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THE MORNING CALL

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BUYER BEWARE: IT'S BUSINESS AS USUAL ON WALL STREET

In the aftermath of the crash of 2008, America got a sickening lesson in the greed and dishonesty of Wall Street. At first the media were obsessed with Bernie Madoff's $65 billion swindle, but it soon became clear that things were going on daily at Wall Street's glamour investment houses that made Madoff's misdeeds look like child's play.

Firms devised complicated financial products with self-destruct timers, sold them to unsuspecting investors, then "shorted them" (bet against them) in their own accounts. Managers of the astonishingly profitable enterprises known as hedge funds enriched themselves via inside information. Bond underwriters built predatory terms into municipal bonds; one shady deal took down an entire Alabama county. Mortgage companies raked in billions by writing loans for unqualified buyers, then bundling those mortgages and reselling them. These deals imploded like the Ponzi schemes they were.

Particularly hard hit were the retirement accounts, which are heavily invested in stocks, bonds and mutual funds. Indeed, the crash of 2008 drained a fast $2 trillion out of 401(k)s and pension plans.

The regulators seemingly slept through all this. Even later, the fines meted out were mere pennies on the dollar. Only Madoff went to jail. However, the chief watchdog, the Securities and Exchange Commission, vowed to set things right. Members of Congress interrogated Wall Street's leaders, who promised reforms.

Today, the same pundits who sang the market's praises on the eve of disaster are at it again. The breathless coverage of each new Dow high suggests that it's perfectly "safe to go back in the water," to paraphrase Jaws.

So have things really changed? Are the big financial firms now a friend to the common man? Listen to what former Goldman Sachs executive Greg Smith had to say about Goldman's "toxic environment" in his public resignation in the New York Times in 2012: "Today, if you make enough money for the firm (and are not currently an ax murderer) you will be promoted into a position of influence."

In truth, it remains business as usual on Wall Street – which is bad news for the little guy.

Many things must change in order for small investors to get a fair shake on The Street. For starters, the SEC is both understaffed and underfunded, operating on an annual budget of $1.3 billion (less than the profits posted by Goldman alone in its most recent fiscal quarter). Thus the SEC can tackle only cases of headline-grabbing criminality; it has little time for the myriad finer points that stack the deck against the everyday investor.

For instance, there's the investment world's woeful lack of disclosure. Because of iffy enforcement of rules that were always toothless, few investors appreciate the true risks of their holdings. It's a little bit like buying grocery items that lack not only nutritional labels but also identifying labels of any kind.

The SEC must address this deficiency as part of a broader requirement that brokers observe a fiduciary standard: the absolute duty to put the client's needs first. Without such a rule, a broker has a natural incentive to put clients into vehicles that make the most money for him. Example: One of today's hottest investment products is the variable annuity. For certain investors it can be a suitable hedge against inflation. But variables are subject to severe loss of principal, and because a broker has no fiduciary duty, he can sell them to people who should be extremely wary – like aging boomers who are in no position to unretire to rebuild a smashed nest egg.

Market regulators also must tie fees to the broker's success at meeting his fiduciary duty. During the market's latest bull run, brokers have pocketed billions in fees. Fair enough. But when the market turns, those brokers will collect more billions on the way down. Why should advisers be racking up hefty fees while clients are losing their shirts?

The one piece of major legislation to come out of 2008, the Dodd-Frank Act, has been both stalled and watered down as regulators allowed Wall Street lobbyists to define its terms. Until such nonsense ends – and regulators begin punishing the bad guys with meaningful jail time – investors should use the same caution they'd use when swimming in waters where sharks are known to feed.

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