



714 HOPMEADOW STREET, SUITE 3  
SIMSBURY, CT 06070  
(860) 658-5058

ROBERT G. WUELFING, PRESIDENT  
LARRY H. GOLDBRUM, GENERAL COUNSEL

601 PENNSYLVANIA AVE.  
10TH FLOOR-NORTH BUILDING  
WASHINGTON, DC 20004

Filed Electronically

October 16, 2006

Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: **Proposed Distribution Plan for Massachusetts Financial Services  
Company (Administrative Proceeding File Number 3-11393)**

Dear Ms. Morris:

The SPARK Institute, Inc. (“SPARK”)<sup>1</sup> appreciates this opportunity to comment regarding the proposed distribution plan (the “Distribution Plan”) for Massachusetts Financial Services Company (“MFS”) that was published by the U.S. Securities and Exchange Commission (“SEC”) on September 14, 2006.

We commend the SEC for its prior efforts to address and minimize the administrative complexities associated with allocating and distributing payments to retirement plans. We also appreciate the SEC’s recent efforts to address the issues raised by The SPARK Institute in the comment letters we filed with respect to the previously released proposed distribution plans.<sup>2</sup>

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<sup>1</sup> SPARK represents the interests of a broad based cross section of retirement plan service providers, including members that are banks, mutual fund companies, third party administrators and benefits consultants. SPARK members include most of the largest service providers in the retirement plan industry and the combined membership services more than 90% of all defined contribution plan participants.

<sup>2</sup> Such other comment letters are available at <http://www.sec.gov/litigation/admin.shtml>.

Additionally, we commend MFS and the Independent Distribution Consultant (“IDC”) for developing a plan that addresses many of the retirement plan industry concerns raised by The SPARK Institute in our other comment letters. The SPARK Institute requests that the IDC and the SEC consider the following issues and concerns regarding the Distribution Plan.

**I. Retirement Plan Service Providers Will Require Significant Time To Complete Their Roles In Connection With The Distribution Processes.**

The Distribution Plan appears to provide significant flexibility in connection with the timing of distributions. However, it is not entirely clear how much time retirement plan service providers will have to make certain decisions and obtain plan sponsor instruction prior to receiving payments.

The Department of Labor (“DOL”) provided guidance regarding these matters in Field Assistance Bulletin (“FAB”) 2006-1, dated April 19, 2006. Under the FAB, the DOL concluded that a retirement plan service provider becomes a fiduciary upon receipt of settlement funds, even if such entity is not otherwise a fiduciary with respect to the plan it services. For many retirement plan service providers the fiduciary implications created by the receipt of funds under the Distribution Plan are not contemplated in their arrangement with the plans they service. Moreover, many retirement plan service providers carefully construct their services to avoid fiduciary status, and the services are priced accordingly, such that fiduciary risk is not factored into the fees charged.

Consequently, retirement plan service providers will, to the extent necessary or beneficial, likely elect to handle the distributions according to the provisions in the DOL FAB that suggests that a record keeper “may be able to avoid fiduciary status” if the “receipt, allocation and/or distribution services . . . are carried out in accordance with the directions and approval of appropriate plan fiduciaries. . . .” (FAB 2006-1.) Accordingly, the service provider must have adequate time to obtain the required instructions from the appropriate plan fiduciaries and make the allocation before receiving any payments from the “Fund Administrator” (as defined in the Distribution Plan). Identifying the affected plans and obtaining the required instructions will be a time consuming process.

The SPARK Institute requests that the IDC clarify or acknowledge that the Distribution Plan will be administered so as to allow retirement plan service providers reasonable time to (1) identify and provide targeted notification to the affected plans in order to obtain plan sponsor directions regarding participant level allocations; and (2) complete such tasks prior to the receipt of funds so that such service providers avoid or minimize the fiduciary status and potential fiduciary duties under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The SPARK Institute can provide additional information regarding these time concerns and needs, upon request by the SEC.

**II. The Costs To Reconstruct and Retrieve Historical Retirement Plan Account Balance Information Will Be Significant and Will Substantially Reduce Beneficiary Payments.**

The SPARK Institute recognizes and appreciates that the Distribution Plan specifies alternate allocation methodologies and the fact that simplified data (e.g., monthly, quarterly, etc.) may

be used in connection with allocations for retirement plan omnibus accounts. Although such provisions of the Distribution Plan help to resolve some of the issues faced by some retirement plan service providers, and will help some service providers minimize the costs associated with the allocations, certain issues still remain. Additionally, it is not clear under the Distribution Plan whether retirement plan service providers will be reimbursed for the costs and expenses they incur in connection with the work they are called upon to do with respect to retirement plan omnibus accounts.

#### A. Historical Account Balance Information

The Distribution Plan utilizes a distribution methodology (the “Methodology”) that allocates the available funds according to the relative harm suffered by investors on a daily basis. In order to apply the Methodology, even based on simplified monthly or quarterly data, retirement plan service providers must reconstruct the historical account balance information.<sup>3</sup> As we understand the Distribution Plan, it allows retirement plan service providers to use current account information to make participant level allocations. That aspect of the Distribution Plan is useful for retirement plan service providers with respect to the participant level allocations. However, most retirement plan service providers who trade for multiple plans in a single omnibus account for each fund must allocate the gross proceeds among all plans before they make the participant level allocations. Unless the Distribution Plan provides for an alternate methodology for making the plan level allocations, most retirement plan service providers will still be required to reconstruct and retrieve substantial historical account balance information.

