

Kit Addleman in Compliance Reporter: SEC Share Class Reimbursement Settlements Could 'Ruin' Smaller Shops

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PRACTICES Litigation

Haynes Boone Partner [Kit Addleman](#) talked with *Compliance Reporter* about how Securities and Exchange Commission (SEC) enforcers are seeking four years' worth of restitution to settle cases as part of the agency's ongoing 12b-1 fee enforcement efforts. The amount is so large it could bankrupt some firms.

Here is an excerpt:

The commission is expected to soon finalize a batch of 50-100 settlements related to share class selection issues in the coming weeks, and firm are striving to work out a deal with regulators to pay back the fees the SEC is asking for without going broke.

While some of the pending settlement payments can be easily calculated, "in other matters there are issues surrounding whether certain numbers should be in or out of that calculation, and whether the firm has an ability to pay without being put out of business," said Kit Addleman, the former director of the SEC's Atlanta regional office. "The SEC staff is seeking [repayments] from January 2014 through January 2018, and depending on the size or nature of the firm, that number actually can get so large that it could ruin a firm."

The problem is especially thorny for those shops that have a lot of independent brokers, who end up retaining a large percentage of the fees and profits.

"In those cases, the firm no longer has those proceeds; they've already paid out a significant amount of revenues they've had," said Addleman, now a partner with Haynes Boone, who is currently working to iron out such settlement agreements with the agency.

Since firms aren't in a position to claw back fees earned by reps, it leaves them in a tricky situation. "It's virtually impossible—I doubt any of the contracts with IARs provide for that," said Addleman. "A firm would likely lose a large percentage of their sales force if they were to try that."

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