

NEWS ALERT

SECURITIES GROUP



One Size (Table) Fits All? Key Takeaways from the Massachusetts Securities Division’s Investment Advisor Training

By Anthony R. Leone | October 31, 2019

On October 29, 2019, the Massachusetts Securities Division presented critical information regarding its new fee table regulation as part of its annual RICE Section Conference Series.¹ Based on the presentation and feedback from investment advisors, it is clear that while both regulators and advisors want the same thing—clarity in disclosures—attaining this goal is extremely difficult in practice.

As evidenced by the litany of questions posed, investment advisors are rightfully concerned as to how to accurately describe their business models within the strict rubric of the soon-to-be mandatory fee table. Nevertheless, investment advisors located in Massachusetts, in addition to those advisors located elsewhere but registered in Massachusetts, must be thinking about and preparing to implement the MSD’s fee table starting on January 1, 2020.

Below are some important takeaways from the MSD’s training.

1. Fee Table Implementation is Set for January 1, 2020.

The deadline for investment advisors to implement the MSD’s standard fee table is January 1, 2020. In practice, this means that those investment advisors required to maintain a fee table must have a completed fee table on file as of January 1, 2020. The January 1, 2020 deadline does not mean that investment advisors must distribute the fee table to clients on that date (more on which clients must receive the fee table below). Instead, investment advisors may distribute the fee table with their annual Form ADV distribution. Additionally, such distribution may be made in the same manner that the investment advisor typically makes its ADV disclosure, e.g. via e-mail, mail, or in person.

2. Implementation of the Fee Table is Required for a Broad Range of Investment Advisors.

Massachusetts-registered investment advisors with a place of business in Massachusetts and investment advisors located elsewhere, but registered in Massachusetts, must complete the fee table. For those investment advisors who fall into the first category, the investment advisor’s fee table must be distributed to all clients of the advisor, regardless of the client’s state of residency. Investment advisors who fall into category two are required to distribute the fee table only to clients who reside in Massachusetts. SEC registered investment advisors do not need to complete the fee table.

¹The fee table, in fillable form, is accessible on the Massachusetts Securities Division website, [here](#). The regulations found at 950 Code Mass. Regs. 12.205(8) require delivery of the fee table to clients on the same schedule as an advisor’s ADV brochure. Advisors, however, must have a fee table on file as of January 1, 2020.

3. The Fee Table is in Addition to Form ADV.

While the “when must I complete the fee table” and the “who must complete the fee table” questions are relatively straightforward, the “how should I fill in the fee table” question is less clear. In particular, the fee table is a rigid document to be used by all investment advisors. As a result, the fee table omits nuances of many revenue fee models that do not follow a strict tiered percentage of AUM. Further, unlike the familiar Form ADV (which is still required), the fee table leaves little room for personalization or clarification. As a result, advisors must resort to artful drafting in order to complete the fee table. By way of limited guidance, in a prerelease test, the MSD noted the following deficiencies to avoid: (1) not personalizing the fee table to include the investment advisor’s own information; (2) using a preexisting fee table and not the MSD fee table; (3) inconsistencies between the fee table and the advisor’s Form ADV, (4) failing to input all custodian and other required information on the fee table; and (5) exceeding the one page limit.

4. Client Comprehension of Disclosure Documents Matters.

Finally, while, it’s not often that readability tests (e.g. Flesch-Kincaid or Gunning Fog) are on the minds of an investment advisor, advisors should be cognizant of these readability test to an advisor’s list.² As presented by Stephen Shipes of Wake Forrest University, a focus of the MSD, in line with its fee table, is client comprehension of disclosure documents. While no current or pending Massachusetts regulations directly address the “readability” of an advisors disclosures, soft guidance suggest that the MSD is on the look-out to ensure investors truly understand disclosures made by investment advisors.

The RICE Section’s presentation should serve as a wakeup call to Massachusetts registered investment advisors. Given the underlying complexity of the fee table, it is prudent for investment advisors to think through these issues now, rather than on the eve of the deadline. The RICE Section made clear that deficiencies related to the fee table will be addressed in a similar manner to other deficiencies found by the RICE Section on advisory examinations. At the end of the day it appears that implementation of the fee table is going to be a work in progress for both advisors and the RICE section alike.

*If you have questions about this bulletin, please contact:
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²In case you were wondering, this client alert scored a 43.2 on the Flesch Reading Ease scale and 14.5 on the Gunning Fog scale.

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