

## **Financial Reform Field Hearing**

### **“Bringing Accountability and Transparency to Wall Street”**

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Good morning, my name is James Michael Sysco and I am currently an Assistant Professor of Business Administration and a Business Ethicist Scholar at the McGowan School of Business at King’s College in Wilkes Barre, PA. Previously, I served as the Senior Deputy Attorney General for the Commonwealth of Pennsylvania in the Office of the Attorney General’s Bureau of Consumer Protection. In my experience, law and ethics are too essential to fail. Comprehensive laws and regulatory programs are fundamental for the development and maintenance of corporate cultures of ethics and excellence.

There are many examples of this. Justin Paperny, a recent guest lecturer at King’s College detailed how executives at UBS turned a blind eye to multiple trading irregularities. For his transgressions, UBS ultimately wrote a restitution check of \$6.7 million, not unlike the \$740 million they paid to the IRS for fostering tax evasion by their clients. Those payments were the cost of doing business” for UBS as they would be for many other banks and brokerages. This practice is unacceptable.

When I was supervising the investigation of predatory lending in the Pocono Region of Northeastern PA, I would attempt to mediate mortgage modifications with Countrywide, Washington Mutual, and IndyMac Banks. Their legal counsel could not satisfactorily explain the mortgage-backed securities they were trading in and would

often comment that they would be willing to modify the mortgage, but for the nature of the instrument. Their good sense was a prisoner of a system run amuck.

Until the recent changes in the credit card industry, scores of consumers would complain that, for a host of reasons, the APR on their outstanding balance would skyrocket from as low as 9.9% to as high as 29.99% (usury in some jurisdictions!). I myself had such an experience with Chase. When I attempted to negotiate a more favorable interest rate, they were uncooperative. I felt like a drowning man who was thrown a cinder block rather than a life preserver.

Is the industry capable of policing itself? In most cases, the industry is incapable of policing itself. There is a culture of “transactional minimalism”; in other words, they ask “what do I, the broker, or we, the corporation, need to do to ‘make the numbers’ and not violate the law.” This minimalist attitude ignores the transformational effect of an enterprise driven by ethics.

As author and scholar Jonathan Boatright notes, even complying with the law is not enough. The law cannot regulate everything. The law is slow to develop. Laws depend on critical ethical concepts. The law is often unsettled and the law is inefficient. We must have laws, sound laws and, sometimes, more laws. But so many corporations have repeatedly shown that they can neither police themselves nor comply with the law.

Banks and financial services companies must adopt a “Credo” not unlike that of Johnson and Johnson, which puts duty to the customer and other stakeholders ahead of that of the stockholders. And, most assuredly, ahead of their own self serving practices.

The situation in the Poconos from approximately 2000 to 2005 was a textbook example of a metaphorical town in need of a sheriff. Unqualified buyers, lax credit and

income standards, inflated appraisals, “sloppy” underwriting, and outright fraud and deception created financial collapse, social ills and personal tragedies for hundreds of families.

Events in the Poconos five to ten years ago are relevant now inasmuch as those events, and other similar phenomena throughout the country, contributed to the burst of the “housing bubble” and the onset of the “Great Recession”.

As we all know, the originating lenders did not “hold” the mortgages. They just packaged them as “securities” to be sold to investors. Once the originating lender was paid, they had no interest in addressing the issues of fraud and misrepresentation experienced by the new homeowners.

Although the Office of Attorney General was able to save about 100 homes from foreclosure, our greatest achievement was to convince the Commonwealth Court to employ the standard of statutory rather than common law fraud when evaluating cases such as those in the Poconos.

One need only review the host of news reports of the last 18 months to see how close we came to the precipice of economic disaster. Sadly, our economy came close to “critical mass” and meltdown because of a litany of ethical lapses, fraudulent and deceptive business and banking practices, and the culture of greed and self-aggrandizement that deluded so many.

We could reflect on financial crises from the days of Michael Milken, through the “Dot Com” bust, and the staggering scandals of Enron, WorldCom, Tyco et al. We thought *Sarbanes-Oxley* would solve the “problem”. It helped; but whether it is the nature of capitalism or the nature of our human condition, there will always be those

among us who seek to “beat the system” or create a “system” we have never seen and are ill prepared to police.

Yes, we must enact new laws and regulations to respond to new economic phenomena. Our real challenge, however, is to learn from our past mistakes and learn to do the “right thing”. Thank Senator.