

SIFMA C&L Society Annual Seminar 2016

March 15, 2016

General Session Remarks

As prepared for delivery

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Thank you for having me today, and it's a pleasure to be with you all. Before we begin I should preface my remarks with a personal disclaimer given this audience – namely, I am not a securities lawyer or a compliance officer. Rather, I am here as Chair of the Securities Industry and Financial Markets Association, and in that capacity alone, I come before you representing roughly 400 large, medium and small broker-dealers, banks and asset managers.

Given the tendency of some to think of our industry as comprising a handful of large New York-based firms, let me take a moment to acknowledge the myriad players that make up the financial services landscape as part of a vast and complex network across the fifty states. Taken together, they establish the infrastructure and backbone of the US financial system.

With that in mind, I would like to honor this rare opportunity to have so many industry, legal and regulatory professionals convened in one place to opine upon the apparent state of relations between financial services and its respective regulatory authorities. I do so informed by dialogue and conversations across our membership as Chair of SIFMA, and as part of my appointed responsibilities to serve as steward for the continuum of firms that comprise our industry. If my remarks serve to provoke discussion, I hope you will consider it time well spent; if they spark debate – even better.

So let me begin by offering three general observations of my own, which I should note are unquestionably influenced by my having spent many years as a public administrator and policy maker before entering the private sector.

First – recognizing that the conduct – if not broader culture – of our industry has been called into question and remains so in the minds of many today, we must acknowledge the shortcomings of the past. This enables the private sector and its regulators to start down a path towards more mutually-felt trust and transparency;

Second – market participants must be forthright in acknowledging that increased regulatory activity has undeniably brought about significant benefits, whereas “safety and soundness” is a tide that lifts all boats; and

Third – how we approach oversight must, from a practical standpoint, incentivize financial institutions to do the right thing, especially as so much of what we do in our business and in our legal and compliance effort involves exercising judgment.

I fully recognize that we still have our work cut out for us when it comes to changing the broader perception of financial services. But what I would like to suggest today – echoing statements by both the regulatory community and the Department of Justice – is that altering both the perception and the reality of our industry is also dependent on achieving balance in the tone and tenor with which the industry and its supervisors interact with one another – that is, rooted in a sense of shared purpose, fairness and professional respect.

Regulators have described compliance officers as “essential partners” or “that we are in this together” or “that together we can usher in a new age of institutional accountability and responsibility.” I could not agree more. In fact, to take the notion a step further, I would submit that compliance professionals should not be seen as working “for” the industry, but rather, as an independent body with a singular mandate: “ascertaining the facts, understanding the context, and seeking the truth.” More than just fact-finding, their work is instrumental to helping forge a path forward in terms of the conduct and culture of the firms they represent. In this way, legal and compliance professionals are integral to rebuilding the reputation and standing of the industry more broadly.

But these professionals have challenges of their own to confront. So to try something a little different than what we might find at a legal and compliance summit... let’s explore the plight – *or seen another way, the flight* – of a compliance officer via the medium of 16th century art – keeping in mind the adage, “a picture is worth a 1,000 words.”

Bruegel’s “Landscape with the Fall of Icarus”

Now, some of you liberal arts majors may recognize this painting here.

On the surface, it’s the depiction of a bucolic – almost idyllic – countryside as it meets the ocean, rife with both vibrant everyday activity and the mundane. But, upon further examination, what are we to make of the pair of legs descending into the sea?

Any guesses or observations?

The painting is Bruegel’s “Landscape with the Fall of Icarus” and that’s poor Icarus from Greek mythology in his final moments, plunging from the sky during his attempt at flight, ending in his demise.

So why am I showing this to you?

Before setting out, Icarus’ father warns Icarus, instructing his son to fly neither too low nor too high, because the sea’s dampness would clog his wings or the sun’s heat would melt them. When Icarus ignores his father’s instructions and soars upwards, the wax in his make-shift wings melts – and Icarus falls into the sea.

