

The Markets and Bigger, Faster, Stronger

A key focus of SEC enforcement has been the retail investor. To that end the Division formed a special unit to focus on cases tied to those investors. Numerous cases have been brought. That focus may also be at least in part responsible for the continued increase in enforcement cases brought against investment advisers.

At the same time, it is not difficult to lose track of what the retail investor focus actually means – particularly through a seeming maze of regulations and enforcement actions.

Recent remarks by Joshua Sterling, Director of the Division of Swap Dealers and Intermediary Oversight at the CFTC, speaking at an Investment Management Conference in Chicago earlier in November 2019 ([here](#)) provides a reminder.

The remarks

Mr. Sterling discussed the markets, asset managers, regulators and the retail investor. He began with the bar and its relation to the markets. Those markets, a function of an open society based on respect for natural rights and law, have afforded a “broad and grand wealth unparalleled in human history . . .” he noted. The bar is a “protector of freedom . . .” and the system which created those markets, echoing ideas introduced to the securities markets as the “access theory” by Irv Pollack and Stanley Sporkin in the early 1970s. Under that theory it is the bar and other market professionals which help safeguard the markets by acting as gatekeepers.

Today the asset management business is bigger, faster and stronger than ever, according to the Director. Bigger means that over the past “several years, investors have generally pushed their assets into a smaller set of very large funds.” Bigger also translates into more efficiency and better pricing to the point where some funds are offering “no fee” share classes.

Faster in the asset management business is often a function of technology with new ways to invest. Some firms, for example, rely entirely on algorithms and other

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quantitative tools. Others are a blend of traditional methods and new techniques. And, larger is the product of strategic transactions and business flows tied to investor preference.

The result is that asset managers are among the largest participants in the markets today. They have become the providers of market liquidity which “is also to transmit risk,” according to the Director. As the trends continue, asset managers will grow to have an even larger impact on the markets.

Bigger, faster, stronger couples not only with the transmission of risk, but also means that regulators must evolve the way they oversee investment management. The role of regulators such as the CFTC should be “not to call the shots in the evolution of the asset management industry, but to promote the strength, and vibrancy of the markets in which asset managers operate.”

Better, faster, stronger also only ties to the retail investor, illustrated by Mr. Sterling with a very personal story: “As a kid, I remember the day my father came home with a new and rather basic Ford Ranger pickup; the only extra was the red paint. Times were tight. But my parents always invested, and they had the opportunity to make prudent choices based on the myriad of sound investment products available to retail investors. My parents are now enjoying their golden years with a solid nest egg built over decades of hard work and savings.”

Comment

The markets afford all significant opportunities as the Director notes. In years past those opportunities permitted sound investment decisions by many who were retail investors. While that may still be true today, much has changed.

Today “better, faster, stronger” means it is likely those same retail investor investment decisions are being made by investment managers, whether they are in the securities or commodity markets. The goal, however, is still the same - to create the opportunity that Mr. Sterling’s parents had and which they are now enjoying. This comes from a balance of market professionals adhering to the access theory, regulators facilitating fair and liquid markets, and investment professionals honoring their duties to their retail investor clients.