COMPLIANCE AS THE COMPETITIVE DIFFERENTIATOR

James Rathz[*]

INTRODUCTION 13
1. *State of Affairs* 15
2. *An Event Horizon* 16
3. *The Compliance Continuum* 18
4. *If the Shoe Fits* 20
5. *The Compliance Story Line* 21
6. *Old School Communication Venues* 22
7. *New Venues for Getting the Story Out* 23
8. *Quality Control* 24
CONCLUSION 25

INTRODUCTION

Financial compliance is often perceived as an insular risk management process designed to keep the regulated firm and its employees in conformity with federal and state securities statutes. This certainly is an essential aspect of compliance, but thoughtful consideration will reveal that this regulatory comportment is not the sole attribute of a sound compliance regimen. Financial compliance can and should be far more transparent to the extent that policy is designed and executed to positively influence the business processes and reputation of the regulated enterprise.

Indeed, this dual compliance objective of regulatory conformance and reputation preservation is extracted from U.S. Securities and Exchange Commission (SEC or Commission) public statements addressing the role of compliance in the regulated investment adviser and

---

* James Rathz is Managing Director of Horrigan Resources, Ltd. (holding the Accredited Investment Fiduciary Analyst™ (AIFA) designation from The Center for Fiduciary Excellence (CEFEX) and a Bachelor of Science degree from Villanova University). The author has over twenty-five years of investment, compliance, and risk management experience. Horrigan Resources, Ltd. focuses its practice in the compliance arena of the investment advisory and broker-dealer lines of business.

broker-dealer business model. In an open letter to CEOs of registered firms back in December 2008 an SEC Director wrote:

> During this time of financial and market turmoil, the Office of Compliance Inspections and Examinations [(OCIE)] of the Securities and Exchange Commission reminds leaders of SEC-registered firms, including broker-dealers, investment advisers, investment companies and transfer agents, of the critical role played by your firm's compliance programs in helping to meet your obligations under the securities laws. Your firm's compliance function is critical to assure that your operations comply with the law and rules for industry participation and to ensure that the interests of your customers, clients and shareholders are protected. Moreover, compliance is a vital control function that helps to protect the firm from conduct that could negatively impact the firm's business and its reputation.[1]

However, the *execution* of financial compliance, i.e., the implementation and testing of policy and internal controls which are calibrated to the risk profile of the enterprise, varies widely by firm and some would argue by industry as well. This variable policy execution presents a potential windfall for investment advisers, broker-dealers, and hedge funds which have attained and sustained a culture of compliance whereby consistent comportment to statutory requirements and regulatory guidance is the norm. The competitive differential of sustained regulatory comportment and pursuit of excellence fashions a great story that can be shared with regulators, clients, and prospects alike.

This article explores the potential for financial service entities to convert regulatory compliance into a competitive advantage whereby compliance makes a positive contribution to the differentiating attributes of the enterprise. We begin with a look at the sweeping psychological and financial impact of the economic crisis of 2008-2009, followed by a brief look at regulatory statistics which evaluate the strength of industry compliance programs. Discussion will posit financial compliance as a vital contributor to efforts directed at regaining investor confidence and differentiating the firm (investment adviser, hedge fund, or broker-dealer) from the competition. Marketing

1. Open Letter to CEOs of SEC-Registered Firms, from Lori A. Richards, Director, Office of Compliance Inspections and Examinations, SEC (Dec. 2, 2008) http://www.sec.gov/about/offices/ocie/ceoletter.htm.

utility of the compliant culture will be assessed with specific reference to compliance metrics and related areas of interest that may be introduced as reputational thresholds. In conclusion, venues for delivering the compliance message are explored while, throughout the article, useful tips and considerations to assist firms in their development of the virtuous cycle of good compliance, sterling reputation, competitive differentiation, and asset expansion are presented.

