

FX-Week

US last look settlement fund may hit \$1bn

Funds available to claimants in future civil lawsuits against banks relating to the misuse of last look could reach \$1 billion in the US alone, while the currently available \$2 billion for class action members in the fixing case could balloon to \$3 billion once the remaining six banks settle, delegates at the FX Invest North America conference heard in Boston on April 25.

The comments came from class action filing service provider Battea. Guy Kershberg, a vice-president for the group, said that while misbehaviour related to last look, and collusion and manipulation, occurred on either side of the Atlantic, civil suits related to both issues are only happening in the US right now.

“Currently, the total funds available in the fixing case are just above \$2 billion. But we expect that with the additional settlements coming in, we will probably be looking at around \$3 billion,” said James Donahue, a vice-president at Battea.

So far, 10 banks out of the 16 involved in the fixing and collusion case, the time-frame of which spans from 2003 to 2015, have settled. Out of the six institutions yet to settle, the largest FX presence is Deutsche Bank, but the list also includes Morgan Stanley and Credit Suisse, as well as UK giant Standard Chartered and French powerhouse Société Générale.

“In the last look case, we expect total funds available to be around \$1 billion in the US. Barclays has already paid \$50 million for the class and we expect a few big settlements in the future from other banks,” Donahue added.

At the moment, only Barclays has been penalised by regulators for misusing last look on its single-dealer venue, Barx. The UK giant has paid out \$150 million to the New York Department of Financial Services (DFS) in fines and agreed to settle a

civil lawsuit brought by Axiom Investment Advisors for the sum of \$50 million.

“This \$50 million will go to anybody who used the Barx system between June 1, 2008 and April 21, 2016. If you used Barx directly and you traded with them here in the US, then you are entitled to make a claim on that trade,” said Kershberg.

He explained the court determined any potential redress amount would be based on rejected trades rather than accepted orders. The price move between the time of the order being rejected and received will determine the outcome.

When looking at these rejections, the court deemed the total potential damage that could have been caused by Barclays misusing last look in this way amounted to \$250 million.

“I don’t think there is a future for last look. I think price-makers are looking at it and thinking about potential future liabilities. If you are a price-maker in this market, you do have that jurisdictional risk that could come back and bite you”

Guy Kershberg, Battea

“I don’t think there is a future for last look. I think price-makers are looking at it and thinking about potential future liabilities,” said Kershberg. “If you are a price-maker in this market, you do have that jurisdictional risk that could come back and bite you.”

Kershberg noted that Battea expects other banks, especially the 16 involved in the fixing lawsuit, to be looked at for their



Deutsche Bank: tried to dismiss Axiom lawsuit

behaviour surrounding last look. Regarding the fixing case, he said a lot of clients think only fixing-related orders can be taken into account, but in reality it is any trades between January 2003 and December 2015.

More cases

“There will be a lot more last look cases. The 16 banks that were involved in the fixing cases will be looked at, and probably charged down the road,” he said. “The last look process is not an acceptable process, and there will be more fines and civil fines as well.”

In February, Deutsche Bank’s attempt to dismiss a lawsuit brought by Axiom Investment Advisors, alleging the bank misused last look for its own benefit, has been thrown out of court in a ruling that could further open the gates for a class action lawsuit in the US in relation to the practice.

“I don’t think the market is as aware as it should be about the potential ramifications in the last look case,” he concluded. “We are not looking for plaintiffs – these cases have been settled. We are only looking for people who have been harmed by these cases.” **Eva Szalay**