



Notes on a conversation with Susan Schroeder, Head of FINRA's Enforcement Division

Susan Schroeder, FINRA Executive Vice President and head of FINRA's Enforcement Division, spoke on February 2, 2018, at my invitation, to a group of broker-dealer attorneys at the offices of Davis Polk & Wardwell. Her remarks were only the expressions of her views and did not reflect any official position of FINRA or the views of any of her colleagues.

Origination of Enforcement Action.

Enforcement attorneys who recommend enforcement action are organized in three groups: attorneys who counsel a regional office's member regulation staff; attorneys who counsel Market Regulation investigators and examiners; and attorneys who independently investigate potential disciplinary violations. As a result of FINRA 360, they are trying to resolve any differences in their approach to enforcement. This includes the type of sanctions and settlements they would follow. They are seeking to centralize the thinking in this area. They consult with a FINRA group that interfaces with the MSRB, as well as directly with the staff of the MSRB, regarding enforcement of MSRB rules.

Things come to their attention by the referral from several sources—regional member regulation staff and sales practice exams; market regulation staff and trading exams; and other sources such as the Office of Fraud Detection and Market Intelligence. They are trying to create onboarding standards for use. Currently everything is decentralized based upon the source of the matter- member regulation, trading practices, other sources.

Under Rule 9211 everything must be sent to the Office of Disciplinary Affairs for approval to initiate an enforcement action. This office reports to FINRA's Chief Legal Officer, Bob Colby.

Rulemaking by Enforcement.

She is aware of this perception and they are considering how to improve internal communications to identify issues that should be the subject of a Regulatory Notice or rulemaking as opposed to enforcement action.

Enforcement Coordination.

A biweekly meeting is held of Mr. Colby, Ms. Schroeder, Susan Axelrod, Executive Vice President, Regulatory Operations, and Thomas Gira, Executive Vice President, Market Regulation and Transparency Services. The idea is to discuss developing cases that are getting near completion, including

extraordinary matters, to align and ensure agreement with an enforcement approach. Enforcement is currently working on enhancing this practice so that it occurs sooner in the process.

They also meet with the SEC's Enforcement staff. Member Regulation meets with the SEC's OCIE. There are also informal relationships among the staffs (FINRA and SEC Enforcement; Member Regulation and OCIE). The Enforcement staff also meets with the MSRB staff as needed to discuss rules applicable to conduct seen in inspections.

FINRA has Regulatory Service Agreements with the several stock exchanges, and is the single point of contact for enforcement of their rules. However, each exchange must interpret and enforce its own rules, and some have considered taking back more enforcement responsibility. For example, the NYSE is taking back its market surveillance.

Length of the Investigation Process.

Most of their cases originate from member regulation and market regulation. Each of those groups conducts investigations before the matter is referred to Enforcement. At that time, Enforcement may identify additional information it needs and continue the investigation—document requests, testimony. Enforcement is seeking to confer with these groups to develop "Rules of the Road" to streamline the investigative process and enhance communication between the groups. There is ongoing dialogue to improve communications and collaboration to effect earlier outcomes.

Sanctions.

Enforcement action is not an end in and of itself. Rather, they are looking at the situation and using enforcement action as one way FINRA can seek to effect needed change. Are they dealing with a "bad actor"; frequent actions by a firm; trying to send a message to the member firm community. Enforcement is not the right outcome in every case and FINRA has other tools it uses in addition to Enforcement.

AWC Orders.

Enforcement is working with FINRA's Office of Disciplinary Affairs to increase transparency in AWCs regarding the reason for the sanction—e.g. mitigating factors, etc. Also focused on appropriate credit for extraordinary cooperation. For example, in one case a firm discovered a series of bad practices by its RRs, reported it to FINRA, and made the customers whole. The firm was censured and paid a substantially decreased fine.

Wells Letters.

The staff reviews with the managers what to say and why. The process is for an attorney to call the firm with their manager, and follow up the conversation with a letter. Enforcement is seeking to have one manual of procedures to follow.

Sworn Testimony.

Usually taken to better understand the documentary evidence and confirm the individuals' roles in the underlying activity. Taking testimony is to get the point of view of the individuals involved.