

Broker-dealers cautiously optimistic about impending SRO consolidation

Will a merger between **NASD** and **NYSE** truly result in more streamlined, efficient and easier-to-understand compliance rules for broker-dealers?

That's the question on the minds of many broker-dealers following the January 21st announcement that NASD members had approved changes to the group's by-laws to make way for the merger.

NASD reports that 83 percent of its 5,058 members voted on the merger. The vote tally: 2,671 voted in favor of the by-law changes (65 percent), while 1,440 voted against them (35 percent) and 67 abstained, according to NASD figures.

The favorable vote pushes the consolidation one step closer to reality. The **SEC** must approve the by-law changes, which the agency says could occur during the second quarter this year. Few see any hitches to the SEC approval, given the agency and its leaders have publicly supported the change as a positive move for the industry.

Once SEC approval of the by-law changes is secure, the NASD and NYSE can officially form the combined SRO and then begin the real work of creating a single rulebook, which will also require SEC approval. And therein lies the source of the cautious optimism that *BD Week* found in our conversations with broker-dealers about the planned consolidation.

"The logic of having a single, regulatory agency

makes sense and it looks good on paper," says **Walter Robertson III**, president and CEO of the mid-sized, full service firm **Scott & Stringfellow**. "The proof, of course, will be in the pudding."

The uncertainty flows from the fact that no one as yet really knows how a single, combined rulebook will look and what it will require for broker-dealers. NASD has billed the consolidation as an effort that will result in no new regulations—just a more streamlined and efficiency-minded approach to oversight.

"I can only believe what NASD is telling us," says **Michael Emanuel**, senior vice president and general counsel for **Loeb Partners Corp**. "We hope that they focus and streamline the approach rather than doubling it."

NASD has said that firms with NASD-only membership will not see added regulatory burdens from the incorporation of the NYSE rules into a single rulebook. However, the differing organizational sizes—NYSE-member firms tend to be larger, while NASD-member firms are smaller—and differing approaches to rulemaking—NYSE is more procedure-focused, NASD is more outcomes-focused—raise the specter that a single set of rules could become more complex as they address the regulatory needs of both groups.

"Some rules will have to be bifurcated or tiered because of the differences in membership," says **Bill Alsover**, chairman of **Centennial Securities**. "We may not get many one-sentence rules."

Alsover and others note, however, that the past two years have already seen efforts by NASD and NYSE to harmonize their rulebooks and, for the most part, broker dealers have found the outcome of those efforts to be positive—particularly as the needs of smaller firms have been accounted for during the process.

"There has been an understanding of the needs of small firms and I think their voices will be heard

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during the consolidation,” Robertson says.

Other broker-dealer observations about the consolidation efforts:

- **A single regulatory body will benefit everyone—including investors.** Given its dual membership in both NASD and NYSE, Robertson says the costs of compliance and preparing for examinations is “staggering.” He and others share the view that a single regulatory body will result in more efficient and just-as-tough examinations without the need for duplicative and over-lapping reviews.

Similarly, some broker-dealers believe the consolidation will eliminate any prospect of NASD or the NYSE positioning to be the more proactive self-regulator to the SEC. “We’ll have one regulator and one voice before the SEC,” Alsover says. “They can’t play one off the other.”

- **More mergers between regulatory bodies may flow from the consolidation.** “If this is successful, I see it as the beginning of future mergers between regulators,” Easterling says. One possibility he’d like to see: A combination between the SEC and the **Office of the Comptroller of the Currency**, both of which regulate banks and their subsidiaries, creating the same duplication of examinations that was a driver behind the NASD/NYSE consolidation.

- **The combined leadership bodes well for success.** Broker-dealers credited NASD chairman and

CEO **Mary L. Schapiro** and NYSE Regulation’s CEO **Rick Ketchum** for deftly handling the negotiations that have enabled the consolidation effort to move forward. As with any merger, the true test of their leadership skills will come as the two entities merge their workforces, culture and approach to regulating the industry.

“I’ve never seen a merger that didn’t have its bumps in the road,” says **Amy Lynch**, president of consulting firm **FrontLine Compliance LLC**. But she and others believe there’s enough momentum and interest for the combination to overcome any snags. ■

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