Conducting Effective Meetings with Investment Advisory Clients

By Robert L. Tuch

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Introduction

Client meetings play an important role for financial services firms that provide investment advisory services to their clients. The initial meeting is extremely important for investment advisers because they must reasonably determine that any investment advisory services that are provided are suitable, taking into consideration the client's financial situation, investment experience and investment objectives, among other things. For providers of ongoing investment advisory services, periodic meetings are also important, since the investment adviser's fiduciary duty to clients includes the responsibility for providing advice and account monitoring over the course of the adviser-client relationship. This article will focus on how investment advisers can effectively use client meetings to facilitate the delivery of quality investment advisory services.

The Investment Adviser's Fiduciary Duty

An investment adviser is a fiduciary and, as such, is held to the highest standard of conduct and must act in the best interest of its clients.[1] This fiduciary standard is based on equitable common law principles and is fundamental to advisers' relationships with their clients.[2] An investment adviser's fiduciary duty includes a duty of care and a duty of loyalty. The duty of care includes, among other things: (i) the duty to act and to provide advice that is in the best interest of the client, and (ii) the duty to provide advice and monitoring over the course of the relationship.[3]

Duty to Provide Advice that is in the Client's Best Interest. This includes (i) a duty to make a reasonable inquiry into a client's financial situation, level of financial sophistication, investment experience and investment objectives (collectively, the client's "investment profile"), and (ii) a duty to provide personalized advice that is suitable for and in the best interest of the client based on the client's investment profile.

Duty to Act and to Provide Advice and Monitoring Over the Course of the Client Relationship. If an adviser has agreed to provide continuous advisory services, the scope of the adviser's fiduciary duty entails a continuous, ongoing duty to supervise

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the client's account, regardless of whether any trading occurs. This feature of the adviser's duty, even in a non-discretionary account, contrasts sharply with the duty of a broker administering a non-discretionary account, where no duty to monitor is required.[4] An investment adviser is required to provide advice and services to a client over the course of the relationship at a frequency that is both in the best interest of the client and consistent with the scope of advisory services agreed upon between the adviser and the client.[5] An adviser's duty to monitor extends to all personalized advice it provides to the client, including an evaluation of whether a client's account or program type (e.g., a wrap fee account) continues to be in the client's best interest.

The Client Agreement

Investment advisers use the Client Agreement to describe in detail the investment advisory services that will be provided to each client. With respect to retail clients, the scope of those services will vary and can include some combination of:

- personalized investment advice about securities;
- portfolio design;
- the establishment of a managed account for ongoing portfolio management;
- financial planning (including retirement planning);
- estate planning and generational wealth transfer;
- business succession planning;
- cash management and budgeting;
- insurance needs analysis; and
- debt review and debt management planning.

While the Client Agreement is used to identify the specific services to be provided to each client, the investment adviser will in all instances have a fiduciary duty to the client. It is important to note, however, that an investment adviser can limit the scope of its activities in a way that does not require the provision of ongoing services. Consider, for example, a Client Agreement that provides for the creation of a single financial plan with no further obligation after the delivery of that plan. In such instances, the adviser's fiduciary duty would be commensurate with the scope of the adviser's contractual obligation.[6] This is meaningful in the context of client meetings since a limited contractual obligation that does not require ongoing services would mean there is no duty to monitor.

The Initial Meeting – Discussion of Services and Fees

Investment advisers are obviously going to want to discuss their service offerings with prospective clients. The adviser's fees for those services should be discussed as well during this meeting. Depending on the scope of services being contemplated, this discussion could also include one or more of the following topics:

- account suitability (fee-based advisory accounts compared to alternative service models and related compensation structures);
- the parameters for a proposed financial plan;
- the investment processes that will be employed for a managed account;
- proposed investment products and strategies for a managed account;
- whether investment discretion will be granted for a managed account;
- the use of model portfolios or third-party money managers for a managed account; and
- the custodian or custodians that will provide services for a managed account.

