Calamos Joins Growing Number of Excessive-Fee Targets

By Emile Hallez, *Ignites*, February 23, 2015 [subscription required]

Two investors in the $3.3 billion Calamos Growth Fund have sued the firm, in what appears to be the first excessive-fee case filed against the Illinois-based fund manager.

The plaintiffs allege that Calamos, acting as both distributor and advisor of the fund, did not negotiate at arm's length for the fees it charged retail investors, and that the advisory fees were consequently much higher than they should have been.

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Lawsuits involving advisory or subadvisory fees have been increasing recently, and some of the cases have presented compelling arguments, says Niels Holch, executive director of the Coalition of Mutual Fund Investors. Similar cases involving claims against Harbor Capital Advisors, Axa Equitable and The Hartford have also survived motions to dismiss.

Surviving a motion to dismiss "is a hurdle that many plaintiffs have not been able to get over in excessive-fee cases," Holch says.. "[The lawsuits are] certainly not frivolous. They're going to be fact-dependent."

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There are two types of excessive-advisory-fee cases that are on the rise, Holch notes. One type involves an advisor that delegates fund management to subadvisors and retains a potentially excessive fee for fund supervision, which plaintiffs have argued involves substantially less work.

In the other type of case, such as the lawsuit against Calamos, an advisor charges a higher advisory fee for its retail funds than it does for what plaintiffs say are nearly identical services as a subadvisor to an outside fund. While the work done by the advisor is the same whether they are managing a fund's assets in an advisory or subadvisory capacity, the fees they charge as subadvisors are often less, due to the competition in winning mandates, Holch says. In other words, there can easily be arm's-length negotiation between advisors and unaffiliated subadvisors, but not necessarily between an advisor and a distributor that are part of the same parent firm, he says.

"Those [institutional] rates are much more market rates for advisory services," Holch says. "When it's not an arm's-length transaction, they're getting a much higher fee."

But fund firms that are defendants in other cases focused on the disparity between advisory and subadvisory fees have argued that the advisor does much more in its oversight role to justify its fee than plaintiffs acknowledge.

In the suit against Calamos, the plaintiffs allege that the firm effectively charges its institutional and separate-accounts clients an advisory rate of 60 basis points, whereas the firm charges investors in the Growth Fund 83 bps.

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Though investors in retail mutual funds must ultimately pay for administrative services that institutional investors do not, such fees are separate from the advisory fee, Holch says, adding that in his estimation the recent cases that compare the advisory costs between advisory and subadvisory services are an "apples to apples" comparison.