1. *State of Affairs*

The opening statement in Gallup Poll's survey report on February 23, 2009, aptly summed up the state of investor confidence at the time, revealing, "American investor optimism plunged in February, as the Gallup Index of Investor Optimism—a broad measure of investor perceptions—fell 24 points to -64, a new low."[2] This poll measures the investor sentiment of adult Americans with $10,000 or more of investable assets. To put this bleak statistic into perspective, the Index reached an all time high of 178 in January 2000, just prior to the bursting of the Internet bubble. The Index then turned negative in 2008 for the first time in its history. Before 2008, the low for the Index was 5 in March 2003, echoing investor concerns at the outset of the Iraq war.

At the time, investor sentiment was not the only economic metric headed south as wealth destruction incurred by U.S. households began to hit close to home—literally. As early as 2006, home values began a historic spine stiffening plummet that as of this writing has yet to reach its nadir. By the time the domestic equity market reached its recent low in March 2009, U.S. households had hemorrhaged over $14.3 trillion in accumulated wealth.[3]

In light of this wealth destruction, it is no surprise that investment advisers, hedge funds, investment companies, and brokerage firms have realized substantial runoff of assets under management and a consequential reduction in fee income. A recent Cerrulli Associates report opines that it will take at least five years for the wealth man-

2. Dennis Jacobe, *U.S. Investor Optimism Hits New Low*, GALLUP, Feb. 23, 2009, http://www.gallup.com/poll/116053/Investor-Optimism-Hits-New-Low.aspx.

3. MARTIN NEIL BAILY & DOUGLAS J. ELLIOTT, THE US FINANCIAL AND ECONOMIC CRISIS: WHERE DOES IT STAND AND WHERE DO WE GO FROM HERE?, 7 (June 2009), http://www.brookings.edu/~/media/Files/rc/papers/2009/0615_economic_crisis_baily_elliott/0615_economic_crisis_baily_elliott.pdf.

agement industry to regain the revenue high water mark of $170 billion attained in 2007.[4] Indeed many firms experienced revenue declines in excess of 50% as the high and ultra-high net worth client markets reverted to cash and fixed income while equity allocation dropped to 25%.[5]

The implication of these trends for investment advisers, hedge funds, investment companies, and broker-dealers is reasonably clear—asset aggregation is now the name of the game, perhaps even assuming equal stature with portfolio management as the most valued business attribute in some cases. During a recent engagement, an experienced and well regarded equity portfolio manager intoned to the writer that managing assets in these turbulent markets, even with volatility topping 80%, has been *less* taxing in terms of time and expertise than that of closing new business.

2. *An Event Horizon*

Since 2008, investors have observed first-hand the systemic failure of compliance oversight in the U.S. as banks, brokers, and advisers were implicated in fraud and mismanagement of risk. Catastrophes are often tinged with bitter irony and this is no exception when one considers that modern financial regulation and compliance have always been primarily focused upon protecting consumers and investors. The reason for the preoccupation with the consumer is quite simple: politicians and regulators understand all too well that the essential lubricant of the capitalist system is the trust extended by the financial consumer when they place funds and capital in the stewardship of a bank, broker, investment company, or investment adviser. Decisions made by households regarding the creation and consumption of personal wealth is the primary driver of all capitalist economies, thus placing the *trust of the consumer* as the preeminent concern of politicians, regulators, and most financial services executives. Further underscoring this intent of Congress and the Executive Branch, Mary Shapiro, the newly appointed Chair of the Commission, averred be-

---

4. Sue Asci, *Asset-management Industry Bled $10T in 2008*, INVESTMENT NEWS, July 9, 2009, http://www.investmentnews.com/article/20090709/REG/907099981.

