

FSI Voice

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VOICE OF INDEPENDENT BROKER-DEALERS AND INDEPENDENT FINANCIAL ADVISORS



Reflecting on 2009, shaping 2010

Market turmoil, the year of the Ponzi, changing regulatory leadership, an activist Congress. RIP 2009. This year, says Dale Brown, president and CEO, the vision for Main Street America will drive FSI's advocacy efforts.

Q *What were your expectations about advocacy challenges in 2009—and how are they shaping the agenda for 2010?*


A We knew after the 2008 election that the environment was going to change. Any objective observer would say that with a Democratic administration and Democratic majority in both houses, there would be a more activist agenda related to government intervention and influence in the marketplace. Layer on top of that the late 2008 and early 2009 market turmoil, the push for major financial services regulatory reform as Congress' "answer" to the crisis, and the names Bernie Madoff and Allen Stanford. It was certainly an unprecedented year.

Early in 2009 we also learned that Mary Schapiro would leave FINRA and move to the SEC, so we were facing the unknown on FINRA leadership. Our advocacy strategy has always been to constructively engage with regulators and legislators because we're in this to have influence for the long haul. During our first five years, we focused extensively on cultivating a healthy working relationship with FINRA because of its role as our members' primary regulator.

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News Briefs:  New quarterly *Advisor Briefing* calls launched on January 20. The upcoming schedule for these calls, open to all FSI financial advisor members, is April 20, July 20, and October 20, all at 4:00pm ET. You can access and listen to the archive of the January 20 call on financialservices.org.  An updated

white paper on Information Security and Data Breach Notifications is now available on the Web site. The white paper contains a summary of state notification statutes related to customer non-public personal information.

 FSI financial advisor membership has grown to more than 13,700 members. For all the "Mpower" information you need, the financial advisor issue of this *FSIVoice* includes a special insert. This "pull-and-keep" resource explains all the exclusive members-only benefits for FSI financial advisor members. And look for the Mpower icon when our totally refreshed Web site goes live in early summer—it's your key to finding member benefits on the site.

FINRA has moved over the last six years from having fundamental questions—if not serious doubt—about our business model to having a much stronger understanding of not only the independent model but also how our goals and theirs align: We share a commitment to **protect, educate, and inform investors**. We have found FINRA's new chairman and CEO, Rick Ketchum, to be open, engaging, and ready and willing to build on the relationship we cultivated with Mary Schapiro. It's obvious to many in Washington that the independent model's "star" is rising—

they are as aware as we are of both advisors and clients moving from Wall Street firms and seeking something different.

Q *You reaffirmed FSI's vision, mission, and strategy last year. Why was that important?*

A After five years, the board felt it was important to not just assume that what got us to the five-year mark would serve FSI for the next five years. This review resulted in a clear and compelling vision: *that all individuals have access to competent*

and affordable financial advice, products, and services delivered by a growing network of independent financial advisors affiliated with independent financial services firms.

It's a very important guiding principle in a year in which we're likely to see dramatic regulatory reform. We want to make sure the focus is on "Main Street America"—our members' clients and potential clients. That's reflected in our 2010 advocacy priorities—we can't have a "growing network of independent financial advisors" without preserving



NEAL SULLIVAN, J.D.

"Credibility is everything"

Neal Sullivan on his role with FSI

"My goal is to reinforce with our regulators that they and FSI really do share a common goal, even though they approach it from different perspectives."



Neal Sullivan, J.D., is putting it mildly when he says he's seen an "interesting evolution of the regulation of retail broker-dealers" in his 20 years focusing on this area. Sullivan, a partner in the Washington office of Bingham McCutchen, is the co-chair of Bingham's financial services area and practice group leader of the firm's broker-dealer group. He regularly represents clients before the SEC, FINRA, and other self-regulatory organizations and state securities agencies. Prior to joining Bingham, he was the executive director of the North American Securities Administrators Association, vice president of regulation at the Boston Stock Exchange, and chief of the Massachusetts Securities Division.

