

VIA ELECTRONIC MAIL

March 21, 2018

Office of the Secretary of the Commonwealth of Massachusetts
Securities Division
ATTN: Carol Anne Foehl, Esq.
One Ashburton Place, Rm. 1701
Boston, MA 02108

Re: Proposed Fee Table for State-Registered Investment Advisers

Dear Ms. Foehl:

On February 7, the Massachusetts Securities Division (“Division”) published its preliminary request for public comment on proposed recommendations to require investment advisers who are registered with the Division to create a fee table for advisory clients (Proposal).¹ The intent is to increase transparency, aid comprehension of advisory fees, and more easily enable comparison shopping of investment advisers.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI supports this proposal and we provide more detailed comments below.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives.³ These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning,

¹ <https://www.sec.state.ma.us/sct/sctfeetable/Fee-Table-Summary-and-Instructions.pdf>

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

³ The use of the term “financial advisor” or “advisor” in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term “investment adviser” or “advisor” in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

FSI appreciates the opportunity to comment on the Division's Proposal. Where applicable, we provide direct responses to the questions posed in the request for comment. Additionally, our comments will speak to our support of streamlining disclosures and the ways we believe additional fees could be disclosed most effectively. These points are discussed in greater detail below.

I. Proposed Fee Table

Please comment on the potential for investor confusion caused by new advisory fee models.

FSI notes that the proposed fee table is very similar to NASAA's Model Fee Disclosure Template⁴ in the way it is laid out and is to be made available on the advisor's public website. The proposed disclosure provides investors with a mechanism to efficiently and easily access and understand fees they may be charged if they work with that particular financial advisor. The proposed fee table would include an hourly fee, fixed fee, performance-based fee and fees charged by third parties (money manager and robo-adviser fees).

We understand that some investment adviser representatives may be concerned about the burden of complying with the Proposal to provide a fee model to investors. To relieve some of that burden, we would suggest extracting relevant information from the Form ADV Part 2 to provide investors a clear understanding of what fees they may or may not incur. Thus, the burden is reduced on investment adviser representatives and investors are still given pertinent information in an easy to read and understandable format.

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? Should an investment adviser create multiple fee tables if it uses more than one fee model?

Although we understand providing a chart to a client with multiple fees that they may or may not be charged may cause some confusion, requiring advisors to customize fee tables for each client and transaction would create a heavy burden. To provide a solution, we recommend allowing advisors to clearly break down each fee so clients understand that not all fees will apply to them. In fact, the fee table will provide a good opportunity for the advisor to discuss potential fees with the client and will encourage a more in-depth face to face conversation about the potential fees the client could incur by working with the advisor as well as the value they will receive in exchange for the fees. The advisor could simply cross out or otherwise denote the fees in the table that the client will not be charged, either due to the nature of the relationship or because they are inapplicable for another reason.

⁴ North American Securities Administrators Association, <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2016/03/Model-Fee-Schedule.pdf> (last visited March 19, 2018).

How should additional fees charged by parties other than the investment adviser, such as mutual fund fees or trading costs, be disclosed? Should commissions, mark-ups or brokerage fees of the client's custodian be included in the proposed fee table?

FSI believes that third party commissions or costs should be included in the proposed fee table, listed under "Fees charged by third party." That said, advisors are able to readily disclose the majority of fees for their services, but occasionally do not have access to all relevant third-party information. For example, the advisor may not be immediately privy to custodial fees and internal product expenses, which are often difficult to navigate. Additionally, non-cash compensation, such as, direct payments or reimbursement for training and education events cannot be tied to a specific transaction or service, and flat dollar marketing reimbursement money provided by some fund families are not directly attributable to any particular sale. Therefore, we suggest that these types of third party fees be exempted by the third party disclosure requirement. These exclusions can be noted in a footnote to the fee table.

For investment advisers who charge fees based on a percentage of assets-management, how should the fee table distinguish between advisers who provide financial planning services and those who provide only portfolio management services?

The information can be provided in the table's preamble or as a footnote.

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?

We believe this distinction can be made simply and efficiently with an indication of whether an advisor provides a one-time financial plan as opposed to one that provides ongoing financial planning services in the "frequency fee is charged" field.

Conclusion

With regard to the remaining questions posed in the Division's request for comment on the Proposal, FSI defers to other commenters to address those questions. We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with the Division on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,



Robin Traxler, Esq.
Vice President, Regulatory Affairs & Associate General Counsel