5. *A New Age of Regulation*, NEWSLETTER (Berkshire Capital Securities LLC, New York, N.Y.), 2nd-Quarter 2009, at 4, http://www.berkcap.com/Libraries/Newsletter_PDF/2Q_2009_Newsletter_-_Mid-Year.sflb.ashx.

fore the Senate Banking Committee that she has "'never been afraid to go after people who violated the public trust'" and vowed to "'take the handcuffs off the [SEC's Division of Enforcement].'"[6]

Indeed, a resurgent SEC will be integral in restoring investor trust as fraud and greed have become synonymous with most things Wall Street. The financial equivalent of an event horizon in 2008 obliterated nearly every investor trust metric when securities fraud and corporate mismanagement were repeatedly referenced as the cumulative cause of the catastrophic effect. In a number of stunning frauds and anecdotal revelations of management ineptitude, it was revealed that compliance with securities statutes and required ethical standards were either non-existent or grossly insufficient. The emergent perception that functional regulators did not fully appreciate or even understand the markets, products, and players therein led some to opine that many regulators were in fact dysfunctional, further depleting the collective investor trust in the U.S. capital markets.

Richard Bookstaber, a new senior policy adviser at the SEC, recently authored the book *A Demon of Our Own Design*, in which he argues that the financial innovation of the past 30 years has actually introduced more risk into the marketplace.[7] Of course further complicating regulatory efforts in recent years has been the proliferation of advisers and brokers swelling the ranks of registered representatives and firms thereby further taxing regulatory resources. Regardless of one's opinion as to culpability for the crisis, it is clear from recent highly publicized events (arrests, enforcement actions, and new hires) that the Commission is in the process of loading for bear, or if you prefer, the cuffs are indeed off.

As noted, the unfortunate intersection of noncompliance or "near-compliance" with deficient oversight has compelled many investors to vote with their feet in the belief that their interests are no longer protected first and foremost in the realm of brokerage firms, advisers, and investment companies. As expected, financial service providers are urgently seeking to repair the damage. Indeed, a significant number of "independent" brokers and advisers, many of them newly established as defectors from the formerly preeminent "wirehouse" busi-

---

6. Neil Roland, *Schapiro: I'll 'take the handcuffs' Off Enforcement*, INVESTMENT NEWS, Jan. 15, 2009, http://www.investmentnews.com/apps/pbcs.dll/article?AID=/20090115/REG/901159973&ht=neil%20roland.

7. RICHARD BOOKSTABER, A DEMON OF OUR OWN DESIGN: MARKETS, HEDGE FUNDS, AND THE PERILS OF FINANCIAL INNOVATION (2007).

ness model, continue to grow in size and number, capitalizing on the desire of many investors to seek a fresh start in rebuilding household wealth. These independent advisers, brokers, and bankers, often referred to as "boutique firms" due to their specialized focus and compact balance sheet, are keenly in synch with the credo of *regaining investor trust* and have adopted its attainment as the primary precept of their business. In short, investors are largely running on empty when it comes to reaffirming trust and placing their capital in the institutions of the U.S. capital markets. It will require some considerable effort to re-position reputable and capable brokerages, investment advisers, and hedge funds as fully deserving of investor trust, though in time that effort can be rewarded with significant and tangible returns.

3. *The Compliance Continuum*

Where does the financial consumer turn for objective information and assurances that their providers are ethical and sound? Unfortunately, there appear to be no compliance certification ratings forthcoming from regulators, as the SEC and the Financial Industry Regulatory Authority (FINRA) do not currently "grade" compliance inspections or examinations. Generally, the SEC's OCIE and FINRA will perform the pre-announced inspection activity and subsequently submit a report to the regulated enterprise prepared by the regional office conducting the examination. In recent years, the results of the report have ranged from benign (no further action required); to disconcerting (the "compliance deficiency letter" is generated to convey policy and procedure shortcomings which require written responses from the firm replete with risk mitigation solutions); to occasional nosebleed status (the results of the examination are referred to the Enforcement Division of the Commission for civil action or the Department of Justice for criminal prosecution). Firms achieving no action status following a regulatory examination and experiencing no subsequent regulatory interactions very likely have attained the culture of compliance deemed to be appropriate by the SEC for the compliance risk profile presented by the enterprise.

