

The next opponent for Wall Street banks? Their own employees

Drop in stock prices could trigger worker suits over 401(k) plans; diversification the issue

By Darla Mercado

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Losses in Wall Street workers' 401(k)s — in a large part due to declines in the companies' share prices — could trigger a large number of lawsuits by unhappy employees. Those suits, according to experts, likely will hinge on whether the retirement plans were larded with company stock.

Last year, some of the largest banks saw steep declines in their stock prices. Indeed, analysis by Bloomberg found that among the top five banks, 401(k) paper losses due to falling share prices totaled at \$2 billion. Workers at Bank of America Corp., for example, suffered a \$1.37 billion loss last year after the company's share price tumbled by nearly 60%, according to Bloomberg. Meanwhile fair value of JPMorgan Chase & Co.'s common stock as of the end of last year had declined to \$2.26 billion, compared to \$2.79 billion in 2010. Workers at Morgan Stanley saw their 401(k) stock investments depreciate by about \$570 million — excluding dividends — following a 44% decline in share price, compared with the previous year, according to Bloomberg. The bank, which also offers other plan investments, can match worker contributions using shares of its stock, but employees can transfer out of the holdings at any point.

Some of the banks have faced down lawsuits by employees who have filed suit following such losses. Morgan Stanley, for instance, was sued last year by plan participants who had claimed that the firm's retirement plans invested heavily in company stock during the recession even as prices tumbled. That case is related to an ongoing ERISA suit filed in 2007 in the U.S. District Court in the Southern District of New York, and Morgan Stanley filed a motion to dismiss in March.

More suits against the banks could be forthcoming, particularly in situations in which a large chunk of retirement assets are put toward company stocks, according to Marcia Wagner, managing director at The Wagner Law Group.

Plaintiff's attorneys likely will take a close look at whether the plans adhere to Section 404(c) of the Employees Retirement Income Security Act of 1974, she said. That segment of the rule requires plans to offer a broad range of investment alternatives and requires that participants have the opportunity to diversify their accounts to avoid major losses.

“There are dozens of requirements going into the disclosure and availability of investments, as well

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as the effective authority and control the participant has,” Ms. Wagner said.

Sandra Hernandez, a spokeswoman for Morgan Stanley, Ferris Morrison, spokeswoman for Bank of America, and Charlotte Powell, spokeswoman for JPMorgan, all declined to comment on this story or possible litigation over the plans.

But Ms. Wagner noted that co-fiduciary investment advisers under Section 3(21) of ERISA who work with plans also could be held liable if they fail to ensure diversification.

“It’s an area for a smart tort litigator to look at,” Ms. Wagner said.



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