

## *MFS Mutual Fund Fraud Litigation*

**COURT:** United States District Court for the District of Maryland

**CASE NUMBER:** 04-md-15863

**CLASS PERIOD:** 12/15/1998 - 12/08/2003

Following a hearing on May 3, 2004 in the massive mutual fund litigation, the United States District Court for the District of Maryland appointed BLB&G client the City of Chicago Deferred Compensation Plan as Lead Plaintiff in the securities fraud class action against Massachusetts Financial Services Company ("MFS"), the investment advisor to the MFS Funds, and others.

On March 1, 2006, the Court sustained the Consolidated Amended Class Action Complaint, allowing the case to move forward against certain defendants.

### SUMMARY OF ALLEGATIONS:

The Complaint in this litigation alleges that MFS and certain of its senior executives were aware of, engaged in and facilitated "timing" trades in the MFS Funds: a money-making act involving short-term trading in and out of a mutual fund. The technique is designed to exploit inefficiencies in the way mutual fund companies price their shares by allowing certain customers to trade shares at distorted prices that no longer reflect the true value of the fund. As a result, those few customers permitted to engage in market timing typically reap huge profits, the cost of which are borne primarily by the long-term investors in the relevant fund.

The public filings issued by the Defendants stated that, "MFS funds do not permit market-timing or other excessive trading practices that may disrupt portfolio management strategies and may harm fund performance." In reality, however, the Defendants knew, or recklessly disregarded, the fact that trades were being timed and that these timed trades negatively and materially impacted the MFS Funds, thereby causing significant losses to investors in the MFS Funds.

On February 5, 2004, MFS agreed to entry of a cease and desist order by the Securities and Exchange Commission ("SEC") against MFS and John W. Ballen ("Ballen"), MFS's current chief executive officer, and Kevin R. Parke ("Parke"), MFS's current president and chief investment officer ("Cease and Desist Order"). Specifically, the SEC found that MFS, Ballen and Parke allowed widespread market timing trading in certain MFS Funds from at least late 1999 through October 2003, in contravention of the Funds' public disclosures. In particular, MFS explicitly informed certain select brokers in a written memo that "unrestricted" trading would be permitted in certain MFS funds (known internally at MFS as "Unrestricted Funds"), including the Massachusetts Investors Growth Stock Fund, "even if a pattern of excessive trading has been detected." Not only did MFS selectively enforce its market-timing policies, but executives at MFS facilitated the frequent trading in and out of certain MFS Funds by steering select investors to these "Unrestricted Funds." As the Cease and Desist Order confirms, as much as \$2 billion in timing money flowed into MFS Funds during the Class Period.

Internal MFS documents and policies acknowledged that market timing was detrimental to long-term shareholders. In fact, as early as June 2000, an internal presentation entitled "Market Timing Wheel of Terror," warned that "[l]ong term investors are being penalized" by market timing activity. Nevertheless, the market timing activity persisted in the MFS "Unrestricted Funds." Moreover, MFS's select enforcement of its trading policies also included late trading, which alone caused well over \$100 million in investor losses. And, as further alleged in the complaint,

various brokers and financial institutions also participated in the market timing schemes, to the detriment of ordinary investors.

MFS's policy of allowing market-timing and steering select investors to the "Unrestricted Funds" was adopted as a means to increase profits by luring market timing assets so as to increase funds under management, and, therefore, increase fees paid to MFS for investment advisory services. These additional assets under management also resulted in an increased bonus pool from which MFS employees, including Ballen and Parke, were paid excessive compensation. During this period, none of the above detailed material information was disclosed to the members of the Class. In addition to the profits from their market timing, MFS also profited by charging ordinary investors hundreds of millions of dollars in management fees while breaching their fiduciary duties to those very same investors.

On May 20, 2010, the Court preliminarily approved proposed settlements, totaling \$75,042,250, that would resolve this litigation. On October 25, 2010, the Court entered Judgments granting final approval to the settlements and entered separate Orders granting Plaintiffs' Counsel's application for an award of attorneys' fees and expenses and approving the Plan of Allocation of the settlement proceeds.

The claims administration process has concluded and the net settlement fund has been fully disbursed. This matter is considered closed.

## Case Documents

- June 25, 2010 - Long-Form Notice
- June 25, 2010 - Mailing Notice
- May 19, 2010 - Preliminary Order for Notice and Hearing in Connection with Settlement Proceedings in the MFS Sub-Track
- September 30, 2004 - Consolidated Amended Class Action Complaint