Sullivan was engaged by FSI at its founding in 2004 to serve as outside policy counsel, advising FSI on regulatory developments and trends and how to best position FSI for advocacy on its regulatory priorities. According to Sullivan, FSI has done a "remarkable" job in six short years: "They correctly identified a void in terms

of advocacy for broker-dealers with the independent contractor model. But frankly, there's a long history in Washington of many people good at identifying and poor at implementing. FSI has really been focused and has been extremely effective at implementing in order to gain credibility."

As a former regulator, Sullivan learned that you have to be able to understand where the other "side" is coming from in order to work toward practical solutions. His "speed-dial" relationships with many current and former regulators go back many years; he deals almost daily with the enforcement divisions of FINRA, the SEC, and the states and talks with FINRA's general counsel several times a month. "There's a strong expectation of respect on both sides," Sullivan says. "We may be in conflict on our positions, but credibility is everything, whether I'm representing an individual client or discussing an FSI issue. This is not a short game."

the foundation of what makes this business model unique. Namely, the independent contractor status of financial advisors, which allows them to operate as entrepreneurial business owners advising clients free from the pressures often found in the employee model. In addition, a very important word in our vision statement is “affordable,” which facilitates access to advice—and it’s why preserving 12b-1 fees is an extremely high advocacy priority. These fees are critical to advisors continuing to serve middle-class clients.

We want to make sure the focus is on “Main Street America”—our members’ clients and potential clients. That’s reflected in our 2010 advocacy priorities—we can’t have a “growing network of independent financial advisors” without preserving the foundation of what makes this business model unique.

— Dale Brown, president and CEO

Q *In a year of uncertainty about what the final outcome of regulatory reform will be, what can members do to continue FSI momentum?*

A Two words: grassroots involvement. The members of any industry or profession whose heart is serving clients in their communities have to *personally* engage with their elected officials in advancing the industry’s agenda. We want our financial advisor members to include in their circle of relationships their representative

and senators. Who do you know? To whom have you given financial support? How can you and FSI take advantage of that relationship? If we have 200 FSI members in a representative’s district, we want to take advantage of that and cultivate existing relationships as well as leverage the critical mass of that representative’s constituents who are concerned about particular issues, *our* issues. That’s what grassroots advocacy is all about. It certainly brings to mind the late Tip O’Neill’s often-quoted statement that “all politics is local.” We urge all of our members to get “local and personal.” *Tell your and your clients’ stories.* There’s also the issue of enlightened self-interest—a strong component of professional responsibility is to be actively involved in the stewardship of your industry.

▶ *You can read more about FSI’s 2010 advocacy priorities at financialservices.org, in the Advocacy Action center.*

Sullivan knows the regulators’ hot buttons, priorities, and motivations, as well as those of independent broker-dealers. “The independent channel has really stepped up and expanded the quality of services to meet the expanding needs of middle-class Americans,” says Sullivan. “It sounds like a good sound bite, but it’s what they do very well. One of the things I’ve tried to reinforce with our regulators is that they and the broker-dealers really do share a common goal, even though they approach it from different perspectives. In general, regulators are smart people motivated by their love of public policy and are fulfilled by wearing what they see as the ‘white hat’—standing up for the little guy. FSI’s advocacy strategy has been effective because independent broker-dealers and their advisors do the same thing—they serve the people that, in many cases, the bigger institutions have left behind.”

Sullivan is deeply involved in the current regulatory reform debate, but notes that it has flip-flopped in the last six months—and the special election in Massachusetts has contributed more turmoil.

“It may very well be that because of all the time and energy on health care reform, along with a new Republican senator, regulatory reform may be more finely focused. The fiduciary-for-all issue may be a casualty. It’s a lot of hard work to define what a fiduciary is and legislators may now look for issues that more of them can generally agree on in order to get a bill passed.”

Regardless of the outcome, Sullivan believes that large investment banks and other financial institutions are playing defense in the reform debate. “The retail-focused broker-dealers have been quietly gathering assets from clients who feel that Wall Street hasn’t been serving them well.” And whatever the final legislation, it promises a period of intense adjustment. “We could see a two- to three-year tail of rulemaking, enforcement cases, and examination precedents and of firms adjusting and amending their policies and procedures. The devil is always in the details.”

Who are those guys?

In the past three years, they instituted 8,365 enforcement actions—administrative, civil, and criminal—ordered \$178 million in fines and penalties and \$1.8 billion to be returned to investors, and sentenced individuals to 2,764 years of incarceration.

