



# NATIONAL ELEVATOR INDUSTRY BENEFIT PLANS



19 CAMPUS BLVD, SUITE 200, NEWTOWN SQUARE, PA 19073-3288

March 2004

Re: MFS and Janus

Dear Participant:

The Elevator Constructors Annuity and 401(k) Retirement Fund offers participants the ability to select investment options for the 401(k) elective contributions they choose to defer from their wages into their 401(k) Plan accounts.

Under the Plan and federal law, the Board of Trustees have no fiduciary liability for any losses that are the result of a participant's selection of investments. However, the Trustees are responsible for providing a range of appropriate investment options for participants. To meet this obligation, the Trustees have engaged an Investment Consultant to assist them in the selection of investment options.

Recently, the Investment Consultant informed the Trustees of SEC investigations involving MFS and Janus mutual funds, which could impact their value. Copies of the Investment Consultant's Investigation Updates on MFS and Janus are enclosed with this letter. The Opinions are also available on the Plan's website – [www.delawareinvestments.com/investments](http://www.delawareinvestments.com/investments). You may wish to consider this information in determining the appropriateness of your current and future selection of investment options.

Sincerely,  
Board of Trustees

## Janus Capital Group's Mutual Fund Investigation Update

In the beginning of September 2003, the New York Attorney General Eliot Spitzer launched an investigation into trading practices in the mutual fund industry. He alleged that certain mutual fund companies, including Janus, assisted in allowing Canary Capital Partners, a hedge fund, to engage in trading practices, which could potentially disadvantage shareholders. Janus was not named as a defendant but was mentioned in the complaint for allegedly allowing Canary to market time select Janus funds. The complaint alleged that by Janus allowing such transactions they were in violation of their prospectus policies. Janus took the allegations seriously and immediately instituted a plan to uncover all improper discretionary relationships and to make complete restitution to shareholders.

Within weeks, Janus publicly announced that they had uncovered a total of 12 discretionary arrangements (a later report stated 10 agreements existed), of which only 4 appear to have engaged in "frequent trading" (market timing). Within these 4 arrangements, the funds that experienced frequent trading are as follows:

- Janus Mercury
- Janus Worldwide
- Janus Enterprise
- Janus High Yield
- Janus Overseas
- Janus Advisor Worldwide
- Janus Advisor International Growth

Janus also stated that at the peak of the arrangements, they represented approximately 0.25% of Janus' total assets under management. In addition, they committed to contribute all management fees earned from these discretionary arrangements, estimated at approximately \$1 million, to the impacted funds. Also, if shareholders were adversely affected by the frequent trading they will be made whole. Janus found no improper trades conducted by their investment professionals.

On December 19, 2003, the Independent Trustees of the Janus funds and Janus Capital Group Inc. announced that they would pay restitution of approximately \$31.5 million to shareholders who were adversely affected by frequent trading. The figure includes:

- Net gains of approximately \$22.8 million realized by discretionary frequent traders,
- Approximately \$2.7 million representing opportunity cost of those gains had they been available to the funds for investment,
- Management fees of approximately \$1.0 million received by Janus Capital related to discretionary trading accounts, and
- Waived redemption fees of approximately \$5.0 million.

The last two items were previously disclosed and reserved for in Janus Capital's third quarter report, and the first two items will be included in the company's fourth quarter results. It is important to note that this reserve is separate and distinct from any settlements with regulators (i.e. SEC, Attorney General New York, Attorney General Colorado). To date, Janus is still in negotiation with regulators in regards to its settlement.

## Janus Capital Group's Mutual Fund Investigation Update (Cont.)

In addition to restitution, the Independent Trustees' recommended, on the advice from an external auditor, that the following measures be put in place to protect shareholders from such abuses in the future:

- Revised prospectus language to more firmly discourage frequent trading,
- Increased redemption fees from 1% to 2% on the funds that currently impose redemption fees,
- More frequent portfolio disclosure (within 30 days),
- Enhanced portfolio evaluation techniques to discourage market timing, and
- Elimination of the practice of using brokerage commissions to purchase research products or services from third parties, a practice commonly referred to as "soft dollars".

Janus will be implementing all suggested changes as soon as possible.

We believe that Janus Capital Group is in the process of making full restitution and more importantly taking the appropriate steps to ensure the rights of their long-term shareholders in the future. We continue to await the outcome of the settlement discussions between the SEC, the New York Attorney General, the Colorado Attorney General and Janus Capital; Group, at which time we will revisit the current "HOLD" rating.

## MFS's Mutual Fund Investigation Update

On Thursday, February 5, 2004, Massachusetts Financial Services (MFS) announced the settlement of federal and state civil fraud charges brought about by the Securities and Exchange Commission and other regulatory authorities in the mutual fund scandal. The complaint against MFS stated that the nation's 11th-largest fund company improperly turned off controls that prohibited fast-moving traders (the so-called "market timers") from rapidly buying and selling 11 of its 104 funds, under the belief that these funds were so large and liquid, shareholders would not be hurt by any market timing activity. The funds in which MFS knowingly permitted widespread market timing included large cap U.S. equity products as well as some money market funds; international products and less liquid products such as small cap equities or high yield bond funds were off limits to market timers. Market timing in the 11 funds, which was actively promoted by the firm, was done despite prospectus language that beginning in 1999 stated: "The MFS Funds do not permit market timing or other excessive trading practices *that may disrupt portfolio management strategies and harm fund performance,*" with the italicized wording added only in 2002. According to the SEC, the lack of supervision in the 11 funds made them vulnerable to late traders<sup>1</sup>, who were responsible for most of the harm to long-term investors. Market timers' assets comprised about 5% of the \$40 billion in assets in the 11 unrestricted funds.

Under the terms of the settlement between MFS and the SEC, New York Attorney General Eliot Spitzer and the New Hampshire Bureau of Securities Regulation, Boston-based MFS will pay \$225 million fine (\$175 million in restitution to shareholders and \$50 million in penalties), pay a \$1 million fine to New Hampshire, and accept \$125 million in management-fee cuts over five years, in an agreement similar to that reached by Alliance Capital in December. In an attempt to shore up credibility with investors, MFS named former Fidelity Investments mutual fund chief Robert C. Pozen as its non-executive chairman.

An important aspect of the MFS settlement includes a change in the senior management of the firm. According to the SEC:

For their roles in the misconduct, the SEC prohibited MFS CEO Ballen and president Parke from serving as an officer or director of any investment adviser and from serving as an employee, officer, or trustee of any registered investment company for three years. In addition, the Commission's order places certain restrictions on the duties Ballen and Parke can perform during that period. The Commission also suspended Ballen and Parke from association with any investment adviser or registered investment company for nine months and six months, respectively, and ordered each to pay a penalty of \$250,000 and disgorge over \$50,000 in ill-gotten gains derived from MFS's market timing practices. All of the money paid by MFS, Ballen, and Parke will be distributed to harmed shareholders.

The enforcement action against MFS has caused us to maintain a high level of vigilance on MFS. We will keep on the lookout for staff departures. We are keeping MFS in an "ON HOLD" status as we evaluate the ramifications of the settlement. We will keep you updated on developments as they occur.

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1. Note that late trades are transactions accepted after the 4 p.m. cut-off which are time-stamped to look as though they came in earlier; this illegal activity admittedly was done by third-parties such as brokers and was not known by MFS.