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Brokers Sue Finra, Credit Suisse over Arbitration Shopping

by [Jed Horowitz](#) | [MORGAN STANLEY](#), [UBS](#) | No Comments

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In a scenario that Kafka might have created had he ever thought about the retail brokerage industry, nine advisors in Chicago have sued the Financial Industry Regulatory Authority in an attempt to have it declare its authority in arbitrating disputes between them and their former employer.

The spark for the suit, filed in Illinois state court on Friday, was a “blizzard” of previously unreported correspondence that Credit Suisse Securities (USA) sent to former brokers in mid-May seeking return of alleged overpayments they collected before they moved to other firms and/or payment due on promissory notes, according to Nicholas Iavarone, a lawyer for the brokers.

The disputes follow Credit Suisse’s decision last year to shutter its U.S. brokerage operations and steer its approximately 250 advisors to Wells Fargo Advisors. When [scores of brokers went to rivals](#), it withheld deferred compensation they had accumulated and filed a raiding complaint against UBS’s U.S. broker-dealer.

Before the claims and counterclaims can be adjudicated, the parties have to agree on where to bring their arguments. Lawyers representing brokers [argue that Finra arbitration panels are the proper place for dispute resolution](#) and are the required forum under the industry-sponsored regulator’s own rules. Credit Suisse and some other broker-dealers prefer to bring employee disputes before private forums such as JAMS (formerly the Judicial Arbitration and Mediation Services) or the American Arbitration Association.

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The problem, according to Iavarone, is that the former Credit Suisse brokers he represents — six of whom are now with UBS and three with Morgan Stanley—are squeezed between the two.

“They signed (employment) contracts with Credit Suisse, which forces them to go through its dispute resolution rules. They’re also working for members of Finra, which has rules saying they can be sanctioned if they don’t use its arbitrators,” the Chicago-based lawyer said.

Attorneys who have been lobbying Finra to explain to courts why it is the proper forum for securities industry disputes also have more latitude in picking arbitrators under Finra’s aegis and in determining where hearings occur. Iavarone, for example, said Credit Suisse wants arbitration sessions and even court hearings on the venue to be held in New York.

Finra to date has resisted lawyers’ attempts to have it assert its authority when brokerage firms attempt to arbitrate outside its jurisdiction. “We’re trying to get them to weigh in on the issue,” Iavarone said. “If they say that their rules require their own forum to be used, the court should rule with us, so we’re trying to grab them by the collar and state what their rules are.”

“It’s a clever way to put Finra in a position where they have to make a decision,” said Barry Lax, whose New York-based law firm Lax & Neville also represents former Credit Suisse brokers but who has not gone to court to seek what the law calls “declaratory relief” on the forum issue.

Because it is a defendant, Finra will have to answer the complaint from the Chicago brokers or move to dismiss it. A Finra spokeswoman declined to provide a comment from the general counsel’s office, which determines the industry-sponsored regulatory group’s rules and legal policies.

In Texas, meanwhile, another lawyer representing 15 former Credit Suisse advisors said his clients also have tired of waiting for Finra.

“I’ve filed six suits, three in Houston and three in Dallas, to have my clients’ disputes resolved exclusively through a Finra arbitration because it doesn’t look like Finra is going to act on this anytime soon,” said Rogge Dunn, an employment lawyer at Clouse Dunn in Dallas. His

clients now work at UBS, Merrill Lynch and even Wells Fargo Advisors, he said.

Credit Suisse has already won a court order to move the Chicago case from state to federal court, where it expects to get more sympathetic hearings. Iavarone said he will file next week to remand the case back to Cook County court.

In letters attached as exhibits to the case, Credit Suisse informed its former employees in mid-May that six of them cumulatively owe about \$353,000 of "over-payments" from the firm, including \$52,472 from lead plaintiff Mark Hutchinson. It told three others who now work at Morgan Stanley that it reserves the right to pursue them for contractual or other obligations over the next five to ten years.

Other former Credit Suisse brokers who are not plaintiffs in the Chicago case also said they received letters demanding return of overpayments. The overpayments are believed to be for payouts on fee-based advisory accounts collected in advance of the quarter in which the brokers left for other firms. One broker said he has already paid taxes on some of those payments.

Credit Suisse also is asking some brokers to repay principal and interest balances on low-interest bonus loans that were contractually due when they left for other firms, but Iavarone and Dunn said the requests in some cases reflect book-keeping disarray as the bank rushed to close the doors of its U.S. brokerage operations.

The bank demanded that Hutchinson return \$673,583, an amount that he had returned on November 11, 2015, and that Credit Suisse cashed on December 31, according to a canceled check attached as an exhibit to the legal complaint. "Credit Suisse's record keeping is apparently seriously flawed," Iavarone wrote on May 19, 2016, to Stephen Kramarsky, a New York lawyer representing the bank in the compensation cases.

A [Credit Suisse](#) spokesman did not return calls for comment.

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