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IRS says BofA's 401(k) transfer to pension violated regulations

The Internal Revenue Service has told Bank of America Corp. that it violated tax rules when employees voluntarily transferred assets from the company's 401(k) plan to its pension plan in 1998 and 1999, the company said in a securities filing Thursday.The Internal Revenue Service is auditing tax returns of the Charlotte bank's pension and 401(k) plans for those years, reviewing whether the transfer of millions of dollars in employee assets was lawful.

The IRS sent Bank of America a "technical advice memorandum" in December saying the transfer violated "anti-cutback" rules, which prohibit a reduction in a participant's accrued benefit. Such a memorandum represents the IRS' final determination on a specific issue.

"The bank is in administrative proceedings with the IRS in an attempt to work out a resolution to the technical issues raised in the audit," spokeswoman Kelly Sapp said. The bank expects the resolution will not adversely impact the 100 percent funded status of the pension plan or participants' earned benefits, she said.

Bank of America's plan is also the subject of a civil lawsuit that alleges the company violated federal pension laws with the transfers. The suit is set to go to trial in September. The bank's motion to dismiss the case is pending.

In the filing Thursday, Bank of America also said a change in accounting standards for stock-based compensation will reduce first-quarter earnings by about 5 cents per share.

New accounting rules have changed the way companies must account for stock compensation paid to retirement-eligible employees, the bank said in its annual 10-K filing. The change will reduce earnings for the year by 4 cents per share because of the new timing for taking the expense.

Analysts expect Bank of America to report first quarter earnings of $1 per share, according to Thomson Financial. --