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FINANCE

## Commentary: Will This New Broom Sweep Clean?

**In his past jobs, NYSE regulatory cop Rick Ketchum has resisted regulators**

Whatever strengths Richard A. Grasso might have had in fending off competitors to the New York Stock Exchange, his record as a regulator was lackluster. For years, the exchange has been dogged by allegations of lax supervision and profiteering by floor traders -- the subject of a Securities & Exchange Commission investigation. A tough new securities cop is clearly needed.

On Jan. 8, the NYSE board of directors announced its pick for the new post of chief regulatory officer: Richard G. Ketchum, the 53-year-old former president of the National Association of Securities Dealers and NASDAQ.

Ketchum certainly is well qualified, having served as the SEC's chief of market regulation before joining the NASD in 1991. But is he the right man for the job? In fact, Ketchum's years of faithful soldiering during some of the NASD's least stellar years, and his tenacious defense of questionable brokerage practices, raise a troubling question: Is the Big Board really committed to a thorough housecleaning? Ketchum's hiring "looks like business as usual to us," says one skeptic, Lawrence Leibowitz, head of equities at Charles Schwab Capital Markets. The NYSE defends its appointment of Ketchum, with a spokesman calling him a person of the "utmost integrity" who was highly regarded by NYSE officials.

Ketchum was a top NASD executive during a period when the NASDAQ stock market, then owned by the NASD, was mired in a price-fixing scandal. He was directly responsible for dealing with the SEC and Justice Dept., which were investigating the accusations. He vigorously defended the NASD prior to its August, 1996, settlement with the SEC, in which the NASD consented to a censure -- and to spending at least \$100 million to upgrade its policing efforts. As was widely reported at the time, settlement documents depict an NASD, while Ketchum was No. 2, that neglected its oversight responsibility and was a cheerleader for NASDAQ. According to a *BusinessWeek* article back then, only one week before the settlement, Ketchum was disputing the issue at the heart of the probe: the existence of a "pricing convention" -- in which brokers colluded to line their pockets at investors' expense. However, Wall Street brokerages had already confirmed to the SEC an ingrained system for widening the "spreads" between the prices at which investors bought and sold stocks. Ketchum now denies he made any such last-minute comments denying price-fixing.

Ketchum also disputes criticism that he failed to cooperate adequately with the SEC. Former SEC Chairman Arthur Levitt Jr. points out that negotiations with the NASD in 1996 were "very difficult," and that feelings ran high. Levitt and other ex-regulators contend that the NASD antagonized the SEC by not turning over information about securities dealers' collusion on stock prices. Says Levitt: "I think [Ketchum] was probably doing [former NASD CEO Joseph R.] Hardiman's bidding, and Hardiman was stonewalling the commission at

that time." Hardiman was traveling and not available for comment.

The SEC dustup put Ketchum's job in jeopardy after Hardiman was replaced by Frank G. Zarb. According to Zarb, Levitt asked him to consider firing Ketchum and other officials for failing to cooperate with the SEC. Zarb says that Ketchum was found blameless but adds that he never looked into whether the SEC was right that the NASD improperly withheld information. Ketchum says he was not aware his job was ever in jeopardy. He adds that he brought to the NYSE board's attention that he held a high post at the NASD during the time its handling of the price-fixing scandal was found deficient.

Ketchum also proved to be a loyal -- if not terribly vigilant -- company man at the SEC. In 1991 his market regulation division was chided by the General Accounting Office for deficiencies in its supervision of the stock exchanges in their oversight of brokerage firms' sales practices. (Ketchum says he doesn't recall the GAO probe.) As was later borne out by events -- including micro-cap scandals that began on his watch -- the GAO was right on the mark. At the time, Ketchum vigorously defended his oversight of the stock markets. And now, for better or worse, he's back at one of them. Perhaps the NYSE board, in filling its next big job -- chairman -- might want to pick someone with an unblemished record of achievement outside the securities industry, rather than yet another Wall Street *apparatchik*.

By Gary Weiss