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SEC may soon OK distribution of settlement money

By **David Hoffman**
August 28, 2006

PHILADELPHIA - Investors who are due millions of dollars from mutual fund settlements that resulted from the fund trading scandals may soon get their due.

The Securities and Exchange Commission appears to have gotten comfortable with a number of the distribution plans that have been proposed to get the money into the hands of those investors.

Three such plans that would pay a total of \$440 million in settlement money have been published within the past few months by the SEC and await approval pending the review of any comment letters that are filed.

And the SEC is working on publishing other plans.

Franklin Templeton Investments in San Mateo, Calif., said on its website that the SEC "anticipates" that the company's distribution plan "will be published on or after" Sept. 15.

Putnam Investments LLC of Boston also thinks that it is getting closer to being able to execute its plan, said Brett Browchuck, a managing director with the firm.

"We have fairly good expectations that we are in the pipeline to move," he said.

There are a few issues that have to be resolved before any plan becomes reality, however.

While it is possible that some investors may start to see settlement checks before the end of the year, it all depends on how those problems are resolved, according to industry experts.

Waiting on the IRS

For example, Putnam is still waiting for a private-letter ruling from the Internal Revenue Service explaining how payouts should be taxed, Mr. Browchuck said.

That same situation is thought to be holding up the implementation of many, if not all, of the proposed distribution plans, industry experts say.

Another potential stumbling block is that some of the comments that have been filed regarding the distribution plans published by the SEC raise serious concerns.

From the standpoint of fund investors, the proposed plans are problematic because they treat investors differently depending on how they purchased fund shares, the Coalition of Mutual Fund Investors in Washington said in two comment letters.

Investors who bought shares directly from the fund companies will have no problem getting the money they are owed, said Niels Holch, executive director of the coalition. But investors who bought fund shares through a third party will have a harder time getting their money, because their orders were probably made as part of an omnibus-account order, he said.

Under all three plans published by the SEC so far, the financial intermediary using an omnibus account isn't required to hand over the identity and transaction information of investors in those accounts to the administrators responsible for implementing the distribution plans.

Instead, each of the three plans gives the financial intermediary a certain amount of discretion, based largely on how much it will cost the intermediary to dig out the information, as to how it wants to proceed, Mr. Holch said.

The three plans that have been published concern the now-defunct Pilgrim Baxter & Associates Ltd. in Wayne, Pa.; Columbia Management Advisors Inc. and Columbia Funds Distributor Inc., both defunct Boston subsidiaries of the former FleetBoston Financial Corp.; and Banc One Investment Advisors Corp. of Columbus, Ohio, once a unit of the former Bank One Corp. of Chicago.

"Mutual fund shareholders expect uniform treatment, and it is important that investor trust in funds not be eroded further because of omnibus accounts and the economic needs of financial intermediaries," the coalition said in comment letters it filed July 31 and Aug. 18 regarding the Pilgrim Baxter and Columbia plans.

The coalition has a point, though it is a complicated issue, said Russel Kinnel, director of mutual fund research at Chicago-based Morningstar Inc.

"Those omnibus accounts are where people are the hardest to track down," he said.

The Society of Professional Administrators and Recordkeepers in Simsbury, Conn., agrees. Its members who handle retirement plans and retirement plan accounts are treated differently than financial intermediaries who use omnibus accounts, such as brokers.

The plans virtually ignore SPARK members, and that puts it in a very difficult position, said Larry Goldrum, general counsel for the group.

The Department of Labor released guidelines in April saying that a retirement plan service provider becomes a fiduciary upon receipt of settlement funds, meaning that the provider is held to a much higher standard, even if it is not otherwise a fiduciary with respect to the plan it services.

The guidance provides a "safe harbor" for retirement plan service providers, but only if the service provider uses the particular allocation methodology set by the distribution plan.

That means that retirement plans must adopt the distribution plan as dictated to them or risk losing the safe-harbor provision - which would open them up to all kinds of liability, Mr. Goldrum said.

The methodologies followed by the plans that have been published would be very expensive for the retirement plan service providers to implement, he said.

As a result, SPARK also filed comment letters July 31 and Aug. 18 regarding the Pilgrim Baxter and Columbia plans, arguing that the plans should be modified to address its concerns.

The comment letters will likely slow down the distribution of settlements.

"I've had follow-up conversations with the SEC since the [Pilgrim Baxter] comment letter," Mr. Goldrum said. "I'm encouraged that they're ... trying to figure out ways to mitigate the issues that we have raised."

With regard to the coalition's concerns, Mr. Holch said that he is also encouraged by the response he received from the SEC.

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Site Design by Karen Morstad & Associates.