Back

US Finra fines BNP Paribas for mis-selling leveraged derivative call option

2 Jul 2015
Pablo Conde

The US Financial Industry Regulatory Authority (Finra) has ordered BNP Paribas (BNPP) Securities to pay $16.6m to a London-based couple in a dispute arising from the sale of a "highly speculative and leveraged" derivative call option.

A panel of securities arbitrators from the US watchdog found the BNP Paribas unit guilty of gross negligence and civil fraud, unsuitability and breach of fiduciary duty following the sale and marketing to retail investors of an "unsuitable" investment product that is typically aimed at sophisticated investors, according to the ruling dated June 26.

The single investment at issue was the BNP Hedge Fund of Funds Option, a resettable strike equity option transaction, based on a leveraged derivative call option. According to the ruling, because BNPP had a policy that prohibited the sale of this product to retail customers, the bank's unit required the retail investors, James and Margaret Eringer, to form a corporate entity, Ontonimo Ltd., through which the Eringers would purchase the investment to circumvent BNPP's own compliance rules.

BNPP recommended that the Eringers invest approximately $14.3m, which represented more than 60% of their investable assets, into this security.

Further, BNPP required James Eringer to become a so-called "investment adviser" for Ontonimo by mandating that Mr Eringer execute a sham investment advisory agreement, even though he had no prior professional financial services experience and no securities licences, said the couple's lawyer, Barry Lax (*pictured*), from Lax & Neville in New York, in a statement.

"The Arbitration Panel's message was clear," he said. "The Eringers should never have been marketed and sold this unsuitable security."

BNP Paribas Securities Corp takes its responsibilities to its clients seriously

and believes that it conducted itself professionally and appropriately with respect to Ontonimo and its investments, said a BNP Paribas spokeswoman in an emailed statement.

"We disagree with and are deeply disappointed by the arbitrators' decision," said the spokeswoman.

According to the ruling, in less than eighteen months the resettable strike equity option transaction became worthless and the Eringers lost their entire $14.3m investment. The Eringers had paid BNPP in excess of $2.3m in fees and costs for this investment with BNPP further retaining approximately $700,000 of the value of the product after its expiration.

The arbitration panel awarded James and Margaret Eringer, through Ontonimo, $16.1m in compensatory damages, inclusive of interest, which reflects 100% of the net out-of-pocket loss plus interest and is one of the largest Finra arbitration awards of compensatory damages in a customer dispute, said the law firm representing the couple.

In addition to the compensation, the arbitrators also ordered BNP Paribas to pay a $500,000 sanction for failing to comply with its orders about exchanging information with the claimants during the proceedings.

The regulator's arbitration panel did not disclose the reasons for its decision as is typical.

To view this award, Ontonimo (OMO) Limited vs. BNP Paribas Securities Corp. – FINRA Case No. 10-04744, **click here**.

Related stories:
SEC questions disclosure on products linked to ETFs, credit and hedge funds
Finra hits RBC with $1.4m fine for unsuitable rev conv sales in US
SEC and Finra offer guidance on sales to older investors
US SEC to focus on suitability and disclosure of 'Trojan horses'