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End the Occupation of Wall Street

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We are the best regulated securities market in the world. We have more pages of do's and don'ts, and more people employed as regulators, than any other country.

But at what price?

Public companies collapse under the weight of reporting requirements and go private. Companies that once went public remain private. Foreign issuers that once listed on the NYSE or NASDAQ go elsewhere - admittedly to offshore exchanges and markets with lesser controls. Smaller domestic companies can barely afford the costs of needed capital, or they find themselves compelled to enter into a devil's bargain with unscrupulous investors. If only the regulators understood that the true cost of excessive regulation is to dissuade the honest and attract the thief. The bad guys always have more time and money than the rest of us.

And what do we get in exchange for this suffocating regulation? Is there a tradeoff in which our capital markets are hamstrung but the public derives enhanced protection? Sadly, that's not the result. Wall Street's cops are a step behind the bad guys, and generally out of breath from trying to get into shape to catch them. Modern regulation is nothing more than Wall Street's coroners reading the toe tags on defrauded investors and gutted public companies. The bodies keep piling up; yet we pass more rules and hire more regulators.

What can we do to restore some order?

First, put the dollars where they will do the most good. Create a national fund to ensure payment of all awards and judgments to all defrauded investors, even when the brokerage firm is out of business and the broker is in jail. A dollar spent on restitution to a public customer is preferable to a dollar wasted on another autopsy.

Second, let brokerage firms get paid a percentage of the profits (and no fee for losses) when they recommend investments. At present, investors pay a commission for the purchase or sale of stock; in some cases, they pay a percentage of their assets under management. Why not let Wall Street put its money where its mouth is? Sure, we would have to tinker with "for how long" and "how much," but it works to some extent with hedge funds. The merits of "success-only fees" have long been documented in many businesses.

Third, professionalize the jobs of the more than 700,000 registered brokers so they work *at* brokerage firms but *for* their clients. We must require the direct registration of brokers with the NASD/NYSE, rather than through their employer firms - much like the manner in which doctors, lawyers and accountants are registered or licensed. That will restrict the ability of employers to unfairly retaliate against departing brokers. It will also underscore that the client is the broker's real boss. Finally, if and when a broker decides to leave an employer, we must ensure that the separation is done with the customer's best interest and convenience in mind.

Fourth, increase the number of veteran regulatory lawyers at the Securities and Exchange Commission, states and self-regulatory organizations. It's about quality, not quantity. We need to retain greater numbers of competent regulators, pay them more and promote them. We must eliminate the cronyism and patronage that has saddled too many enforcement staffs with worthless friends of highly placed and influential people. Sometimes more can be accomplished with less staff and fewer dollars. By way of example, compare former New York State Attorney General Eliot Spitzer's budget and staffing levels with those at the SEC, the NYSE or the NASD. Who was on the cutting edge then? Who forced reforms on an unwilling industry?

Finally, tone down the adversarial nature of regulation. Since the 1980s, the brokerage industry has been under

regulatory siege. The men and women who work on Wall Street talk about their regulators with fear and distrust. As such, the Street tends to follow a "no snitch" policy. Don't get me wrong. In recent years, Wall Street hasn't exactly been a paragon of virtue and honesty. The securities industry is largely to blame for the hostility it has engendered. Nonetheless, the occupation of Wall Street needs to come to an end. If we're serious about preventing securities fraud, we need to enlist the industry in that campaign. We must return regulation to a partnership between the regulator and the regulated.

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