

US defined contribution plans

# company stock



# Company stock in US defined contribution plans

In the wake of the Fifth Third Bank Corp vs. Dudenhoeffer (“Dudenhoeffer”) court decision in 2014, many Defined Contribution (DC) plan fiduciaries evaluated the role company stock as an investment option within their DC plan.

The ruling from the Dudenhoeffer case ultimately overturned the “Moench Presumption,” a principle from earlier case law that said company stock investments under ESOPs and other DC plans were presumed to be prudent if required by a plan’s governing documents.

More than seven years have passed since the Dudenhoeffer ruling and we undertook a survey of our DC clients, building from our 2015 survey, to understand how DC plan fiduciaries are managing company stock as a plan offering.

<sup>1</sup>The Supreme Court’s decision in Fifth Third Bancorp v. Dudenhoeffer [134 S. Ct. 2459 (2014)] set aside nearly 20 years of legal precedent in so-called “stock-drop” lawsuits under the Employee Retirement Income Security Act (ERISA). Previous courts had followed a “presumption of prudence,” which offered fiduciaries some protection against lawsuits following sharp declines in company stock held within ESOPs and other DC plans. The Dudenhoeffer ruling rejected the presumption of prudence and asserted that “ESOP fiduciaries ... are subject to the same duty of prudence that applies to ERISA fiduciaries in general.”

# Key survey findings as of December 31, 2021<sup>2</sup>

**78 plans**

offer company stock as an investment option within their DC plan, out of 217 DC plans surveyed.

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**17 %  
or 11 plans**

engage an independent fiduciary to monitor and oversee company stock as an investment option

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**over  
45%**

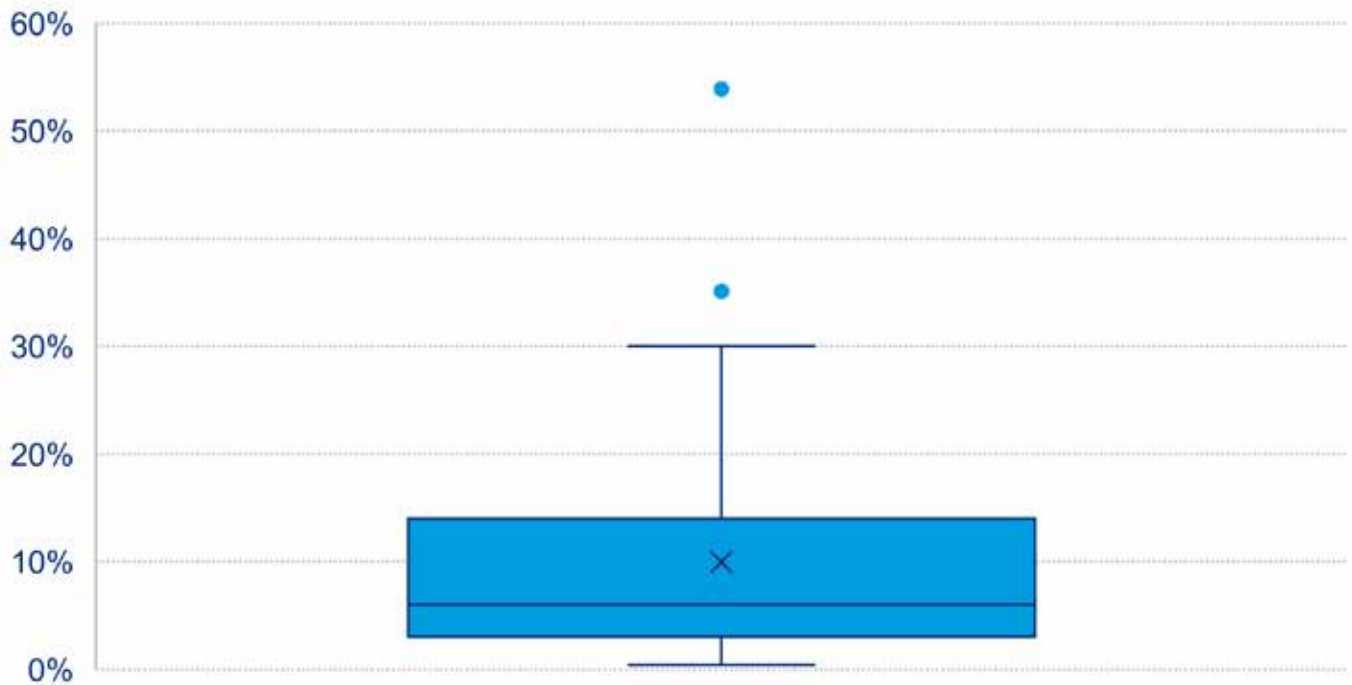
have some limit in place on company stock use, which compared to only 32% of plans in 2015.

- 17%** have frozen as an investment
- 20%** limit company stock as a percent of a participant's total account balance
- 5%** limit new contributions to company stock

<sup>2</sup>Mercer surveyed 271 of our defined contribution clients as of December 31, 2021.



**Figure 1.** Company stock utilization a % of total plan assets as of December 31, 2021<sup>3</sup>



Minimum	Maximum	Median	Average
<b>0.4%</b>	<b>53.9%</b>	<b>6.0%</b>	<b>10.0%</b>

The impacts of company stock fund limitations can be seen within the chart (Figure 1) above . Those plans with limitations in place generally have lower overall exposure when examining company stock as a portion of plan assets versus those plans without limitations in place.

<sup>3</sup>Mercer DC Client survey, n=271 DC plans, as of December 31, 2021.

# Important considerations for plans offering company stock

Similar to all investment options, plan fiduciaries must monitor company stock performance just like any other option when included in a DC plan. This includes evaluating company stock relative to Investment Policy Standards for risk, overall management, and other factors.

Often individuals typically named as fiduciaries with responsibility over a corporate DC plan serve as officers of the company and may experience potential conflicts of interest; for example, as it relates to being privy to inside information. This adds to the unique challenges fiduciaries face related to company stock funds. The following may be useful to consider in partnership with ERISA Counsel when evaluating ways to balance fiduciary responsibilities:



Retaining an independent fiduciary to oversee the company stock fund (this does not fully relieve plan fiduciaries of all responsibility or risk over a company stock fund)



Regularly monitor performance, documenting the monitoring, and documenting the fiduciaries' deliberations about the company's financial performance and other issues affecting the decision to hold or divest the Plan of company stock.



Consideration for liquidity sleeve vehicles and allocations in unitized company stock funds



Provide proactive and/or targeted communications to participants regarding single stock risks



Thoughtful committee composition (balanced of experience and company knowledge)

Company stock funds in DC plans can serve an important role related to corporate culture, retention, and potential investment opportunities. Since 2014, we have seen some DC fiduciaries take actions to remove company stock from their retirement programs in favor of providing access to stock ownership through Employee Stock Purchase Plans. However, every retirement program is unique and the role of company stock should be continually evaluated, as with all investment options in the plan, to ensure it continues to serve participants and their beneficiaries appropriately.

## For more information

Contact your local Mercer office, email us at [DCFWRsearch@mercer.com](mailto:DCFWRsearch@mercer.com) or visit us at [mercer.us](http://mercer.us).

### Katie Hockenmaier

Head of US Defined Contribution Research  
[katie.hockenmaier@mercer.com](mailto:katie.hockenmaier@mercer.com)

### Matt Reilly

US DC Research Associate  
[matt.reilly@mercer.com](mailto:matt.reilly@mercer.com)

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