SECURITIES WEEK

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

PENDING SEC MARKET STRUCTURE PROPOSALS COULD OPEN DOOR TO NASDAQ EXCHANGE STATUS

The SEC will consider during an open meeting tomorrow whether to publish five proposals to "enhance and modernize the national market system."

If the SEC does enact these changes—as it is expected to do—it could clear the way for action on Nasdaq's exchange application that has languished for more than three years.

A year ago, many industry observers believed that the SEC would need to deal with Nasdaq's exchange application before it could break the bottleneck to resolve a variety of market structure issues. However, by the end of last year, some sources began to view the situation as the reverse—that by dealing with other market structure issues first, primarily the trade through rule reforms, it would be easier for the SEC to approve the application.

The reason for this is that the main objection to Nasdaq as

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MASS-TORT ATTORNEY SANCTIONED BY NASD, ALSO APPOINTED TO PRESTIGIOUS PANEL

James Hooper, partner at mass-tort legal firm Hooper & Weiss, has had a contentious past couple of months, including a rare sanction against a plaintiff's attorney by the NASD, and an appointment to a prestigious NASD panel that has surprised some long-standing industry observers.

Hooper was sanctioned $2,000 in the NASD arbitration Robert Ockerman v. SouthTrust Securities, heard in Tampa, Fla., in late January. According to the award: "The Panel also imposed sanctions of $2,000 against Claimant and his attorney, James Richard Hooper, jointly and severally, for abuse of the discovery process and failure to comply with the Panel's Order of July 16, 2003."

The size of the sanction is not the issue so much as the almost unheard of nature of a plaintiffs' attorney receiving it; in the rare instances that the NASD issues sanctions against a side

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AIM FUNDS UNAWARE WHETHER COMMERCIAL PAPER HAD LINKS TO PARMALAT

As of last January Aim Funds held $30 million worth of commercial paper for Eureka Securitisation—a European Citigroup subsidiary that securitized debt for the controversy-laden Italian firm Parmalat Group—but did not know which companies Eureka financed receivables for. Consequently, the firm did not know how much of Parmalat Eureka, and by extension Aim, may have once held.

The dollar amounts come from the Aim Money Market Fund's January 31, 2003 semi-annual report.

This issue first gained attention several weeks ago when it was revealed that commercial paper for Eureka ended up in money market funds at Aim, Putnam Funds and Bank of New York (SW, 2 Feb., 1).

In total $300 million worth of Eureka

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CONGRESS RECEPTIVE TO LAWYER COMPLAINTS ABOUT SEC ETHICS CODE

The American Bar Association has written Congress stressing its opposition to an SEC proposal that could require lawyers to resign when they detect fraud while representing a company and the client ignores the warning.

The ABA believes the requirement would be a potential breach of the lawyer-client relationship. It also argues the best solution in such instances is for the lawyer to continue working with the client rather than to abandon it.

The ABA letter was sent to the House Financial Services Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, which early this month conducted a hearing on the lawyers' ethics rule. The hearing suggested committee support for the Bar's concerns.

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PENDING SEC MARKET STRUCTURE PROPOSALS COULD OPEN DOOR TO NASDAQ EXCHANGE STATUS

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an exchange was the lack of price/time priority in trading, which is an important part of the definition of an exchange. If trade through was reformed to lessen price/time priority in intermarket trading, the theory went, then there should be less objection to the lack of price/time priority in intra-Nasdaq trading.

An official with Nasdaq said the proposals coming out this week are separate from the exchange application, but acknowledged that, to the extent they create a uniform structure across the markets, the proposals could have an impact on the application.

That view is shared by a number of sources around the industry.

"If this does resolve some things—specifically what is an exchange—it could lead to the approval of the Nasdaq exchange application," said a spokeswoman for the Securities Industry Association. "Trade through reform—no matter what the commission does—will have an impact. Those have been stumbling blocks for Nasdaq's application."

Jeff Brown, director of product development at UNX, an independent agency brokerage, said that since it appears the SEC would address the national market system and the Intermarket Trading System as a whole, that could help Nasdaq's application.

"The SEC has recognized that the infrastructure set up in the 1970s is not conducive to trading in the 21st century," Brown said. "The way the commission has looked at exchanges and defined them appears to be under consideration, and that would materially impact Nasdaq's application."

Still, sources noted that the potentially sweeping changes that could from the SEC are much bigger than Nasdaq's application.

"They seem to be laying the groundwork for a decision on Nasdaq's application since they're redefining the national market system," said John Giesea, president of the Security Traders Association. "Clearly, though, the issues being presented on Tuesday have far greater impact for the marketplace than the exchange status for Nasdaq."

Becoming an exchange would allow Nasdaq to complete its separation from the NASD. Nasdaq views that as a critical governance issue, to separate the regulator from the market center. It would also allow Nasdaq to raise capital in the marketplace—its shares now trade on the OTC Bulletin Board—though Nasdaq officials have said they do not view the separation as an economic event. Of course, the capital raising potential is greatly diminished from the time when the separation from the NASD began in 1999.—***JB***

MASS TORT ATTORNEY SANCTIONED BY NASD, THEN APPOINTED TO PRESTIGIOUS PANEL

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in an arbitration it is almost always against broker-dealers for, ironically enough, failure to produce documents. That this sanction comes against a plaintiffs' attorney makes it doubly rare.

