

## UBS to Pay \$89 Mln to Settle Broker Overtime Lawsuits (Update4)

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By Jane Mills and Bob Van Voris

Feb. 8 (Bloomberg) -- UBS AG, Europe's biggest bank, agreed to pay as much as \$89 million to settle lawsuits by U.S. stockbrokers who said they were wrongly denied overtime pay.

UBS Financial Services, a New York-based unit of the bank that manages money for wealthy individuals, failed to pay overtime and improperly deducted money from employee paychecks to compensate staff, cover unpaid customer fees and refund incorrect trades, lawyers for the brokers claimed in lawsuits filed in at least four states.

"We're talking about something that I think has potentially broad ramifications," said Daniel Sarch, president of Leitner Sarch Consultants, an executive search firm in White Plains, New York. "By no means is this the only commissioned sales job on Wall Street, or for that matter in other industries."

The brokers said they are owed back pay under federal and state wage laws because they work longer than 40 hours a week. The pact, intended to pay overtime to commission-based UBS brokers nationwide, follows similar settlements last year by New York-based Merrill Lynch and Co. and Charlotte, North Carolina-based Bank of America Corp.

The settlement includes brokers and broker trainees, UBS said. Before they start collecting their money, the parties must notify all 50 state attorneys general of the settlement and it must be approved by a judge, said Reno, Nevada-based lawyer Mark Thierman, who represents the brokers and broker trainees, who are also included in the settlement.

### Number of Brokers

It is hard to say how many brokers will collect money from the settlement, Thierman said. About 8,500 licensed brokers currently work for UBS outside of California, including more than 700 in New York, more than 400 in Connecticut, almost 700 in New Jersey and large numbers in Florida, Texas and Illinois, according to research by Thierman's firm.

"Both current and former employees will be mailed a claim form with the number of months they worked during the class period," Thierman said.

Merrill, the world's biggest securities firm, agreed in August to pay as much as \$37 million to settle a suit on behalf of about 1,200 brokers in California. The next month, Bank of America settled a California overtime suit for \$9 million by employees who sold home mortgages and personal loans on commission.

"UBS settled this case at the national and state level because it did not believe protracted litigation in multiple courts was in the best interests of employees or clients," the bank said in a statement.

### Overtime Policies

UBS, which didn't say whether it would change its overtime policies, said it set aside the "vast majority" of the \$89 million in the third quarter of 2005. Final details of the claims payment process have yet to be determined by the court, the bank said.

Lawsuits against the unit of Zurich-based UBS were filed under the federal Fair Labor Standards Act and state labor laws in at least four states: California, New Jersey, New York and Connecticut. Many of the laws are relatively untested when it comes to financial companies.

“Some of the regulations that we rely on in these cases have been on the books for 60 years,” said plaintiffs attorney Kevin J. McInerney, who represents brokers in three overtime suits. “I don't think you can say it really got going until the late '90s.”

Many workers are exempt from overtime regulations, including managers and administrative workers. According to federal labor regulations, “an employee whose primary duty is selling financial products does not qualify for the administrative exemption.”

### Major Change

Applying overtime laws to stockbrokers would be a major change in how they are compensated, said Sarch, the executive search consultant.

“Brokers know when they get hired that the big money is on commission and that their hard work at the beginning will hopefully result in bigger sales down the road,” Sarch said.

UBS, the world's largest manager of money for the rich, oversaw about 1.67 trillion Swiss francs (\$1.31 trillion) of assets for wealthy clients at the end of September. The bank has added almost 40 billion francs in client assets through eight acquisitions in the past three years.

Last month, UBS agreed to pay \$49.5 million to settle regulators' claims that it failed to supervise stockbrokers who helped hedge-fund clients engage in abusive trading of mutual funds at the expense of other shareholders. The settlement with the New York Stock Exchange and New Jersey regulators addressed so-called “market timing” claims.

### Connecticut Settlement

The bank also agreed in January to pay \$5.5 million to settle similar claims by Connecticut regulators. UBS brokers allowed clients to “market time,” or rapidly buy and sell mutual funds to exploit discrepancies in pricing, Connecticut Banking Commissioner John Burke said. The trading occurred between January 2000 and February 2002.

UBS said Nov. 1 that third-quarter profit rose 71 percent to a record 2.77 billion Swiss francs on higher fees from investment banking and managing money for the wealthy. About 40 percent of its profit came from managing money, and a further 40 percent from its investment banking business.

Merrill Lynch is a passive minority investor in Bloomberg LP, the parent of Bloomberg News.

--With reporting by Alice Ratcliffe in Zurich. Editor: Rovella

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