Comments on Disclosure Effectiveness

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The Honorable Mary Jo White
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Disclosures would be effective if disclosures were being done. Disclosures are not being done. And Congress wrote the laws that allow highway robbers to go out and do it, the crime, all over again.

As the expression goes, the Commission oversees and is aware there are differing standards for The JOBS, Jumpstart Our Business Startups Act Regulation S-K provides requirements for Public Company disclosure likewise just because a street light turns green, doesn't mean someone is going to cross at the corner and not in between. Might be a good idea to check out stats on how many people follow rules of the road and the rules Congressional poohbahs sat cross legged, came up with notions that justified their paycheck but failed to protect the paycheck that Main Street trustingly invested with Wall Street, those people supposed to be complying with the Jobs Act., that don't, comply that is, or, even better, escape getting found out.

That is the problem with Congress. People with an arm's length away from reality write rules, interviewing pie in the sky economists, professors, lobbyists and wonks without doing diligence amongst the masses to see how them's apples are actually working. The name Frank Lautenberg ring a bell? He was one of 'yours', when he got clipped by Ponzi man Bernard Madoff. And then there is the TV show, American Greed, profiling multiple shows a night, multiple shows a week, profiling scammers whose Disclosures were more correctly exposures when the show aired months, too late, later.

The system is broke. It isn't rocket science to know the problem isn't if disclosures are made but that when disclosures are made, nothing happens to them. More correctly, what happens to Main Street wont happen to Wall Street. Wall Street walks. Bernard Madoff said "they knew." They did. They, FINRA, disclosed Madoff's crimes decades later after the fact. FINRA, post 2009, published online that Madoff sold "No Product" in 2008, 2007, 2005, 1975 and 1973.

Problem was no one, of the involved parties disclosed to the harmed victims that a crime was suspected or even, that a crime took place. The names of Johns get published in newspapers but the names of Thieves, Forgers and plain out and out criminals are not published in the papers, mailed to the client to protect their assets, published on their online and papers statements along with the words "ALERT, you've been hacked by your fiduciary."

Let's get real here. Be it the S-K, the 10-Q or the Finra Brokercheck there is no difference when the game ends the same with the investor being told too little, too complicated with the investors assuming that Congress has their back. More likely, with a gun put to it. After all, it is Congress that wrote the laws that the SEC has oversight over implementing and enforcing. Sorta.

There is another player in the world of Wall Street and Main Street insecurities. That player is the S.R.O., in this case, the one and only S.R.O. Congress did write their should be plurals. Yet, there is just one, another case of Congressional Friends With Benefits, a legislative bad habit that continues to cost consumers not Congress.

Congress wrote a law that says when someone did what Bernard Madoff does, that the S.E.C. should call the U.S. Attorney. No one called the U.S. Attorney on Bernie. Madoff marched himself in to law enforcement. So much, for disclosures. Billions of dollars later, Bernie disclosed. Only it was too late, neither Congress nor the Commission nor the SEC neutered version of cops did anything, least of all return to the injured victims money that Congress and Commission let get stolen.

While the Commission's interpretation of Disclosure is their own agenda of "on the business and financial disclosures required by periodic and current reports" and "compensation and governance information included in proxy statements", the investment clients interpretation of Disclosure is equally relevant to things the investor should have been told before turning a dime over to the financial consultant or, even, execs of a firm, brokerage or investment.

1- The definition of "Disclosure" is "the action of making new or secret information known." Transparency is what is demanded not exposing secret information, covered up in investor dog and pony shows accompanied by P.R. fluff pieces. What good are disclosures if the written disclosures are so complicated, long unable to be read by the everyday person.

2- The paperwork is far to complicated for the everyday person to read. President Obama and President Bush before him signed off on Acts simplifying paperwork that gets more complex each day, it seems. The Legislative staffers get paid by the week not by the word. Say something once, straight forward and in English even a Jeff Foxworthy 5th grader can read

3- Disclosures are only as good as the investigators vetting them. Does the investigator intake a set of complaining papers then demand responses from the complained about party that the investigator does not disclose to the complainant? This is a recipe for the fraud to fester as learned by the SEC where the SEC recently leveled charges that financial advisor who deliberately misled the SEC investigators. The disclosure failure should not be leveled at the thief but a the SEC investigator who, as they stated and as their legal beagle stated, made a judgement not to cross reference with the complainant. There are no judgements when it comes to investigations. There are crimes scenes and frauds and methodology on the books on how to confirm six ways to Sunday the information is correct. Disclosures were made, it's just that the disclosures were lies the investigator may not be a legitimate trained investigator rather someone

who applied for a job with minimal skillset. Remedy? Hire real trained investigators to mitigate bad judgement calls.

4- Senator Ed Markey's "baby" is brokercheck. brokercheck is Congressionally sanctioned failure to disclose. Few legislators know that brokercheck is offered by one entity, FINRA. Few legislators know that FINRA is an S.R.O., self regulatory organization. Fewer legislators, and staffers, know what Self Regulatory Organization means. Yes, it does need explaining, too often, that Congress wrote a laws that the SEC is responsible for overseeing and implementing, one of which was a law that an entity be established for overseeing issues between Brokers and Dealers. The law Congress wrote does not say ONE S.R.O. The law Congress wrote allows for multiple S.R.O.s but that never happened. In time that S.R.O. sued other S.R.O.'s that tried to establish themselves, moreso, over time the S.R.O. created upping the standard for being their member that, with the approval of Congress' hand off to the SEC for oversight of the S.R.O., the smaller Broker-Dealers were squeezed down in numbers and out of business.

