtains a loan from a registered representative’s client just as if the registered representative obtained it themselves. Knowing a relative or related entity stood to potentially benefit from a client’s well-being creates the potential for a conflict to arise.

Finally, PIABA is in favor of modernizing the “immediate family” definition and limiting the “personal relationship” and “business relationship” exceptions. The risk of harm here is too great to leave the potential for abuse. PIABA commends any effort to limit the exceptions and make very clear that this conduct is not allowed.

PIABA acknowledges and appreciates the opportunity to comment on this important issue. PIABA applauds FINRA’s effort to root out the problem that taking loans from clients or lending money to clients presents. We thank you for the opportunity to comment and urge FINRA to continue its efforts to curb this abusive conduct.

Sincerely,



Michael Edmiston
President, PIABA