“They” are state regulators and those statistics come from their trade organization, the North American Securities Administrators Association (NASAA). They want you to know them and they want you to know them before there’s a problem. Or, as Joe Borg puts it, “That’s not the best circumstance for our first meeting. Remember that we have the same goals as broker-dealers and financial advisors: that investors are protected and well-served.” Borg, the director of the Alabama Securities Division and two-time past president of NASAA, shares how state securities regulators work—and what they found in their most recent examination findings.

How state securities regulators are organized:

Most state regulators are under either the secretary of state’s office for their state or a combined state agency that oversees insurance and securities. In only a handful of states does securities regulation fall under the attorney general’s office. Some state securities regulators, such as in Alabama, are independent agencies. All state regulators have administrative authority and the majority have civil authority; only a very few have criminal authority.

Representatives from state agencies (as well as those from Canada, Mexico, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia) make up the membership of NASAA.

Who they’re examining and what they’re finding:

NASAA’s most recent 3-year aggregated results come from examining 228 broker-dealers; 15 percent were home office exams and 85 percent were branch office exams. The majority of deficiencies—49 percent—were in books and records, a “troubling” statistic, says Borg, since books and records are totally within the control of the firm and branch offices. The other deficiency categories are operations (6 percent), registration and licensing (7 percent), sales practices (16 percent), and supervision (22 percent). Within books and records, the majority of problems were in maintenance of customer new account information and advertising/sales literature. Borg says that by far the biggest issue that state regulators will examine in sales practices is suitability—general issues on customer suitability and, specifically, suitability of variable products and variable annuity 1035 exchanges. “If there’s not a robust compliance program examining 1035 exchanges, it can become a firm-wide pattern of practice,” says Borg.

About that three-year-old-and-still-shrink-wrapped policies and procedures manual: Written supervisory procedures (WSPs) are critically important—not following WSPs was the primary deficiency finding in supervision violations. “If you want a full-blown audit where your examiner is on-site for weeks, just give the examiner a copy of a manual that’s years old and still wrapped in cellophane. Or has another firm’s name on it. Or can’t be ‘found’ on the computer. Or you can’t prove that you hold regular training on policies and procedures. These often tell a state examiner that there likely are other problems in the firm or the branch office.” Notable is that 36 percent of deficiencies

in failure to follow supervisory procedures occurred in large branches or home offices.

Just ask. They’ll tell:

In Alabama and other states, says Borg, any firm can request a half-day program on what the state is reviewing. “We tell them what we’ve seen the previous year and what our ‘top 10 list’ for the current year is. Take advantage of it—and get to know us. We can help you. Neither one of us wants the unscrupulous or unethical advisors out there.”

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► *The material from the Web conference in which Borg participated, “State Securities Examination Findings,” is available at financialservices.org. For more on NASAA go to nasaa.org.*



Celebrating credibility, embracing change, leading authentically, tweeting compliantly—and a lot of other know-how

The Saints provided the big street party in New Orleans the last week of January, but the 500 attendees who gathered for OneVoice, the annual broker-dealer conference, had their own rallying cry: game on.



OneVoice attendees network before the opening general session. Attendance at this year's conference was up 10 percent from 2009.

Celebrating earned credibility

Fighting for 12b-1 fees, preserving the independent contractor status, and exerting meaningful influence on regulatory reform for the benefit of “Main Street America.” Those advocacy priorities are high-stakes propositions that require a credible voice in Washington. **Mari Buechner**, 2010 chair of the board, said during the OneVoice opening general session that a short six years ago “FSI who?” was the frequent response when talking to regulators. Today, they are seeking the views and perspective of FSI and its members, especially as the independent channel’s star continues to rise. Buechner noted that independent advisors now represent almost 43 percent of all advisors, a number that promises to increase during the next several years. Closer to home, FSI’s financial advisor membership has now grown to more than 13,700 members.

