

Citigroup Unit to Pay to Settle OT Claims

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NEW YORK -- [Citigroup's](#) Smith Barney brokerage unit has agreed to pay \$98 million to settle claims on behalf of thousands of current and former brokers that they are owed overtime pay and other reimbursements.

The proposed settlement is the latest and largest by securities firms that claim brokers are exempt from state and federal overtime laws because they are salaried, administrative employees. Brokers' draw on commissions, a monthly loan most receive, qualify as a salary, they argued.

"We are pleased to have this matter resolved," a Citigroup spokesman said.

The securities industry swallowed hard in making the argument that brokers are salaried employees because it likes to portray them as trusted financial advisors, not mere administrators, said Mark Thierman, a lawyer in Reno, Nevada. He is one of more than a dozen class-action labor lawyers who have brought the suits on behalf of brokers, primarily in California.

Their primary argument is that brokers are not salaried but receive incentive-based compensation, such as commissions, that are tied to sales. They also countered the brokerage firms' claims that the Fair Labor Standards Act exempt salespeople from overtime because the exemption applies only to store sales, not trades of securities.

The preliminary settlement was reached last week, pending final approval by a federal district court in San Francisco. It affects about 11,000 full-time equivalent employees at Smith Barney _ which translates to many more individuals who worked as far back as six years from the final settlement date, said Thierman.

Citigroup's proposed nationwide settlement is higher than others reached to date because of the number of employees affected and because of its national breadth, he said. People close to the bank said that it has reserved money to cover most of the settlement.

In February, the UBS Wealth Management unit of UBS AG agreed to pay \$89 million in a nationwide settlement to financial advisors who sued for overtime pay and to recover charges assessed by the firm for sales assistants, computers, and trading errors.

Last year Morgan Stanley agreed to pay \$42.5 million and [Merrill Lynch & Co.](#) acceded to pay \$37 million to settle claims involving only California brokers. Additional claims against the firms are pending in Connecticut, New York and New Jersey.

The number of people eligible for compensation from the settlements, and the amounts they can receive, depend on statutes of limitations in individual states and court approvals of the settlement formulas. The law firms bringing the cases generally receive 25 percent of the settlement amounts.

Thierman said lawyers are preparing cases against another 13 or 14 large brokerage firms.

Wall Street firms, meanwhile, are working to revamp their compensation schemes to retail brokers, lawyers said.

"It's fair to say that everyone is looking at this with a great deal of concern and assessing their potential liability," said Philip M. Berkowitz, a partner at Nixon Peabody LLP in New York who has banking and brokerage firm clients. "I'm advising them to be sure that they properly classify their employees. To the

extent that brokers get involved in financial analysis that would more likely bring them under the exemptions."

One problem for firms is that they are wary of giving brokers fiduciary control over client assets because it could expose them to greater liability and to additional regulation as investment advisors.

Thierman suggested that brokerage firms raise salaries and continue the trend to tie pay to client assets under management. "The industry made a mistake and it's time to make it right," he said. "Salaries reduce the pressure to churn."

A spokesman for the Securities Industry Association declined to comment.

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