InvestmentNews
The Leading Information Source for Financial Advisers

Wells Fargo, in 'atypical' outcome, wins 401(k) lawsuit

The win could provide fodder in other legal defenses, and supports the contention that comparing fund costs to Vanguard doesn't always provide an accurate barometer

By Greg Iacurci | *May 30, 2017 - 1:50 pm EST*

Wells Fargo & Co. has prevailed in a lawsuit alleging the firm breached its fiduciary duty to the company 401(k) plan by offering proprietary target-date funds.

Minnesota district court judge David S. Doty granted Wells Fargo's motion to dismiss, which some observers call a rarity among the proliferating 401(k) lawsuits against financial services companies, and barred plaintiffs from re-filing an amended complaint in the case.

"This is pretty atypical," said Marcia Wagner, principal at The Wagner Law Group.

Several other retirement plan providers have been sued within the past two years for allegedly using in-house investment products that enrich them at the expense of their plan participants.

Some providers, such as New York Life and TIAA, recently settled their respective lawsuits for several million dollars, while judges in the vast majority of other cases that have received a ruling have denied defendants' motions to dismiss.

Cases against Allianz Asset Management, Franklin Templeton Investments and American Century Investments, for example, are moving forward after defendants failed to get them thrown out at the motion-to-dismiss stage. Other cases against firms such as Jackson National Life Insurance Co., T. Rowe Price, JPMorgan Chase & Co. and BlackRock Inc. are still pending.

Ms. Wagner cautioned against placing too much importance on the Wells Fargo decision, because it was only one case at the district-court level. However, other financial services companies will undoubtedly point to the Wells decision in their cases, and the case "could over time become important," she said.

The class-action lawsuit in question, Meiners v. Wells Fargo & Co. et al, originally filed in November 2016, alleged fiduciaries to the bank's $37 billion 401(k) plan retained the firm's own TDFs despite better-performing funds being available at a lower cost.

Judge Doty's rejection of that argument offers a validation to industry observers who disagree with the notion of offering the cheapest available funds and using Vanguard Group funds as a benchmark, as is common in excessive-fee litigation.

The only benchmark the plaintiff provides to claim Wells Fargo TDFs underperformed was that of Vanguard funds' performance, a comparison the judge called "insufficient," according to the court order, filed May 25.

"One would expect the Wells Fargo and Vanguard funds to perform differently because the Wells Fargo funds have a different investment strategy than the Vanguard funds," the judge wrote. "Specifically, Wells Fargo funds have a higher allocation of bond[s] than Vanguard funds."

The plaintiff also relied on a comparison of Wells Fargo's fund fees to Fidelity Investments' and Vanguard's, which are lower-cost, to make the case that Wells Fargo's were excessive.

"If such allegations were sufficient to survive a motion to dismiss, it would render fiduciaries liable to suit for failing to choose the cheapest, non-affiliated fund — even if that fund is 'plagued by other problems,'" Judge Doty wrote.

'APPLES TO APPLES'

He continued to say the complaint doesn't suggest Vanguard and Fidelity funds are "reliable comparators," offer similar services, are of similar size, or that Wells Fargo's funds are more expensive when compared with the overall market.

"It places a fairly high burden on plaintiffs to determine what is an appropriate benchmark," Ms. Wagner said. "The judge didn't use the phrase 'apples to apples,' but that is exactly, I think, what the judge was saying."

The judge also rejected an allegation of fiduciary breach stemming from Wells Fargo using its TDFs as a default investment for participants who fail to make an investment election.