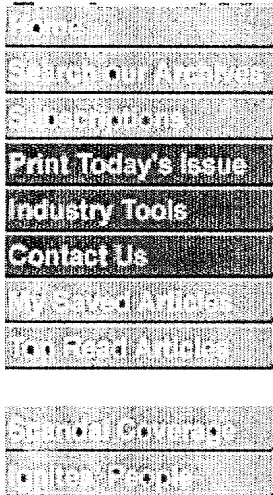


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Firms Fall Behind in Paying Scandal Damages

Article published on September 21, 2004

By Tom Leswing

Only a few fund firms have tapped distribution consultants to start the long process of reimbursing shareholders for scandal-related damages. That's the case even though deadlines for many firms requiring them to appoint a consultant have come and gone.

Pilgrim Baxter, Franklin Templeton and Strong have yet to appoint a distribution consultant who meets the independent board members' and the SEC's approval. In doing so, they have missed their initial deadline for finding the consultants.

The appointment of a distribution consultant is mandated as part of the firms' market-timing settlements with the SEC and New York attorney general Eliot Spitzer. Once selected, the consultants will determine the value of harm inflicted upon individual shareholders and appropriate a reimbursement.

So far, **MFS** and **Putnam** have received board and SEC approval of their distribution consultants. An **Alliance** spokesman,

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meanwhile, says the firm's proposed consultant has been approved by the fund family's independent board members. He was unaware, however, if the consultant had been approved by the SEC.

While the SEC has taken a hard-line stand in handing out punishment related to the fund scandal, it may be a bit more flexible on this issue. Strong spokesman Drew Wineland maintains that the SEC settlement allows it to receive extensions, assuming Strong shows "good cause" for not meeting its deadline. He declined, however, to provide further details on the process of finding a consultant.

In fact, John Nester, an SEC spokesman, says that some flexibility exists regarding deadlines.

"Basically, the SEC has discretion in determining if someone shall be fined based on how much progress they have been making," he says.

Strong reached an SEC settlement on May 20. Like most, the settlement requires that the firm retain a consultant within 30 days of the settlement date. That consultant, whoever it is, will be charged with distributing up to \$75 million in fines and disgorgement fees that Strong has agreed to pay out.

Meanwhile, Pilgrim Baxter has identified a consultant and is now seeking to have the individual approved by the SEC, according to a source familiar with the situation. A company spokesman declined comment.

Pilgrim reached its settlement on June 21. The firm agreed to pay \$50 million in civil penalties, return \$40 million in ill-gotten gains and cut management fees by \$10 million over five years.

Franklin Templeton has also missed its SEC-imposed deadline. It reached a \$50 million



settlement with the SEC August 2. It too was granted 30 days to find a consultant. The firm is moving forward on the process, says Stacey Johnston, a spokeswoman.

“We are currently in discussions with the SEC to finalize arrangements concerning the retention of an independent distribution consultant,” she says, declining to comment further.

Firms' inability to meet the SEC's deadline on a distribution consultant illustrate how difficult it is to find the right person for the job, says David Ruder. He is a law professor at Northwestern University's School of Law and a former SEC chairman. He also serves as a compliance consultant to the Strong Funds.

Ruder explains that distribution consultants, upon completing their assignments, must refrain from working for the tainted fund firm for two years. That's true regardless of the distribution consultant's main vocation.

“That limits the number of people that you have [to choose from],” he says. “That's especially true with large firms that have a lot of lawyers.”

Larger law firms are likely to have an employee or two who work with fund firms involved in the market-timing issue, he says. That is especially true because most fund firms have a variety of affiliated firms and subadvisor relationships.

“Most advisors' tentacles go out pretty far,” he says.

Still, some say fund groups' challenges in finding a distribution consultant is not what is important.

Niels Holch, who heads up the Coalition of Mutual Fund Investors, says he's disappointed to hear that some firms still haven't finalized their distribution consultant appointments.

“Fund firms should reimburse shareholders in a timely manner if they hope to restore investors trust,” he says.

Among the firms that found consultants, MFS was one of the first. Responding to inquiries in July, the firm said that it had tapped John Coates, a professor of law at Harvard, for the task. Coates is now assessing how the firm will distribute up to \$225 million in fines that MFS has agreed to dish out as part of its settlement with regulators. It reached the settlement with the SEC on February 5. Coates didn't return calls by press time.

Putnam has also identified its distribution consultant. It's tapped Peter Tufano, a professor at Harvard Business School, who declined to comment. Putnam had reached the agreement on April 8. It stipulates that Putnam pay out \$110 million in fines, most of which will be used for reimbursing shareholders.

Click [here](#) to contact Tom Leswing.

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