

Preliminary Request for Public Comment on Proposed Fee Table for State-Registered Investment Advisers

February 7, 2018

The Massachusetts Securities Division (“Division”) is seeking preliminary comments on a proposed regulation that would require investment advisers who are registered with the Division to create a fee table for advisory clients. The proposed fee table is intended to increase transparency, aid comprehension of advisory fees, and enable comparison shopping of investment advisers. The fee table would be delivered to current and prospective advisory clients and included on an investment adviser’s website, if applicable.

This preliminary solicitation of comments will be reviewed by the Division and then be publicly published. If the Division decides to propose a fee table regulation, a formal regulation proposal will follow in which public comments will be solicited pursuant to the Massachusetts Administrative Procedure Act. Substantive input and comments from stakeholders will help assist the Division in considering the feasibility of implementing a fee table as well as the fee table’s content and structure.

Background of Fee Table

Recent changes have occurred in the financial services industry, marked by evolving fee structures, delegation of asset management services and increasing emphasis on financial planning. These developments have created the need to increase transparency, aid comprehension of advisory fees, and enable comparison shopping of investment advisers.

These changes have resulted in an increasing number of state-registered investment advisers that charge for advisory services using new types of fee structures. Investment adviser fee arrangements currently include new fee models, including, but not limited to, retainer fees, subscription fees, third-party advisory fees, robo-adviser fees, and fees based on net worth or household income.

Investors need transparency of services and fees as investment advisers increasingly use third party money managers, including robo-advisers, to manage client assets, which are subject to their own advisory fees. Some investment advisers solely provide “investment monitoring” or “investment supervision” of client portfolios, while asset management duties are fulfilled by third parties. These myriad of services and fees provided by third parties need to be clearly disclosed to clients.

Furthermore, investment advisers who charge a fee based on a percentage of assets-under-management vary in the extent of services that they offer to clients. While some investment advisers provide only portfolio management services, other investment advisers include a range of financial planning services within their assets-under-management fee. Clients should be aware

of the investment adviser's scope of services, including whether financial planning services are included in the fee arrangement or are considered an additional service for which they are charged separately.

Purpose of Fee Table

The Division's goal is to increase transparency, aid comprehension of advisory fees, and enable comparison shopping of investment advisers. An investment adviser would create one fee table, which includes all fees and services provided by the investment adviser. The fee table would be delivered annually to clients along with the investment adviser's Form ADV Part 2 and would not be a replacement for an investment adviser's current disclosure requirements. The fee table should be simple to read and structured in a way that makes it easy for clients to compare fees between investment adviser firms. The proposed instructions provide additional guidance as to the attributes of the fee table.

Guidelines of Fee Table

- A paper version of the fee table should be given to prospective clients in conjunction with Form ADV Part 2 or other disclosure document, in compliance with 950 MASS. CODE REGS. 12.205(8)(a).
- The fee table should be updated annually and delivered annually in paper or electronic form to the investment adviser's current advisory clients.
- If the investment adviser has a website, the fee table should be readily printable in chart form from the investment adviser's 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 responses.

Feedback Solicitation

To facilitate the Division's assessment of the proposed fee table, an email box is now available for members of the public to make their views on these issues known publicly in advance of a formal regulation proposal. The Division welcomes public views on the following questions, as well as other information the public believes to be relevant in consideration of the fee table. For each comment that responds to one of the below questions, provide an explanation of your comment.

- Please comment on the potential for investor confusion caused by new advisory fee models. Could this confusion be best addressed through the fee table or would you suggest other methods? If you would suggest other methods, explain your suggestions.
- Do the proposed fee table column titles and permissible categories of services provide investment advisers with adequate flexibility to describe their fees and services? If not, provide suggestions of how this could be accomplished.

- For investment advisers that have several fee models depending on the services provided to a client, would the proposed fee table be readily understandable to clients? If not, provide suggestions of how to accomplish this goal. Should an investment adviser create multiple fee tables if it uses more than one fee model?
- If an investment adviser's advisory fee includes the fees of sub-advisors within it, how should investment advisers disclose the advisory fees of these third party money managers and robo-advisers to clients? If third party advisory fees are charged separately to the client by a third party money manager, should these fees be disclosed by the state-registered investment adviser? Explain why or why not.
- How should additional fees charged by parties other than the investment adviser, such as mutual fund fees or trading costs, be disclosed? The proposed fee table does not include third party commissions or costs. Should commissions, mark-ups or brokerage fees of the client's custodian be included in the proposed fee table? If not, why?
- The proposed fee table includes a field for total fees. Are advisers able to readily disclose the total fees for their services? Would the total fee disclosure be understandable to consumers?
- For investment advisers who charge fees based on a percentage of assets-under-management, how should the fee table distinguish between advisers who provide financial planning services and those who provide only portfolio management services? How should the fee table distinguish between investment advisers who create a one-time financial plan in comparison to those who provide ongoing financial planning services?
- Please comment on the proposed fee table's costs, benefits and economic effects on investment advisers. Would the proposed regulation be unduly burdensome for state-registered investment advisers to implement? Approximately how much time and cost would an investment adviser incur to create the proposed fee table?

To the extent that your comment responds to one of the above questions, please state the question before your response. The Division will post all comments without change and persons submitting comments are cautioned to submit only information that they wish to make publicly available. Comments may be submitted by emailing securitiesregs-comments@sec.state.ma.us. If you have questions about the proposed fee table, you may contact Jennifer Kim-Gagne, Esq. or Carol Anne Foehl, Esq. at 617-727-3548.

Exhibit 1.



