Financial Advisor IQ - Deferred Comp Pits FAs Against Wirehouses

By Miriam RozenJanuary 11, 2021

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Recent legal actions have focused attention on wirehouses' deferred compensation plans, a persistent source of discontent for some financial advisors, according to recruiters.

In late December, a new lawsuit targeted Morgan Stanley's deferred compensation practices, challenging its policies which defer as much as 15% of top-earning advisors' pay, according to the allegations.

The complaint comes in the wake of Wells Fargo's $79 million settlement last year with former FAs who had claimed its plan violated Erisa.

Deferred compensation practices can be a source of friction between advisors and wirehouse employers, who view them through entirely different lenses, according to recruiters, a compensation consultant, and a lawyer representing the plaintiff in the Morgan Stanley litigation.

Advisors often focus on the perceived downsides of deferred compensation, the recruiters say.

"It makes it so that a lot of advisors feel like they have golden handcuffs, where, if they leave, they're leaving behind a ton of money that they've earned, and that doesn't feel right," says **Louis Diamond**, executive vice president and senior consultant at Morristown, N.J.-based Diamond Consultants.

Employers, in comparison, view the "golden handcuff" aspect of deferred compensation as its primary benefit, says Tasnady Associates owner **Andrew Tasnady**, who has helped wirehouse management teams develop their deferred compensation plans.

"The original intent was as a retention device, similar to executive compensation deferred comp designs, where you're basically trying to retain your high performers, so that, if someone gets an offer to leave, there is a little more of a hurdle for them," Tasnady says. "If they stay, they have an opportunity for added annual compensation."

In a lawsuit filed Dec. 30, 2020, former Morgan Stanley financial advisor **Matthew Shafer** alleges that when he exited the firm it refused to pay him over $500,000 in deferred compensation he had earned. Shafer's lawsuit, filed in Manhattan federal court, seeks class action status and claims that Morgan Stanley refused to pay deferred compensation to many other advisors who left the firm.

A Morgan Stanley spokesperson declined to comment on the lawsuit.

In the suit, Shafer alleges that Morgan Stanley defers as much as a 15% ratio of advisors' compensation if they generate more than $5 million in trailing 12-month gross revenues, and as little as a 1.5% ratio of it if they generate under $240,000.

Under the Morgan Stanley plan, the FAs' deferred compensation presently vests in six years, according to Shafer's lawsuit.

"Unvested deferred compensation is an issue especially for larger producers when they are contemplating a change," says **Mark Elzweig**, president of New York-based recruiting firm **Mark Elzweig Company**.

To attract money-making FAs, most of the wirehouses and some boutique firms offer to replace some deferred compensation which advisors will otherwise forfeit when they move, according to both Elzweig and Diamond.

Those arrangements make "it easier for them to choose another wirehouse or high-end boutique firm that already has a program in place to address this," says Elzweig. "Going independent is harder but advisors who are committed to independence will keep doing it anyway."

Legal battles between FAs and their former wirehouse employers have simmered over deferred compensation issues for several years — with no clear unanimous agreement from the courts, according to **Jack Edwards Jr.** of the Houston-based law firm **Ajamie**, who represents Shafer.

The law "unfortunately is not exactly clear" on when a deferred bonus compensation plan should be governed by Erisa vesting rules, Edwards says. The longer the deferral period, the more likely the plan should abide by Erisa rules, he says.

For now, wirehouse financial advisors should expect deferred compensation plans to persist, Tasnady says, though he does not expect deferred compensation will grow as a ratio of wirehouse FAs' total income.

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