SECURITIES LAW360

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Ameriprise Unit To Pay Exxon Retirees $22M: NASD

Wednesday, May 17, 2006 --- In a stunning success for a group of retired Exxon Mobil Corp. employees, a National Association of Securities Dealers panel has imposed a $22 million award to be paid out by Securities America Inc., a subsidiary of Ameriprise Financial Inc., in one of the largest awards of its kind.

The award, handed down earlier this week by a three-person NASD arbitration panel, comes as a victory for the 32 former Exxon employees, who claimed that they incurred large losses after Securities America nudged them into risky investments while failing to alert them to high fees associated with certain variable annuities and mutual fund B shares.

Both forms of investment are controversial and have been targeted by recent enforcement actions.

Class B shares do not impose a front-end sales charge, but may carry higher expenses that investors are assessed over the lifetime of their investment in a fund, and often impose a contingent deferred sales charge.

In recent years, Class B shares sales practices have come under fire by the NASD over concerns that brokers receive higher commissions from the sale of Class B shares than other classes of fund shares.

According to the group of Exxon employees' joint statement of claim against Securities America and David McFadden, the broker involved in the case, McFadden urged the employees to place their retirement savings primarily in variable annuities and Class B shares, promising impressive returns on the investments.

The employees said they were not notified of the higher annual fees associated with those investments.

Ameriprise Financial Inc., a spin-off of American Express Co., disclosed the decision in a regulatory filing with the U.S. Securities and Exchange Commission earlier this week, saying it disagrees with the arbitration panel's decision and intends to file a motion to vacate the award.

However, the company also noted that if the award is sustained, "its impact, net of applicable reserves, would not be material to Ameriprise Financial's earnings," according to the SEC filing.

The $19.6 million award is a rare achievement in the history of customer-related complaints as one of only a few such victories that have approached the $20 million mark, according to the Wall Street Journal.

"A myriad of things were done wrong and the award reflects that," said Joseph C. Peiffer of Correro Fishman Haygood Phelps Walmsley & Casteix LLP, who represented the Exxon employees in the case, along with Jim Swanson of the same firm. "These people are just the nicest people you'll ever meet, but they are not financially sophisticated, and they thought they could trust McFadden."

According to Peiffer, McFadden lured his potential clients by holding seminars at a local seafood restaurant with PowerPoint slides boasting the benefits of early retirement.

McFadden allegedly told the investors they could make more money by giving up their blue collar jobs and putting their retirement money into a safe, diversified program of investments, but instead put the money into variable annuities and Class B and C shares.

"They just got slaughtered," said Peiffer. "Several people have flat-out no money left."

Peiffer acknowledged the unusually high amount of the award, but said that "even more amazing is the fact that McFadden is still licensed as a broker." He also said it would be unsurprising if Securities America were to file a motion to vacate the award, although the arbitration process is set up to make such appeals quite difficult.

Scott Hoyt, senior vice president and general counsel for Securities America, confirmed that the company would appeal the ruling.

"We disagree with the arbitration panel's decision, and we intend to file a motion to vacate that decision," said Hoyt. "We are considering all elements of that decision and understand that we need to decide a specific course of action within the next 30 days."

The latest news comes less than six months after Ameriprise Financial agreed to shell out $57.3 million to settle charges of illegal mutual fund share trading and brokerage misconduct brought by the SEC, the NASD and the state of Minnesota.

Ameriprise agreed to pay the SEC $15 million to settle charges that it allowed certain shareholders to do rapid "market-timing" deals in shares of mutual funds it advised, as well as an additional $30 million to the SEC and $12.3 million to the NASD.

Ameriprise Financial is a leading financial planning, asset management and insurance company, with a nationwide network of more than 10,000 financial advisors.

As part of the settlement, Ameriprise agreed to beef up its internal reviews, including making annual presentations to its board of directors about the adequacy of its policies on market timing.

Ameriprise changed the prospectus disclosures for the AXP Funds to specifically prohibit market timing in January 2002. Nonetheless, the fund family still permitted some market timing activity for six to eight months, the SEC said.

In addition, the fund family did not put practices in place to prevent employees from market timing the AXP Funds through their 401(k) accounts, the SEC said.

Market timing occurs when a company makes frequent trades in order to capitalize on ups and downs in the market. While market timing is not illegal, many mutual funds prohibit it.

New York Attorney General Elliot Spitzer initiated an investigation into the practice after his office received a phone call in 2003 accusing several of the funds of improper trading practices.

Spitzer's investigation sent shockwaves through the mutual fund industry, which had previously not been the subject of a major probe.

Mutual funds continue to feel the repercussions of the scandal.

Last year, the SEC fined Citigroup $20 million after investigating the company for failing to reveal to shareholders that brokers were paid to recommend certain funds to clients.

The NASD ordered Citigroup, American Express Financial Advisors, and JPMorgan Chase to pay a total of $21.25 million for violations of mutual fund regulations.

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