MS ‘Platform Fee’ Raises Specter of Distribution in Guise

By Whitney Curry Wimbish, *BoardIQ*, May 8, 2018 [subscription required]

https://www.boardiq.com/c/1962144/230514/platform_raises_specter_distribution_guise?referrer_module=issueHeadline&module_order=1

Morgan Stanley says a newly disclosed wrap account fee will be partially offset by mutual funds’ sub-TA fees – an expectation directors and others say presents a serious concern for boards.

They say that, after the Securities and Exchange Commission’s prior investigations into fees for distribution in guise, directors must be extra careful that charges from distributors are paid through 12b-1 fees – unless it’s concretely proven the fee is not for distribution.

“This platform cost smacks of distribution, so I assume it’s paid for in addition to what they’re getting from 12b-1 fees,” says an independent director, who spoke on condition of anonymity.

The onus is on the distributor to explain “what additional services are you providing that could support the board’s ability to say, ‘Yes this is a sub-TA cost,’ particularly in light of how sensitive the SEC is. The SEC has been trying to find funds to whack. This is not an opportune time to play gamesmanship with additional fees.”

Morgan Stanley added the 4.2-basis-point platform fee to its Trak Fund Solutions, UMA and Consulting Group managed accounts programs, disclosures show, a move first reported by *BoardIQ* sister publication *Ignites*. The firm told clients it “expects” sub-TA fees and revenue sharing will pay for it, *Ignites* reported.

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As Niels Holch, executive director of the Coalition for Mutual Fund Investors, puts it, “Directors will have to evaluate whether this fund platform fee is a distribution fee, and it’s going to be hard to argue that it’s not.”

Directors are unlikely to have forgotten the SEC’s investigation into fees for distribution in guise, says Holch, also a founding partner at **Holch & Erickson**. The commission sought to find whether funds were paying for distribution outside of 12b-1 plans by setting up improper sub-TA payments.

In 2015, **First Eagle Investment Management** and its affiliated distributor agreed to pay almost $40 million to settle charges that it improperly paid for fund marketing and distribution with fund assets. Last year, **William Blair** and **Calvert Investment**

Management said they would collectively pay more than $27 million in restitution and penalties for compelling their funds to make improper distribution and sub-transfer agent payments.

“If management comes to the board and says, ‘I need another 4.2 basis points to be on the Morgan Stanley platform, the fund board is probably going to say that we’re not allowed to use fund assets for distribution outside of a rule 12b-1 plan,” Holch says. “So if you want fund assets to pay for this, it has to come out of what we’re already doing for 12b-1. Otherwise it has to come out of revenue sharing because otherwise you’re inconsistent with the January 2016 guidance.”