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WASHINGTON UPDATE



SEC Issues Proposed Rules on Mutual Fund Distribution Fees

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On July 21, the Securities and Exchange Commission (SEC) proposed significant changes to the framework for mutual fund distribution fees, including 12b-1 fees. These proposed changes would have a significant impact on our industry. Therefore, ASPPA government affairs staff is currently reviewing the proposed rules and gathering input from ASPPA members. ASPPA will be submitting comments on the rules to the SEC in the fall.

SEC Rule 12b-1 permits a mutual fund to use fund assets to pay broker-dealers and others for distribution expenses, such as marketing and selling costs. Under the rule, service fees, such as fees paid to retirement plan administrators, can be included as part of the distribution expense. Asset-based sales charges are currently capped at 100 basis points under NASD rules.

Restructuring Asset-based Distribution Fees

The SEC has proposed repealing Rule 12b-1 in its entirety. In its place, the proposed rules provide for two types of fees: a marketing and service fee and an ongoing sales charge.

Marketing and Service Fees

The SEC would create a new Rule 12b-2 that would permit funds, with respect to any class of fund shares, to deduct a fee of *up to* 25 basis points annually from fund assets. This “marketing and



service fee” could be used for any distribution related expenses, including service fees. The SEC release states that funds may use the proceeds of the fee for paying “retirement plan administrators for the services they provide participants.”

Ongoing Sales Charge

Under the proposed rules, funds also would be permitted to deduct asset-based distribution fees in excess of the marketing and service fee, provided that the excess amount is considered an “ongoing sales charge” (OSC) subject to certain sales charge restrictions. A fund can deduct an OSC to finance