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Spark Institute Backs MFS Distribution Plan

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A proposal to distribute the **MFS** market-timing settlement to shareholders has won kudos from the Spark Institute, which represents the interests of retirement plan vendors.

However, other observers are questioning if enough information is available to assess whether the proposed distribution plan will be fair to all fund shareholders.

MFS had previously settled market-timing charges by agreeing to dish out $225 million. As part of the deal, MFS also agreed to tap an independent consultant to determine how to divvy up the fines among long-term shareholders believed to be harmed by the abusive market-timing activities.

In doing so, the MFS proposal joins the ranks of plans for the **Columbia**, **Banc One** and **Pilgrim Baxter** settlement funds. The plans propose methods for reimbursing long-term shareholders of funds hit by market timers.

Like other plans proposed by other firms, the MFS plan calls for calculating the daily dilution to fund assets that occurred each day because of rapid trading by market timers. It then proposes to reimburse each long-term shareholder with an amount that's proportional to the percentage of the fund that each individual owned and the amount of dilution that occurred each day.

Unlike other plans, however, the MFS proposal provides details for dealing with thorny issues associated with retirement plan investors, points out Larry Goldbrum, general counsel of the Spark Institute. The institute has previously said that other plans impose tough deadlines on 401(k) vendors to identify former shareholders of funds.

Larry Goldbrum
Executive Vice President and General Counsel RG Wuelfing & Associates and The Spark Institute

It has also expressed concerns over the costs associated with finding former shareholders and distributing money to the individuals. Those issues have surfaced because many retirement plans and broker-dealers use omnibus accounting. The process involves batching together investors' trade orders instead of sending a large number of individual trades to fund shops. As a result, fund firms don't always know the identities of individual shareholders.

With that in mind, the MFS plan provides a variety of options for firms to get the cash to shareholders, he says. "Overall, I'm encouraged by what I have read so far," Goldbrum says. "They seem to have taken into consideration concerns that we have expressed [over previous plans]."

Previous plans haven't provided specific methods for determining how checks will be sent to individuals in retirement plans, he says. The MFS plan, in comparison, provides a variety of options.

For example, retirement plan recordkeepers can provide the identities of former shareholders to firms that will handle the disbursement of the market-timing settlements. In that scenario, the firms handling the disbursements will calculate how much shall be sent to each individual investor and then mail out the checks.

Another option is that the disbursement firm, after receiving the identities of shareholders, will make the calculations and then send a single check to each recordkeeper. Each recordkeeper will then be charged with the task of divvying the money up among shareholders in accordance with calculations made by the disbursement consultant. The plan also states that firms handling the disbursements can simply mail a check to retirement plan recordkeepers, which will then be responsible for calculating how much should be sent to each shareholder and also for distributing the money.

The MFS plan appears to offer some flexibility for the deadlines for making payments to individuals, Goldbrum adds.

However, other industry observers question whether the plan will be fair to shareholders. It's hard to assess the fairness of the plan without having a sense of the makeup of investors that purchased shares through omnibus

accounts, maintains Niels Holch, executive director of the Coalition of Mutual Fund Investors.

For example, payments from the settlement funds may end up in the hands of those who committed the abuses in the first place. "I'm still troubled by the lack of transparency in omnibus accounts," Holch says. "You don't really know what's going on in those accounts. You could even be distributing money into accounts of market timers."

The plan has a variety of screens for assessing which market-timing trades should be used to calculate the daily damages that occurred, adds Eric Zitzewitz, an assistant professor of economics at Stanford Graduate School of Business.

Zitzewitz has previously published papers on the impact of market timers upon mutual fund investors. Larger market-timing trades may have been broken up into small trades by investors trying to hide their activities, he explains. As a result, some of the trades may not be included in the calculations of damages that occurred each day. That could mean that shareholders in the funds in those days may not receive a fair portion of the settlement funds, he maintains.

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