Now, we know well the story – and consequences – of flying “too close to the sun” in all of its generic applications to daily life; but rarely do we focus on the perils of flying too close to the sea – and the resulting tensions and challenges that arise.

With that in mind, let’s take a look at this setting as a metaphor for the dynamic of life at any firm...located anywhere in the US...on any day of the week – and make it relevant to our discussion today.

Namely, what can be gleaned when we think about a compliance professional as Icarus himself – and the plight of operating within narrow strictures and off-setting parameters? This is, of course, something that you all are asked to do every day, which can make the daily life adventure of one in a control function quite daunting –if not outright foreboding; perhaps, even more so than it was for Icarus.

(1) Let’s take a look at the parameters for compliance professionals:

- you operate in the space between heightened expectations of both the businesses you support and the law enforcement and regulatory community to which you must be responsive: the “sea and sun”

- you navigate an environment of ever-increasing scrutiny and second-guessing;

- and then, factor in the stormy consequences – in today’s increasingly complex, rapidly evolving marketplace – of bad things happening despite your best efforts to get it right;

- while overhead, a dark cloud of personal liability potentially takes shape.

Comparatively speaking, one might say it makes the flight path of Icarus seem a bit benign.

(2) What’s more, the painting more broadly is a statement on “contextual awareness” – let’s look at that:

In this scene, something quite extraordinary is taking place – but amidst a very normal setting...on a very normal day... at a very normal time. We see:

- the ploughman with his head-down hard at work;

- the shepherd head-up gazing to the sky;

- the angler at water’s edge – the closest to Icarus – yet still preoccupied;

- the tall ship sailing calmly along – the captain has somewhere to get to.

Implicit here is the message that – amidst our daily lives – there are:

-- the commonplace things we see, and the mundane tasks we attend to;

-- yet at the same time, there are truly astonishing and unexpected things taking place, often as extraordinary as they are inaudible.

Thinking still of this same scene as “every day at the office,” now consider compliance officers as figures in the broader landscape of this painting.

When you do, the inference is that you – our industry’s watchmen – are expected:

-- to identify, and mitigate, not only the risks that are immediately before you, but also...

-- be cognizant of what may be brewing beyond the periphery – on a potentially more seismic scale.

Put another way, today’s compliance professionals are being asked to exhibit an extraordinary contextual awareness not seen even in Bruegel’s masterpiece statement on daily life. One might say that to be dutiful and flawlessly perceptive on so many levels of awareness is a lot to ask in any setting – bucolic or otherwise.

(3) Finally, if you consider the broader context of this painting and story, it is also a commentary on pluck, gumption and risk-taking – which, here again, is exactly what we ask of our legal and compliance professionals every day.

The story of Icarus and his father’s plight was about their attempted escape from Crete and the Labyrinth, having been imprisoned there by King Minos. Rather than remain captive to their circumstances, Icarus and his father took stock of their situation, calibrated their options, constructed a plan, and took to flight.

In the same way, legal and compliance professionals are fundamentally in the business of:

-- analyzing a set of circumstances, making well-considered judgements, and taking action; yet...

-- “making well-considered judgements” can also be seen as “taking well-measured risks” – depending on where you sit in the equation;

So it follows that, absent a mutually supportive environment, if lawyers and compliance officers are so risk-adverse that they forego taking actions that might require, say, sticking their neck out in an uncomfortable situation – then we are left without those qualities that are ultimately imperative for effective oversight.

Successful compliance officers are so precisely because of their sense of initiative, shrewdness and resolve, never content to simply stay put and run the maze on the island of Crete.

With that to transport us back from the pastoral to the present, we have to ask ourselves: Does the totality of activity – spanning regulation, enforcement, public policy and private enterprise – in today's compliance climate provide reason for concern?

