

# Compliance Reporter

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The Securities and Exchange Commission and the Practising Law Institute were due to hold their 27th annual "SEC Speaks" conference last week in Washington after *CR* went to press. Commission officials were scheduled to discuss regulatory developments in every area from market regulation to enforcement. Look for full coverage in the next issue of *CR*.

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## COURT DECISION MAY INCREASE BEST EXECUTION BURDEN.

A federal appeals court decision may increase the burden on broker/dealers to track down the best available market price—known as best execution—for customers trading securities. The court's ruling further confuses an already controversial issue and may alter the historical understanding of best execution, according to industry attorneys.

Best execution is generally considered hitting the national best bid or offer (NBBO)

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## CFTC DRAFTS CONCEPT RELEASE ON REGULATING OTC DERIVATIVES.

The Commodity Futures Trading Commission is crafting a proposal for regulating the more than \$12 trillion over-the-counter derivatives market and intends to float the plan as a concept release in the Federal Register. CFTC Chairwoman Brooksley Born mentioned the project in passing last week at a financial products advisory committee meeting—the agency's industry consultation group—but did not elaborate on the

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## N.Y. TARGETS BROKER/DEALER SUPERVISION; SANCTIONS ON THE HORIZON.

The New York Office of the Attorney General is homing in on supervisors at broker/dealer firms—a move that will likely result in more sanctions. The new emphasis, which comes out of the recent state and federal regulatory crackdown on microcap fraud, represents uncharted territory for New York. "I don't think we've ever brought a major supervisory case," said Andrew Kandel, bureau chief in the attorney general's Bureau of Investor

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## FORMER COMPLIANCE CHIEF FIGHTS NASD; SAYS COURT-APPOINTED COUNSEL WAS IN CHARGE.

A former compliance director is fighting NASD Regulation charges that he failed to supervise his firm's trading floor by arguing that a court-appointed independent counsel was in charge of monitoring the firm's compliance. Compliance officials believe the case is the first to turn on the split of responsibilities between court-appointed attorneys and compliance officers.

John Chepak, former director of compliance at Thomas James Associates, now HJ

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### CFTC *(continued from page 1)*

substance of the proposal or provide a timetable, according to an individual who attended the [redacted] spokesman confirmed that Born ma [redacted] matter but was unable to elaborate as CR went to press.

The notion that the CFTC would assert jurisdiction over the largely unregulated OTC derivatives market has been a perennial concern among dealers, who don't want the additional reporting and disclosure burdens it would entail. No-action letters from the agency's staff or speeches by senior officials are closely vetted by Street lawyers who especially worry that the CFTC will take the position that swaps are technically futures, and thus fall under its auspices. Because the subject is a matter of heated debate, the individual who attended last week's meeting was surprised that Born dropped the bombshell among a litany of items on her agenda and did not elaborate. "In the middle of a bunch of initiatives that would make your eyes water," he said, "there was this throwaway line about a concept release on regulating OTC derivatives."

The CFTC proposal could represent an effort by the agency to stake out ground ahead of what Beltway observers predict is a looming turf battle between the agency and the Securities and Exchange Commis6

sion over the SEC's "broker/dealer lite" proposal. That proposal (CR, 9/16/96) would allow Street firms to create separate registered entities for their derivatives business that would be subject to SEC oversight. It was unclear whether the SEC is involved in the drafting of the CFTC proposal. An SEC spokesman did not return calls. —Greg Joslyn

### FORMER *(continued from page 1)*

Meyers, was hit with the charges as part of an NASDR investigation charging firm officials with, among other things, excessive markups. Chepak maintains that his supervisory responsibilities were superseded at the time by an independent counsel, who was appointed after a separate Securities and Exchange Commission 1990 court action against Thomas James, according to a notice of appeal filed with the NASDR. Chepak, who has left the firm, declined to comment.

Chepak is arguing that when he became compliance director in June 1990, it was with the understanding that he was required to take direction from the court-appointed counsel.

The National Association of Securities Dealers District Business Conduct Committee—in a Sept. 26, 1997 order—denied Chepak's request for a dismissal of the NASDR charges. The committee said he should have known better than to delegate compliance responsibility of the trading floor to the counsel, an unregistered person. Chepak was the only registered principal in the firm's compliance department. An NASD spokeswoman did not return calls for comment by press time.

Chepak's alleged violations took place between December

1990 and March 1991, according to the NASD's initial complaint against the firm's employees and principals. All 19 other defendants in the case have settled the charges.

Jenice Malecki, an attorney for Chepak, said the NASD is contradicting the court order from the SEC's 1990 case, which seemed to give the independent counsel supervisory responsibility. Malecki and Chepak's other attorney, Bill Singer, both with Singer Zamansky, filed an amended notice of appeal Jan. 20.

—M.M.

### BRIEF

The likely implementation date for the redesigned Central Registration Depository (CRD)—the database that helps regulators and investors track the disciplinary histories of registered representatives—has been pushed back to mid-1999. NASD Regulation, which runs the CRD, had hoped to deliver a redesigned CRD this year (CR, 10/27). An NASD spokeswoman said that by mid-1999, the NASD intends "to have the whole system in place." In anticipation of a delayed implementation, the Securities and Exchange Commission has adopted Interim Form BD, the uniform broker/dealer registration form. The Interim Form implements changes to Form BD that were adopted by the Commission in 1996 and is intended to make B/D information more widely available before the CRD redesign.

### QUOTE OF THE WEEK

"We are seeing a proliferation of screwball products." —Mike Burton, director of securities at the Arizona Corporation Commission, on the increase in prime bank notes and other worthless securities (See story, page 6).

### ONE YEAR AGO IN COMPLIANCE REPORTER

A number of state regulators participated in sweeps of New York-area broker/dealer firms to examine basic sales practice issues. The examination reached its peak when four of the states—Florida, Connecticut, Kansas and New Jersey—simultaneously descended on one company on the same day. [States have since conducted a number of sweeps individually and collectively, most recently targeting investment adviser fraud.]

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