Table of Fees and Services

The below fees do not include fees of third parties, such as commissions, mark-ups or brokerage fees which, if included, would increase the overall costs for clients. Carefully read Item 4 and Item 5 of Form ADV Part 2 (“Brochure”) for more details of Iceberg Asset Management’s advisory services and fees, respectively. Fees below may not apply to all clients. Fees are negotiable.

Fees Charged by Investment Adviser	Fee Amount	Frequency Fee is Charged	Services
Assets Under Management Fee	1-2% of Assets under Management Annually	Quarterly	Portfolio Management and Financial Planning
Hourly Fee	0	N/A	N/A
Subscription Fee	0	N/A	N/A
Fixed Fee	0	N/A	N/A
Commissions	0	N/A	N/A
Performance-based Fee	0	N/A	N/A
Other	0	N/A	N/A
Other	0	N/A	N/A
Other	0	N/A	N/A
Fees Charged by Third Parties	Fee Amount	Frequency Fee is Charged	Services
Third Party Money Manager	0	N/A	N/A
Robo-Adviser Fee	0	N/A	N/A
Fee Total	1-2% of Assets under Management Annually		

Effective as of 02/07/2018

Table 1.

Key Features of the Fee Table (See Exhibit 1).

Feature	Description
1. Document Header	Investment Adviser name and logo (if applicable)
2. Document Title	Table of Fees and Services
3. Preamble	<p>Located below the Document Title and above the Table of Fees</p> <p>Preambles may vary among investment advisers but should be brief and include at a minimum:</p> <ul style="list-style-type: none"> • A statement that the listed fees do not include commissions, markups, or brokerage fees of third parties, which may increase the overall cost. • Urge clients to carefully read Item 4 and Item 5 of Form ADV Part 2A for a complete explanation of services and fees. • A statement that the fees may not apply to all clients. • Whether the fees are negotiable.
4. Column Title	<p>Reading from left to right:</p> <p>Fees Charged by Investment Adviser / Fee Amount / Frequency Fee is Charged / Services</p>
5. Fees Charged by Investment Adviser	<p>Standard categories to organize fees listed under the Fees Charged by Investment Adviser Column:</p> <ul style="list-style-type: none"> • A percentage of assets under your management (“assets under management fee”) • Hourly charges • Subscription fees (for a newsletter or periodical) • Fixed fees (other than subscription fees) • Commissions • Performance-based fees • Other
6. Fees Charged by Third Parties	<p>A separate set of columns reading from left to right:</p> <p>Fees Charged by Third Parties / Fee Amount / Frequency Fee is Charged / Services</p> <p>Standard categories to organize fees listed under the Fees Charged by Third Parties Column:</p> <ul style="list-style-type: none"> • Third party money manager fee • Robo-adviser fee • Other
7. Fee Total	Aggregate of total annual fee amounts or ranges based on all fee types charged.
8. Date	Refers to most current and up-to-date version in use by the firm. May be placed in a footer.

An example of a completed fee table is attached as Exhibit 1. All fee names, definitions, and amounts are for illustrative purposes only.

Instructions for Fee Table (See also, Table 1 and Exhibit 1)¹

Name and Preamble

The fee table should show the investment adviser's name and logo, if applicable. It should be titled "Table of Fees and Services." A preamble should be included which states, at a minimum: that the listed fees do not include commissions, markups, or brokerage fees which increase the overall cost to clients; that a complete explanation of fees and services can be found in the firm's Form ADV Part 2A; that the fees may not apply to all clients; and whether the fees are negotiable.

Columns

The fee table should include four columns, each with its own heading (reading left to right): Fees Charged by Investment Adviser, Fee Amount, Frequency Fee is Charged, and Services. These four column headings should not be modified.

Fees Charged by Investment Adviser	Fee Amount	Frequency Fee is Charged	Services
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- **Fees Charged by Investment Adviser:** Fees will be listed under categories used by Form ADV Part 1A, Item 5.E. (reading from top to bottom): a percentage of assets under your management ("assets under management fee"); hourly charges; subscription fees; fixed fees; commissions; performance-based fees; and other. These categories should not be modified. However, investment advisers do have discretion to use the "Other" category to explain fees otherwise not covered (e.g., assets under advisement fee, educational seminar or workshop fee, household income fee, membership fee, net worth fee, retainer fee, advisory fees charged by a sub-advisor, or other).
- **Fees Charged by Third Parties:** Advisory fees of third parties will be listed under the following categories: third party money manager fee; robo-adviser fee; and other. Investment advisers have discretion to use the "Other" category to explain advisory fees charged by third parties that are otherwise not covered.
- **Fee Amount:** Fee amount or range of fee amounts for the corresponding advisory service.
- **Frequency Fee is Charged:** Frequency or intervals in which advisory fees are charged to the client (e.g. monthly, quarterly, annually, or other).
- **Services:** Description of advisory services is limited to the list defined by Form ADV Part 1A, Item 5.G., which includes: financial planning services; portfolio management for individuals and/or small businesses; portfolio management for investment companies; portfolio management for pooled investment vehicles; portfolio management for businesses or institutional clients; pension consulting services; selection of other advisers; publication of periodicals or newsletters; security ratings or pricing services; market

¹ The Division modeled the fee table in part on the NASAA Model Fee Schedule, located at <http://www.nasaa.org/industry-resources/broker-dealers/model-fee-disclosure-resource-center/>.

timing services; educational seminars/workshops; and other. Investment advisers do have discretion to use the “Other” category to indicate categories of services not otherwise listed, but which are included on the investment adviser’s Form ADV Part 1A, Item 5.G.

- Fee Total: Description of total annual fee amounts or ranges based on all fee types charged by the adviser.

Date

The fee table should include a date field to reflect the most current version in use by the firm. The date may be placed in a footer.