

Regulatory Watch

One Is the Loneliest Number

Will the merging of the NASD and NYSE regulatory arm give investors less recourse?

INDIVIDUAL INVESTORS wronged by their brokers have long chafed at the fact that they can't sue—they must arbitrate before a panel. And now the two organizations that oversee securities brokers—the National Association of Securities Dealers and the regulatory arm of the New York Stock Exchange—are merging to form one watchdog group with a single arbitration forum. The upshot? Investors have just one venue for their complaints instead of two.

Calling it a move toward greater efficiency and efficacy, the broker members of the NASD and NYSE voted overwhelmingly in favor of the combination in January; the Securities and Exchange Commission is expected to approve the merger later this spring. Securities dealers operate in a self-regulated world—that is, they pay the NASD and NYSE to police them. Under a single regulator, brokerage firms will have fewer regulatory fees and one set of rules with which to comply. It also means that investors will have only one option for arbitration. "The elimination of an entire arbitration forum eliminates choice, and antichoice is never good," says Steven Caruso, a securities attorney and president of the Public Investors Arbitration Bar Association.

Not everyone is as outraged: Barbara

Roper, director of investor protection at the Consumer Federation of America, says the merger will have little impact on investors since the NYSE oversees only a tiny fraction of the number of cases the NASD does. "As long as they adequately fund the arbitration forum, we have no objection," she says, conceding that the very nature of the system works to the advantage of the brokers. She favors instead an independent arbitration structure, which the securities industry so far hasn't embraced.

The NYSE and the NASD are also responsible for writing rules and penalizing the brokers who break them, a task that Caruso points out could also be compromised by going from two regulators to one: "It's a lot easier for one set of eyes to miss fraud."

—Megan Barnett

