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The Real Impact of the JOBS Act

Back in June 2012, I published a piece outlining why the JOBS Act may have very little significance to the hedge fund industry. At the time, many industry commentators were already ushering in a marketing heyday for alternative investments and some envisioned a fundamental change in the way funds are marketed to investors, while I saw the landscape in a rather different light. I received more feedback from this article than any other I have written, split fairly evenly between two camps: “you’re exactly right” and “you’re out of your mind”.

Regardless of which side of the fence you find yourself on, there can be no doubt that the legislation has the potential to be a game-changer. The long-term influence of the JOBS Act on the industry, by definition, remains to be seen and to be sure some investment managers have already begun to utilize the looser advertising standards to promote their brand. As the mutualization of the industry takes further shape, specifically through the increased use of structures like “40 Act” funds, direct marketing could become more prevalent.

That said, from even a cursory glance, we can already see the real impact of the JOBS Act. More than ever, hedge fund managers are willing to speak publicly about their approaches to investing, right down to the specific positions that they are holding and, indeed, promoting.

Who remembers the infamous (and highly amusing) showdown between Carl Icahn and Bill Ackman on CNBC? The more appropriate question may be who could forget such a clash of the titans, which arguably was the best televised moment in the history of the industry. We all recall that the battle was over the appropriate direction of Herbalife shares, at least that’s where it started before it got personal. However, let’s stop and give some thought to the situation itself: two billionaire money managers, in front of untold numbers of international viewers, debating an equity position in their portfolio.

Dan Loeb and George Soros eventually waded into the fray, taking their own long positions in Herbalife and speaking out regarding their thoughts on the business and its direction. As each man lobbed canon fire across various mediums for the better part of 2013, we couldn’t get enough of it; heck, even Vanity Fair featured the showdown in an article titled “The Big Short War”. Oh yes, a war it certainly was.

Does such a debate occur without the passage of the JOBS Act? Perhaps yes; after all, it’s not the first time such a confrontation has occurred. That said, such fights usually do not happen so publicly. They usually do not feature this degree of open sharing concerning not just portfolio holdings, but personal feelings and long-held grudges. Again, this situation is not necessarily without precedent, but the scale of it is.

Another obvious example of where the lines have blurred, if they have not been outright erased already, is on social media such as Twitter. One cannot even count the number of hedge fund managers who are regularly tweeting about all sorts of items, including their holdings. Returning to Carl Icahn, it seems like many of his positions these days get revealed not through SEC filings or the rumour-mill, but rather through tweets from the man himself. And while he is one of the more active Twitter users amongst money managers, he is most certainly not alone. After all, you know it has gone mainstream when @WarrenBuffett joins in the mix.

Twitter, just like CNBC, is an interesting and relatively new place for hedge fund managers to congregate (and not just because Twitter itself is relatively new). It is an extremely public forum, restricted only by the amount of information that can be conveyed through the number of characters in a tweet, and is subject to instant and widespread feedback by anyone with a Twitter account. These are personal statements made by real people with enormous amounts of money on the line; any mistakes that are made are widely broadcast and instantly known.

In thinking about this though, it actually makes perfect sense. Hedge funds themselves, after all, are service businesses and their brands rise and fall based on the individuals running the funds. Very few money managers can lay claim to a brand that outweighs their portfolio managers. If one needs proof of this fact, pull up a list of well-known fund managers, which would include some of the names already mentioned in this article plus others such as David Einhorn, Ken Griffin, David Tepper, Paul Singer, John Arnold, and more. Now, name the funds that these gentlemen manage. Gender stereotyping aside, the man is the brand.

This is the basis for the real and most immediate impact of the JOBS Act: we are not witnessing the promotion of funds, but rather the promotion of fund managers. More than ever before, in far greater numbers, money managers are willing to engage with the public through traditional and new media to espouse their investment ideas. The JOBS Act has given these investment managers the freedom to do so without having to worry to the same degree about saying the wrong thing and thus running afoul with the regulators.

As time goes by, we'll have to see if this trend evolves into something bigger, dies down, or simply levels out as status quo. But beyond the pure distraction of watching egos collide, such public commentary offers a rare insight into what has historically been a rather opaque process. The general population is now receiving information on how the biggest names in money management analyze companies and, quite often, receiving a detailed analysis to go with it.

And if that part doesn't appeal to you, at least it is darn entertaining.