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A Star Broker, 'Virtually Unsupervised,' Puts Ameriprise Arm Under Scrutiny

By SUSANNE CRAIG

DAVID MCFADDEN is one of the top brokers at Securities America. How he achieved this feat is now the focus of a National Association of Securities Dealers investigation and recently contributed to a \$22 million arbitration award against the firm, a brokerage arm of Ameriprise Financial Inc.

For years Mr. McFadden courted employees of oil giant Exxon Mobil Corp. He boasted that he was a certified public accountant and told many of the employees they were set for retirement and promised impressive returns, according to documents filed in a 2003 arbitration claim.

His claims, however, didn't mesh with reality. His CPA certification had lapsed years ago, and several of his clients had to go back to work as he failed to deliver the rosy returns he promised.

"Your retirement won't be so wonderful if you can't sleep at night because you're worried about your investments," he told Exxon line operator Bradley Simon, 55 years old, whose \$700,000 retirement nest egg dwindled to \$267,000 during his five years with Mr. McFadden at Securities America.

Clients, including Mr. Simon, say Mr. McFadden in some cases placed them into often high-fee investments that were contrary to their investment objectives, turning their retirements into a nightmare. Securities America had issues with some of Mr. McFadden's monthly account statements and at Mr. McFadden's request went so far as to draft an agreement which Mr. McFadden signed asking the broker to indemnify the firm if problems later surfaced with those statements, according to people familiar with

the matter and testimony given by Securities America compliance chief at the arbitration, which was decided in May.

Joe Peiffer and Jim Swanson, lawyers with the New Orleans law firm Corroero Fishman Haygood Phelps Walmsley & Casteix LLP, say many of their clients have been forced back into the work force and in some cases have had to sell their homes to make ends meet.

The award and ongoing investigation is the latest regulatory blow to Minneapolis-based Ameriprise, which has been hit with a number of regulatory complaints in recent years, including the two largest fines issued in 2005 by the NASD's enforcement division.

For years, Ameriprise was owned by American Express Co. and known as American Express Financial Advisors. In 1998, American Express bought Securities America, and it became a unit of American Express Financial Advisors, once a crown jewel of the American Express family. American Express spun off Ameriprise in 2005 and doesn't own any of its stock.

Securities America has filed a motion in federal court in the Eastern District of Louisiana to modify the NASD arbitration award, asking the court to vacate the \$3.5 million punitive damage portion of the award and reduce the approximately \$4.7 million in legal fees, saying both these sums were granted in manifest disregard of state law. The firm says it plans to meet the obligation of the \$11.6 million compensatory portion of the award.

Mr. McFadden, 60, said through a lawyer and company spokeswoman that he is currently coming to a resolution with the NASD, and any agreement "will likely include [his] withdrawal from the securities business."

Increasingly, Ameriprise has been in the cross hairs of regulators. In January, the Securities America unit received a notice from the NASD saying it left Mr. McFadden "virtually unsupervised" and warning it may face civil charges related to its treatment of the Exxon employees, according to people familiar with the notice. Securities America General

Counsel Scott Hoyt says there are a number of things in the notice from the NASD that the brokerage firm disagrees with.

In the \$22 million Exxon arbitration award, hearings stretched over two years and provided a rare glimpse into some of Securities America's sales practices that are now under the microscope.

The award, one of only a handful of customer-related complaints to top the \$20 million mark, focuses on the Baton Rouge, La.-based Mr. McFadden and 32 former Exxon employees, a mix of largely blue-collar workers who either worked at Exxon's local refinery or nearby chemical plant and held primarily entry-level jobs like office clerks that he recruited in the late 1990s.

His pitch was impressive. Although he had not been licensed as a certified public accountant since 1987 and, according to documents reviewed by The Wall Street Journal, had been warned repeatedly by the State Board of Certified Accountants of Louisiana not to represent himself as one, he openly marketed himself as a CPA.

The clients signed on, lured by his credentials and his seminars, which promised impressive returns and, unbeknownst to the Exxon employees, were subsidized by the very vendors whose products he was peddling, according to testimony given by a Securities America official at the arbitration hearing.

The Exxon employees claimed Mr. McFadden dumped them into largely unsuitable holdings, variable annuities and mutual fund B-shares. Class B shares are broker-sold shares that don't carry a front-end sales charge but do carry higher annual fees than other fund shares. Regulators say brokers have sold B shares to many clients who would have been better off buying so-called A shares, which offer discounts on upfront commissions for larger investments.

A variable annuity is an investment contract that guarantees a payment each year for life or for a term of years; the money is typically invested in mutual-fund-like subaccounts and are generally



David McFadden

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considered inappropriate for retirees who are more concerned with generating income than accumulating additional assets because they often charge large commissions and fees, among other things.

Take the case of 73-year-old Pat Salatich, a nurse for 25 years at Exxon. In 2000, she says she entrusted Mr. McFadden with \$565,383, of which \$493,306 was placed in an American Skandia variable annuity. The selling point: the annuity had a death benefit, which would leave a set amount to her heirs. As part of the contract she had to pay \$4,900 a year for seven years even though the benefit expired when she was 70. Mr. McFadden

made more than \$25,000 on Ms. Salatich's account.

She withdrew approximately \$189,000 from her account during the 12 months Mr. McFadden was her broker, and when she shut the account she had just \$73,000 left. She is currently living primarily off her \$1,500 monthly Social Security payment. "I feel you should continue taking out \$4,000 a month and enjoy yourself and let me worry about the market," he wrote to her in May 2001.

In its January notice to Securities America, the NASD raised numerous concerns about the supervision of Mr. McFadden, according to people who have reviewed the notice.

David Spinar, the firm's chief compliance officer, testified during the arbitration that the firm simply failed to verify Mr. McFadden's claims that he was a certified public accountant in good standing.

The NASD's January notice of possible civil charges also criticizes the firm's failure to review many trades, according to these people.

At issue in the arbitration was the firm's inability to review thousands of trades Mr. McFadden made in the annuity accounts of the Exxon employees. Mr. Spinar testified during arbitration that this is a "fundamental difficulty" but added Securities America is trying to "crack that nut."