Gathering Investment Profile Information and Determining Suitability

Once a decision is made by a prospective client to move forward and become a client, the adviser should begin gathering information to establish an investment profile for the client. Each investment adviser should establish a formal information gathering process. This process should include the use of a form that is designed to obtain a sufficient amount of information that enables the firm to determine whether proposed advisory services would be suitable. Whether this is in the form of a questionnaire or some type of fact sheet, the goal here is to produce a written record that includes all relevant investment profile information that has been obtained by the firm and acknowledged by the client.

There are different ways to document that (i) an effective information gathering process has been established, and (ii) the firm has a reasonable basis for determining that a recommended set of advisory services is suitable. One common approach is to use both a Client Agreement and an Investment Policy Statement. The Client Agreement can describe the services in sufficient detail and establish the client's right to impose reasonable investment restrictions. The Investment Policy Statement can describe in detail all investment objectives and proposed investment vehicles and strategies.

The information gathering process and initial determination of suitability must be completed and adequately documented before investment advisory services are provided. For those investment advisers that provide ongoing advisory services, the client's investment profile will have to be updated, as more fully addressed below.

Periodic Meetings Over the Course of the Client Relationship

When an investment adviser provides ongoing investment advisory services, the adviser must update the client's investment profile in order to adjust its advice to reflect any changed circumstances.[7] The frequency with which the adviser must update the information in order to consider changes to any advice the adviser provides would turn on many factors, including whether the adviser is aware of events that have occurred that could render inaccurate or incomplete the investment profile on which it currently bases its advice.[8] The need to work with an up-to-date investment profile requires advisers to schedule periodic meetings with clients. However, there are additional reasons for doing so, which may include (i) changes in service offerings, (ii) the needs and desires of clients, (iii) the need to educate clients regarding regulatory or legislative developments, and (iv) a desire to deepen client relationships. With these factors in mind, advisers will need to decide the frequency and format of these meetings for each client.

The Importance of Monitoring Managed Accounts

The importance of monitoring managed accounts was recently highlighted by the SEC's Office of Compliance Inspections and Examination ("OCIE") in its report entitled *2019 Examination Priorities*[9]. In a section of this report addressing Portfolio Management and Trading, OCIE made the following observations:

> Reviewing portfolio management processes is an integral component to investment adviser examinations. OCIE will review firms' practices for executing investment transactions on behalf of clients, fairly allocating investment opportunities among client, ***ensuring consistency of investments with the objectives obtained from clients***, disclosing critical information to clients, and complying with other legal restrictions (emphasis added).
>
> OCIE will also examine investment adviser portfolio recommendations to assess, among other things, whether investment or trading strategies are: (1) ***suitable for and in the best interests of investors based on their investment objectives and risk tolerance;*** (2) contrary to, or have drifted from, disclosures to investors; (3) venturing into new, risky investments or products without adequate risk disclosure; and (4) ***appropriately monitored for attendant risks*** (emphasis added).[10]

This article will focus on how investment advisers can effectively use client meetings to facilitate the delivery of quality investment advisory services.

As noted above, advisers need to ensure that a client's investment profile is up-to-date in order to adjust its advice, as necessary and appropriate. By meeting with clients periodically, advisers can determine whether adjustments in their investment portfolios are warranted. This could come about due to any number of things that could cause a client's financial situation to change, including but not limited to: (i) a life event (e.g., wedding, divorce, house purchase, inheritance, retirement, illness, etc.), or (ii) a change in applicable laws or regulations affecting financial products or services.

How Advisers Conduct Effective Client Meetings

Determine the Frequency, Duration and Format. There are many investment advisers that meet with most of their clients annually unless a reason exists to do so more frequently. This can work very well in many instances – especially when the adviser provides periodic updates to clients regarding economic and industry developments. It is important to keep in mind, however, that in many cases, the frequency, duration or format is determined by (i) the suite of services provided, (ii) client preferences, or (iii) the location of the client's residence.

