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## Retirement Shops Want a Cut of MFS Settlement

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By Tom Leswing

A portion of the \$225 million **MFS** market-timing settlement should go to reimburse retirement plan recordkeepers for costs associated with distributing the money to shareholders, according to a recent comment letter from the Spark Institute. But some oppose the measure.

In developing the proposed plan, an independent distribution consultant for MFS has estimated that costs to shareholders resulting from market-timing activities are less than the settlement amount, explains Larry Goldbrum, general counsel of the institute.



**Larry Goldbrum**  
Executive Vice  
President and  
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"Why not use that surplus for expenses that recordkeepers incur rather than use it as a windfall for investors?" he says.

Goldbrum maintains that retirement service providers will face substantial costs when identifying and locating investors that held fund shares when the market-timing activities occurred. Additionally, firms will face other expenses when distributing the settlement money to investors, he says.

Using the money to offset recordkeepers' expenses would actually benefit retirement plan participants, he argues. Using the surplus would be an alternative to deducting money from payments to shareholders as a way to recoup the costs.

MFS, of course, isn't alone in proposing a plan for distributing market-timing settlement funds to investors. **Banc One**, which was bought by **JPMorgan**, and **Pilgrim Baxter**, which is now under the **Old Mutual** brand, have also submitted proposed plans for review and eventual approval by the SEC. Columbia has also done so. Consultants for other firms hit by the market-timing scandal, meanwhile, are also drafting similar distribution plans.

In general, the proposed plans seek to reimburse shareholders based on the amount of damages inflicted upon each long-term investor by market timers frequently trading fund shares.

Goldbrum maintains that the proposed MFS plan is unique, however, because it states that the settlement amount exceeds the amount of estimated damages experienced by investors. While the plan makes that statement, it doesn't specify the amount of the difference between the settlement amount and the estimated expenses.

At the same time, not everyone is convinced that the market-timing settlement amount exceeds the amount of financial damages caused by market timers.

Many accounts were held in omnibus platforms, points out Niels Holch, executive director of the Coalition of Mutual Fund Investors. Those accounts batch together individual trade orders. That way, firms can just send a single large trade order to fund shops rather than the more costly approach of transmitting a large number of individual trades. In doing so, however, retirement firms don't reveal the identities of individual shareholders and specific trading activities.

"I don't think we can make a statement that we have a good handle of the amount of market timing that occurred," Holch says. "We don't really know what the losses at the individual investor level are because we don't have an outreach program or access to omnibus accounts."

As an alternative, fund firms should reimburse recordkeepers for the costs associated with identifying prior shareholders and processing the payments, he says.

Like the Spark Institute, the coalition has also submitted a comment letter to the SEC on the MFS plan. In doing so, Holch has called for full disclosure of individual shareholder activities. Providing such disclosures is consistent with the SEC's Rule 22c-2, or the redemption fee rule, he maintains. The rule specifies that intermediaries such as retirement

recordkeepers and broker-dealers must provide such information to fund firms upon request. That way, fund firms can analyze the information and weed out market timers.

Without evaluating the account-level information within omnibus accounts, market timers that remain in MFS funds may actually receive payments from the settlement amount, he adds. That, of course, would be inappropriate since market timers are the ones that caused the harm in the first place.

Holch maintains that distribution plans from other fund shops specify that the distribution consultant will seek information on individual shareholders when calculating how much each investor should receive. The MFS plan would instead have financial intermediaries undertake that task.

The bottom line is that the settlement payment and distribution calculations, even under the best scenario, will be only an approximation of the amount that each shareholder should receive as reimbursement, adds Kent Novell, a consultant to 401(k) service providers.

"All you can really do is take a stab at it," he says.

Even if it were possible to develop a definitive method for assessing damages on an individual level, the process would be cost-prohibitive, he maintains. Additionally, combing through past retirement recordkeeping systems to assess each shareholder's activities is no small undertaking. The process will be complicated because many larger recordkeepers have merged. In addition, plan sponsors occasionally change recordkeepers.

"It will be a major headache," he adds.

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