



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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October 5, 2015

Via email to e-ORI@dol.gov

Phyllis C. Borzi
Assistant Secretary
Office of Regulations & Interpretations
Employee Benefits Security Administration
Attn: Conflicts of Interest Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue
Washington, DC 20210

Re: RIN 1210-AB32 – Definition of the Term “Fiduciary” – Conflicts of Interest Rule – Retirement Investment Advice, and related proposals published on April 20, 2015 in Volume 80 of the Federal Register; related comment letters submitted to the Department of Labor (April 20, 2015 to present) and statements made at the Public Hearing (August 10-14, 2015).

Dear Ms. Borzi,

With this letter, the North American Securities Administrators Association, Inc. (“NASAA”)¹ supplements its comments² on the Department of Labor (“the Department”) Employee Benefits Securities Administration’s (“EBSA”) proposed rulemaking defining the term “fiduciary”³ and related proposed rulemaking initiatives published alongside the fiduciary duty

¹ NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

² Letter from William Beatty, NASAA President and Wash. Sec. Adm’r, to Phyllis C. Borzi, Assistant Sec’y, Emp. Benefits Sec. Admin. (July 21, 2015), available at: <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/2015-07-21-NASAA-Comment-to-DOL.pdf>. Letter from William Beatty, NASAA President and Wash. Sec. Adm’r, to Phyllis C. Borzi, Assistant Sec’y, Emp. Benefits Sec. Admin. (September 24, 2015), available at: <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/2015-09-24-NASAA-Comment-2-RIN-1210-AB32.pdf>

³ 80 Fed. Reg. 21928 (April 20, 2015).

proposal, including the Best Interest Contract Exemption⁴ (“BIC proposal”) (collectively, “the EBSA proposal” or “the proposal” or “the proposed rule”). As stated in our previous comment letters, NASAA remains supportive of the Department’s proposal and goals and urges the Department to finalize the proposal with limited changes to address workability concerns. By raising the standard of care for investors in retirement plans (“retirement investors”), the Department will increase investor protection for a significant subset of investors. NASAA especially supports the EBSA proposal’s inclusion of IRAs, as rolling over an IRA is a critical decision for an investor and a transaction that should be in the investor’s best interest.

This comment supplements our earlier letters and addresses the Department’s proposed Best Interest Contract Exemption. The BIC proposal seeks to provide an exemption to allow certain investment advice fiduciaries, including broker-dealers and insurance agents, to receive various forms of compensation that, in the absence of an exemption, would not be permitted under ERISA or the Internal Revenue Code. The Department asks for comment on the design and feasibility of disclosures made to investors as part of the BIC exemption.⁵

NASAA recently completed a project that we believe the Department may find useful as it considers issues related to the disclosure of information to investors. Specifically, we enclose NASAA’s Fee Working Group Report on Accessibility and Standardization of Miscellaneous Broker-Dealer Fees for Retail Customers, which was released on September 28, 2015.⁶ The Report is the result of collaboration among state securities regulators, representatives of the Financial Industry Regulatory Authority (FINRA), the Securities Industry and Financial Markets Association (SIFMA), the Financial Services Institute (FSI), LPL Financial LLC, Morgan Stanley Smith Barney LLC, Prospera Financial Services, and Signator Investors, Inc. In addition to the Report, the working group developed a model fee disclosure schedule to help investors better understand and compare various broker-dealer service and maintenance-related fees as well as guidelines to make fee disclosure accessible and transparent.

The model fee disclosure schedule is designed to be used on a voluntary basis by firms, though the Report provided specific parameters for its use. Specifically, the table should include all miscellaneous account and service fees, including account maintenance fees, but can be customized to be consistent with a firm’s branding. The fee disclosure schedule does not include commissions, mark-ups, commission equivalents or advisory fees. The enclosed report and schedule provide an example of how fees can be disclosed to investors in a straight-forward manner that we believe also makes it easier for investors to compare fees among firms.

⁴ 80 Fed. Reg. 21960 (April 20, 2015).

