Judge Denies Request To Unseal Tax Info In Finra Merger Case

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NEW YORK (Dow Jones)--A federal judge denied a request by Dow Jones & Co. and two other news organizations to unseal documents that could shed light on charges that Mary Schapiro, now chairman of the Securities and Exchange Commission, misled brokers about terms of the Financial Industry Regulatory Authority's creation three years ago.

U.S. District Judge Jed Rakoff of New York ruled late Monday that correspondence between the former National Association of Securities Dealers, or NASD, and the Internal Revenue Service would remain under a protective order. Lawyers from Dow Jones & Co., acting on behalf of Barron's; Bloomberg L.P.; and The New York Times sought the information in connection with a 2007 class-action lawsuit led by Standard Investment Chartered, a California-based brokerage.

A key issue in the case is the adequacy a $35,000 payout NASD made to its individual members when it merged with the regulatory arm of the New York Stock Exchange to form the Financial Industry Regulatory Authority, or Finra. In proxy material in December 2006, the NASD claimed that the IRS had precluded it from paying members more than $35,000 each. The lawsuit challenges that claim and says the NASD had plenty of money for a bigger payout.

The motions by Dow Jones & Co. and other news organizations sought to review the IRS correspondence that purportedly established the $35,000 payout figure.

Schapiro became Finra's chairman and chief executive following the 2007 merger. Her compensation rose 57%, from $1,999,731 to $3,140,826 a year. The plaintiffs allege that this was made possible, in great part, by minimizing payments to their firms.

Rakoff's decision that correspondence between NASD and the IRS remain under seal follows a 2008 order by federal Judge Shirley Wohl Kram, who since died. Judge Kram ruled, at the time, that releasing the information would create a "competitive disadvantage" for NASD. It is unclear how such a competitive disadvantage could have affected the former NASD. However, the correspondence may have revealed information about how the former NASD valued its services, which could be relevant to negotiating future regulatory services, say lawyers.

A federal appeals court affirmed Judge Kram's decision in 2009.

Judge Rakoff, in Monday's decision, hinted that he may have reached a different outcome without the history of previous court rulings. "If this court were writing on a clean slate, it might disagree with the conclusion that the disclosure of the IRS data could provide material information about NASD's/FINRA's negotiating strategies beyond the particular transactions involved in the instant litigation...," he wrote.

Lawyers for Dow Jones & Co. and other news organizations argued that Schapiro's appointment to SEC chairman since the earlier rulings was another reason to lift the court's protective order. Judge Rakoff disagreed. Spokesmen for Dow Jones & Co. and Finra declined comment.

An SEC spokesman declined to immediately comment.

A lawyer for Standard Investment Chartered didn't immediately return a call and email requesting comment.

News Corp. owns Dow Jones & Co., publisher of this newswire, and The Wall Street Journal.

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