Observations and Trends

To those questions – I suggest today that there have been some unsettling trends in the evolving relationship between financial institutions and the regulatory and law enforcement community. These have the potential to subvert our common objective of ensuring the most effective legal and compliance programs.

Most I have already alluded to in the painting, but to bucket them for discussion and debate – and ultimately, towards securing the most fair, efficient capital markets – let's take a look at some of these now:

(1) As an overarching point, there is seen by many to have been a shift away from constructive relationships. More specifically, in recent years, the overall tone of interactions between financial institutions and their regulators has drifted – away from concerted and cooperative, to something else. This shift – expressed by SIFMA constituents of all sizes – has manifested in myriad ways, from refusals to grant extensions to respond to specific information requests, to failures to entertain requests for relief when reviews or audits extend for many years or remain open indefinitely. However it manifests, there seems to be an atmosphere of caution in regulators' interactions with financial institutions, which may be indicative of regulators trying to do their jobs in fear of being second guessed themselves.

(2) SIFMA members have also observed what has been a transference from “risk-based” to “zero tolerance” regulation. The long-standing regulatory guidance has been that compliance programs should reflect a risk-based approach, tailored to the business mix and risks of each institution. To the extent that a financial institution had reasonably designed controls that were executed in good faith, its program was generally considered effective if yielding acceptable results.

In recent years “risk-based” and “reasonable” have been lost in the dialogue. Regulatory examinations increasingly have become the terrain where technical issues or isolated errors are portrayed as systemic weaknesses or deficiencies, rather than as a natural byproduct of complex, high-volume but reasonably designed control processes.

In addition, where law or regulation is silent or ambiguous, regulators increasingly are perceived as filling the interpretive void not through rulemaking or guidance, but by examination findings and enforcement proceedings. These conditions increase the incentive for financial institutions to “self-direct” their legal and compliance efforts to areas that are believed to present the greatest “inspection risk” – even at the cost of under-addressing substantive risks not yet built into examination guidelines.

(3) A further concern being voiced is that there is little-to-no credit for self-initiated investigative and corrective behavior. Some see regulators and law enforcement as assigning

less and less value to financial institutions' efforts to unearth and remediate deficiencies – rather than crediting firms for conducting look-backs to address weaknesses or historical issues. Holding firms accountable for problems that were self-identified goes back to the overarching point of administering oversight that incentivizes financial institutions to do the right thing. Over time, a perceived zero tolerance environment can have unwanted effects on firm's incentive to investigate aggressively, a willingness to come forward with issues they uncover, or to apply newly developed controls retroactively.

(4) Examination fatigue and resource constraints are also being experienced as direct byproducts of today's operating environment. The need for regulators to actively discharge their examination mandates is beyond dispute. And in the wake of the financial crisis, an increase in the volume and intensity of exams has undoubtedly been warranted. Recently, however, the regulatory community is seen by many to have embraced this notion to such a pitch that the rate of examinations and non-routine inquiries far eclipses what some might consider well-spent time and resources. Examinations of this nature can take months or years to complete, and firms must often respond to multiple, overlapping examinations of the same or similar functions. This also raises issues pertaining to local and global coordination, and best practices, among multiple regulators spanning various regulatory regimes.

What may not be fully appreciated is the cumulative impact this trend is having on financial institutions' ability to effectively address their oversight mandate – as well as the regulators' ability to carry out their own mandates.

More plainly put, there is less available time and effort to devote to spotting the next big risks, to “seeing around corners” and keeping pace with innovation and the complexities that come with it. To this end, an effective legal and compliance control environment needs to be optimized and well-resourced in terms of its technology-driven capabilities to identify and monitor those areas that pose the highest degrees of risk, ensuring the most coverage for the most significant or proximate risks.