Hooper said that he did not handle the case personally, but rather it was another attorney in his office who is no longer employed there. He declined to mention the attorney's name.

He actually agreed with the sanction, saying he would have reacted similarly to the arbitration panel. "Parties on both sides have to cooperate with discovery, and it was not being done," he said. "I'm not sure I can fault the arbitration panel at all."

He added that though he was not personally involved with that file he has to take responsibility for it.

He added that he believed his attorney was late in providing discovery, although everything was eventually turned over.

The attorney in question, he said, had been at his office for a year, and had been doing quite a number of cases. He added

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that the former employee was not just a securities attorney, but was also involved in other areas as well.

Victor Hayslip, counsel for SouthTrust, did not return calls.

One criticism that had been lobbed at Hooper & Weiss upon their entry into the securities field in the past two years is that they did not have enough attorneys experienced with arbitration. In fact in early 2003 their website was openly soliciting attorneys with NASD arbitration experience (SW, 2 Feb., 1).

Tracy Pride Stoneman, a plaintiff's attorney, agreed that it is very unusual for any attorney to ever get sanctioned, let alone a plaintiff's attorney.

"That's not good, that's pretty serious. To not be on top of the cases like that...it's a byproduct of the volume of cases Hooper had," she said. "He got into this business with the intention of signing everyone up who wanted to be signed up. That's hundreds if not thousands of people."

Hooper & Weiss made a big initial splash when they entered the securities world by trying to bring their mass-tort model to securities. News reports from 2003 show Hooper claiming they had signed over 9,000 clients; a number that dwarfs even what massive securities arbitration law firms can handle. Hooper claimed that presently he and other offices his firm is working closely with have 500 cases filed now.

He also said he has 68 arbitrations scheduled through 2004, which, by any standard, is a drastic reduction from 9,000.

Such seeming hyperbole has rubbed some long-standing securities attorneys the wrong way; Hooper described this as territoriality.

"I think there's lots of work to go around," he said. "Everyone likes to speculate as to what my motives are. Nobody knows except me. I think I can get in and provide services that are not being provided."

Specifically he said his goal is to represent clients whose claims are individually too small for most securities attorneys to bother with.

Jenice Malecki, a securities attorney in New York, thought the sanctions against Hooper were unfair because in her experience defense counsels routinely flout discovery requests with almost no repercussions.

"This looks like there was a great amount of weight put on the fact that one discovery order not complied with," she said. "You do not see such awards on the respondent's side. You do see every type of excuse you can imagine."

Hooper is also generating mixed reactions for having been selected as a member of the highly esteemed NASD National Arbitration and Mediation Committee.

This committee is actively involved with all aspects of NASD dispute resolution including evaluation of existing rules/regulations/procedures, recruitment, arbitrator evaluation, and recommending appropriate rules and procedures. As such it is typically filled with among the most experienced arbitrators in the business.

Hooper said George Friedman, senior vp of NASD Dispute Resolution, asked him to be on the committee due to his huge number of cases. He added he has not received any criticism regarding his appointment.

Charles Austin, Jr., a securities attorney in Richmond, Va., however, did not understand Hooper's appointment. "Frankly, to me it's inexplicable.

"I personally don't understand how much a person with what I understand to be very little prior experience in this field can lend to a body charged with both formulating and revising policies and procedures that parties to securities arbitration are going to live with for the foreseeable future."

Austin added that he hopes Hooper takes this chance to support investor's rights, as "opposed to just those instances that would benefit those yet-to-come mass filings we have been hearing about for a year-and-a-half."

Another observer, requesting anonymity, thought that the NASD probably gave Hooper the coveted seat to bring him into the system as opposed to having him rail at it from outside as he brings his, at one time, estimated 5,000 cases to bear.

That Hooper was given the NAMC seat based on thousands of cases that have yet to materialize makes his appointment ironic, to say the least.

"It's a simple question: where are all these cases?" asked attorney Austin.

Mark Maddox, partner at Maddox, Koeller, Hargett & Caruso, in Fishers, Ind., and chairman of the NAMC said that even if Hooper's office is handling hundreds of cases, not thousands, that still earns his spot at the table.

As for his value Maddox said the jury is still out. "Ask me after our first meeting in March."—***DS***

AIM FUNDS UNAWARE WHETHER COMMERCIAL PAPER HAD LINKS TO PARMALAT

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commercial paper was in those three funds.

An Aim spokesman, questioned Friday, could not provide further answers by press time.

The core issue, however, is not whether any of these funds would be ruined by their relationship with Eureka, but rather that asset backed commercial paper is securitized in such a way that it is extremely difficult to learn how much of a certain company the conduit, such as Eureka, holds. In essence, a fund could hold a company as toxic as Parmalat and not know it.

When this history between Eureka, Parmalat and Aim first came to light the Aim spokesman was asked how aware fund managers at Aim were of the relationship between Parmalat and Eureka.

"Eureka is an asset-backed program that finances receiv-