Shareholders sue Whitney Bank

They oppose merger with Hancock

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Whitney Holding Corp. shareholders have filed a class action lawsuit in federal court seeking to block the bank's merger with Hancock Holding Co., saying that the directors of the New Orleans bank may not have acted in shareholders' best interests.

The suit was filed Monday evening by a non-Louisiana company called Realistic Partners against Whitney, its board members and Hancock. The case has been assigned to Judge Martin Feldman.

Whitney, the parent company of Whitney National Bank, announced Dec. 22 that it was merging with Hancock, a Mississippi company that owns Hancock Bank. According to U.S. Securities and Exchange Commission filings that were the subject of a pair of Times-Picayune stories on Sunday, Whitney spurned another suitor, described as Company A in the filings but widely believed to be IberiaBank, after three months of talks in favor of a last-minute deal with Hancock.

In the suit, Realistic Partners says that the defendants have provided "materially incomplete" information to Whitney shareholders, preventing them from making an informed decision about the deal. It also charges that Whitney Chairman and Chief Executive John Hope "sought to protect and advance his own interests at the expense of Whitney's public shareholders," and that Whitney directors breached their fiduciary duty to shareholders because the process they used to vet potential suitors was flawed.

"It doesn't appear that the decision was in the best interests of the shareholders. The shareholders would have done better, it appears, with the Iberia offer," said Randy Smith, attorney for Realistic Partners. "It raises the question of to what extent it was based on preference for Hancock, or animus toward Iberia, and to what extent it was based on individual benefits to executives and directors, as opposed to what's best for the shareholders. I don't think we know the full story at this point."

Another prospective class action was brought by shareholder Norman de Lapouyade in Orleans Parish Civil District Court on Jan. 7, on general allegations that the merger should be enjoined because the deal was arrived at through an "unfair process" that garnered an "unfair price."

If either suit gains steam, it could derail the merger timeline. Hancock chief executive Carl Chaney said in an interview last month that both Whitney and Hancock hoped to put the merger to a shareholder vote at the end of March, so that the deal could close April 30.

Whitney Investor Relations Manager and Senior Vice President Trisha Carlson said that Whitney doesn't comment on pending legal matters. Paul Guichet, vice president of investor relations at Hancock, said he couldn't comment because he hadn't read the suit.

The Realistic Partners suit questions whether Whitney needed to merge at all; Whitney executives had told shareholders that the bank will return to profitability during the first quarter of 2011.

The day the deal was announced, several Wall Street analysts said they were puzzled as to why the deal was occurring now, given that Whitney claimed it was poised to return to profitability imminently and the bank had until the end of 2013 to worry about the interest rates on the TARP money rising from 5 percent to 9 percent. In follow-up interviews, Whitney affirmed that nothing had changed about its view of the future.

Merging with another bank -- whether Hancock or Company A -- means that Whitney executives would be able to collect lucrative severance packages as long as the acquiring company pays back Whitney's $300 million in Troubled Asset Relief Program loans to the federal government.

Selling the company just before Whitney returns to profitability, the suit contends, would allow Hancock to buy the company on the cheap, with share prices still below their historic levels before the full value of the company can be realized.

Whitney executives also failed to engage in a process that adequately determined what, if any, alternatives existed to selling the company, according to the shareholder lawsuit. The board didn't engage in a market check, didn't content potential purchasers, didn't attempt to hold an auction, and didn't attempt to negotiate a "go-shop" provision in the sale agreement. In fact, the board did the opposite, and agreed to pay Hancock fees if the deal didn't work out.

If it was in their best interests to sell the company, Whitney shareholders don't have the necessary information to determine whether the board made the best deal in choosing Hancock over Company A.

The shareholder suit says that Whitney dragged its feet in exploring negotiations with Company A during fall 2010, in contrast with the rush to the altar with Hancock even though Company A offered a higher price.

"Upon information and belief, the Board had personal animus for the officers and/or directors of Company A, which caused the Board to favor Hancock contrary to the interests of the shareholders," the suit reads.

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