(5) A particularly unnerving concern being voiced is the trend towards personal liability for compliance officers. More specifically, there is a perception of increased focus by regulators on penalizing individual compliance officers in circumstances where an institution's compliance program has been found to be deficient – not the individual's actions. In some cases, compliance officers have been held personally accountable even though the public record did not suggest malicious, intentional or even reckless conduct. More clarity and more communication around the standard by which regulators judge conduct must be central to the dialogue if we are to achieve more transparent and trustful relations between the industry and its oversight entities.

(6) As a knock-on effect of this trend, there is evidence that personal liability for compliance officers – in addition to whatever other factors are seen to make their situation untenable – will have a chilling effect on qualified candidates. I read a recent Wall Street Journal report cited around three dozen senior bank compliance executives who left their jobs in last year – three times the number a year earlier. The “brain drain” that could result from the

misdirected targeting of compliance officers will eventually detract from – not enhance – the efficacy of financial institutions’ compliance programs.

Confidence Building Measures

So with that, in wrapping up these observations shared by many SIFMA member firms – small and large alike – on the state of financial compliance, I would put forth three ideas that might act – even if just a start – to advance the tenor of our relationships and the commonality of our interests: which should be nothing short of the most comprehensive oversight capabilities.

(1) To promote a more constructive partnership between SIFMA member firms and the regulators who oversee them, I propose that we create a permanent working group. This would be a standing body composed of key representatives of both the regulators and the regulated, which meets regularly to discuss the efficacy and impact of existing and prospective regulatory, examination and enforcement efforts. This approach is by no means novel. Indeed, as the Treasury Department’s Bank Secrecy Act Advisory Group has proven, it can be extremely effective, providing regulators with valuable insight into the commercial viability and impact of their initiatives, and the industry with a greater sense of control over their destiny.

(2) To address the perception that regulators are playing a game of “gotcha” where examination findings and enforcement proceedings are the only means by which questions of regulatory interpretation are addressed, I propose that a significant mandate of the new joint industry and regulatory working group be to regularly publish guidance.

This guidance would be the product of ongoing feedback from both the regulators and the regulated. It would reflect the experiences of each agency that is conducting examinations and enforcement investigations, as well as each industry member that is on the receiving end of these initiatives. The working group would therefore serve as both a single collection point for both sides’ experiences and observations, and a single dissemination point from which these observations can be shared across a wider affinity group. Ideally, the result would be a regulatory community that was aware of, and therefore applying, more consistent standards, and a community of the regulated that is more conscious of prevailing expectations.

(3) If efforts continue to target and hold compliance officers personally liable, I propose that the association of legal and compliance professionals convene a panel or designated body to act as a unified voice for their collective viewpoints and concerns, and to serve as an advisory body in cases where the conduct of individual compliance officers is at issue. This entity would function as the convening vehicle – the ombudsman – through which a more organized and focused industry engagement effort can share its views, opine upon matters of fairness and standards, review individual cases, and make recommendations.

The Preeminence of America’s Capital Markets

Let me conclude where I began: the tenets of trust, transparency and constructive collaboration. For as we examine the relationships, policies and practices that underpin our common interest in effect oversight, we have to ask ourselves more broadly what is at stake.

At a recent SIFMA sponsored event in which a number of panelists addressed the “state of the industry,” I made the point that all market participants must remain open and engaged with one another towards the greater good of nurturing and driving a financial system that promotes job creation and economic growth and the strength of American capital markets.

Integral to this undertaking is balancing our efforts to reduce systemic risk while still ensuring well-functioning markets and the efficient allocation of capital in the US and on a global scale. Achieving such an ongoing balance is both an art and a science; as we seek to find what I call the “fulcrum” of regulatory oversight, it is imperative that we continue to design and calibrate our approach to keep up with, and appropriately govern, a rapidly-evolving, interconnected and technology-driven financial marketplace.

In the face of so much innovation and change, however, there will forever remain absolutes that, in the end, will always carry the day: the more we work in true partnership, with trust and transparency, the more certain we can all be of the continued dynamism and longevity of this great financial marketplace.