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## Legal action spreads to losses on Lehman exchange-traded notes

Arbitrations in the US have now expanded to recovering losses made as a result of investments in Lehman exchange-traded notes (ETNs). Around 20 law firms are now investigating the sale of principal-protected Lehman notes (PPNs) in the US, which have been left virtually worthless following Lehman's bankruptcy filing.

Florida law firm Colling Gilbert Wright & Carter is examining options for investors who have lost money in Lehman ETNs, and has already filed two arbitration cases regarding Lehman products with the Financial Industry Regulatory Authority. Several brokers, including UBS, are being investigated by lawyers on the basis that products they sold were misrepresented.

"With ETNs, regardless of what the play was, it was still unsecured Lehman debt and they didn't disclose that properly," says William Young, a partner at the law firm. "We are arguing that they knew Lehman was creating the products to support itself financially because they knew it was haemorrhaging money." Under securities law, investors will be entitled to rescission, and in the state of Florida they are also entitled to attorneys' costs if material misrepresentation and omission is found to have taken place during the sale process.

UBS stands accused of a conflict of interest over its sale of Lehman notes, as it had approximately \$300 million worth of exposure to the ailing bank (Structured Products, November 2008). However, UBS Wealth Management in the US has refuted the claim, and says it has "already been in communication with clients outlining potential alternatives while the insolvency of Lehman continues to be worked out". UBS says it properly sold these investments to its clients. "The offering materials clearly identified Lehman as the issuer and discussed all the relevant risks and features of the product." UBS clients hold approximately 1.7% of Lehman's reported structured notes and privately placed securities, according to the bank.

Aside from addressing the misrepresentation of product risk, PPN arbitration cases are also scrutinising the alleged neglect of a duty to diversify investor assets. "It's a combination of oversold products and incompetence at financial adviser level," says Chris Vernon, a partner at Florida law firm Vernon Healy. Vernon says some advisers put investors into a variety of Lehman notes linked to different indexes to diversify them across asset classes, with no attention to the massive concentration of credit risk in the portfolio. Under securities law, "it is a breach of the standard of care not to diversify assets properly," he says.

Most individuals have chosen to pursue arbitration claims against brokers, as the resolution, if successful, is likely to occur within 12 to 18 months. The bankruptcy settlement, however, is anticipated to take between five and 10 years to conclude, lawyers estimate, at which point investors may still receive little back.

Source: **Structured Products**

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