NEWS INDUSTRY NEWS

Stifel's star Miami broker in structured note cases misled via text, attorney claims

"How can a firm supervise a broker when he's got numerous text communications that have no visibility?" Jeff Erez asked.

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By Bruce Kelly

Last month Stifel Nicolaus & Co. Inc. agreed to pay a $35 million penalty to settle charges with the Securities and Exchange Commission that the firm, like many of its competitors, *had longstanding failures* in maintaining and preserve electronic communications of bankers, financial advisors, and employees, in violation of recordkeeping provisions of the federal securities laws.

Now, in the aftermath of Stifel Nicolaus, the retail brokerage arm of Stifel Financial Corp., ***losing a huge, $14.2 million*** arbitration involving a star broker in Miami who sold complex products, the matter of a firm keeping tabs on a financial advisor's text messages and WhatsApp communications may be playing out in costly litigation and clients' arbitration claims, according to Jeff Erez, a plaintiff's attorney.

The SEC has penalized dozens of firms in its investigation of compliance failures in keeping records of financial advisors' and employees' electronic communications, such as text messages and apps. Stifel's ***$35 million penalty*** is on the lower end of penalties.

Erez has more than a dozen investor complaints filed against Stifel Nicolaus via Finra Dispute Resolution Services, which manages investors and employee lawsuits against firms.

"This financial advisor fits squarely within the findings of the SEC settlement," Erez said. "A scenario in which Stifel failed to enforce and supervise is very evident and applicable in these cases."

The plaintiffs, Louis and Elizabeth Deluca, who won the $14.2 million decision, sued Stifel Nicolaus last year. They alleged fraud, negligence, negligent supervision, and other claims in their complaint relating to their investments in structured notes, a complex and potentially volatile product.

Chuck Roberts was the DeLucas' advisor, Erez said, and he is based in Miami Beach.

The SEC's investigations into all the firms except for one involved in the September settlements "uncovered pervasive and longstanding use of unapproved communication methods, known as off-channel communications, at these firms," according to a statement by the SEC. "As described in the SEC's orders, the firms admitted that during the periods relevant to each order, their personnel sent and received off-channel communications that were records required to be maintained under securities laws."

A spokesperson for Stifel Financial declined to comment for this article. When the award was issued on Oct. 3, the company said it intended to seek a motion to vacate the award.

"The messages to clients were very misleading and misrepresented the risks and returns of structured notes the financial advisor was selling," Erez said. "Those are the allegations, and we believe the allegations have been accepted and proven. They were mostly text messages, but there are also some using WhatsApp."

"The financial advisor explained to our clients, both verbally and in text, that they would receive the maximum of what's called a 'contingent coupon' in structured notes," Erez said. "He referred to it as 'yield.'"

"But a contingent coupon means maybe the investor gets the coupon and maybe he doesn't," said Erez, who declined to give specific details about the structured notes cases, including the amount of commission dollars and revenue Roberts generated for Stifel.

"How can a firm supervise a broker when he's got numerous text communications that have no visibility?" he asked. "These are the allegations."

Wall Street banks underwrite structured notes, which can be volatile because they are a hybrid of a bond and a derivative. Some notes have principal protection, but others don't, and investors can lose a portion or all of their principal based on the terms of the note and market volatility.