In 2008 (the most recent period for which statistics are published), there were approximately 11,300 SEC-registered investment advisers and 5,600 broker-dealers (in addition to 174,000 branch of-

fices, and 676,000 registered representatives).[8] In 2008, the SEC conducted 1,521 investment adviser examinations and 720 broker-dealer examinations. With regard to investment advisers examinations, 31% resulted in no action, 68% led to a deficiency letter, while 4% were referred to the Division of Enforcement.[9]

As noted, the SEC is now highly motivated and substantially better funded than in recent years and it is very likely that the referral ratio to the Division of Enforcement will be significantly higher in coming years. Congressional largess towards the agency is not limited to financial means either. On August 5, 2009, the Commission adopted an amendment[10] to Title 17, § 200.30-4[11] of the Commodity and Securities Exchanges regulations. The amendment empowers the Director of the Division of Enforcement with the authority to issue formal orders of investigation thereby providing significant efficiencies and new authorities to the investigative and prosecutorial resources of the SEC. Simply put, the Commission grew a new set of incisors and the Director of the Division of Enforcement, Robert Khuzami, has aptly demonstrated his willingness to use them.

On the self-regulatory front, FINRA conducted over 2,500 routine examinations and nearly 7,000 cause examinations of broker-dealers in 2008. According to Stephen Luparello, Interim Chief Executive Officer of FINRA, as a result of these examinations, FINRA instituted disciplinary action in 1,060 cases.[12] "FINRA collected over $28 million in fines, either ordered or secured agreements in principle for res-

---

8. Lori A. Richards, Dir., Office of Compliance Inspections and Examinations, SEC, Address at the National Society of Compliance Professionals National Meeting: Compliance Through Crisis: Focus Areas for SEC Examiners and Compliance Professionals (Oct. 21, 2008), http://www.sec.gov/news/speech/2008/spch102108lar.htm.

9. Jeffrey C. Morton & Valerie Simpson, The SEC's Examination Program Presentation for the Pa. Bar Inst., (June 10, 2009), http://www.pbi.org/resources/extras/pli_extras/mutual%20funds/14%2045_MortonSimpson.pdf.

10. Delegation of Authority to Director of Division of Enforcement, Exchange Act Release No. 34-60448 (Aug. 5, 2009) (amendment is effective Aug. 11, 2009 through Aug. 11, 2010).

11. SEC Delegation of Authority to Director of Division of Enforcement, 17 C.F.R. § 200.30-4 (2009).

12. Stephen Luparello, Interim Chief Executive Officer, FINRA, Testimony Before the Subcomm. on Capital Mkts., Ins., and Gov't Sponsored Enterprises (Feb. 4, 2009) (Mr. Luparello became Vice Chairman of FINRA on Feb. 24, 2009).

titution in excess of $1.8 billion, expelled or suspended 20 firms, barred 363 individuals from the industry, and suspended 325 others."[13]

Firms receiving a deficiency or comment letter may in fact ultimately have cause to promote their compliance capabilities to clients and prospects. The materiality of deficiencies may range from quite significant to primarily administrative in nature. Even if the deficiencies are significant in nature, there is an opportunity for the regulated entity to improve its reputation and subsequently secure the long term viability of the enterprise by addressing the noted deficiencies with sustainable compliance policy and procedure refinements.

For those advisers and broker-dealers now finding themselves on the right side of their functional regulators, communicating the firm's success in proactive compliance risk management may highlight competitive advantage. In lieu of a regulatory sanction, the financial consumer must rely upon the financial enterprise itself to tell the compliance story. Unfortunately, current disclosure of enterprise risk management capability and related events by way of SEC Form ADV[14] is not an overly consumer friendly process whereby clients and prospects may with relative ease obtain and infer insight into the compliance culture of a current or prospective financial partner.

Firms contemplating the leveraging of good compliance as reputational burnish must fully consider the means by which the good news is delivered. Specifically, the message "bandwidth" to be assumed must be considered, i.e., private disclosures to prospects and clients versus communicating the compliance message in the public domain. There are advantages and risks attendant to both formats which must be deliberated with care by management.

