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SEC OKs Columbia Market-Timing Remediation

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The SEC has approved the latest version of the proposed **Columbia** market-timing distribution plan and has gained a supportive nod from a top retirement industry group.

The SEC action, along with other developments, has some industry observers speculating that the painfully long process of distributing market-timing settlements to investors may actually be gaining steam.

That's a favorable development, as fund firms believe that having settlements distributed to investors is the final step in putting the market-timing scandal to rest, industry observers say. The Columbia plan provides a method for distributing the approximately \$140 million settlement that the fund shop reached with regulators over allegations that it allowed certain investors to inappropriately market-time with its funds.

Bank of America and **FleetBoston** reached a \$675 regulatory settlement with the SEC and former New York attorney general Eliot Spitzer. At the time of the settlement, Bank of America was in the process of acquiring FleetBoston, Columbia's parent. The Columbia portion of the fine called for \$70 million in disgorgement and \$70 million in civil penalties. In addition, Columbia agreed to lower fees by \$80 million.

Retirement plan vendors are relieved that the Columbia distribution plan provides provisions that address a host of concerns conveyed by the Spark Institute, says Larry Goldbrum, general counsel for the organization. The group had feared the plan would force retirement plan recordkeepers to take on fiduciary responsibilities and absorb the costs of processing the payments to investors. In approving the plan, however, the SEC has addressed those concerns.

"Our members are reasonably satisfied with the plan and interpretation of the plan," he says. "It's a much more reasonable approach than the **Pilgrim Baxter** plan."

Pilgrim Baxter, part of Old Mutual, became the first firm to have a market-timing distribution plan approved by the SEC. The plan will result in divvying up a \$125 million portion of a \$267 million settlement to some 254,000 investors. The recent SEC decision makes Columbia the second fund shop to have a plan approved.

Goldbrum says the Columbia plan has a variety of provisions that will accommodate concerns of retirement service providers. At one point, Spark was concerned that the settlement fund administrator would send checks to each retirement plan recordkeeper before determining which investors will receive payments and the amount of each payment. That could have made retirement plan recordkeepers fiduciaries because the firms would be responsible for safekeeping of the assets until the payments were made.

The distribution plan, however, will allow recordkeepers to work with the settlement fund administrator to calculate the payments for each investor. That way, recordkeepers will have the information upon receiving payments from the settlement funds.

"If you know where to put the money before you get it, you can say to a plan sponsor, 'This is how much you are going to get, where would you like us to put it?'"

The plan also stipulates that Columbia will reimburse retirement plan vendors for any reasonable costs associated with distributing the checks to investors, he says.

He adds that the IRS, meanwhile, has reached a determination on the tax treatment of the payouts. Firms have been uncertain about the type of tax forms they must provide with the payments, so they have been waiting for guidance from the IRS on the matter.

The IRS has reached a determination, however, so the tax matter shouldn't be an issue, he says. The IRS has also reached a determination on the tax treatment of a proposed distribution plan for the Putnam market-timing fund, which should help expedite the processing of that settlement. The public comment period on the proposed plan for distributing the approximately \$100 million Putnam market-timing settlement is scheduled to close today.

Not everyone is pleased with the Columbia plan, however.

The Coalition of Mutual Fund Investors is concerned that the distribution plan allows plan sponsors to offset retirement plan expenses with the settlement funds, says Niels Holch, executive director of the group. The plan also permits distributions to be made only to current shareholders if tracking down former investors isn't feasible, he says.

Neither of those options is consistent with the SEC's last annual review. In that document, the SEC said it believed that the money should be returned to investors that may have been harmed by market-timing activities. The document specifies that the SEC wants to maximize the payments that individuals receive. One way to do that is to refrain from deducting retirement plan expenses from the payouts, Holch says.

"I don't think it's in the spirit of the plan," he says.

Goldbrum maintains that the plan is taking a practical approach. Indeed, many investors will probably receive less than \$10 for each fund within which they invested, he says. With that in mind, it doesn't make sense to expend a substantial amount of time and energy into tracking down former shareholders.

Either way, the approval of the Columbia plan is a positive development for the fund industry, says Michael Missal, a partner with **K&L Gates**. The idea is that progress is being made. "It has to be encouraging for fund firms," he says.

He says that the plans have been a big ordeal for the industry. "They are very complicated, and you have so many different situations that it just takes time to get them done," he says.

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