Calamos Jettisons 12b-1 Claim in ’40 Act Fee Suit

By Beagan Wilcox Volz, Ignites, April 14, 2017 [subscription required]
http://www.ignites.com/c/1612913/188283/calamos_jettisons_claim_suit?referrer_module=issueHeadline&module_order=3

Calamos has winnowed the scope of a ’40 Act excessive-fee lawsuit that it has been fighting for more than two years.

The plaintiffs last week agreed to voluntarily dismiss their claim that the $1.8 billion Growth Fund charged excessive 12b-1 fees. However, Calamos continues to defend a claim that the fund levied excessive advisory fees.

The voluntary dismissal of the 12b-1 portion of the suit, which was first filed in February 2015, “is not the result of a settlement or compromise or the payment of any consideration to Plaintiffs or Plaintiffs’ Counsel,” a court document states. Terms of the dismissal also prevent the plaintiffs from filing the claim again.

The language about a lack of a settlement or exchange of money is identical to that used in the recent voluntary dismissal of a separate excessive-fee suit against Prudential, which likewise barred the plaintiffs from bringing their claims anew. In contrast, though, that case was dismissed in whole.

* * * * *

Plaintiffs historically have not had much success with excessive 12b-1-fee claims, says Niels Holch, partner at Holch & Erickson and executive director of the Coalition of Mutual Fund Investors.

The SEC lays out the rules of how 12b-1 fees are used and Finra regulations cap the amount that funds can charge. The maximum is 75 basis points for marketing and distribution and 25 basis points for shareholder service under Finra rules, for a combined maximum of 100 basis points.

“When the regulators are capping the fees, presumably they’re making a judgment about what’s excessive and what’s not, and so I think [that] makes it hard for plaintiffs to make the argument that anything within these caps [is] excessive,” says Holch, who is tracking the ’40 Act fee litigation.