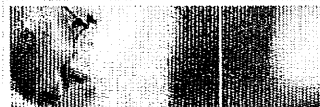


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NYSE Ramping Up Regulatory Role

Article published on January 24, 2005

By Alison Sahoo

The New York Stock Exchange isn't just a venue for trading equities anymore. It's also becoming an active industry regulator, joining the SEC, NASD and a variety of state securities cops looking into mutual fund issues.

Earlier this month, the NYSE announced its first settlement related to mutual fund trading abuses. Along with the NASD, the NYSE settled charges of market timing with Dallas-based brokerage firm **Southwest Securities**.

NYSE spokesman Scott Peterson says more cases are on the way.

"We are looking at other cases in the market-timing and late-trading arena," he says. "Enforcement is getting tougher, and our fines will reflect the severity of the conduct and the length of time it has gone undetected."

The new, tougher approach is a dramatic departure from the way the exchange has historically dealt with regulatory matters. The NYSE has its own set of rules that its 3,400 or so

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broker-dealer members must follow and conducts regular compliance examinations. But it has largely been just a paper tiger, says one industry observer.

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Peterson attributes the change to the SEC's creation of an autonomous regulatory office under a new chief regulatory officer in December 2003. That set the stage for the culture change. The NYSE hired former NASD president Richard Ketchum to fill the slot.

The new CRO, Peterson notes, has brought on a new head of enforcement along with some 65 new regulatory staffers. He's established a risk assessment unit to identify problem areas. And he's significantly reduced conflicts of interest in disciplinary matters by virtue of the new separation between the NYSE's regulatory function and its capital markets function.

While the shift in approach has already been dramatic, even more changes could be on the horizon. Ketchum has discussed requiring brokerage firms to make their top staff more accessible to NYSE compliance officials on a more frequent and regular basis, Peterson says.

The CRO is also kicking around the idea of requiring firms to officially sign off on their compliance programs, he says.

However, others in the industry believe that the NYSE's new regulatory gusto is based in part upon self-preservation.

McGuiness & Holch partner Niels Holch says the exchange might be trying to forestall any further SEC actions that could affect its business model.

Bingham McCutchen partner Hardy Callcott traces the changes to the bad press the NYSE suffered from the Dick Grasso scandal.

In September 2003, Grasso resigned his post as

NYSE chief under pressure over his \$140 million pay package. The scrutiny that followed, however, also identified conflicts of interest between Grasso's role as a promoter of the exchange and his ability to go easy on registrants for infractions.

"The NYSE's view is that they're trying to restore customer confidence in the markets but they also got bad publicity about the perception that they were too close to the industry under Grasso," says Callcott. "They're trying to make a statement."

The ramp-up in activity can be a double-edged sword, though, he says.

More regulators in the mix can increase the difficulty of striking settlements in enforcement actions, notes Callcott. That was particularly evident in **Edward Jones**'s recent \$75 million revenue-sharing settlement, he says.

In December, the California brokerage reached a preliminary deal with the SEC, NASD and NYSE resolving charges that it failed to properly disclose revenue-sharing arrangements with preferred mutual fund shops.

Then there's also the concern about regulatory duplication.

Although the NYSE is working to harmonize its examinations with those of the NASD and conducts joint training programs with the SEC and the NASD, Peterson says there's still a fair amount of overlap between the exchange's rules and those of regulators.

On the other hand, Callcott says, the NYSE has a much smaller number of firms that it inspects than the NASD, so it can get more details about its members' operations and potentially conduct more effective examinations.

Click [here](#) to contact Alison Sahoo.