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B of A Market-Timing Payouts Get Messy

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The complex job of cleaning up the aftermath of the market-timing scandal just became even more complicated for the fund industry thanks to a recently proposed plan for distributing some $375 million in settlement money.

The **Bank of America** has recently proposed a plan for distributing $375 million, plus interest, to Nations Funds shareholders believed to be harmed by the market-timing scandal. The money resulted from the fund shop's previously reaching a settlement with former New York attorney general Eliot Spitzer and the SEC.

However, unlike other firms that are working to distribute their market-timing settlements to shareholders, the Bank of America plan has introduced a new wrinkle, explains Niels Holch of the Coalition of Mutual Fund Investors. An independent distribution consultant has determined that only $90 million of harm occurred to investors within the Nations Funds, which have since been merged into the bank's Columbia Funds, he says.

As a result, the consultant is recommending that more than $255 million of the settlement amount be distributed to shareholders in other funds that were used by Bank of America brokers to market-time.

For example, some $80 million will be distributed to investors who held shares of Alliance Funds when the market timing occurred. Shareholders in funds offered by **AIM**, **Janus**, **MFS**, **Federated**, **Franklin** and other fund shops will also receive a portion of the Nations Funds settlement, he adds.

Those firms have also hired consultants to oversee the distribution of settlement money to shareholders. The consultants will now have to also oversee distribution of portions of the Bank of America settlement, as a portion of the settlement will be directed to shareholders in those other funds, Holch adds.

The development underscores the complex nature of cleaning up in the aftermath of the market-timing scandal, adds Peter Delano, research area director of securities and investments at research and consulting firm **TowerGroup**.

"I can't even fathom the amount of effort that's going into calculating the payments and getting the checks mailed out," he says. "And the longer this process goes on, the more complex it becomes."

Indeed, the proposed Bank of America plan is the first to require that a portion of the settlement be distributed to investors in funds other than those offered by the firm that has paid out a settlement fine, he says. As a result, distribution consultants for other fund shops will now have to calculate what portion of the Bank of America settlement should be distributed to each shareholder. That's on top of calculating the amount that each firm that has reached a settlement should pay their own shareholders, he says.

Other distribution plans have limited payments to only shareholders that were investors in a firm's funds when the market-timing activities occurred, he explains. Even that is a cumbersome process as consultants must identify which investors held fund shares and also determine the current locations of the investors in order to mail out the checks.

The consultants must also estimate how much each investor lost because of market-timing activities in order to cut a reimbursement check.

In addition, over the past few years, fund shops have been merging away redundant funds and poorly performing portfolios. The end result is that tracking down former shareholders in particular funds is becoming more complicated, he maintains.

The development is a bit of a surprise for the fund industry, which had started to get a grasp on the various requirements within the settlements reached with regulators, points out Todd Cipperman, esquire with **Cipperman & Co.** It is a surprise to many that the distribution consultants would propose sending settlement money to investors that used funds from a variety of firms, he says.

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