Dale Brown, CAE, president and CEO, affirmed FSI’s vision—and how it “lives” through FSI’s advocacy strategy. Notable: Supporting FSI’s strategy of robust involvement in FINRA governance are the 14 FSI members on FINRA’s 11 district and nominating committees, almost a fourth of the total. More than 100 FSI members held 110 meetings with members of Congress at the Advocacy Summit last September—more than 20 percent of Congress heard the role of the independent channel in the lives of middle-class investors. Brown also outlined FSI’s advocacy priorities for 2010, which you can find on the Web site at financialservices.org in the Advocacy Action Center. And then the regulators took center stage.

Too many solutions in search of problems

The opening general session of current and former regulators, moderated by

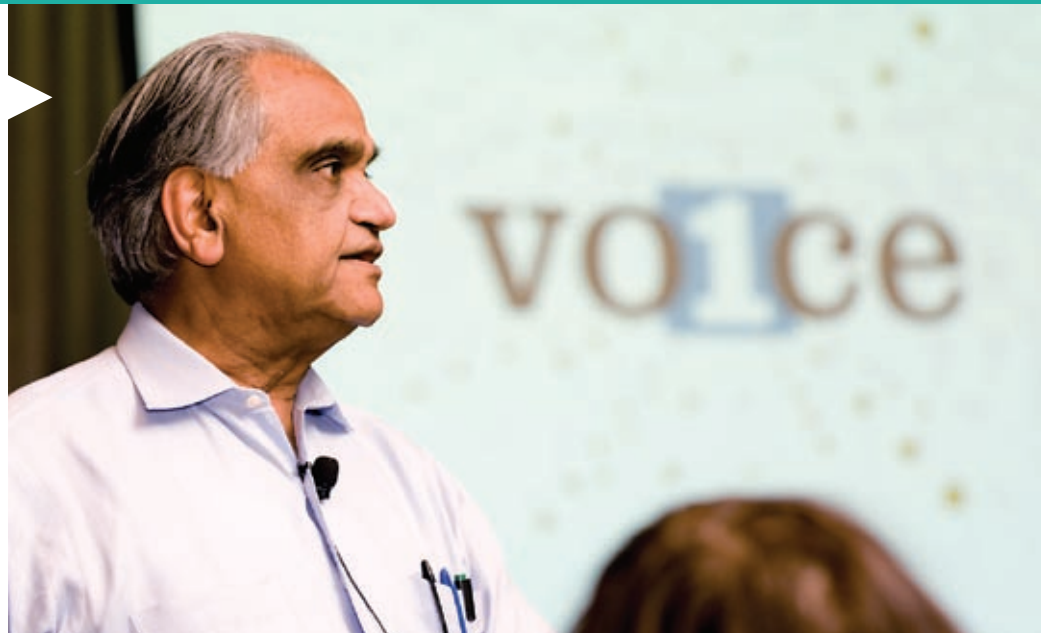
Neal Sullivan, J.D., FSI’s outside policy counsel, was a lively mix of opinion, perspective, and predictions. **Paul Atkins**, a former SEC commissioner, believes two things—the January election of a new Republican senator from Massachusetts and health care reform—will result in regulatory reform being sidelined until the Senate (“not good at multi-tasking”) can pass health care legislation and then get a grip on the most important, bipartisan features of a regulatory reform bill.

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Mari Buechner, 2010 chair of the board, and Bill Dwyer, 2010 vice chair. Read more about Mari and Bill at financialservices.org.

He is troubled by what he sees as the SEC's changing view of due process: "Subpoena power, for example, has been pushed lower and lower into the SEC's ranks and there is too much focus on criminal proceedings." Atkins firmly believes in limited government and the free market approach, while **Joe Borg**, commissioner of the Alabama Securities Division, cautioned "not to confuse smarter regulation with continued deregulation." State securities commissioners, the first to whom wronged investors turn, see the very unfortunate results of weak consumer protection. **David DeMuro**, J.D., an attorney with O'Melveny & Myers, former head of global compliance and regulation for Lehman Brothers, and a member of the FINRA board of governors for four years, believes that FINRA is "looking for a reason to be relevant and has made no secret of its interest in oversight of RIAs." As for whether a new fiduciary status will be required in any final reform bill, DeMuro emphasized the problem with any new standard: no case law to support it. *Listen to the entire regulatory panel discussion by downloading the audio at financialservices.org in the "Events" tab.*



Internationally known business advisor Ram Charan gave a keynote address on principles of leadership.

