



## New FINRA Rule Restricts Financial Advisors' Ability to be a Beneficiary or Hold Position of Trust for clients.

By: Joshua Weijer

The Financial Industry Regulatory Authority (FINRA) is an independent, nongovernmental organization that writes and enforces the rules governing registered brokers and broker-dealer firms in the United States. As part of Its stated mission to “to safeguard the investing public against fraud and bad practices.” The organization has adopted Rule 3241, limiting the ability of a FINRA registered financial broker/advisor (advisor) to be named as a beneficiary, executor, trustee, or power of attorney for their clients.

Rule 3241 becomes effective February 15, 2021, and will help protect clients from unscrupulous financial advisors and limit advisors from holding “positions of trust” for clients.

Unless the client is a member of the advisor’s immediate family, the advisor shall decline being named a client’s beneficiary, trustee or executor, being given power of attorney or receiving a bequest from a customer’s estate.

The new rule will require brokers/advisors to inform their firm in writing that they are named as a client’s beneficiary or are holding a position of trust for a client. The firm must assess the relationship and approve or disapprove of the fiduciary relationship.

Rule 3241 addresses the numerous conflicts of interest that arise when a financial advisor could benefit by providing inappropriate or undue influence over important financial

matters to the client’s detriment. The rule addresses these potential conflicts, which may not become known to the firm, or other beneficiaries of the client, for months or even years. As noted in the comments to the rule, FINRA states that “senior investors who are isolated or suffering from cognitive decline are particularly vulnerable to harm.”

Immediate family is defined as parents, grandparents, mother-in-law or father-in-law, spouse or domestic partner, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person who resides in the same household as the advisor and the advisor financially supports, directly or indirectly, to a material extent. This includes step and adoptive relationships

The attorneys at Sulloway & Hollis are here to assist if you have questions regarding this new law. Our Tax, Trusts & Estates practice group professionals provide legal guidance to clients across New England.



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