A client who is provided with ongoing investment management of a portfolio, financial planning advice, estate planning advice and insurance needs analysis may be a good candidate for semi-annual or quarterly meetings whereas a client who only has a managed investment account may only need to meet with the adviser on an annual basis. A client who has moved to a distant location may be a good candidate for a virtual meeting, using technology that allows for online discussions, such as Skype or GoToMeeting.

The use of checklists, agendas and a consistent format for memorializing meeting notes can be very beneficial for investment advisers who desire to provide quality investment advisory services on an ongoing basis.

Some clients have a strong preference for face-to-face interaction while other clients call their advisers on a frequent basis. These characteristics can help determine the frequency, duration and format of client meetings. By showing flexibility regarding the format and frequency of meetings and discussions with clients, investment advisers can demonstrate a strong commitment to providing excellent service.

Consider a Checklist to Help Prepare for Client Meetings. Here are several examples of potential checklist items that can be used to prepare for a client meeting, depending on the scope of services that are provided:

General

- Review the client's investment profile and make sure that it has been updated, based on all information that has been received by the firm.
- Make sure you have up-to-date information on accounts that are held away from the firm.
- If applicable, be aware of any Required Minimum Distributions that may be coming due for client retirement accounts.
- If applicable, determine whether an insurance review should be conducted.
- If applicable, determine whether a client's financial plan should be updated.
- Determine whether your notes from the last client meeting require the completion of any follow-up items.
- Be prepared to go over any activities that have been undertaken on behalf of the client (other than ongoing portfolio management activities).

Ongoing Asset Management

- Review client holdings and recent trading activity.
- Make sure that the investment portfolio is consistent with the client's investment objectives, risk tolerance and investment restrictions. If an Investment Policy Statement is used, it should be reviewed with this in mind.

Prepare a Meeting Agenda. An agenda can be quite useful as a means of ensuring that all relevant topics are covered. Here are some items that you should consider when preparing a meeting agenda:

- Review the client's investment goals and objectives.
- Review the performance of the client's investment account.
- Discuss implemented investment strategies.
- Ask if there have been any life events that have impacted his/her financial situation, investment objectives or risk tolerance level.
- Recommend investment portfolio modifications, if needed, to align with the client's investment profile.
- Review any recent legislation, regulations or changes to the firm's policies and procedures that may affect the client.
- Include a placeholder for any matters that the client may wish to discuss.

Document Each Client Meeting. To document information that was obtained and memorialize important portions of the meeting discussion, a form should be used that includes the following:

- client identifying information (including name(s) and account number(s));
- meeting date;
- meeting format (in person, video conference, telephonic);
- meeting frequency (i.e., quarterly review, semi-annual review, annual review);
- changes, if any, to the client's personal or financial situation;
- specific changes that were made to the client's investment profile (e.g., changes to investment objectives, time horizons or risk tolerance level);
- recommended changes to the client's investment account(s);
- any additional recommendations that were made; and
- space to include additional meeting notes and conclusions.

Recordkeeping. Documentation forms that are used for client meetings should be maintained in a convenient electronic format. This is typically accomplished by utilizing the firm's client record management (CRM) system.

Conclusion

Conducting thorough, effective client meetings enables investment advisers to provide effective advice and account monitoring over the course of the client relationship. This, in turn, enables the adviser to meet its fiduciary duty to advisory clients and demonstrate a strong commitment to excellent customer service. The use of checklists, agendas and a consistent format for memorializing meeting notes can be very beneficial for investment advisers who desire to provide quality investment advisory services on an ongoing basis.

ENDNOTES

1 SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963) ("SEC v. Capital Gains").

2 Id.

3 SEC Release No. IA-4889, *Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulations* (2018).

4 Arthur B. Laby, *Fiduciary Obligations of Broker-Dealers and Investment Advisers*, 55 Villanova Law Review 701, at p. 728 (2010) (the "Laby Article").

5 See SEC Release No. IA-4889, *supra*, note 3.

6 See the Laby Article, *supra*, note 4, at p. 727.

7 See SEC Release No. IA-4889, *supra*, note 3, at p. 10.

8 Id.

9 SEC, Examination Priorities for 2019 (December 20, 2018).

10 Id.

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