United States Senate
WASHINGTON, DC 20510

May 21, 2019

Mr. Robert W. Cook
President and Chief Executive Officer
FINRA
1735 K St NW
Washington, D.C. 20006

Dear Mr. Cook,

We write to request that FINRA promptly issue guidance or initiate rulemaking to curb the ability of broker dealers and other financial professionals to inherit from their clients. FINRA has the responsibility to police unethical behavior by broker dealers and other financial professionals. Bequests from clients to brokers are inherently problematic because of the conflict of interest it creates between the broker's professional obligations and personal interests.

This is a significant problem, especially as it relates to elderly or vulnerable adults. Most recently, as reported on April 6, 2019 in an article by Gretchen Morgenson of the *Wall Street Journal,* a Maryland financial adviser received $500,000 through variable annuities in the will of a client who was suffering from dementia and had lived in a nursing home since at least 2016. As noted in the article, the client, who reportedly lacked competency at the time, had requested the funds to be given outside of the probate process in the months prior to her passing and the advisor neglected to notify the firm of the bequest, as per the firm's supervisory procedures.[i]

While an arbitration panel in a forum administered by FINRA criticized the advisor's decision, calling it "not consistent with just and equitable principles of trade," the panel did not decide against the advisor, nor did FINRA bring an enforcement case against the advisor or his firm.[ii]

FINRA Rule 2010 requires that "its members [broker-dealer firms], in the conduct of its business shall observe high standards of commercial honor and just and equitable principles of trade" and broker dealer firms are required to have supervisory systems reasonably designed to achieve compliance with this requirement. Towards this end, many firms implement supervisory procedures to prohibit their advisors from receiving bequests from clients except under limited circumstances. However, we understand that these requests are not specifically prohibited by rule; bequests from clients are inherently problematic. Given that there are no specific rules prohibiting this conduct, we urge FINRA to implement new guidance or initiate rulemaking which would explicitly prohibit financial advisors from receiving bequests from clients with some limited exceptions such as for family members. New guidelines should ensure that brokers and firms who break these rules should forfeit the bequests, pay large fines and/or be unable to serve as financial professionals in the future. FINRA already recommends such sanctions for similar misconduct, such as conversion and improper use of funds of securities.

Please let us know what rulemaking FINRA might engage with in the future to protect investors from manipulative and predatory behavior from broker dealers and other financial professionals under FINRA's supervision. We look forward to hearing back from you by June 18, 2019.

Sincerely,

Catherine Cortez Masto
United States Senator

M. Michael Rounds
United States Senator

Chris Van Hollen
United States Senator

Tina Smith
United States Senator

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[i] Morgenson, Gretchen. "A State Investigator, the Financial-Adviser 'Heir' and an Elderly Client: How Lines Get Blurred in Insurance Regulation." *Wall Street Journal*. April 6, 2019. Available at: https://www.wsj.com/articles/a-state-investigator-the-financial-adviser-heir-and-an-elderly-client-how-lines-get-blurred-in-insurance-regulation-11554548401

[ii] *Ibid.*