4. *If the Shoe Fits*

Turn now to the current operational scenario for the vast majority of regulated broker-dealers and advisers and for soon-to-be regulated hedge funds. In many cases, assets under management are on the decline or at least have stabilized at much lower levels, revenues are contracting, cost structures and staffing levels are being rolled back, clients are hard to keep and prospects are even more difficult to matri-

---

13. *Id.*

14. 17 C.F.R. § 279.1 (2009); *see also* SEC Form ADV, Unif. Application for Inv. Adviser Registration SEC1707, http://www.sec.gov/about/forms/secforms.htm (last visited Nov. 20, 2009).

culate to the financial services firm. Rather than hunker down and wait for the "once in a century storm" to pass (perhaps five years according to Cerrulli)[15] a proactive and innovative initiative whereby compliance assets are utilized to the complete and virtuous advantage of both the enterprise and its clients appears to be in order.

Effective insinuation of sound and successful compliance policy into the marketing message of the regulated entity requires a migration from traditional insular compliance risk management to the assumption of a more transparent compliance orientation. The SEC maintains that a unique "risk-based culture of compliance" is the prism by which the Commission ascertains comportment to the regulatory regimen for investment advisers (and presumably hedge funds in the near future).[16] This cultural aspiration entails thoughtful and relevant policy formulation by the enterprise coupled with diligent implementation and testing of internal controls to ensure the efficacy of the compliance program, i.e., financial compliance must become a *prime* component of the enterprise risk management capabilities of the firm. The concept that clients and prospects would be more inclined to engage a well-managed and compliant firm is both reasonable and compelling.

5. *The Compliance Story Line*

With the exception of noting the specific result of recent examinations or inspections, any embellishment or exaggeration of SEC, FINRA, or state regulatory interactions is prohibited.[17] The prospective content of the compliance story however could reference quality control attributes currently instituted as internal controls of the firm's compliance program. Examples of objective compliance quality controls might include client complaint policy track records, client retention ratios, arbitration history, and regulatory violation statistics. Equally compelling are the subjective topics of the annual compliance review (advisers) or CEO certification highlights (broker-dealers), internal and external examination findings, demographics and exper-

---

15. Asci, *supra* note 4.

16. Christopher S. Petito, Alison Micucci & Steven A. Yadegari, Inv. Adviser Compliance Programs and SEC Inspections Presentation for the Pa. Bar Inst. 7 (July 17, 2009), http://www.pbi.org/resources/extras/pli_extras/documents/15_45_Petito_Micucci_Yadegari.pdf.

17. Advertisements by Investment Advisers, 17 C.F.R. § 275.206(4)-1 (2009).

tise of the firm's compliance staff, compliance technology resources, and the nature and experience of compliance partners**.** Account management capabilities may also provide useful insight for prospective and current clients whereby reference to consistent account dispersion and benchmark performance tracking metrics could significantly influence the adviser/hedge fund selection process.

Consider an example. Most investment advisers receive Requests for Proposal (RFP) from prospective institutional investors, wherein the firm is asked to respond to a variety of questions about the organization. In reviewing the RFP processes of clients engaged by our firm, we have noted a distinct increase in the number of compliance oriented questions posited in the RFP as well as more sophisticated nuance regarding the state and orientation of the compliance regimen. As these inquires percolate upward in the due diligence process, an opportunity to get the compliance story out becomes very compelling. To the extent the RFP does not directly inquire about compliance technology resources, the firm should consider providing additional text or exhibit information about such resources including budgetary increases and software implementation. Highlighting the firm's investment in compliance assets and resources in some detail provides additional relevant criteria for discerning prospects seeking to engage an ethical and compliant partner while reassuring current clients of the firm that they have made a good decision to place their trust and their funds with a compliant partner. This is especially relevant when the prospective client retains a pre-existing fiduciary duty as is the case for plan trustees of Employee Retirement Income Security Act qualified retirement plans.

For those firms with work to do on their compliance programs, the added incentive of getting it right and keeping it so should impel management and staff alike to become more conversant with the regulatory regimen of the firm, thus promoting a more compliant culture. This begs the question, how to get the good news out?

