

SECURITIES WEEK

An exclusive report on events and people in the securities and futures industry

CME, CBOT LEADERS CALL FOR EXAMINATION OF FOREIGN OWNERSHIP OF A U.S. EXCHANGE

Leaders of the two Chicago futures exchanges raised concerns about possible dangers from foreign ownership of a U.S. exchange in testimony before the House Agriculture Committee's subcommittee on general farm commodities and risk management last week.

"The idea of foreign-owned U.S. exchanges offering U.S. products raises unprecedented public policy issues that go beyond the narrow competitive interests of any exchange," said Chicago Board of Trade Chairman Charles Carey.

Eurex was not mentioned by name but was implicit in references such as Carey's to "The announced plans of at least one foreign exchange (that would allow) a foreign owner to control a U.S. exchange during a period of market turmoil that could have significant pricing consequences for major forces in our national economy..."

Eurex, the world's leading derivatives exchange, is a public
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NASDAQ, INSTINET URGE CONGRESS TO REFORM ITS

The CEOs of Nasdaq and Instinet sent a letter to Congress last week calling for market structure reforms that would allow for more competition in listed stock trading.

Nasdaq's Robert Greifeld and Instinet's Ed Nicoll specifically targeted the Intermarket Trading System and the trade-through rule as restraints on competition and efficiency.

"Although Nasdaq and Instinet have, and will in the future, compete aggressively in the equity marketplace, we both face the same regulatory barriers that inhibit full and fair competition in the market for exchange-listed securities," the letter said. "If the nation's equity markets are to remain competitive in the face of challenges to investor confidence and increasing global competition, we must remove barriers that inhibit the

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CLIENT SUING SMITH BARNEY SEXUAL DISCRIMINATION CLASS COUNSEL FOR MALPRACTICE

Cara Beth Walker, a class member in the infamous Smith Barney "Boom Boom Room" sexual discrimination class action, is suing class counsel, the firm of Stowell & Friedman, in Chicago, for malpractice.

Walker, represented by attorney Scott Combs, of Novi, Mich., filed with the United States District Court Eastern District of Michigan Southern Division in March 2003. Walker resides in Clinton Township, Mich.

The complaint roughly coincides with efforts by another attorney, Robert Plotkin, of Chicago, to supplant Stowell & Friedman as class counsel for the Merrill Lynch sexual discrimination class settlement (SW, 2 June, 7). Still some legal experts are skeptical about Walker's chances.

The firm Johnson, Jones, Snelling, Gilbert & Davis, in Chicago, represents Stowell & Friedman. Tom Johnson, senior partner, responded he believes Walker's claim is frivolous.

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NASD WEIGHS IN ON INSTANT MESSAGING COMPLIANCE

The increasing use of instant messaging on Wall Street prompted the NASD to advise its members to treat the communications tool as they would email.

NASD members must retain the instant messaging, or IM, for three years and ensure that the communication does not violate rules governing sales literature and correspondence. The NASD notice follows a similar directive from the NYSE to its members a few months ago about viewing IM compliance the same as email.

"NASD recognizes that instant messaging is becoming increasingly popular as a real-time method of communicating and we want to be clear about our expectations for its use," said Mary Schapiro, NASD vice chairman and president of Regulatory Policy and Oversight. "Firms have to remember that

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CLIENT SUING SMITH BARNEY SEXUAL DISCRIMINATION CLASS COUNSEL FOR MALPRACTICE

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"That court doesn't have jurisdiction over it (the class action)," he responded.

He declined further comment.

Calls to Combs were not returned.

Mary Stowell and Linda Friedman are official class counsel for the nearly 2,000 female Smith Barney employees who claimed that while at the firm they were discriminated against or harassed.

In an interview, Walker alleged Stowell & Friedman accelerated the settlement, and their own payments, before any class reps had a chance to vet it. Consequently, Smith Barney paid the law firm \$6 million before class members saw a dime, she said. "I wanted that money held in escrow," she said. "I've never heard of an attorney being paid before a client."

Anne Kaspar, a class member in the Merrill Lynch case, is also suing the firm for malpractice. Kaspar didn't return calls.

Especially galling to Walker is a letter she received from Stowell & Friedman on January 14, 1998—when it was called Leng Stowell Friedman & Vernon—that tried to coach her into how to respond to a request by the New York Attorney General seeking testimony about the securities industry.

In the letter, Stowell replies that Mark Belnick, Smith Barney's counsel, "has asked that women not appear, but rather provide information in writing if anyone wants to participate."

Still worse, to Walker, was Stowell's comment that if Walker does wish to submit something, in writing, to the AG's office, she should: "feel free to say something positive about Smith Barney's leadership in the industry." There is no mention of why Walker should testify on behalf of Smith Barney—her adversary—in the letter.

"Can you imagine an attorney saying say something nice about Smith Barney?" she asked.

Pam Martens, the former lead plaintiff in the Smith Barney

class action, who was dismissed by Stowell & Friedman as a client, believes Walker's malpractice might be the first against the firm for the Smith Barney case. Martens is employed by AG Edwards in Garden City, NY.

Martens estimated 38 class member cases remain open. She said the class action was first filed in May, 1996.

Jonathan Kord Lagemann, a securities attorney in New York, said he doubts Walker will get far, although he believes Stowell & Friedman ignored testimony he obtained that could have helped the plaintiffs in the class action.

"This is not a heavyweight pleading," he said. "This'll get dismissed too."

Lagemann added, however, that Stowell & Friedman settled the majority of cases before any discovery had been made, and therefore lacked crucial evidence about the male/female ratio of assistants that became brokers. He said this happened even though he had been in contact with Friedman.

"She settled blind," he said. "We had testimony, she never wanted to look at it. We had testimony from the highest levels of the company."

Walker is requesting a judgment against Stowell & Friedman for an amount that greatly exceeds \$75,000, according to her briefs. Walker declined to specify the amount in an interview.

The brief said Walker is suing for: "tortious interference with contracts, for tortious interference with prospective economic advantage... fraudulent misrepresentation, negligent representation, legal malpractice and for declaratory relief."

Walker also alleged Stowell & Friedman failed to act in a timely manner and appropriately in regard to her claim, failed to communicate with plaintiff and counsel, and failed to request documents from Smith Barney and others.

Correction - In a story in last week's issue titled *Pru Manager Wins 2002 Award Despite Failing 2001 Audit*, Phil White's tenure of service was reported as 40 years, but it is actually about 20 years. *Securities Week* regrets the error.

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