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# Merrill Retreats from Battle to Fight Former Executives in Court

by Jed Horowitz | News | MERRILL LYNCH | No Comments



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After a series of defeats in its battle to contest fraud lawsuits from more than 60 former managers and executives in federal court, Merrill Lynch has acquiesced to fighting the claims seeking more than $1 billion in Financial Industry Regulatory Authority arbitration forums.

William Halldin, a spokesman for Merrill, confirmed that the company on March 27 dismissed its efforts to obtain preliminary injunctions in nine federal district courts that would have precluded arbitration. He declined to comment on why Merrill changed its tactics or why it believed it had a better chance of prevailing in court than in arbitration.

"They lost the arguments in the courts, some of which were compelling them to arbitration," said Michael Taafe of the law firm Shumaker, Loop & Kendrick, a co-counsel for the former employees.

The legal maneuverings have drawn attention because Merrill and other brokerage firms generally require their own customers and employees to bring claims to arbitration, where they generally feel they can receive more favorable hearings than in courts. The lawyers for the former employees also assert that Merrill thought it could better shield itself from having to produce account statements and other documents, and win a dismissal, if it were not subject to Finra arbitration rules.

They have asked the Securities and Exchange Commission to review whether Merrill's withholding of the former employees' signed arbitration agreements in the proceedings to date violates securities law and are filing motions for monetary sanctions to cover the costs and expenses of appeals Merrill sought in federal courts. Halldin declined to comment on the actions.

The former Merrill officials, many of whom spent decades with the company, allege to have lost about $400 million in the value of their company stock due to the firm's undisclosed exposure to subprime mortgages and mortgage-backed securities that plummeted during the financial crisis. They are bringing their claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), which allows awards of triple underlying damages.

Taafe said that the number of plaintiffs has grown from under 40 at the beginning of the year to over 60 as word of the legal actions spread. The largest claim is from the estate of James Billington, a former western region director at Merrill.

The Bank of America subsidiary had been arguing that the statute of limitations had run out for complaints, while the employees' lawyers said the start date for such an argument was in August 2014 when the Justice Department fined Merrill $17 billion for its mortgage securities violations. The firm also argued that the complaints didn't qualify for Finra arbitration because the stock was issued by Merrill Lynch & Co., the broker-dealer's parent, which is not a Finra member.

The jurisdictional and statute-of-limitation issues are now essentially moot, given Merrill's withdrawals of its federal court motions, Taafe said. But the firm appears to be sticking to its claims that the complaints are invalid because the issuer of the stock changed to Bank of America as a result of the bank's takeover of Merrill.

Merrill spokesman Halldin declined to comment on Taafe's assertions.

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