As we have noted in our prior comment letters submitted to the SEC, the costs associated with gathering the historical balance information required to make the plan level allocations across thousands of plans will be significant.<sup>4</sup> Although allocating the

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<sup>3</sup> Retirement plan record keeping systems are sophisticated and perform a great number of functions necessary to comply with complex rules under ERISA and the Internal Revenue Code. Such systems have been designed and have evolved over the years in order to make mutual fund investing through retirement plans available to millions of Americans in a cost effective manner. Although such systems are well designed for their intended purposes, including maintaining records for millions of plan participants with relatively small balances and frequent small deposits through payroll deductions, such systems were not designed to meet the massive data retrieval demands of this extraordinary and historical restitution process without significant costs being incurred.

<sup>4</sup> At the request of the SEC in response to our comment letter regarding the Pilgrim Baxter Distribution Plan, The SPARK Institute worked with its members to develop certain costs estimates. The estimated average compliance costs for daily historical data retrieval and allocation of the proceeds at the plan and participant levels range is approximately \$242,000 per institution for a single distribution plan. For certain institutions the estimates reached a high of approximately \$500,000 for more widely used funds that would impact a large percentage of their plans. Moreover, such estimates **did not include** costs for communications with plan sponsors and participants, distribution costs, and the costs associated with locating and handling payments for plans and participants that have moved during or following the period at issue. The costs associated with these additional items can be significant and possibly even more costly than the data reconstruction. For example, the costs associated with mailing trade confirmations to millions of affected participants as required under SEC Rule 10b-10 alone will likely exceed the data retrieval costs.

payments based on historical balance data may be the most precise allocation method, the effort and cost associated with gathering this information with respect to retirement plans may not be cost effective and may not be justifiable given the ultimate benefit of such accuracy. Most retirement plan record keeping systems do not retain historical balance information in the way a typical brokerage system retains such information. Although the balance information can be calculated, the data gathering process is extremely complicated and will require the dedication of significant information technology resources. This effort will easily affect tens of thousands of plans, millions of participants, and hundreds of millions of transactions and data points because retirement plan service providers process hundreds of thousands and even millions of transactions each day.

Additionally, retirement plan record keeping systems have changed significantly since 1999. Many service providers have changed record keeping platforms, have outsourced their record keeping operations to other entities, or have been involved in mergers and acquisitions. Some of the information may be on systems that are no longer supported by the service provider or its software vendor.

#### B. Cost Reimbursement

The SPARK Institute believes that retirement plan service providers should be reimbursed for the reasonable costs and expenses they incur in carrying out the role they are called upon to plan in connection with the distributions. The SPARK Institute has addressed these issues in its prior comment letters and reiterates that in the absence of any cost relief in the form of reimbursement, retirement plan intermediaries will be forced to pass on their costs associated with allocating and making distributions to plan participants and reduce, if not entirely eliminate their distribution amount.

If the Distribution Plan does not provide for reimbursement of costs and expenses to retirement plan service providers, then, in effect, the Distribution Plan is dictating that the intended beneficiaries receive less than other beneficiaries unless the retirement plan service provider absorbs such costs. It is unreasonable to expect only retirement plan intermediaries to absorb all the costs they incur with respect to the accounts they hold.

The SPARK Institute understands from the information provided in the Distribution Plan that the “Settlement Amount” (as defined in the Distribution Plan), will exceed the “Loss Allocation” (as defined in the Distribution Plan) (See Section 6). The Distribution Plan appears to provide for this excess to be allocated to investors to “reimburse” them for advisory fees paid during the period at issue. Such allocation appears to provide a windfall for certain investors. The SPARK Institute urges the IDC and the SEC to set aside such excess amounts to instead be made available as a source of funds to reimburse retirement plan service providers for the costs they will incur. This will ultimately allow retirement plan participants to keep a greater portion of the gross proceeds. Otherwise, non-retirement plan investors will ultimately receive disproportionately more money than retirement plan investors.

Accordingly, The SPARK Institute requests that the Distribution Plan clearly provides that retirement plan service providers be reimbursed for the reasonable costs and expenses they incur, and that the Distribution Plan expressly state that the intent is for un-reimbursed costs and expenses to be charged against the proceeds.

The Fund Administrator should provide an estimate of the potential cost reimbursement amount available to each retirement plan service provider in the distribution notices described in Section 9. This will allow each retirement plan service provider and the Fund Administrator to determine what is the most cost effective way to handle the payments.

### **III. Conclusion**

As we have stated in our prior comment letters, our members are extremely concerned about the fact that they are being required to play a significant role in this process which is the result of events with respect to which they are not at fault. Such members are being asked, if not forced, to accept fiduciary responsibilities that they never contemplated undertaking, and to incur and absorb significant costs to facilitate the many pending distributions plans.

We thank you for this opportunity to comment on this very important effort. Should you have additional questions or need additional information regarding this comment, please do not hesitate to contact us at (860) 658-5058.

Respectfully,

/s/

Robert G. Wuelfing  
President

/s/

Larry H. Goldbrum  
General Counsel

cc: Peter H. Bresnan, Division of Enforcement (Securities and Exchange Commission)  
Nancy Burton, Division of Enforcement (Securities and Exchange Commission)  
Lou Campagna, Employee Benefits Security Administration (Department of Labor)