

Funds Win Class Cert In JPMorgan ERISA Suit

By Hilary Russ

Law360, New York (August 05, 2010) -- A federal judge has granted class certification to plaintiffs in three consolidated lawsuits accusing JPMorgan Chase Bank NA of mismanaging huge amounts of cash collateral belonging to several retirement funds.

Judge Shira A. Scheindlin on Wednesday granted a motion by Barroway Topaz Kessler Meltzer & Check LLP in the U.S. District Court for the Southern District of New York to certify the class, finding that individual issues raised by the bank "do not threaten to overwhelm the class, require this court to conduct numerous minitrials or make the class as a whole unmanageable."

In his order, Judge Scheindlin also appointed Barroway Topaz lead class counsel. The firm had been interim lead class counsel.

JPMorgan is accused of violating the Employee Retirement Income Security Act by bungling investments worth billions of dollars when it purchased notes that were intended to provide safe and stable returns but did not.

The collateral was raised through the bank's practice of lending out shares controlled by the plaintiff funds for use by short sellers.

The money then was invested in medium-term notes issued by Sigma Finance Inc., a Delaware corporation organized to issue debt securities for its Cayman Islands-based parent, Sigma Finance Corp., plaintiffs claim.

After the bank purchased the notes, financial analysts allegedly began to issue warnings that entities like Sigma suffered from a severe lack of liquidity that threatened their viability.

JPMorgan is accused of ignoring these warning signs and holding on to the investments as their value declined.

In September and early October 2008, the lawsuit says, Sigma's creditors — among them JPMorgan itself — seized more than \$25 billion of its approximately \$27 billion in assets, leaving behind \$1.9 billion to secure \$6.2 billion worth of outstanding notes.

By Oct. 6 of that year, Sigma was in receivership, the lawsuit says.

The class as certified consists of "all plans and entities for which JPMorgan Chase Bank NA, pursuant to a securities lending agreement, invested cash collateral, either directly or through a collective investment vehicle, in one or more debt securities of Sigma Finance Inc. and continued to hold those debt securities as of the close of business on Sept. 30, 2008."

JPMorgan had objected to the motion for class certification, saying five direct account holders of the 76 total putative class members failed to satisfy requirements for inclusion and should be left out of the class, the order said.

But those five parties were significant because together they allegedly suffered about 80 percent of the total losses. Judge Scheindlin found that the five direct account holders should be part of the class.

The plaintiff in the lead case is a retirement benefits plan for the American Federation of Television and Radio Artists, a labor union representing more than 70,000 performers, journalists and other media professionals.

The lead case was filed in January 2009. Two additional cases were consolidated with AFTRA's case that April.

The judge's decision to grant class certification was "well supported by the evidence in the case and by applicable law," Barroway Topaz's Peter H. LeVan Jr. said.

"The class representatives and other class members placed their trust in JPMorgan. Rather than honor that trust, JPMorgan purchased and continued to hold risky Sigma medium-term notes, even as JPMorgan's own CEO was publicly announcing the demise of the SIV sector," he said.

JPMorgan also enriched itself, he said, adding that the class is "anxious to proceed to trial and present these claims to the trier of fact."

A JPMorgan spokesman declined to comment on the class certification.

The motion for class certification was filed by Peter H. LeVan Jr. and Joseph H. Meltzer of Barroway Topaz, plaintiffs' lead counsel.

Plaintiffs are also represented by Nix Patterson & Roach LLP and Dealy & Silberstein LLP.

JPMorgan is represented by Paul Weiss Rifkind Wharton & Garrison LLP.

The case is Board Of Trustees Of The AFTRA Retirement Fund et al. v. JPMorgan Chase Bank NA, case number 09-cv-00686, in the U.S. District Court for the Southern District of New York.