Pimco Shelled Out Billions to Execs, Shafted Shareholders: Plaintiff

By Beagan Wilcox Volz, *Ignites*, May 10, 2018 [subscription required]

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A plaintiff who has accused Pimco of charging excessive fees for its Total Return Fund is focusing on the company's multibillion-dollar payouts to top executives and the product's high profit margins to bolster his claims.

Pimco improperly included billions of dollars of profit sharing, equity and other compensation for top executives when calculating the profitability of Total Return and other products, inaccurately reducing the figure reported to the fund board, according to an expert witness for the plaintiff.

"The amount of profit sharing included as an expense in the profitability model was extraordinary," wrote the expert witness, James Lamb, a retired principal at accounting firm **RSM**. *Ignites's* sister publication *BoardIQ* was first to report on the October expert report.

Bill Gross, co-founder of Pimco and the fund's former portfolio manager, and former CEO Mohamed El-Erian were paid a combined $549 million in profit sharing and equity compensation in 2013 — part of about $1.93 billion in such pay that they received between 2010 and 2013, according to Lamb's report, which cited company documents.

Meanwhile, during the same four-year period, an unspecified number of managing directors and portfolio managers received about $5.4 billion in profit sharing and equity compensation, the report included in court documents states.

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In his March motion for partial summary judgment, the plaintiff asked the court to rule that Dechert, counsel to the independent directors, was conflicted and that the law firm's failure to obtain informed consent from the board should bar Pimco from arguing that the court should defer to the directors' fee decisions, as reported.

But another observer of '40 Act fee cases says it seems unlikely that the plaintiff will convince the court that pay should not be included as expenses in profitability calculations. Under Generally Accepted Accounting Principles, compensation is an expense, says Niels Holch, executive director of the Coalition of Mutual Fund Investors, who is tracking the cases.

Indeed, Pimco argues in its motion for summary judgment that the plaintiff's expert witnesses do not dispute that treating profit sharing as an expense is consistent with GAAP.

"[T]he plaintiff's myopic focus on 'profitability' is intended to take the Court's attention off the focus of Section 36(b), which is the 'fees themselves,'" the firm states.

Total Return's fees have "consistently been at or below the median fees charged by advisors to competitor funds," Pimco notes. As to the firm's profits, "It is not the court's job to act as a ratemaker, to rule on what level of profit is appropriate, to say whether anyone's compensation is 'too high,' or to sit as a 'super trustee' substituting its own judgment to decide what fee is 'just right,'" Pimco contends.

The plaintiff may have better success with his argument that Pimco failed to pass on economies of scale to shareholders, says Holch of the Coalition of Mutual Fund Investors. A "more aggressive breakpoint schedule" would have led to lower revenues and less substantial payouts to executives, he says.

In his 2014 complaint, the plaintiff claimed that the fund's lack of breakpoints demonstrated that the fund was not sharing the benefits of economies of scale with shareholders.