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Did FINRA just open the floodgates to millions in claims against Credit Suisse?

Credit Suisse may soon face a multitude of FINRA arbitration cases from former brokers enraged by the firm's decision to withhold millions of dollars in deferred compensation – as well as by its insistence that they resolve disputes in a private forum.

After prodding from brokers' attorneys, FINRA issued new a regulatory notice on Friday emphasizing the right of both advisers and customers to resolve disputes in the regulator's arbitration forums.

(Bloomberg News)

The regulator wrote that "FINRA rules do not permit member firms to require associated persons to waive their right to arbitration. ... A member firm’s failure to comply with FINRA’s rules relating to predispute arbitration agreements with customers or predispute agreements with associated persons, or failure to submit a dispute to FINRA arbitration as required by FINRA’s rules, would violate FINRA rules, and member firms may be subject to disciplinary action," the regulator said.

Attorneys for the ex-Credit Suisse brokers reacted cheerfully.

"It's a major victory for registered representatives – especially Credit Suisse registered reps, who have been fighting for their right to arbitrate in FINRA's arbitration forum," says Brian Neville, an attorney at New York law firm Lax & Neville.

A Credit Suisse spokeswoman declined to comment.

A 'HOMERUN' FOR ADVISERS

The ongoing disputes have their origins in Credit Suisse's decision to exit the U.S. wealth management business earlier this year. The Swiss firm had reached an arrangement in October 2015 to give Wells Fargo the inside track on recruiting roughly 250 U.S.-based brokers. Terms of the deal were not disclosed.

> Quote
> "It's a homerun for the Credit Suisse brokers and frankly for other employees," says Ross Intelisano, a partner at law firm Rich, Intelisano & Katz.

Wells Fargo offered this elite group up to 300% of the annual production to make the move. Yet many passed on the deal, opting instead for firms such as UBS and J.P. Morgan Securities. In fact, so many brokers accepted offers from UBS that it sparked a raiding claim suit in FINRA arbitration by Credit Suisse. About 110 of the brokers went to Wells Fargo.

Credit Suisse withheld deferred pay from brokers who moved to other firms, arguing that they quit voluntarily and therefore gave up the right to their deferred compensation. The firm also insisted on resolving disputes in a private arbitration forum run by JAMS, a dispute resolution company.

Among the brokers affected, some are owed $100,000 while others are pursuing as much as several million, according to their attorneys.

Earlier this year, Neville and several other lawyers filed a letter with FINRA, asking the Wall Street regulator to weigh in on the matter. Credit Suisse's actions could create a dangerous precedent, allowing firms to choose when to resolve disputes in FINRA's forums and when to resolve them in private arbitration, the attorneys argued. Awards would not be public; only Credit Suisse would have access to that information, putting brokers at a disadvantage in negotiations over potential settlements, the attorneys added. They also questioned the transparency and neutrality of a privately run arbitration system.

"A big part of people's concerns with JAMS was that Credit Suisse was a big repeat user of it, and that arbitrators would be afraid to bite the hand that feeds it. That same concern doesn't exist at FINRA," Neville says, adding that his clients will be filing statements of claim against the firm and seek FINRA arbitration.

The regulator should be commended for buttressing its rules, says Ross Intelisano, a partner at Rich, Intelisano & Katz in New York who represents over a dozen former Credit Suisse advisors.

"It's a homerun for the Credit Suisse brokers and frankly for other employees," says Intelisano, who says his clients are owed tens of millions in combined damages.