REGULATORY ROULETTE

"What constitutes smart regulation is different in times of crisis than during normal market environments."

We have written extensively about the regulatory landscape financial markets have seen in the last decade. This predates the Great Recession of 2008, which has shaped the current financial regulatory landscape.

I joined *Futures/Modern Trader* at the cusp of a new, more open regulatory cycle. The Commodity Futures Modernization Act of 2000 (CFMA) would replace prescriptive rules with a principle-based regulation and provide clarity on swaps trading. It was an age of confidence when old rules were too restrictive to accommodate the onslaught of innovative new financial products that would create mountains of wealth.

This was not political as the reform came under a Democratic administration, one that arguably understood the value of innovation and worked to be a friend, not an obstacle, of business. This is not intended to break down the pros or cons of the CFMA — which there are both — but to point out that regulation, like markets, tends to run in cycles. In 2008 our markets experienced a shock not felt since the Great Depression, which ended one regulatory cycle and led to one of the largest regulatory rewrites by Congress. In "**Regulatory cycles**" (page 32) we talk to outgoing National Futures Association President and CEO Dan Roth about regulatory cycles.

Roth joined NFA in 1983 as a lawyer and has witnessed numerous market and regulatory cycles. He points out that "smart regulation" is always the goal of Congress, but what constitutes smart regulation is different in time of crisis than during more normal market environments. There is a problem that needs to be fixed and there are people harmed who demand action. In times like that there is less focus on the cost of rules. That is why, as Roth says, it is good to go back and look at what you were trying to accomplish with certain rules and make sure it is working.

The goal is to avoid a yo-yo effect where you place overly restrictive rules in times of crisis and then blow them up when the market skies are clear.

It is encouraging that much of the financial world is not calling for an outright repeal of Dodd-Frank, but instead a thoughtful review of the seven-year rule writing process that has levied huge costs on the financial services industry. In "**Smart regulation**" (page 26) we talk to FIA President and CEO Walt Lukken, who recently reached out to the new Administration regarding regulatory reform. While industry professionals will always opt for less regulation, it is clear that the most harm comes from uncertainty, and the industry is just now beginning to get back its bearings. So, while there is a pretty lengthy list of changes they would like to see and relief to some of the more onerous rules recently passed, they don't want a repeal — they want certainty.

Prior to the credit crisis of 2008, there were the accounting scandals of the early 2000s, which led to the Sarbanes-Oxley Act of 2002. Many financial industry veterans have complained about the restrictions imposed by Sarbox, but nobody can honestly say that there was not a problem that needed to be addressed. And nobody in their right mind can say the "too big to fail" world of banking that led to the 2008 crisis did not need to be reined in. So, the goal now is to look at rules, see what is working, what isn't and what is placing too heavy a cost on markets without making them safer.

I was somewhat amused to read about the controversy regarding the Snapchat IPO. The founders have created something so special they expect investors — and not just any investors but the institutional investors who have the clout to participate in initial public offerings — to send them gobs of money without expecting anything in return (see "**The banana republic of Snapchat**," page 16). Everyone can insert their own participation trophy joke or anecdote about the millennial generation here. For those of you not following the Snapchat drama, the young founders — Evan Spiegel and Bobby Murphy — put forth an IPO plan in which shareholders will not hold any voting rights. The plan has not been received well. To some this smacks of spoiled rich millennials who don't understand that with investment comes accountability; to me the arrogance of Snapchat's founders is reminiscent of Enron when CEO Jeff Skilling reportedly yelled "shut up!" to unruly shareholders questioning the incomprehensible data in Enron's earnings material.

This is the type of attitude that — if left unchecked — can lead to bigger problems. ∆

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