

New FINRA Rule Limits Registered Persons From Being Named Customer's Beneficiary

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The Financial Industry Regulatory Authority (FINRA) has announced that it has adopted a rule to limit a registered person from being named a customer's beneficiary, executor, or trustee or from holding a power of attorney or similar position of trust on behalf of a customer. The new rule becomes effective February 15, 2021.

New Rule 3241, "Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer," would protect investors by requiring all FINRA member firms to affirmatively address situations where registered persons (whether or not employees) are named to these positions, according to the organization. Rule 3241 requires the registered persons to provide written notice to the member firms with which they are associated, then the firms must review and approve or disapprove the registered person assuming such status or acting in such capacity. Rule 3241 does not apply where the customer is a member of the registered person's "immediate family" as defined in the rule.

Registered Person's Obligations

Rule 3241 provides that a registered person must *decline*:

(1) Being named a beneficiary of a customer's estate or receiving a bequest from a customer's estate upon learning of such status, unless the registered person provides written notice upon learning of such status and receives written approval from the member firm prior to being named to such status, or upon learning of appointment to such status; *and*

(2) Being named as an executor or trustee or holding a power of attorney or similar position for or on behalf of a customer, *unless*:

(a) Upon learning of such status, the registered person provides written notice and received written approval from the member firm prior to acting in such capacity or receiving any fees, assets, or other benefit in relation to acting in such capacity; *and*

(b) The registered person does not derive financial gain from acting in such capacity other than from fees or other charge that are reasonable and customary for acting in such capacity.

Rule 3241 does not prohibit a registered person from being named a beneficiary of or receiving a bequest from a customer's estate.

Further, registered persons who do not have customer accounts assigned to them are not subject to the Rule.

Member Firm's Obligations

Rule 3241 does not prescribe any form of written notice, but rather permits member firms

to specify the form of notice for its registered representatives.

Upon receipt of a written notice, the rule requires the member firm to:

1. Perform a reasonable assessment of the risks created by the registered person's assuming such status or acting in such capacity; *and*
2. Make a reasonable determination of whether to approve the registered person acting in such capacity or assuming such status, to approve it subject to specific conditions, or to disapprove it.

If the member firm imposes conditions or limitations on its approval, the member firm is required to reasonably supervise (in accordance with FINRA Rule 3110, Supervision) the registered person's compliance with the conditions or limitation.

If a registered person is approved to hold (and receive compensation for) a position of trust for a customer whose account is held *away from the member firm*, the requirements of both Rule 3241 and FINRA Rule 3270 (Outside Business Activities of Registered Persons) would apply to the activities away from the member firm.

Rule 3241 also requires member firms to establish and maintain written procedures to comply with its requirements. The procedures must include a requirement to preserve the written notice and approval for at least three years after the date the beneficiary status or position of trust has terminated or the bequest received or for at least three years, whichever is earlier, after the registered person's association with the firm has terminated.

If a registered person was named as a beneficiary or to a position of trust prior to the registered person's association with a member firm, the Rule 3241 requires the registered person, within 30 calendar days of becoming so associated, to provide notice and receive approval from the member firm consistent with the rule, in order to continue to maintain the beneficiary status or position of trust. Likewise, Rule 3241 requires the registered person and member firm to act consistent with the rule for any existing beneficiary status or position of trust entered into prior to the existence of the broker-customer relationship.

Jackson Lewis attorneys are available to answer questions concerning Rule 3241 and other workplace developments.

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