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Market-Timing Resolutions Hit Yet Another Snag

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The SEC is continuing to delay buying into proposed distribution plans for market-timing settlements, which may have far-reaching consequences for the fund industry.

The most recent example is the delay of **MFS's** plan, which has been previously pushed back. This is the latest in a string of postponements, which includes the **Banc One** and **Columbia Funds** proposed distribution plans, each of which have been delayed multiple times. The delays may further muddy the processing of the settlement funds, observers say.

The SEC has just announced that it extended its own deadline for approving or rejecting a proposed distribution plan for the \$250 million MFS settlement. The most recent deadline was Feb. 13, but that has been postponed to May 14. The February deadline was also the result of a previous 90-day extension for the SEC to approve or reject the distribution plan.

According to the recent SEC order extending the deadline, the commission believes more time is needed to address additional issues that have arisen with the proposed plan. Those issues require additional review and analysis.

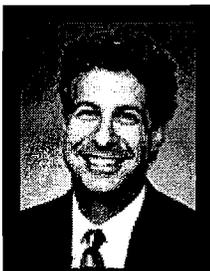
An SEC spokesman says the delay is a result of the complex nature of the distribution plan, but declined to provide further comment.

The MFS plan isn't the only program to face delays.

The distribution plan for the \$50 million Banc One settlement is facing a March 15 deadline. The deadline is a result of the SEC's extension of a previous deadline, which was Jan. 4, which was also the result of an extension.

The SEC is also facing a March 16 deadline for approving or rejecting the \$140 million Columbia Funds distribution plan. That deadline resulted from the SEC's previously delaying the deadline from Sept. 17 of last year to Dec. 16 and then extending the deadline again to March 16.

The delays, of course, mean that shareholders will have to wait to receive their share of the market-timing settlements. Perhaps just as significant, however, is that fund firms will have to wait even longer to put the market-timing scandal behind them, says Larry Goldbrum, general counsel of the Spark Institute, which deals with legislative and policy issues relating the retirement plan industry.



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That is significant because fund firms want to end the negative publicity associated with being involved in market-timing settlements. "The sooner the plans get approved, the sooner fund firms can stop talking about it," Goldbrum says.

The delays have several industry observers, who wished to remain anonymous, questioning if the SEC would have been better served to appoint a single consultant to forge distribution plans for all of the market-timing settlements. The regulator instead had each fund firm select a consultant. With a single consultant, the plans would likely be more similar. As a result, reviewing and evaluating the plans would be somewhat simpler.

Yet, each situation is unique, so developing a common plan for each market-timing settlement probably isn't feasible, says Niels Holch, executive director of the Coalition of Mutual Fund Investors. Yet at the same time, having the plans streamlined would make it easier for the regulator to approve the distribution programs.



"Each proceeding has a unique set of facts, but there are also similarities," he maintains. "There is a need for individual plans, but also for standardization in the plans. So, the SEC needs to strike a balance."

He speculates that the SEC is probably evaluating whether it should have taken actions to make the plans more similar, as the regulator has repeatedly had to extend deadlines for approving the programs.

He maintains that having one consultant create distribution plans for each market-timing settlement isn't feasible. He doesn't think an individual consultant or consulting firm has sufficient resources to handle all of the settlements.

Observers have also questioned whether the delays may make it harder for fund administrators to process the distributions to shareholders and former shareholders. The concern is that as more time passes, more shareholders will move to new addresses, some shareholders will die, and some transfer agents and retirement plan recordkeepers may change technology platforms.

Yet, even a year delay probably won't make much of a difference, Goldbrum says. "Those problems already exist," he says. "The delays will simply cause the level of magnitude of the problems to increase."

Tamar Frankel, a professor of law at Boston University, agrees the delays are a direct result of the complex nature of the plans. With that in mind, she believes fund firms should work with their independent distribution consultants and discuss the plans with the SEC. The idea is that fund firms and consultants should determine which issues within the plans are causing the confusion with the SEC and then propose ways to clear up those issues.

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