Finra Orders UBS To Pay $5M In Biggest Award Yet For Options Strategy Losses

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A Financial Industry Regulatory Authority arbitration panel has ordered UBS Financial Services to pay more than $5 million to a couple who lost money in a controversial options product that the plaintiffs' attorneys say has lost almost $1 billion for wealthy clients since 2018.

Finra on Friday awarded $5,028,412 in compensatory damages to George and Sandra Schussel, as well as $94,679 in pre-judgment interest (under Florida rates) and $91,939 in costs. The Schussels had originally sought $6.5 million. Still, the award was still one of the largest to date in claims against UBS's "Yield Enhancement Strategy," otherwise known as "YES," an options product meant to overlay clients' investments so they would be protected from downside risk.

One of the biggest awards before this one was the $3.9 million awarded by Finra to two investors, John and Elise Oren, in early May. Three other claimants, Jacques Andre Soileau, Jennifer Beth Plauche Soileau and Nexgen Investments, won a claim of almost $1 million in mid-June. And claimants B. Terry Bryant and Memorial Rock Investments won a $1.184 million award in March.

Not every claim against UBS and its YES product has been successful, however. Ross Intelisano, the attorney for the Schussels, a retired couple now living in Florida, said it helped that the current arbitration case was held in person in Boca Raton, Fla. "The biggest thing we focused on was the breach of fiduciary duty," Intelisano said. "These are all discretionary accounts, so the firm and the advisors have fiduciary responsibilities, and from our perspective, that means doing what's best for the client even if that's not good for you. The firm was making so much money on the YES strategy and it was so complex [that advisors recommending it] didn't really understand it, which is basically what the SEC found in their order this summer. And that by itself is a breach in the fiduciary responsibility."

UBS reached a $25 million settlement with the Securities and Exchange Commission over the product on June 29. In its cease and desist order, the agency said UBS provided inadequate training to its financial advisors recommending the YES strategy, and they weren't aware of its potential for downside risk. UBS investor documents show that the product lost 18.44% in 2018 and lost another 11.34% in 2020.

The YES product was what's known as an "Iron Condor" options strategy. It used four options contracts—long and short put options alongside long and short call options—to create both a bear call spread and a bear put spread on the S&P 500. But attorneys say that the fund ended up making directional bets on the market—betting it would rise. That be ended up causing huge losses in 2018, the plaintiff attorneys said.

According to a class-action suit filed in December, there were 1,500 advisory customers using the YES mandates when the program was at its height, and there was at that time about $5.7 billion pledged (that would put the 18.44% loss at around $1 billion). By February 2022 the YES mandate had dwindled to only 193 accounts and had only $715.6 million in its mandate, according to UBS statements sent to clients this year that were obtained by *FInancial Advisor,*

"It was pitched as a moderate risk strategy, when at the end of the day it was being executed as a high-risk strategy," said Intelisano, a founding partner at Rich, Intelisano & Katz.

Attorney Jeffrey Kaplan at Dimond, Kaplan and Rothstein said he and his clients have won four out of the last five arbitration suits against UBS over its handling of the YES product. He said the initial successes in these arbitration suits were about half and half, but he adds that the awards are getting bigger and the victories more frequent.

“The tide is turning because we now have gotten our arms around more of the documents,” Kaplan said. “Documents that reveal UBS misconduct. In any of these big product cases when they first rear their head a good plaintiff lawyer can figure out some aspect of the case, but we’re handicapped by not having evidence. But as we have uncovered more documents and more nuances we can more easily demonstrate misconduct.”

According to the SEC’s letter, the YES product was a legacy holdover from Credit Suisse.

“UBS recruited the YES Team from Credit Suisse Securities USA in late 2015, paying them upfront awards of approximately $50 million,” the SEC settlement said. “UBS also recruited a number of financial advisors from Credit Suisse. Collectively, the legacy Credit Suisse financial advisors brought to UBS approximately 300 client accounts with approximately $1 billion in YES.”

The product was designed for wealthy investors. The fee for the product overlay was 1.75% for accounts of $5 million and under.

UBS opened the product up to new investors in February 2016, road-showing it in Texas, California and New York and explaining the concept to its remote advisors.

“The YES Team marketed the strategy as a way to enhance returns on an existing portfolio of securities," the SEC letter said. “The YES Team generally explained to financial advisors and clients that historically the strategy had generated gains of approximately 3%-to-5% per year with worst-case historical losses of approximately 1% per year. The YES Team acknowledged that the strategy had experienced losses up to 11% in a single month, but explained that this created a potential profit opportunity because they could try to sell options at premium prices, sometimes analogizing the program to writing ‘hurricane insurance.’”

The client accounts increased by 600 and the amount invested in YES increased by approximately $2 billion in the next year through February 2017.

A UBS spokesperson said the firm would not comment on the most recent settlement.
