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COMPLIANCE WATCH: Investors Target Former Lehman Brokers

By Suzanne Barlyn

Some former Lehman Brothers brokers are getting caught in the tide of arbitration cases involving principal-protected notes issued by their parent company.

The cases are creating yet another headache for them: Now, in addition to hunting for or adjusting to new jobs after the company's collapse, they must hire lawyers to defend themselves against angry investors.

The arbitration claims are typically a last-ditch effort to recoup some of the money invested in Lehman Brothers Holdings Inc. principal-protected notes.

Investors say the fixed-income securities were "guaranteed" to return at least the equivalent of the investor's principal, as the product's name suggests. The securities instead proved highly risky: Investors who bought the notes lost nearly everything when the once-venerable institution declared bankruptcy in 2008. They could ultimately collect as unsecured creditors in Lehman's bankruptcy proceedings, say lawyers, but that may take years and yield, if anything, pennies on the dollar.

Those who bought the Lehman notes through brokers at UBS AG (UBS), which also sold them, are in a better position to collect, since the firm is still in business, say securities lawyers. In December, a Financial Industry Regulatory Authority arbitration panel awarded a retail investor \$200,000 after deciding a UBS broker inappropriately sold her Lehman principal-protected notes. The case was one of the first involving the Lehman notes to be heard by a Finra arbitration panel.

Investors who bought the notes from Lehman brokers, however, face a steep uphill struggle to recover their money.

Barclays PLC (BCS) purchased assets related to Lehman's North American investment-banking division, as well as its New York headquarters, in the bankruptcy proceedings. It bought only a very limited class of Lehman's liabilities, however, which didn't include principal-protected notes. That leaves former clients with few, if any, avenues of relief. Many investors also are filing claims against Barclays, but any chance of recovery is unlikely, say lawyers.

Brokers, who have been named in a small number of cases, can expect to spend

between \$40,000 to \$50,000 for legal fees to defend themselves during a four-day hearing, according to Marc Dobin, a securities lawyer in Jupiter, Fla.

Longer cases may cost an additional \$5,000 to \$6,000 per day, he said. Brokers who win can ask the panel to order the investor to pay their legal fees, but such victories are rare, he said.

Dobin said he's now defending a former Lehman broker in a case involving "significant" losses. The broker, he said, recommended certain principal-protected notes to clients based on information he received from the company about the quality of the notes just prior to the bankruptcy filing. Dobin declined to name the broker.

Paulino Nunez, a securities lawyer in Miami, Fla., is representing two investors,

including an 88-year-old man, against a former Lehman broker who, he says, sold them more than \$2.5 million of Lehman notes when the firm knew it was failing.

Nunez also declined to identify the broker, or to comment on specifics. But he said a firm's bankruptcy generally leaves investors few alternatives but to pursue the broker, as long as there's a reasonable basis for recovery, such as breach of fiduciary duty or selling unsuitable investments.

Other lawyers, however, say naming a broker is often fruitless because most don't have professional liability insurance. "Generally, you have an individual that may not be able to answer to a big award," said Jacob Zamansky, a New York-based securities lawyer.