

REQUEST FOR COMMENT

April 3, 2019

The Massachusetts Securities Division (the “Division”) of the Office of the Secretary of the Commonwealth is proposing to amend 950 MASS. CODE REGS. 12.205(8) (the “Regulations”) in two respects as it relates to investment advisers. Specifically, the Division is proposing and requesting comment on amendments that would (1) require each investment adviser registered in Massachusetts to provide clients and prospective clients with a stand-alone Table of Fees for Services (the “Fee Table”) indicating the fees charged for services offered by the investment adviser, and (2) revise paragraphs (a) and (d) of the Regulations to remove redundancy and potential ambiguity in those paragraphs as currently drafted.

1. Proposed Amendment Requiring Investment Advisers Registered in Massachusetts to Provide Clients and Prospective Clients with a Fee Table

A. Summary of Proposed Amendment Requiring the Use of a Fee Table

Investment advisers currently disclose information about the services that they offer and the associated fees and costs in a narrative format in Form ADV Part 2A (the “Brochure”). The proposed amendments will require investment advisers who are registered in Massachusetts to distill this information into a Fee Table, in accordance with the instructions and parameters prescribed by the Division.

The Fee Table will be a one-page, stand-alone document. Investment advisers will update the Fee Table annually, in accordance with the timing of the required annual amendments to Form ADV Parts 1 and 2. Investment advisers will deliver the Fee Table to clients prior to or at the time of signing the advisory contract, and deliver or offer delivery of the Fee Table annually in accordance with the existing requirements for delivery of the Brochure. If the investment adviser has a website, the Fee Table must be readily available and easily accessible on the website. If the investment adviser’s website has an internal search feature, a search for the term “fee” or “fees” should return a link to the Fee Table as one of the top results.

The Fee Table is not intended to replace the more detailed disclosure of fees and services in the investment adviser's Brochure. Instead, the Fee Table is intended to supplement the existing disclosures and help investors understand and use this important information.

B. Background and Purpose of Proposed Amendment Requiring the Use of a Fee Table

The Division's goal is to increase transparency of advisory fees and costs, aid comprehension of advisory fees and costs, and enable investors to make more informed decisions when choosing their investment advisers. The Fee Table will achieve this goal by distilling the information about fees and services from the investment adviser's Brochure into a simple, digestible format that will enable side-by-side comparison of investment advisers and facilitate more informed questions and conversations about services and fees.

In recent years, the types of services and fee models offered by investment advisers have become more varied and complex. The Division has noted the evolution of novel fee structures, the increasing delegation of asset management services to third parties (including robo-advisers), and an increasing emphasis on financial planning. While some investment advisers provide only asset management services, other investment advisers include a range of financial planning services within their assets under management fee. A growing number of state-registered investment advisers are migrating away from a traditional assets-under-management fee, and toward new fee models, including, but not limited to, retainer fees, subscription fees, and fees based on net worth or household income instead of the amount of client assets under management. Additionally, the delegation of asset management to third parties often results in the payment of fees to these third parties on top of the fees paid to the investment adviser.

These developments have led to more complex disclosures by investment advisers in the Brochures that can be difficult to understand for many investors, and may represent a barrier to those most in need of clear financial advice.¹

It is therefore increasingly important that investors seeking financial advice have easy access to the information they need to make informed decisions affecting their financial wellbeing. Investors must be able to read and understand information about whom exactly they will be paying for what services, including whether financial planning services are included or are considered an additional service for which they are charged separately, and whether the adviser will be delegating asset management functions to a third party for an additional fee.

C. Summary of Preliminary Comments on Model Fee Table

Between February 7, 2018 and July 16, 2018 (the "Preliminary Comment Period"), the Division requested preliminary comment on a proposed model fee table for state-registered investment advisers.² The

¹ See Kyre Dane Lahtinen, Stephan Shipe, *Readability of financial advisor disclosures*, 44 J. Empirical Fin. 36-42 (2017) (analyzing readability of Form ADV Part 2 disclosures). Professor Shipe was a participant in the Division's fee table working group, discussed below.

² An electronic copy of the Division's Preliminary Request for Public Comment can be found at <https://www.sec.state.ma.us/sct/sctfeetable/preliminaryfeetableidx.htm>.

Division received and considered approximately forty-one public comments. The proposed amendments reflect certain changes to the Fee Table and its instructions, which were implemented in response to the public input provided during the Preliminary Comment Period. Multiple comments indicated concern regarding the perceived duplication of disclosures, the perceived compliance burden, and whether the Fee Table adequately communicates differences in the scope and quality of services provided by different investment advisers. The Division has considered these concerns and does not believe that they negate the necessity or effectiveness of the Fee Table.

There is academic research suggesting that the average Brochure is difficult to read for most investors and the readability of Brochures has decreased since the financial crisis.³ The research also suggests that Brochures tend to become more difficult to read as investment advisers offer a wider range of services to a wider range of clients, and that the available guidance on how to write the Brochure in “plain English” is inadequate.⁴ These findings demonstrate the necessity of a concise, easy-to-read supplement to the existing disclosure documents, such as the Fee Table.

