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Market-Timing Settlement Plans Face Delays

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The SEC has granted its first approval of a market-timing settlement distribution plan, but action on other plans has been moving at a painfully slow pace.

Observers say the fund industry's efforts to wrap up the market-timing scandal hit a major milestone late last year when the SEC approved a [plan](#)¹ for distributing money to investors from a \$250 million **Pilgrim Baxter** market-timing settlement. The firm has since been absorbed by the **Old Mutual** brand. At the same time, observers add that the regulator has also delayed granting approval of other plans. In some cases, it has even agreed to postpone deadlines twice.

An SEC spokesman responded to questions on the delays by referring to the regulator's 2006 [Performance and Accountability Report](#).² The report says the regulator has gone through a steep learning curve regarding the many issues involved with distributing the settlement funds to investors. It further says that the SEC is now using what it has learned to speed the distribution process.

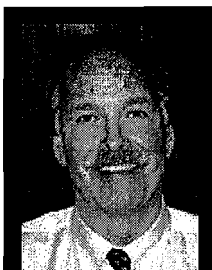
For the industry, the delays mean it will take longer for fund firms to stop the negative publicity stemming from the market-timing scandal, says Burt Greenwald, a consultant to fund firms.

"The firms want to get it behind them," he says. "I don't know why the SEC hasn't just said go ahead and take care of it."

Many SEC observers expect the payments to shareholders to be minimal, which makes it harder to justify delaying approval of the distribution plans, Greenwald adds.

Firms tainted by the market-timing scandal agreed to hire independent consultants to forge plans for distributing settlement money to shareholders that may have been harmed by frequent trading of fund shares. Many observers say distributing the settlement money will be one of the final steps in wrapping up the lingering complications of the market-timing scandal. Yet, independent consultants must get SEC approval of their proposed plans before sending money to shareholders.

The most recent [delay](#)³ in the process occurred on Dec. 26 and applies to a proposed distribution plan for the \$50 million **Banc One** settlement, says Niels Holch, executive director of the Coalition of Mutual Fund Investors. The order extends a Jan. 4 deadline to March 5. The Jan. 4 deadline, meanwhile, was a result of a decision by the SEC last October to delay approving the Banc One plan, he points out. Banc One is now part of **JPMorgan Chase**.



Niels Holch
Executive
Director
Coalition of
Mutual Fund
Investors

The SEC also delayed approval of a proposed \$140 million settlement plan from Columbia Funds. In September, it issued an order extending the deadline for approving the plan from Sept. 17 of last year to Dec. 16. That deadline has since passed, of course, and the fate of the proposed plan remains unclear.

Holch says that the SEC has also delayed granting approval of the proposed distribution plan for the \$250 million MFS settlement.

Holch maintains that a variety of reasons may account for the delays of the plans. For example, the first few approvals of distribution plans may establish precedents for procedures or practices spelled out in distribution plans for other market-timing settlements. With that in mind, the SEC may be taking extra care to ensure that the plans are up to par before granting any approvals.

Another factor is that the plans are complex, adds Roy Weitz, publisher of FundAlarm.com.

Indeed, the plans often spell out complicated methods for determining the payment for each individual investor who held shares when the market timing transactions occurred.

In addition, firms and organizations have expressed concerns over various aspects of the proposed plans. The Spark

Institute, for example, has commented that retirement plan recordkeepers will have to absorb substantial costs associated with tracking down retirement plan investors and calculating the appropriate payments for each investor.

The SEC addressed only some of the organization's concerns when finalizing the Pilgrim Baxter plan, adds Larry Goldbrum, general counsel for Spark.

"We're glad that they made some changes, but we don't think they went far enough," he says. "We are not very happy in them saying that there will be no reimbursement for retirement plan recordkeepers' costs."

Rather than allow recordkeepers to recoup costs of distributing money to shareholders from fund firms or from the settlement, the SEC has created a simplified method that the firms can use when calculating the appropriate payment for each investor, he says.

While that is better than having to absorb the costs of doing more elaborate calculations, Spark believes that recordkeepers should instead be reimbursed for their work. Money could come either from mutual fund firms or from settlements when the amount of settlements exceeds the amount of the estimated damages to shareholders.

Not everyone is disappointed with the final Pilgrim Baxter plan, however.

"I think the SEC did a pretty nice job in responding to public comments [on the proposed plan]," Holch says.

For example, Holch had proposed using Regulation 22c-2 to require intermediaries to disclose the identity of shareholders in omnibus accounts. Those accounts bunch together buy and sell orders from individuals before sending the trade requests to fund shops. As a result, fund firms may not know the identity of underlying investors.

In approving the plan, however, the SEC said it doesn't believe that Regulation 22c-2 can be used retroactively

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