From visionary to leader: Ram Charan on those destined to "get there"

How many times, asked Charan, have you heard somebody say, "Boy, that CEO is a real visionary!?" Charan—coach to Fortune 100 CEOs, business advisor, and author of 11 books—regularly asks people to name the true attributes of leadership and generally hears more than 100 that people believe are necessary. But to get from visionary to leader, it takes only seven core principles, according to Charan.

Delegate it. The brain has enormous capacity to learn and adapt to new information. Leaders, however, can't learn something new and then get stuck doing it over and over. Ask yourself: What am I doing new today that could become routine tomorrow? Bonus: High-performing leaders create other high-performing leaders.

Put the right people in the right jobs. The most common reason CEOs fail is not their own weaknesses; it's that among their direct reports there are at least two people mismatched in their job. Define the non-negotiable criteria and match those with each person's gifts. "You will make people's lives more joyful if you learn, practice, and teach this."

Become more agile. For the last decade, many CEOs have become particularly adept at cutting costs. Now it's time to focus on growing revenue. And that's not the only spectrum in which flexibility and agility are needed: Demographics are undergoing a huge shift. "What will older, in some cases *much* older, consumers mean for your company's product or service? How are you adapting?"



The exhibit hall is a popular place for networking and visiting sponsors.

Focus on priorities. Leaders must have only three to five very clear priorities for the organization and communicate those priorities with passion. “Vision aligns people emotionally,” said Charan.

Collaborate, collaborate, collaborate. First, build a great team. Second, make sure they understand that individuals

on a team often must make trade-offs for the good of the team. Be relentless on collaboration.

Perceive and execute change. There are people whose jobs are to “break the frame” and create change every day. Leaders must develop a solid methodology for perceiving and executing change in their companies. One way to do that is to...

Take the seven-minute reading challenge. Read two columns on the front page of *The Wall Street Journal* every day and ask yourself: “What change do I detect—any change, anywhere—and who will be hurt by it and who will benefit from it?” The seven-minute reading technique will condition you to see, understand, and execute change. ♣



The opening general session, moderated by Neal Sullivan, J.D. (far left), featured a panel of current and former regulators, with a lively mix of opinion, perspective, and predictions.

Who said...what?

“Why should the independent channel brand itself with consumers? Think about this parallel: the high-recognition marketing message ‘A Diamond is Forever’ from DeBeers. But no consumer has ever bought a diamond directly from DeBeers.”

—from the education session **“This Is Our Time: Branding the Independent Channel”**

“Broker-dealers have abdicated custody of independent registered reps’ advisory assets to major custodians. You need to regroup and consider four questions if you want to continue to compete in the future: Does your brokerage know what its optimal or ideal adviser looks like? Who are your competitors for that optimal adviser? What are your firm’s capabilities for competing in the marketplace? What is your broker-dealer’s definition of success?”

—from the education session **“Points of View: Competitive Strategies for Serving RIAs”**



Tom Pappas of FINRA and Karalyn Carlton of Pacific West Securities in a panel discussion on social media.



Mark Tibergien, CEO of Pershing Advisor Solutions, presented a session on competitive strategies for serving RIAs.

“Social media is all about pull marketing and relationship marketing... pulling your customers into community. Today, people are more trusting of other people, rather than the mass media, for getting the information they want. It’s very much about your brand: you are what you tweet! As far as compliance and supervision, there are new guidelines but we’re almost figuring this out as we go.”

—from the education session **“Yes, You Do Need To Know About Social Media!”**

▶ All educational sessions are available for download at financialservices.org.

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ONE GOOD TWEET DESERVES ANOTHER



We're on **Twitter!** Dale Brown, president and CEO, is now tweeting, straight from the heart of Washington. Follow him: **@FSIDaleBrown**. And if you're on Twitter, we'd like to know so Brown

can follow you. Brown is following and tweeting about his "on the scene" advocacy activities, on what—and who—you need to keep up with in Washington, regulatory reform, policy and legislation that affect our industry, the economy

and the markets, leadership, and other topics. Be sure also to join us on **LinkedIn** and **Facebook**. Read more about our expanding use of social media in the April issue of *Inside FSI*, in your e-mail inbox on April 1.



Social media

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