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Pace of Timing Settlement Payouts Quickens

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The Securities and Exchange Commission reached a milestone this year in returning to investors more than $2 billion in civil penalties and ill-gotten gains, nearly half of which was derived from market-timing settlements.

More than $990 million in Fair Fund distributions paid as of Nov. 20 stemmed from nine market-timing cases involving mutual fund firms dating back to the 2003 scandal, according to the SEC. The nine timing cases were part of 31 total settlements paid out to investors. They included a distribution of more than $320 million to approximately 2 million investors in **Alliance Capital** mutual funds.

"There is no substitute for returning money to defrauded investors," Robert Khuzami, director of the agency's Division of Enforcement, said in a release.

The distribution to investors also signifies a huge step for mutual funds that have long paid into the fund but had no control over when the checks would actually go out. The Fair Funds, created in 2002 as part of the Sarbanes-Oxley Act, has so far paid out about $6.6 billion to investors for illegal conduct ranging from accounting fraud, pump-and-dump schemes and mutual fund market timing.

Many mutual funds had reached multimillion-dollar settlement agreements with the SEC in 2003, 2004 and 2005. But a complicated distribution process meant that distributions of the settlements did not gain momentum until last year, when $724 million was authorized to go out to mutual fund investors, according to Niels Holch, president of the Coalition of Mutual Fund Investors.

"If you look at 2009 numbers, it definitely is the best year so far for mutual funds," says Holch, whose organization tracks the data. "It appears the distribution plan is going faster than it did a few years ago."

The SEC has collected $3.4 billion from mutual fund market-timing cases, according to Holch's calculations. That amount also includes accumulated interest sitting in a Treasury account, he says.

Bruce Carton, a former senior counsel for the SEC's Division of Enforcement, doesn't place too much weight on the milestone payout. Distribution problems prompted the Division of Enforcement to form an Office of Collections and Distributions in 2007 meant to centralize the process. But in a March speech, SEC commissioner Luis Aguilar acknowledged that the office "does not yet have the personnel and expertise to shoulder full responsibilities for distribution." The agency announced it would increase the office staff to focus specifically on Fair Funds and not place the responsibility on enforcement investigators.

But Carton, who is now editor of Securities Docket, an online publication, says the $2 billion payout may be more a combination of the SEC's becoming better at the disbursement process and its desire to silence critics by acting more quickly. The SEC has worked to regain its standing as a regulator after its failings in 2008 and has emphasized its role as an investor protector.

Other distributions this year include those from **Bear Stearns**, with more than $240 million to about 700,000 investors, and **Aim**, with more than $78 million to more than 590,000 investors.