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Omnibus Market-Timing Refunds Lack Clarity

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As the long process of reimbursing fund investors injured by the market-timing scandal continues, one advocacy group is calling for better transparency in how payments are being made.

Niels Holch, executive director of the **Coalition of Mutual Fund Investors**, wrote the Securities and Exchange Commission's Office of Collections and Distributions May 29 requesting a detailed accounting of the ongoing Fair Fund disbursement of more than $3 billion from firms. The office was set up in February following criticism by the Government Accountability Office that the SEC needed to centralize the administration of the fund. The earliest settlement date for a fund dates back to 2003.

Holch, who tracks the disbursement process on his website, says the disbursement methodology offered by independent distribution consultants on behalf of the funds potentially excludes investors from losses they may have sustained. The consultants are approved by the SEC and have laid out various options in determining which investors should be considered for reimbursement and then hiring fund administrators to make the distributions.

Holch is especially concerned with disbursement options that involve omnibus account holders, such as brokerage firms, fund supermarkets and 401(k) plans.

The administrators for many disbursement plans — **Rust Consulting** and **Boston Financial Data Services,** for example — have the option of providing lump-sum payments to an omnibus account holder if that account holder does not produce the individual customer information. Otherwise, the administrator and omnibus account holder may work together on an alternative, which could include the omnibus account holder making the distribution payments directly to its customers.

"What if [omnibus account holders] don't know who their customers are because their record keeping is flawed?" Holch asks. "If somebody can't get their customer information to the fund administrator, then how confident are we that they can handle it when they have to make the same distribution?"

Richard D'Anna, director of the SEC's Office of Collections and Distributions, says Holch's letter is being reviewed by the agency's general counsel's office; D'Annna did not have a response to any of Holch's concerns as of Tuesday. He acknowledged the long delay in distributing funds under the old system, which was handled by the regional enforcement divisions, and expects the new centralized effort to improve the process.

"While speed is a concern of ours, overriding that is ensuring we are doing the right thing and ensuring that it is under control," D'Anna says.

Still, Holch argues that the formation of the collection department is not enough.

He is requesting that the SEC publish a detailed account on its website of the number of customers who make up omnibus accounts and are subject to disbursements. This will at least allow for greater transparency.

"You can't just say they were distributed correctly; you have to know they were distributed correctly," Holch says. "It's just useful to find out what happens so then we can evaluate if there are any flaws in the process or if something unfair has happened."

The administrator of each fund is required under Rule 1105(f) of the Fair Fund procedures to develop a quarterly and final accounting of all affected funds. To protect the privacy of investors, names and addresses can be omitted, Holch says.

Karen Dolan, director of fund analysis at **Morningstar**, says she is not too worried about the level of detail sought by Holch's group. What's important is that the long process comes to an end and investors are compensated as soon as possible, she says.

"Our focus is on shareholders' being paid and also that these fund companies move past this, get clean and take these events more seriously than they did in the past," Dolan says.