6. *Old School Communication Venues*

Having developed a compelling compliance message, it is critical to *manage and control* the process whereby the message is delivered to clients and prospects. Traditionally, the primary compliance disclosures made to clients of investment advisers have been the investment advisory agreement executed at the inception of a client relationship and Form ADV (a regulatory filing that must be delivered to new

clients, and subsequently offered to existing clients on at least an annual basis). Both documents are designed to fulfill regulatory disclosure requirements pursuant to the Investment Advisers Act of 1940[18] and other rules. As regulatory disclosures they are required to be accurate in content and "plain English"[19] in format. However as noted previously, the Form ADV has limited utility as a client communication venue.

In the case of brokerage services, the account application is the primary document framing the professional relationship between the client, the registered representative, and the firm. The application procedure often is perceived as burdensome; however, upon reflection it may be viewed as a viable platform from which to launch an informative conversation about the strength of the firm's compliance program. Brokerage, adviser, and hedge fund entities with well-managed compliance programs have a story to tell; not unlike the advertising days of old when the target market was identified, the product attributes defined, and its ultimate relevance to the consumer established. One might argue that the recent decline of accounts under contract for brokers and advisers suggests that current disclosure practices, while meeting regulatory content and format requirements, are not sufficient to assuage consumer distrust—even for those firms not directly implicated in the recent skein of inadequate corporate governance and recurring breaches of fiduciary duty.

7. *New Venues for Getting the Story Out*

If current disclosure venues have limited client communication utility, what is the most efficient and direct means of informing clients and prospects of the firm's culture of compliance? With the understanding that regulators take a dim view of enlisting the disclosure process in a marketing campaign, there are a number of effective venues which may be utilized.

Financial professionals have a variety of communication channels to convey the compliance story, including RFP responses, pitch books

18. 15 U.S.C. § 80-1 et seq. (2006).

19. Amendments to Form ADV, 73 Fed. Reg. 13958, 13959 (proposed Mar. 14, 2008) (to be codified at 17 C.F.R. 279.1), *available at* http://www.sec.gov/rules/proposed/2008/ia-2711fr.pdf.; *see also* Press Release, SEC, SEC Proposes Plain English Narrative Disclosure By Investment Advisers To Investors (Feb. 13, 2008), http://www.sec.gov/news/press/2008/2008-19.htm.

or prospect presentations, website profiles, newsletters, brochures, client reports, or customer service oriented communications. Management of the compliance story line would ideally be implemented as a collaborative effort between marketing, client service, and compliance professionals of the firm. Of course, any compliance narrative or other exportation of business processes into the marketing initiative must adhere to the approval policies of the firm in terms of written authorization, implementation, and record retention. Legal review of the finished message is recommended insofar as the content would certainly represent a new angle of communication. The ultimate benefit, as compliance gains visibility inside and outside the firm, is that the culture of compliance is reinforced as it contributes to the asset aggregation and client retention capabilities of the enterprise.

A long anticipated change to the Form ADV Part II disclosure process could result in a big assist by the SEC to advisers and hedge funds in their effort to get their compliance story out. Indeed, for several months prior to the onset of the Madoff era, the SEC had solicited feedback from regulated advisers regarding a proposed change in the Form ADV Part II disclosure whereby a "narrative" format would be implemented. The narrative design would serve to replace the "check the box" format currently in place, thus allowing more flexibility for advisers to communicate with clients and prospects about their business model and service offerings. A further rule amendment, if passed, would require advisers to post the Form ADV Part II on the SEC website, thus providing greater access and transparency. Presently, only the web posting of ADV Part 1 is mandated.

To date, limited Congressional action on new statutory authorities for regulators have placed a temporary hold on the Form ADV change proposal[20] however it is widely expected that the ADV change will pass sometime in early 2010.