⁵ See 80 Fed. Reg. 21974-21975.

⁶ NASAA, FINRA, FSI, SIFMA, LPL FINANCIAL LLC, MORGAN STANLEY SMITH BARNEY LLC, PROSPERA FINANCIAL SERVICES & SIGNATOR INVESTORS, REPORT ON ACCESSIBILITY AND STANDARDIZATION OF MISCELLANEOUS BROKER-DEALER FEES FOR RETAIL CUSTOMERS (2015), *available at*: <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2015/09/Fee-Working-Group-Report.pdf>

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In closing, NASAA reiterates its support for the Department's goal to enhance the standard of care available to retirement investors. Should you have any questions regarding the comments in this letter, please do not hesitate to contact Joseph Brady, NASAA's Executive Director, at jb@nasaa.org or A. Valerie Mirko, NASAA's Deputy General Counsel, at vm@nasaa.org or 202-737-0900.

Sincerely yours,

A handwritten signature in blue ink that reads "Judith M. Shaw". The signature is written in a cursive, flowing style.

Judith Shaw
NASAA President
Maine Securities Administrator

FEE WORKING GROUP

REPORT ON ACCESSIBILITY AND STANDARDIZATION OF MISCELLANEOUS BROKER-DEALER FEES FOR RETAIL CUSTOMERS

A collaborative and voluntary effort for the purpose of promoting accessible, standardized,
and transparent disclosure of miscellaneous broker-dealer fees.

Jointly by:

NASAA
FINRA
FSI
SIFMA

LPL Financial LLC
Morgan Stanley Smith Barney LLC

Prospera Financial Services
Signator Investors, Inc.



FEE WORKING GROUP OVERVIEW

In the summer of 2014, NASAA convened a Fee Working Group (the “Working Group”) to promote accessibility, standardization, and transparency in the way in which broker-dealer miscellaneous account and service fees are disclosed to retail customers. The Working Group consisted of representatives of NASAA, FINRA, SIFMA, FSI, and several diverse broker-dealers including LPL Financial LLC, Morgan Stanley Smith Barney LLC, Prospera Financial Services, and Signator Investors, Inc. Starting in the fall of 2014 and continuing into the summer of 2015, the Working Group met to develop meaningful miscellaneous account and service fee disclosure and transparency that is simple to read, easily accessible, and can be used effectively by retail investors to understand and compare fees.

The resulting pages are a result of this collaborative and voluntary effort that brought the goals of the Working Group to fruition. The Working Group is pleased to announce that LPL Financial LLC, Morgan Stanley Smith Barney LLC, Prospera Financial Services, and Signator Investors, Inc. have adopted and are in the process of implementing both the model fee disclosure (found at Exhibit 1) and related accessibility guidelines (found on page 2). The Working Group encourages other broker-dealers to voluntarily adopt and implement the model fee disclosure and accessibility guidelines as a sound business practice.

RETAIL INVESTOR ACCESS TO SCHEDULE OF MISCELLANEOUS ACCOUNT AND SERVICE FEES

One stated goal of the Working Group was to increase retail investor access and transparency of miscellaneous account and service fees charged by broker-dealers. To that end, the Working Group considered and adopted the following guidelines.

RETAIL INVESTOR ACCESS GUIDELINES

Fee disclosure increases transparency for investors, but its effectiveness depends, in part, on the accessibility and prominence of the disclosure. The Working Group believes the investor access guidelines below will enhance broker-dealer fee disclosure and transparency. To that end, the Working Group agreed on the following guidelines to make fee information more readily available to retail investors.

- The Schedule should be made available on the broker-dealer's public website (without requiring any logon or password).¹ Ideally, a broker-dealer's website homepage would contain a clearly identifiable link to bring investors directly to the Schedule or to a webpage with a link to the Schedule.
- If the broker-dealer's website has an internal search bar, a search for the term "fee" or "fees" should return a link to the Schedule as one of the top responses.
- The Schedule should be accessible through a simple internet search using any of the common search engines. The Schedule should be readily printable in chart form from the broker-dealer's website (e.g., in a stand-alone .pdf format).
- A paper version of the Schedule should be made available to potential retail customers upon request and to retail customers at the time of account opening.

