



Today's Corporate Governance Opportunity: The Next Move for Securities Class Actions

By Jane Kenyon, Director, Global Custody Asset Servicing, Global Transaction Services, Citi

In today's environment of increased corporate governance scrutiny, institutional investors can not afford to leave millions in clients' securities class action settlements on the table. Failure to file class action settlement claims can compromise both portfolio returns and the ability to fulfil fiduciary responsibilities to investors. Therefore, all fund managers must take a proactive approach to monitoring and responding to securities class actions in order to ensure responsible governance and superior client service.

U.S. Securities Class Action Lawsuits: An Opportunity and a Risk

Recent studies show that more than 50% of institutional investors who are eligible to participate in a given settlement fail to file claims. In fact, as of Q2 2009, over USD9 billion in class action settlements and SEC civil penalties are awaiting disbursement to investors.

"As class action lawsuits grow increasingly larger, investors are leaving hundreds of millions of dollars unclaimed," says Jane Kenyon, Global Custody Asset Servicing Product Manager for

Citi's Global Transaction Services. "The average securities class action settlement is USD54 million and growing."

At the same time, some fund managers have faced criticism from clients alleging that the funds breached their fiduciary responsibility by failing to collect settlement payouts to which the investors were entitled. According





to Adam Savett, Director of RiskMetrics Group's Securities Class Action Services: "The cost of not filing, or not filing properly, can be very high." Savett cites a 2005 lawsuit in which 40 mutual fund managers were sued for more than USD2 billion in unclaimed securities class action settlements, plus punitive damages, commissions and fees. (Source: *HFMWeek* article by Adam Savett)

Why Do Investors Fail to File Claims?

Given the opportunities and risks, why do so many institutional investors choose not to participate in securities class action settlements? Lack of information. The tracking of securities class action activity requires vigilant monitoring of hundreds of diverse sources. There are thousands of notices regarding securities class actions every year, from the initial call for lead plaintiff or announcement of the court filing, to final dismissal of the case or actual monetary award. These announcements can come from courts, law firms, claims administrators or any number of publications. Collecting, analysing and acting on the relevant information can be a daunting challenge.

Even when properly notified of an actual class action settlement, many institutional investors may fail to file

properly due to misunderstanding of the filing process and due to challenges sourcing the historical data. Most fund managers do not have consistent systems and processes in place for responding to class actions.

The Role of the Custodian

To address these challenges, many institutional investors have turned to their custody providers for support in the time-consuming, complex and paperwork-intensive securities class action claims filing process.

Custodians can play a key role in successful claims filing because during the class action period they are often the holders of the securities for their institutional clients in registered form or through a central securities depository. Also, the custodians are usually the primary source of historical data in connection with the settlement of clients' purchases and sales of the securities. In addition, Global custodians have expert staff in place to manage the entire claims process: gathering settlement notices, filing claims on behalf of their clients, recovering funds and tracking the entire lifecycle of the claim process.

This type of activity, which is so process-driven in nature, fits with the trend so many fund managers are following today – that of outsourcing operational functions in order to focus

on more strategic ones. Custodians are stepping up their class action services for clients who prefer outsourcing over building and maintaining complex new internal systems.

Citi Class Action Service: A Comprehensive Class Action Claims Management Offering

With Citi as a partner, there is no need for institutional investors to leave settlement dollars on the table due to incomplete information or filing processes. Citi has the global reach and expertise to track and swiftly respond to securities class actions.

Citi provides a comprehensive service offering for monitoring and administering U.S. class actions. The goal is to make this important responsibility as seamless as possible so that clients' investment managers can focus on strategic activities like portfolio management and corporate governance.



Benefits of the Citi Class Action offering include:

- I. Outsourced claims management: for clients who used Citi as custodian during the class action period, Citi identifies, tracks and collects the cash distributions to which you may be entitled
- II. Online service to track the complete securities class action lifecycle
- III. Critical data for filing is delivered online prior to filing with claims administrators
- IV. Flexible service options
- V. Dedicated operational support and client service
- VI. Processing of distributed payments to your designated cash accounts
- VII. Online management and summary reports

For further information on Citi's Class Action Service please contact your Global Transaction Services representative.

The Future of Securities Class Action Lawsuits

Securities class action lawsuits are expected to grow even larger and more complex in the years to come. To maximize returns and minimize risk, institutional investors must ensure participation to collect their piece of every award.

"It is imperative that a fund either commits to building the internal systems and knowledge to properly oversee the process or outsource some or all of the process to a trusted third party that has the global reach and resources necessary," says Savett of RiskMetrics Group. (Source: *HFMWeek* article by Adam Savett)

The Bank Depository User Group (BDUG) is the industry leader for the bank depository community. The BDUG Class Action Focus Group was created to develop rules and guidelines for handling securities class actions as well as standards for class action announcements, proof of claims filings and payment processes. It includes members from more than 30 financial institutions and is co-chaired by Citi's Jane Kenyon.

Industry experts also expect to see more class action events outside the U.S. The vast majority of today's class actions are in the U.S., but new activity has been tracked in Canada, the Netherlands, Australia, Taiwan and other markets.

"We are closely watching this trend and preparing to stay ahead of the curve to support our clients in responding to class action lawsuits outside the U.S.," says Citi's Kenyon. Citi plans to extend its Class Action Service to the Netherlands, and Canada in 2010, with other markets to follow as local market activity demands.

Looking Forward

In today's market, class action management is indeed a corporate governance issue. Investors cannot afford to abandon millions in claims or risk lawsuits by missing a class action settlement opportunity or court award.

The securities class action landscape will only get more complex – and more difficult to monitor – in the years ahead. It is critical for institutional investors to find the right partners and the right systems to manage the risks and maximize the opportunities.

"With corporate governance under greater scrutiny, institutional investors can't afford to miss out on billions of dollars in securities class action settlements," says Kenyon. "A renewed focus on securities class actions can turn a corporate governance risk into an opportunity."



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