8. *Quality Control*

This virtuous cycle of utilizing successful compliance experience as both a self- reinforcing business process and a competitive differentiator clearly has an Achilles heel. If a particular compliance metric included in the compliance story line were to deteriorate to vulnerability or deficiency status, the public message could be significantly

20. Amendments to Form ADV, *supra* note 19.

marginalized, thereby introducing increased reputation risk to the firm. It is imperative that an effective and well-managed quality control process be instituted to ensure that compliance metrics included in the client/prospect message are in fact managed to a very high level of performance.

For example, if client service metrics were components of the message it would be critical to hold those elements to significant quality control thresholds, e.g., "client complaints and operational problems are resolved within 24 hours, while any deviation from this metric will require the office of the COO to engage the client within 48 hours of the complaint." Prudent practice would entail quality control procedures to require input and shared responsibility across lines of business. Indeed, in many respects this collaboration may have become more elusive in recent months as the financial crisis flexed the execution and communication capabilities of financial firms as they adjusted to various exigencies. Implementing a strategy whereby all professionals have responsibility to contribute to and uphold standards of excellence regarding ethical and compliant performance is vital to the positioning of compliance as a competitive differentiator.

In the final analysis, the risk-reward of communicating good compliance to existing and prospective clients must be considered. Leveraging the compliance culture to achieve asset aggregation and account retention objectives may in fact provide a key competitive differentiator, though scrutiny upon this very same culture will raise the reputation risk associated with non-compliance.

CONCLUSION

The events of the preceding eighteen months have injected a new urgency for regulated financial service firms to develop effective and angular asset aggregation and client retention strategies. It is likely that this condition will remain so until macroeconomic trends and investor confidence levels achieve more normalized profiles than currently reflected and forecast. Likewise, heightened scrutiny by regulators of compliance policy development and implementation will continue. The SEC, as a governmental agency, has experienced a public relations debacle unlike any other in U.S. history; indeed some would argue that its very credibility as an effective and relevant regulator is on the line.

To this end, the SEC has made it quite clear that the game is changing. The Commission is working closely with FINRA to bring

about a number of changes, including the enhancement of examiner expertise and resources to assist in fraud detection, implementation of ongoing monitoring of regulated entities outside the examination process, more frequent use of targeted sweeps and wiretaps, and the application of stiffer enforcement penalties and fines in the face of rule violations.[21] Recently, elements of the financial press have even opined that the Commission is now in the early stages of a war on corporate corruption and fraud that evokes memories of the war on organized crime circa the 1970s and 1980s, especially in light of the more aggressive investigative and procedural tones implemented by the SEC in recent examinations and enforcement actions. Sage advice counsels that all will be revealed in the fullness of time and that certainly is the case here regarding the Commission's new and muscular modus operandi.

As this paper goes to press, the nation is consumed with impending health care reform; however, it is unlikely that Congress or the current administration can afford to whistle past the graveyard of financial regulatory reform indefinitely. Increased funding for regulators will likely produce more referrals to a more efficient and effective Division of Enforcement for civil prosecution as well as an increase of referrals by the Commission to the Department of Justice for criminal prosecution. At the same time, FINRA and other functional regulators will be pushed to pursue newly affirmed mandates to protect investors. So there is plenty of incentive to get compliance right. But as with the dawning of all new eras, there will remain an element of the past.

The post-crisis financial era in the United States will certainly include a more aggressive regulatory regimen; however, there will also reemerge the financial services enterprise that utilizes every resource at its command to effectively influence and retain client trust. The virtuous cycle of good compliance, client trust, and reputational integrity will again represent valuable currency in the emergent new normal for the financial services enterprise, just as it has after past market panics. Count on the Feds to *ensure* that investors are *reassured* that their trust remains high on the totem of regulatory reform.

---

21. Lori A. Richards, Dir., SEC Office of Compliance Inspections and Examinations, Address to the SIFMA Compliance and Legal Division: Strengthening Examination Oversight: Changes to Regulatory Examinations (June 17, 2009), http://www.sec.gov/news/speech/2009/spch061709lar.htm.