MODEL MISCELLANEOUS ACCOUNT AND SERVICE FEE DISCLOSURE AND NOTIFICATION

In addition to access guidelines, the Working Group reached a consensus around a model fee disclosure document as well as specific parameters for its use. The model, “Schedule of Miscellaneous Account and Service Fees” or “Schedule” at Exhibit 1 will be used by the broker-dealers in the Working Group on a voluntary basis to disclose the miscellaneous account and service fees.

The Schedule should include all services provided by the firm for which there is a fee charged, including account maintenance fees. The Schedule does not include commissions, markups, commission equivalents, or advisory fees. The Schedule can be customized to be consistent with a firm’s branding such as color and logo. While font type and paper used for printing are discretionary, the Schedule should be simple to read and structured in a way that makes it easy for investors to compare fees between firms. The instructions below provide additional guidance as to the attributes of the model fee template and delineate aspects of the Schedule that should not be modified and those where customization may be appropriate.

The Working Group recognizes that broker-dealers must provide retail customers with adequate notice prior to the implementation or increase of a charge or fee. Accordingly, broker-dealers should provide retail customers at account opening written notification of all service charges and fees. In addition, firms should provide retail customers with written notification at least 30 calendar days prior to the implementation or increase of any service charge or fee.² These notifications may be made by electronic means.

INSTRUCTIONS— SCHEDULE OF MISCELLANEOUS ACCOUNT AND SERVICE FEES (See also, Table 1 and Exhibit 1)

Name and Preamble

The Schedule should show the broker-dealer’s name and logo (Exhibit 1, Part 1). It should be titled “Schedule of Miscellaneous Account and Service Fees” (Exhibit 1, Part 2). There should be included a preamble, a brief statement that, at a minimum, explains: that the listed fees do not include commissions, markups, commission equivalents, or advisory fees; that the fees may not apply to all accounts; and that some of the fees may be waived under certain conditions (Exhibit 1, Part 3).

Columns and Categories

The Schedule should include three columns, each with its own heading (reading left to right): Account or Service, Fee Amount, and Frequency (Exhibit 1, Part 4). These three column headings should not be modified. Fees will be listed under three standard categories (reading from top to bottom): Account Maintenance, Cash Management Services, and Investment Specific (Exhibit 1, Part 5). These categories should not be modified. However, broker-dealers do have discretion to use subcategories (e.g., Cash Management Services subcategories-ATM/Debit Card, Checking, Credit Card, Other). The order and grouping of the fees beneath each category heading is left to the discretion of the broker-dealer. Broker-dealers may also create separate fee tables according to the Schedule for qualified accounts and non-qualified accounts.

Fee Names

Fee names may be customized, but definitions or descriptions should be used when the fee name does not clearly indicate or imply the service (e.g., ACAT fee—a fee charged on outgoing account transfers). Broker-dealers are encouraged to leverage technology, if available, to provide more comprehensive descriptions of particular fees from the Schedule on their websites or mobile devices. This may include the use of hyperlinks, pop-ups, text bubbles, or similar features.

References

For ease of reading, when using footnotes or endnotes, firms should use numbers as opposed to symbols. Footers may also be incorporated into the broker-dealer’s Schedule on a limited basis to reflect, for example, additional information on fee waivers.

The Schedule should also include a date field to reflect the most current version in use by the firm.

Table 1.

Key Features of the Schedule of Miscellaneous Account and Service Fees (See Exhibit 1).

