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SHOULD MADOFF MEAN MORE REGULATION?

By GREGORY F. HOLD and JEFFREY HAAS

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YES: Much more regulation of hedge funds is needed - and fast.

Midsized broker-dealers like my company, Hold Brothers, for example, with 1,200 traders but less than $20 million in customer funds, gets swarmed like fire ants by regulators - and rightfully so - but a hedge fund or an investment advisory firm like Madoff's, with tens of billions of dollars in investor funds, has almost no regulatory requirements.

Hedge funds and investment advisers should be under the auspices of an additional set of regulators, like FINRA, and be licensed.

As it stands now, you can be a felon and open a hedge fund, whereas broker-dealers like those I employ have to pass exams and undergo background/criminal record checks.

Brokers-dealers must submit financial reports to the SEC every month and have minimum amounts of their own money as a cushion - or they are shut down immediately.

Having a similar regulation in place may have been enough to blow Madoff's cover and stop his fraud much earlier - thus saving thousands of investors the heartbreak and financial ruin brought about by this apparent fraud.

Even if you are a professional investor, what you agree to with the investment adviser and hedge fund, regarding strategy, can change with market conditions and the hedge fund's degree of desperation.

Even a professional won't be allowed to send in auditors to keep up with what the hedge fund is doing lately. Too much trust is involved; we should have regulators monitor these funds.

In summary, investment advisers should be regulated like broker-dealers. They should be examined annually, by multiple regulators, like FINRA and the NYSE, have licenses and be limited in their investments.

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NO: The last thing we need in the wake of Bernie Madoff's alleged scheme is more regulation.

Financial markets today are global and passing additional and more cumbersome regulation could force businesses - and the taxes and fees they pay - overseas.

Already, many market watchers argue that the adoption of Sarbanes-Oxley is forcing private companies to either postpone going public or switch their listing to an overseas stock exchange. When that happens, the US financial system is weakened.

The UK, with its "light touch" regulation, is already wooing companies.

New and supplementary regulation - especially unnecessary or duplicative regulation - makes a country that adopts it less competitive in the global financial marketplace. While concern clearly and rightfully should be balanced on the need to protect investors, we should focus our legislative energies with surgical precision on problems that are not adequately covered by existing laws and regulations.

What Madoff has allegedly done - commit criminal fraud among a slew of other criminal and civil violations - is clearly already illegal.

We have a litany of laws and regulations already on the books designed to police the conduct in which Madoff and his firm engaged.

What has occurred is simply a catastrophic failure to proactively enforce the laws and regulations that are already on the books. For example, how is it possible for an asset management firm that oversaw around $50 billion in investors' dollars to be audited by a three-person accounting firm operating in a storefront next to a pediatrician's office? In addition, how is it possible to earn a 12 percent annual return year after year after year? This latter red flag was clearly visible to both current and prospective Madoff investors.

(Indeed, my employer New York Law School, which lost some of its endowment in the fiasco, is currently suing a Madoff feeder fund on a variety of grounds).

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