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# Fund Shops Face More Timing Settlement Costs

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By Tom Leswing

It looks as if fund firms will get hit with the hefty costs of distributing roughly $2.8 billion in market-timing penalties to shareholders.

Details regarding who will foot the costs of distributing the checks are sketchy at this point, but a handful of firms are implying that they will absorb the costs. Proposed plans for distributing the money to shareholders also imply that fund shops will be hit with the expenses of distributing the settlement funds, industry observers say.

The issue of who will foot the costs of distributing the payments came to light recently when the SEC issued its 2006 Performance and Accountability Report. The report says that the regulator is seeking to have the distribution process conducted in an efficient manner. To that end, it has invested settlement funds in interest-paying debt and has been structuring settlements to require that asset management shops absorb distribution costs.

Along those lines, a proposed plan for distributing the $226 million **Janus** settlement to shareholders specifies that the firm will pick up the costs associated with the task, says James Aber, a spokesman for the firm.

"Janus will bear the full cost of the distribution of restitution payments to shareholders," he says.

Janus had previously reached a $226 million settlement with regulators over charges that it allowed certain investors to market-time with its funds. Janus has since created a proposed plan for distributing the money to shareholders and will need to get SEC approval before starting the process.

**MFS** is taking a similar approach, adds David Oliveri, a spokesman with the shop. "It's safe to say that fund investors won't bear any of the costs," he says, declining to elaborate on the matter.

MFS had previously reached a $225 million market-timing settlement. A distribution consultant hired by the board of the firm's funds has since concluded that the settlement amount exceeds the amount of damages to shareholders resulting from market timers' frequent trading of fund shares.

That conclusion has prompted at least one trade group to lobby for having a portion of the settlement amount used to reimburse retirement plan recordkeepers for the costs of handling the distributions to shareholders. In a comment letter to the SEC, the Spark Institute maintains that retirement plan service providers will face substantial costs when trying to identify and locate shareholders that are entitled to payments from the MFS settlement fund. With that in mind, the surplus should be used to help offset recordkeepers' expenses rather than to provide a windfall for investors, according to the institute's letter.

Not everyone agrees with that logic, however.

It's difficult to estimate the cost to shareholders that has resulted from the market-timing activities, argues Niels Holch, an attorney and executive director of the Coalition of Mutual Fund Investors. Indeed, the estimated surplus may be no surplus at all.

He adds that the wording in initial settlements with fund firms implies that fund shops should absorb the costs of distributing the assets to shareholders. "It is implied that distribution consultants develop methods to return the entire settlement amounts plus earnings and interest to shareholders," Holch maintains.

Other attorneys add that the original negotiations and agreements between fund firms and regulators will dictate whether fund firms have to pay for distributing the assets to shareholders.

"It may depend on each settlement," says Andre W. Brewster, who is a partner with **Howard Rice**. "It's really a matter of contract law. If it's not clear then perhaps fund firms will have to negotiate [with regulators] if they should have to pay the costs."

Either way, the costs of distributing the funds to shareholders will be substantial, adds Peter Delano, a senior analyst with research and consulting firm the TowerGroup. He declines to put a dollar figure on the amount.

One challenge is that older shareholder account records have probably been moved from transfer agency systems to archive systems. So, firms will have to put the data back onto transfer agency systems before they can identify investors who held fund shares when the market timing occurred.

In addition, firms will have to find shareholders' current addresses. They will also have to draft letters to shareholders that will explain why the checks are being distributed. Fund firms will have additional telephone calls from shareholders that may have questions about the nature of the distributions. Furthermore, firms will have to decide what to do with checks that are returned because of incorrect addresses.

**Putnam** also says it expects to absorb the cost of distributing payments to shareholders. It had reached a $110 million market-timing settlement. "The full amount of restitution proceeds plus interest will be paid to shareholders with no deduction for costs of distribution," says Sinead Martin, a spokeswoman with the firm. She declined further comment.

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