



# Hold It or Fold It: Keeping or Terminating the Employer Stock Fund After Dudenhoeffer and Tatum

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In this article, we describe a process enabling the ERISA fiduciary to decide the employer stock fund is prudent and - vastly more attractive to some fiduciaries - a process letting the fiduciary prudently terminate the fund without raising fiduciary risk or inadvertently signaling that management has lost faith in the stock. The process for either decision is based on the Supreme Court's decision in *Dudenhoeffer v. Fifth Third Bancorp*, and its foundations in Rule 10b5 case law and financial market theory. The proposed process dispenses with the perceived need for an independent fiduciary - a common but arguably uncertain avenue for reducing fiduciary exposure.