Further, the Division believes that the compliance burden for the proposed amendment will be minimal. The one-page Fee Table will be prepared using information that is readily available to the investment adviser and should already be in the investment adviser’s Brochure. The Division has developed a fillable template that will be made available on the Division’s website. Additionally, the requirements for updating and delivering the Fee Table will be the same as those already applicable to the Brochure.⁵ Finally, enforcement of the proposed amendments, including the Fee Table, would be deferred until January 1, 2010. Thus, both the material cost and the need for assistance from legal and compliance personnel will be minimized.

The Division acknowledges that the Fee Table may not fully delineate all differences in the scope and quality between one investment adviser’s services compared to another’s, such as financial planning. However, the Fee Table will not replace the investment adviser’s Brochure, and will expressly refer the reader to the Brochure for a more detailed description of services. Investment advisers will not lose the ability to distinguish themselves from others, and should be able to do so in their Brochures and in conversations with potential clients.

D. *Fee Table Working Group*

Beginning on August 1, 2018, the Division convened a working group to further develop the Fee Table with direct input from stakeholders. The participants in the working group included representation from the investment adviser community, financial academia, and two securities industry trade groups. The working group met in person four times between August 1, 2018 and February 28, 2019. During the meetings, the working group discussed all aspects of the Fee Table and its instructions, including format, content, execution, and the value added for investors by the Fee Table.

³ See Lahtinen and Shipe, *Readability of financial advisor disclosures*, 44 J. Empirical Fin. 36-42, 40.

⁴ See Lahtinen and Shipe, *Readability of financial advisor disclosures*, 44 J. Empirical Fin. 36-42, 37.

⁵ Like delivery of Form ADV, delivery of the Fee Table may be done electronically.

Investment adviser participants tested the instructions by preparing their own Fee Tables and solicited feedback on their respective Fee Tables from current and potential advisory clients. The feedback received from those current and potential advisory clients reinforced the value of simplified fee and service disclosures in the form of a table, as well as the efficacy of the Fee Table as further developed by the Division in cooperation with the working group.

2. Proposed Amendment Revising the Regulations to Remove Redundancy and Potential Ambiguity

Paragraphs (a) and (d) of the Regulations as currently drafted appear to require similar disclosures by investment advisers to clients, but are ambiguous with respect to the timing of the disclosures.

Specifically, paragraph (a) currently requires that a copy of Form ADV Part 2, or an equivalent disclosure document, be provided to clients “at least 48 hours before entering into a contract, or, if given the statement at the time of entering the contract, the client must be given the option to cancel the contract within five business days.”

Paragraph (d) of the Regulations provides that the disclosure obligations in MASS. GEN. LAWS ch. 110A, § 203A(a) “will be met” by delivery of Form ADV Part 2 or an equivalent disclosure document, any information required to be disclosed under the Investment Advisers Act of 1940, and a notice that disciplinary history of the investment adviser and its representatives can be obtained from the Division. Paragraph (d) is less specific than paragraph (a) with respect to the timing of these disclosures, requiring that these disclosures be provided “prior to the client entering into an advisory contract[.]”

The Division proposes to simplify the Regulations in the following ways:

- moving all affirmative disclosure requirements from paragraph (d) into paragraph (a); and
- revising paragraph (d) to provide that compliance with paragraph (a) will be deemed to satisfy the requirements in MASS. GEN. LAWS ch. 110A, § 203A(a).

This proposed simplification will streamline the Regulations, remove redundancy in paragraphs (a) and (d), and remove any potential ambiguity regarding the required disclosures and the timing for making the required disclosures. The Division does not believe that these changes will materially alter the substantive requirements of the Regulations.

COMMENT SUBMISSION PROCESS

The Division should receive written comments on the proposed amended regulations no later than **Friday, May 3, 2019 at 5:00 p.m.**

We will post comments on the Massachusetts Securities Division website and comments are subject to public records laws. We do not edit personal identifying information from submissions; submit

only information that you wish to make available publicly.

Submission via Mail

Please mail any comments on the proposed amendments to:

Office of the Secretary of the Commonwealth
Attn: Proposed Regulations – Fee Table
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

Submission via Facsimile

Faxed comments may be sent to (617) 248-0177. Comments sent via facsimile should include a cover sheet to the attention of “Proposed Regulations.”

Submission via Email

Email comments or submissions of scanned comment letters attached to an email may be submitted to securitiesregs-comments@sec.state.ma.us.

If you have questions about either of the proposed amendments, you may contact Carol Anne Foehl, Esq. or Dylan White, Esq. at (617) 727-3548.

PUBLIC HEARING

A public hearing on these proposed changes will be held at **10:00 a.m. on Thursday, May 2, 2019** at One Ashburton Place, 17th Floor, Boston, MA 02108.

Interested parties will be afforded an opportunity to orally present data, views, and arguments relative to the proposed action. Written presentations may be made at the hearing or submitted at any time prior to the close of business on **Friday, May 3, 2019** to the Massachusetts Securities Division via mail, facsimile, or email, as provided above. Copies of the proposed amendments are available on the Division’s website at <http://www.sec.state.ma.us/sct/sctidx.htm>, or by calling (617) 727-3548 or emailing MSD@sec.state.ma.us.