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# MIT, NYU, Yale Sued Over Retirement-Plan Fees

Suits claim plans breached duties by stocking investment menus with retail mutual funds



A man walks through Killian Court at the Massachusetts Institute of Technology in Cambridge, Mass. The university is being sued for allegedly causing participants in its retirement-savings plans to pay excessive fees.

PHOTO: REUTERS

By [Anne Tergesen](#)

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The Massachusetts Institute of Technology, New York University and Yale University were sued Tuesday for allegedly causing participants in their retirement-savings plans to pay excessive fees, making them the latest to be targeted in a wave of similar litigation challenging the use of retail mutual funds in 401(k) and other retirement plans.

As with many of the previous 401(k) fee cases, the new suits allege the plans breached their duties under the Employee Retirement Income Security Act of 1974 by stocking their investment menus with retail mutual funds rather than lower-cost institutional versions of the same investments.

While plaintiffs in other 401(k) fee cases have challenged the use of retail mutual funds, experts say the three new cases are among the first to put the spotlight on 403(b) retirement plans sponsored by many universities. Similar to 401(k)-style plans, 403(b) plans are organized under a different section of the Internal Revenue Code. NYU and Yale offer 403(b) plans, while MIT offers a 401(k) plan.

With billions of dollars in assets, the plans have the “bargaining power” to secure lower fee investment products, said Jerome Schlichter, whose St. Louis law firm, Schlichter, Bogard & Denton, filed the cases. “These universities don’t have retail mutual funds in their endowments. Our position is that a multibillion-dollar 403(b) or 401(k) plan shouldn’t have them in a retirement plan either.”

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Yale “has not officially been served with a complaint. We are cautious and careful in administering our plans and will defend ourselves vigorously,” said Yale spokeswoman Karen Peart

“NYU takes seriously the welfare of our faculty and employees—including a dignified retirement—and the retirement plans offered to them are chosen and administered carefully and prudently. We will litigate this case

vigorously and expect to prevail,” said John Bekman, a spokesman for NYU.

A representative for MIT declined to comment.

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The lawsuits, which are seeking class-action status, were filed in the U.S. district courts of Massachusetts, the Southern District of New York and the District of Connecticut, respectively.

The suits come on the heels of several others that have been filed in recent weeks against companies including financial-services firms, which have been targeted for offering their own mutual funds in their 401(k) plans.

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Fueling the 401(k) fee litigation trend, experts say, are a handful of recent multimillion-dollar settlements of 401(k) fee cases by companies, including [Boeing Co.](#) and [Lockheed Martin Corp.](#) , as well as the Supreme Court’s May decision in [Tibble v. Edison](#), which put retirement plans on notice that they have a continuing duty to monitor plan investments, including fees.

In total, Mr. Schlichter’s firm has filed about 20 401(k) fee cases and has settled nine, including [a \\$62 million suit against Lockheed Martin](#). It led the class-action case against [Edison International](#) that [the Supreme Court ruled on in 2015](#).

“Given that there has been more and more 401(k) litigation, I’m not surprised to

see it moving downstream to 403(b) plans,” said Brooks Herman, head of data and research at BrightScope Inc., which tracks retirement plans.

The 403(b) market had \$900 billion in assets at the end of 2015, according to BrightScope. Users of 403(b) plans include public and private educational institutions, some nonprofit groups and some hospitals, among others.

By contrast, BrightScope put the 401(k) market’s asset value at \$4.7 trillion as of the second quarter of 2015.

Typically, 403(b) plan charge higher fees than 401(k) plans—on average, they charge 0.53% of assets, versus 0.47%, according to BrightScope. In addition, 403(b) plans have historically offered dozens, if not hundreds, of investment options, including annuities. In contrast, 401(k) plans typically offer one to two dozen mutual funds.

The MIT suit singles out the university for offering 340 investment options in its 401(k) plan before July 2015. These included 300 retail mutual funds. Last July, the plan whittled its investment options to 37 choices.

By dividing its assets among hundreds of funds, the complaint says, the plan diluted its ability to bargain for lower fees.

The suit against MIT also alleges Fidelity Investments has served as the plan’s record keeper since 1999 without any competitive bidding, violating the school’s duty “to act in the exclusive interest of its employees and retirees.”

A spokesman for Fidelity, which isn’t a defendant, declined to comment.

The suit claims Fidelity has received “excessive fees” for record keeping. In part, it adds, that is because of “MIT’s close relationship with Fidelity Investments.” Abigail Johnson, chief executive of Fidelity, as been on MIT’s board of trustees since 2007, the complaint says, and the Johnson family has donated “hundreds of thousands of dollars” to the school.

The complaint alleges MIT, in return, “placed over 150 Fidelity funds, including high-price retail funds, in [its 401(k)] plan, despite the plan being a \$3.5 billion plan able to command lower fees.” Last July, when MIT reduced the number of investments in its plan, it cut all but one Fidelity fund, the complaint says.

The complaint says MIT plan participants paid fees before July 2015 that were 13% to 15,000% higher than those charged by the investments the plan switched to last July. In total, it says participants paid \$8 million in excess fees in 2014 alone—and that participants could have avoided tens of millions of dollars in “performance losses” had the plan streamlined its investment options in 2010, instead of 2015.

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Corrections & Amplifications:

BrightScope Inc. pegged the 401(k) market’s asset value at \$4.7 trillion as of the second quarter of 2015. An earlier version of this article incorrectly said the value was \$4.7 billion. (Aug. 10, 2016)

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