FEATURE	DESCRIPTION
1. Document Header	Broker-dealer name and logo
2. Document Title	Schedule of Miscellaneous Account and Service Fees
3. Preamble	Located below the Document Title (2.) and above the Chart of Fees (4.) Preambles may vary among broker-dealers but should be brief and include at a minimum: <ul style="list-style-type: none">• The listed fees <i>do not include commissions, markups, commission equivalents or advisory fees.</i>• Some of these fees <i>may not apply to all account types.</i>• Some of these fees <i>may be waived</i> under certain conditions.
4. Column Titles	Reading from Left to Right: Account or Service//Fee Amount//Frequency
5. Three Categories	Three standard categories to organize fees listed under the Account or Service Column: <ul style="list-style-type: none">• Account Maintenance• Cash Management Services• Investment Specific

An example of a completed Schedule is attached as Exhibit 2. All fee names, definitions, and amounts are for illustrative purposes only.

¹ The Working Group acknowledges that some broker-dealers may experience delays in implementation due to contractual, technical, or other unforeseen challenges.

² See generally, NASD Notice to Members 92-11 available at: <https://www.finra.org/content/notice-members-92-11>.

EXHIBIT 1

TEMPLATE



SCHEDULE OF MISCELLANEOUS ACCOUNT AND SERVICE FEES 2

The listed fees do not include commissions, markups, commission equivalents or advisory fees. Some of these fees may not apply to all account types. Some of these fees may be waived under certain conditions. 3

ACCOUNT OR SERVICE	FEE AMOUNT	FREQUENCY 4
ACCOUNT MAINTENANCE 5		

CASH MANAGEMENT SERVICES 5		
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INVESTMENT SPECIFIC 5		
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EXHIBIT 2

SAMPLE (For Illustrative Purposes Only)



SCHEDULE OF MISCELLANEOUS ACCOUNT AND SERVICE FEES

The listed fees do not include commissions, markups, commission equivalents or advisory fees. Some of these fees may not apply to all account types. Some of these fees may be waived under certain conditions.

ACCOUNT OR SERVICE	FEE AMOUNT	FREQUENCY
ACCOUNT MAINTENANCE		
Annual Account Fee	\$X.00	Annual
Document Copies	\$X.00	Per request
Estate Services Fee/Legal Transfer Fee	\$X.00	Per position reregistered
Express/Overnight Mail	\$X.00	Per Request
Minimum Balance Fee	\$X.00	For accounts with a balance under \$25,000
ACAT <i>Fee for transfers facilitated by ACATS (Automated Customer Account Transfer Service)</i>	\$X.00	Per outgoing transfer
Postage and Handling	\$X.00	Per statement/confirmation sent
Termination Fee	\$X.00	Per termination
Transfer on Death	\$X.00	Per request
Retirement Account Fees		
IRA Maintenance Fee	\$X.00	Annual
Roth IRA Conversion	\$X.00	Per conversion
CASH MANAGEMENT SERVICES		
ATM/Debit Cards		
ATM Withdrawal	\$X.00	Per withdrawal at non-affiliated ATMs (other fees may be charged by the non-affiliated bank)
Additional Debit Card	\$X.00	Per card request
Checking		
Check Reorder	\$X.00	Per reorder-250 checks provided
Returned Checks for Insufficient Funds	\$X.00	Per returned check
Check Stop Payment	\$X.00	Per stop payment request
Credit Cards		
Platinum Credit Card	\$X.00	Annually
Other Cash Management Services		
Wire Transfer <ul style="list-style-type: none">• Domestic• International	\$X.00 \$X.00	Per wire request
Check Request-Overnight Delivery Fee	\$X.00	Per request
Cash Advance	\$X.00	Per request
Online Bill Payment	\$X.00	Per request
Returned ACH Payment	\$X.00	Per returned item

SAMPLE (For Illustrative Purposes Only)



ACCOUNT OR SERVICE	FEE AMOUNT	FREQUENCY
INVESTMENT SPECIFIC		
American Depository Receipts (ADR) Custody	\$X.00	Per investment
Limited Partnerships - Reregistration	\$X.00	Per transaction
Mutual Funds - Short term redemption	\$X.00	Per transaction
Physical Certificates		
• Transfer and Ship	\$X.00	Per request
• Safekeeping	\$X.00	Per security