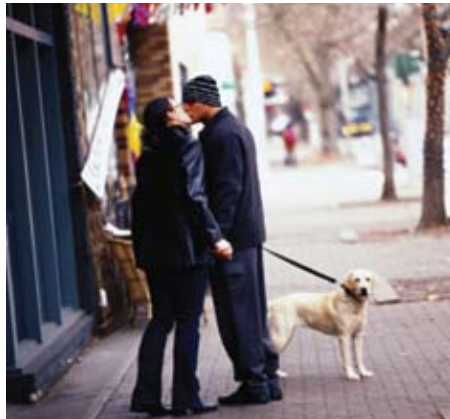


## NASD/NYSE Combination Continues to Percolate

BY TOM LAUERMAN

While the combination of NASD and NYSE broker-dealer regulatory functions is pending SEC approval, it seems that the NASD has become more sensitive to the need to tailor its rules to fit different types of broker-dealers. In a recent speech, NASD Vice Chairman Doug Shulman stressed that the new sole regulator, the Securities Industries Regulatory Association, will have and vigorously pursue real opportunities for such tailoring. Shulman said that the NASD is committed to making more distinctions based on firm size, business focus and business model.



*How long will the honeymoon last?*

In a similar vein, the Small Firm Rules Impact Task Force that the NASD created last September recently had two proposals adopted by the NASD's Board of Governors. These proposals would make modest, but welcome, reductions in compliance burdens in the areas of (1) keeping the NASD apprised of a broker-dealer's contact persons with whom the NASD may deal and (2) eliminating duplicative principal approvals of certain sales materials. Chairman Mary Schapiro has advised that the Small Firm Rules Impact Task Force will be making additional recommendations in the coming months.

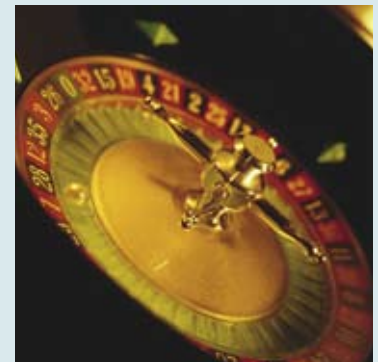
Some small and specialty broker-dealers, however, remain concerned about how long the honeymoon will last after the NASD/NYSE nuptials. In that regard, the NASD recently retained William Alsover as a consultant with the NASD's member relations department, reportedly to improve the NASD's relationship with small firms and to better communicate the NASD's policies to those firms. Mr. Alsover had been the small firm representative on the NASD's Board of Governors. Although he has now resigned that position, some small broker-dealers thought that he did not adequately take account of their concerns and interests. Some are also concerned whether Mr. Alsover's new position signals that the NASD's approach to small and specialty broker-dealers will emphasize public relations more than substance.

## Risky Mortgage Fallout Impacts Securities Industry

BY PAUL FISCHER

With all the current publicity about the bursting of the real estate market bubble, and the consequences on home owners holding the "creative" and risky refinancing mortgages that were popular at the height of the market, it is not surprising that securities regulators and broker-dealer customers have turned their attention to past sales of securities financed by refinanced home mortgage proceeds.

In December 2004, NASD issued Notice to Members 04-89 in which it alerted members to concerns when recommending or facilitating investments of liquefied home equity—proceeds from refinancing.



*All bets are off with creative financing*

Now two years later in a changed real estate market, we are aware that securities regulators currently are looking into the suitability of securities transactions conducted since December 2004 where the securities customer also was the recipient of home refinancing proceeds within a close proximity in time. Regulators are inquiring into the terms of the mortgage transaction, the terms of the securities transaction and the link, if any, between the two. We are also aware that customers allegedly saddled with onerous mortgages, the proceeds of which were used to invest, are looking to rescind securities transactions that may not be liquid, in order to carry or buy out mortgages which threaten foreclosure.

Broker-dealers may be called upon to verify and justify the suitability of securities transactions where they knew, or a regulator or customer thinks they "should have known," that a mortgage transaction provided the source of funds. Although fewer consumers are refinancing or attracted to innovative mortgages these days, given the continuing low interest rate environment, securities brokers may want to remind personnel of the importance of conducting and fully documenting securities suitability determinations where a mortgage loan may lurk in the background.