DAY TRADING IS A SUCKER'S GAME

Some day-trading firms require their customers to trade frequently. Skiersch says that he observed personnel at two day-trading firms physically take the terminals away from customers who didn’t do enough trading. In his experience, when customers ran out of money, they were encouraged to borrow—not only from the firm but from friends, family, and their credit-card balances. When day traders were cleaned out, they were unceremoniously ejected, and new customers quickly took their place. “I realized there is no way to win. Just like there’s no way to beat Caesars Palace,” says Skiersch.

Of course, not all day-trading firms are alike. Some, such as All-Tech Investment Group and Momentum Securities, offer training courses and offices for trading, while others, such as MB Trading, just offer day-trading software and execute customer trades.

Led by the states, new regulations and more enforcement actions against day traders are on the way. The North American Securities Administrators (NASAA) has called for new rules, now before the Securities & Exchange Commission, which would close the regulatory loopholes that have allowed day-trading firms to thrive. Since they don’t recommend specific stocks, these firms have been able to ignore the suitability requirement. One proposed rule would make day-trading firms screen their customers sufficiently to make sure that they are wealthy enough to absorb substantial losses. That rule already applies to all full-service brokers.

State regulators believe that “suitability rules do apply because day trading is a strategy for a program of investing,” which is just the same as recommending a specific stock, according to one state regulator.

Regulators are also expected to crack down on the area of deceptive marketing. Massachusetts, for example, just took action against one firm for saying on its Web site that 85% of customers were successful and another firm for promoting a day-trading course that said its system provides a “6-to-7-figure income per year.”

Another bone of contention is the practice at some day-trading firms of encouraging their clients to trade for others, which regulators say is operating as an unregistered investment adviser. “I anticipate, in the year ahead, many more actions by state and other regulators concerning the problems in the day-trading industry,” says David Shellenberger, chief of licensing for the Massachusetts Securities Div.

So far, marketing, technology, and the soaring stock market have outpaced regulators. And day traders have allowed themselves to be dazzled and deceived as well. But tougher regulations and a growing realization that day trading is a sucker’s game may finally dampen the euphoria surrounding it.