The S.R.O. took on the creation of Ed Markey's baby, the intended consequence of was to be increased protection for Investors except that the S.R.O. FINRA, in existence since 2007 when it allegedly replaced the NASD and NYSE, sorta. Failed to disclose the 100% holding company was the New NASD Holding. And the S.R.O. fails to disclose investors that it is not a charity, a non profit in the traditional sense of the word but one of the I.R.S. 29 approved for non-profit categories, a 501 (c)(6), a business league, no different than a football league the I.R.S. requires members to pay dues to.

This fact of FINRA being a business league is not disclosed on its website, its paper work, its DRS forms for people considering FINRA as a Dispute Resolution Forum, nor on its TV ads, business cards no where. This is a very deceptive disclosure to not make to the investing public, and legislators who write laws the Commission is supposed to enforce.

Simply, if FINRA made the disclosure to investors that (i) FINRA has no oversight over investment clients, investment advisors, and (ii) no Congressional mandate to address, voluntary or otherwise, disputes between investment clients and FINRA's dues paying members, one would think even the simplest minded of investors in times of need would still have the common sense to run, fast and far.

Senator Markey's baby does not state on its TV commercials the information on the brokercheck has been expunged, even multiple times, even like 30-40 multiple times without the customer visiting brokercheck knowing how many expungments were made by the Financial Consultant, how many complaints were filed, who the arbitrator was, what that arbitrator's DRS record is, and so on.

Meeting requests made to Senator Markey's office are pending,even a few months after the first request was made towards showing Senator Markey where the FINRA broker check states that FINRA does not report to police an alleged complaint against a member or someone alleging to be a FINRA member. Expungements are on the record of people outside of a FINRA DRS. FINRA does not release these records, citing FOIA. Disclosure is that FINRA cannot claim FOIA exemption. FINRA is not government. FINRA is a private business. Disclosure that must be corrected is that claim Resolution of fraud emanating from fraudulent disclosures are routed in to a single S.R.O. that claims on its website that it is "authorized by an Act Of Congress" when it is not

Disclosures are not made warning investors the information on the brokercheck is not accurate nor honest nor much of may really be going on in that industry representatives background.

5- The S.R.O. fails to advise that investors that (i) the information is supplied by the Financial Consultant themselves, (ii) the Financial Consultant's supplied information is not vetted by the Wall Street'rs S.R.O., (iii) the S.R.O. has no dogs in the investor's fight in that the S.R.O. is a 501(c)(6) that collects dues from its members. It's members are the very people the investors are suing. We are talking Brooklyn Bridges to nowhere

Regulatory agencies are Congress' Friends With Benefit programs that keep common criminals out of jail while Main Street'rs are finger printed, mug shots taken, lose civil liberties like voting and forced as felons to check the box, become recidivous finding their way back in to jail while Wall Street'rs walk free to thieve again, and again, and again….

Holding companies are the Bermuda Triangle for Wall Street financial truths. There is no FINRA rule stating that disclosures of what is in the race must be disclosed either in FINRA Rules of Procedure for Members and Rules Of Investors. Yes, Virginia, FINRA does have two sets of Rules, one for Wall Street

The S.R.O. FINRA fails to disclose that forced arbitrations are a violation of the 10th Amendment.

The S.R.O. FINRA fails to disclose that it cannot use the FAA, the Federal Arbitration Act as its governing law deferral because Wall Street licenses are given on a State by state basis which means the D.R.S., dispute resolution are argued before a State Rule not before a Federal Rule for ships.

The S.R.O. fails to disclose that it is not a regulatory agency. That it must apply to the SEC for a license the same way the investor appliance for license, too.

If the purpose of this exercise is to look like the agency is effective, then the query fails. The formula of financial failure are familiar, there are four horseman of the apocalypse. There is only one with Wall Street, and that is Congress.

Congress needs to roll back and go through the existing laws, one by one. The Investment Acts of 1933 is affirmation that dates change, people don't. Criminals were around in 1933 just like criminals are around in present date, the difference being that todays thieves are aided with the Internet giving the thieves greater reach, in faster time and with multiples of aliases aided by technology to masquerade with T.L.D.s, domain names and disappearing data that makes the point what is the point of requiring disclosures if the disclosures can be here today and gone tomorrow or as is stated by technology T.O.S., Terms Of Service, that the Terms can change at will of the online entity.

As for disclosure effectiveness? It is a punchline, isn't it. If you or I told I lie in a FINRA arbitration, we would be found guilty of perjury. If a FINRA member told a lie in a FINRA arbitration, they get yet another free pass in that filing them guilty of perjury is up to the DRS panel. Full disclosure of the DRS would be to advise the investment client complainant the Respondent may but most likely will not even get a pre determined penalty is a slap on the wrist that was written by Congress.

Lawsuits are filed against Wall Street'rs on an ongoing basis. Basis of claims include 'failure to disclose material information. Claims are routed by Wall Street'rs away from the Courts under the false pretense that Claimants are allegedly bound to dispute in a FINRA arbitration.

There are some truths to behold, disclosure should be that Wall Street and Main Street are held accountable to the same standard.

So much for Disclosures. The Commission wants to 'disclose' about numbers. Investors want disclosures about criminals to stay away from…. Hmmmm… like FINRA brokercheck and FINRA, playing a shell game it says Congress authorized. Are the Disclosures effective? Sure for the criminal but not for the investor that Congress says that Congress will protect….

Sincerely
Carrie Devorah

Founder
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