

## Edward Jones hit with second lawsuit over excessive 401(k) fees

**Allegations in the lawsuit largely resemble those of a separate one filed in August this year**

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By [Greg Iacurci](#)

[Edward Jones](#) has been sued for excessive fees and self-dealing in its 401(k) plan, representing the [second such legal ordeal](#) to befall the company this year and coming amid a barrage of litigation targeting financial services companies for their own retirement plans.

The lawsuit, [Schultz et al v. Edward D. Jones & Co., L.P. et al](#), alleges the broker-dealer and several employees overseeing the retirement plan breached their fiduciary duties by selecting high-cost mutual funds when identical, lower-cost ones were available, choosing “an unreasonable number” of high-risk investment options, and including a “poorly performing” money market fund [in place of a stable value fund](#).

Plaintiffs also claim Edward Jones engaged in self-dealing through a distribution relationship with several fund companies such as American Funds, [Franklin Templeton Investments](#), Goldman Sachs and BlackRock.

They allege Edward Jones entered into arrangements with such “product partners” whereby fund companies paid for access to the “captive market” of 401(k) participants by giving revenue-sharing fees to Edward Jones in return for “shelf space” on the retail side of the brokerage business.

These revenue-sharing arrangements, plaintiffs claim, were “contingent upon” Edward Jones offering the partners' investment options in the roughly \$4 billion Edward D. Jones & Co. Profit Sharing and 401(k) Plan.

“Edward Jones was able to negotiate and secure these acknowledged Revenue Sharing Agreements with its Product Partners in part by guaranteeing them access to the billions of assets under managements in the Plan, where Edward Jones, through its designees, could choose all of the investment options,” according to the legal complaint, filed Nov. 11 in Missouri district court.

Such arrangements clouded fiduciaries' decision-making and ultimately cost participants millions of dollars in excessive fees, according to plaintiffs, who are seeking class-action status.

John Boul, a spokesman for Edward Jones, said the company will “vigorously defend” against such allegations in court.

"The Plan's Investment Committee takes very seriously its obligation to provide quality investment options for associates to choose from to achieve their individual retirement goals," Mr. Boul said in an e-mailed statement. "The lawsuit's allegations that Edward Jones, its affiliates and plan fiduciaries violated their fiduciary duties or engaged in prohibited transactions related to plan assets are not true."

The "underlying theory of liability" appears to be the same in this case when compared with a separate case filed against Edward Jones in August, according to James Fleckner, chair of the ERISA litigation practice at Goodwin Procter.

Contrary to the first suit, defendants in the new case include James D. Weddle, managing partner of Edward Jones, as well as Brett G. Bayston, an Edward Jones financial adviser who, according to plaintiffs, serves as chairman of the 401(k) investment and education committee.

The most recent complaint was filed by Armstrong Law Firm, based in St. Louis. Bailey Glasser, based in Clayton, Mo., brought the first.

### **BROADER THEME**

The Edward Jones suits fit within a broader theme of the plaintiff's bar suing financial services companies over fiduciary breach in their own 401(k) plans. Firms such as Morgan Stanley, Neuberger Berman, Franklin Templeton, [New York Life Insurance Co.](#) and American Century Investments are [among those targeted this year](#).

"I think there's been a significant uptick in the last 12 months in suits that have focused on financial services companies that sponsor plans for their employees," according to Mr. Fleckner, who represents defendants in such litigation. He's unaffiliated with the Edward Jones lawsuit.

Allegations centering on Edward Jones' retail distribution relationships and revenue-sharing payments influencing its 401(k) fund selection seem unique among the lot, though.

"These two complaints against Edward Jones are the first I've seen that make that direct allegation that funds have been utilized for a 401(k) plan due to outside arrangements that the fund complexes have with the sponsor of the 401(k) plan," Mr. Fleckner said.

Courts are typically "sensitive" to whether a sponsor is operating solely in the interest of plan participants, which may make a dismissal of this particular case more challenging for Edward Jones, he added.