
Ameriprise and Bank of New York Mellon settle ERISA suits

By Editorial Staff *Fri, Mar 27, 2015*

Ameriprise Financial will pay \$27.5 million to settle charges that its own 401(k) plan investment options were too expensive and Bank of New York Mellon will pay \$84 million for offering unfavorable pricing to most of its 'standing instruction' foreign exchange clients.

Ameriprise Financial Inc. has agreed to pay \$27.5 million to settle a 2011 class-action lawsuit, one of several filed over the past decade by St. Louis attorney Jerome Schlichter's law firm, over the operation of its 401(k) plan for the company's own employees and retirees, the Minneapolis *Star-Tribune* reported this week.

The suit had accused Minneapolis-based Ameriprise of offering proprietary, high-fee, and underperforming mutual funds in the company 401(k), thus violating its fiduciary responsibility as a plan sponsor under the Employee Retirement Income Security Act of 1974, or ERISA.

A joint motion for approval of the settlement was filed Thursday by the parties for consideration and approval by U.S. District Judge Susan Richard Nelson in St. Paul. The proposed settlement would cover about 24,000 current and former employees. The 401(k) plan currently covers about 12,000 Ameriprise participants and has about \$1.5 billion in assets, according to Ameriprise.

In a statement, Ameriprise said, "The settlement does not require any changes to our plan, which will maintain the existing broad and competitive selection of investment options and features. The plan has always included funds we manage, as well as funds from other companies."

In 2012, Nelson declined to dismiss the lawsuit, allowing it to proceed based on charges ranging from failure to monitor fiduciaries, to prohibited transactions and excessive record-keeping fees. One count of unjust enrichment was dismissed.

The Schlichter firm has achieved similar settlements with several of those employers in recent years. The most recent and largest was a \$62 million settlement reached in February with Lockheed Martin.

In an unrelated case, the Bank of New York Mellon has agreed to repay \$84 million to employee benefit plan customers victimized by the bank's "standing instruction" foreign

exchange trading program, as part of a larger settlement of private, state, and federal lawsuits against the bank.

An investigation by the U.S. Department of Labor found that the bank violated its ERISA fiduciary obligations by assigning “nearly the worst prices” at which currencies had traded in the market during all or part of a day in most of its “standing instruction” foreign currency exchange transactions with customers, including retirement plans.

The bank also led its clients to believe that it was pricing their transactions in a more favorable manner, the DOL found, “misrepresented and failed to disclose to clients how it was pricing the transactions,” and “engaged in a deliberate, prolonged effort to conceal its pricing methods.”

The “standing instruction” foreign currency exchange program is a service that the bank offered to customers who exchanged currencies regularly. The bank automatically exchanged the currencies at a rate and time that the bank, in its sole discretion, determined.

The department’s investigation found that the bank habitually assigned its “standing instruction” customers rates that were close to the worst rates that the currencies had traded earlier in the day, and that the bank favored certain clients with better rates than “virtually all of its other plan customers,” in violation of ERISA.

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