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Banc One Rolls Out Settlement Distribution Plan

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By [Tom Leswing](#)

Banc One has become the third firm to propose a plan for distributing market-timing fines to long-term shareholders.

The process may seem like a mere administrative step in the long, painful episode of the market-timing scandal. Yet, it's raising a host of concerns for retirement plan recordkeepers, broker-dealers and shareholder advocates.

Like many other fund firms, Banc One had previously settled with the SEC over charges that the firm improperly allowed certain investors to market-time to the detriment of other fund shareholders. Banc One, in reaching the settlement, agreed to dish out \$50 million in penalties. In addition, the firm agreed to hire an independent consultant to develop a method for distributing those assets to long-term shareholders.

Joseph Grundfest, a professor at Stanford Law School, has been tapped for that mandate and has just proposed a plan for distributing the assets to long-term shareholders. The plan is similar to an earlier plan submitted by a consultant for the firm previously known as **Pilgrim Baxter**, points out Niels Holch, executive director of the Coalition of Mutual Fund Investors.

Both plans propose determining the amount of profits that market timers made on a daily basis. The plans then say shareholders of the funds are to be identified for each day that market timing occurred. The portion of each shareholder's ownership in the fund each day and daily profits made by timers on each day would then be used to determine the portion of the settlement to be given to each investor.

The Spark Institute, which tracks legislative and regulatory developments on behalf of retirement plan service providers, has just begun evaluating the proposed Banc One plan, explains Larry Goldbrum, general counsel for the organization. The institute and the Coalition of Mutual Fund Shareholders are the only two organizations to have submitted comments to the SEC on any of the proposed plans.

Initially, the Spark Institute was concerned that the Pilgrim Baxter plan didn't give retirement plan recordkeepers sufficient time to identify shareholders in funds that were subjected to market timers. The organization maintained that many recordkeepers are already facing the challenge of complying with Rule 22c-2, or the redemption fee rule, which is already consuming their technology resources, so many firms may not have sufficient staff to also research the identities of prior investors.

The rule stipulates that intermediaries such as retirement plan recordkeepers must provide fund firms with shareholder trading records. Armed with that knowledge, fund firms can then ensure that market-timing activities aren't occurring under the veil of omnibus accounts. Omnibus providers batch together individual trade orders. That way, they can submit one large trade order to fund firms. Combining the orders into a single order may be efficient, but it means that fund firms don't see the underlying identities of investors. That will complicate efforts to distribute settlement funds to the investors.

Goldbrum, however, says tough deadlines for intermediaries to identify shareholders under the Pilgrim Baxter plan and Banc One plan don't appear to apply to retirement plan recordkeepers. Instead, the plans propose that recordkeepers handle the distribution of assets to 401(k) investors.

While it's encouraging to know that many of the provisions of the two plans don't apply to recordkeepers, the process of distributing the payments may be daunting for many firms.

"The bad news is that basically, you will be on your own," Goldbrum says, referring to the role that retirement plan recordkeepers will play. "Essentially, the independent distribution consultant is saying that he will not do any of the allocations among retirement plans. Instead, it will be up to the retirement plan recordkeeper."

While the Spark Institute is concerned with that development, it is also optimistic that the SEC will be responsive to its comments on the proposed plans. The organization has been working closely with SEC staffers and believes that the regulator is willing to address its concerns, Goldbrum maintains.

Either way, identifying the shareholders that purchased shares through omnibus accounts will be a huge task for intermediaries, explains Holch. Under the proposed Banc One plan, the distribution consultant will have to request shareholders' records from certain intermediaries within 30 days of the plan's being approved by the SEC, he explains. The plan then specifies that intermediaries would have 90 days to produce the information.

"I still think intermediaries will need more time," he says. "I think you probably need six months."

One approach could be to simply notify the general public that investors that held shares of the funds may be entitled to a payment, says Tamar Frankel, a professor at Boston University School of Law. By doing so, investors that are entitled to payments could come forward and claim their distributions, she says.

In addition to Pilgrim Baxter and Banc One, Columbia Funds has also submitted a proposed plan. Calls to Grundfest, the Banc One distribution consultant, weren't returned.

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