

From: Curtis, Ryan

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Subject: DOL and 12-b1 fees

I have a question about 12-B1 fees and how they may restrict a client's right to exchange between mutual funds within the same fund family based on the rule. One of the advantages of mutual funds is that once you are invested in a fund family, you have the right to change between funds within the family for no commission. This allows people to adjust their asset allocation and rebalance positions on a regular basis without paying any commissions. However, several mutual funds pay different 12-b1 fees to the advisor. Under the rule as I read it, going forward we would only be allowed to move from higher to lower paying funds, but not the other way around. For example, assume I had a client that was invested 50/50 in a stock fund paying .25%, and a bond fund paying .1% respectively when I grandfathered the assets based on a neutral outlook. Then the outlook improved and we want to move to a 60/40 allocation. I would not be allowed to do that rebalance because it would increase my 12-b1 compensation. Therefore to change to that 60/40 allocation, I would need to move at least some of the assets out of the grandfathered account and into a fee based account that charges 1% but returns his .25% 12-b1 fee thereby increasing both the cost to the client, and my compensation. This keeps me compliant with the rule, but is counter to its intended goal of doing what is in my clients best interest which is making the investment recommendation and executing it in the most cost efficient way (i.e. just keeping all the funds in a grandfathered account that doesn't charge additional management fees). It seems like the rule is significantly restricting the clients control of asset allocation in order to avoid small differences in advisor compensation. This seems like a poor tradeoff for the client. Is there a way that we can remain compliant, but simultaneously keep our capacity to adjust asset allocation without moving to a higher cost fee based account?

Thanks for your help!

Ryan Curtis CFP®

Financial Advisor

Stifel Nicolaus

805-903-1070

www.RyanCurtisFinancial.com

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