

The Street, The Bull and The Crisis:

A Survey of the US & UK Financial Services Industry

Presented by
The University of Notre Dame
and Labaton Sucharow LLP

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From the Authors

In the aftermath of the financial crisis, as we struggled to understand the key drivers of the fallout, our work—albeit in very different trenches—brought us together. As sweeping financial reforms honed in on the wounded market, we turned our focus from the industry to the individual, to better understand the character of, and on, Wall Street.

In this report, we present the findings of our collaborative study—the most detailed and expansive of its kind—to measure workplace ethics in the financial services industry. We surveyed more than 1200 professionals working in the United States and the United Kingdom. Respondents represented a broad spectrum of the industry, from young professionals to senior executives, investment bankers and investment managers, from San Francisco to Scotland.

Our findings are particularly compelling when compared to data from Labaton Sucharow's 2012 benchmark study, **Wall Street, Fleet Street and Main Street: Integrity at a Crossroads**. In the three years since that report, regulations have taken hold in both the US and UK, and authorities have successfully investigated and levied record fines against numerous global banking giants. Various indicia of market health suggest that investors' faith in the markets has somewhat returned. Against this backdrop, we wonder if that faith is rightly placed. Has the industry truly reformed or has the public grown complacent? Has enforcement deterred wrongdoing or are perpetrators finding new ways to evade the law? Are we just as, or perhaps even more, vulnerable to another financial disaster? What does the future hold?

The answers are not pretty. Despite the headline-making consequences of corporate misconduct, our survey reveals that attitudes toward corruption within the industry have not changed for the better. To be sure, there are some encouraging statistics such as increased faith in law enforcement and in colleagues. Nevertheless, there is no way to overlook the marked decline in ethics and the enormous dangers we face as a result, especially when considering the views of the most junior professionals in the business. **Most concerning, is the proliferation of secrecy policies and agreements that attempt to silence reports of wrongdoing and obstruct an individual's fundamental right to freely engage with her government.**

We hope this report will serve as a useful tool for those who wish to understand and remedy the current state of ethics within the industry. As an educator and an advocate, we each believe it is imperative to tackle the issue from all sides. Greed and corruption are not endemic to financial services nor are they critical to its success. Allowing the status quo to persist is an open invitation to the next, perhaps more devastating, financial crisis.



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Key Findings

State of Play: Unethical Behavior Continues to Persist

Nearly seven years after the global financial crisis rocked investors' confidence in the markets and financial services in general, our survey clearly shows that a culture of integrity has failed to take hold. Numerous individuals continue to believe that engaging in illegal or unethical activity is part and parcel of succeeding in this highly competitive field. With legal and regulatory sanctions coming out on almost a daily basis, the industry has a long way to go to regain the confidence of the public.

- 47% of respondents find it likely that their competitors have engaged in unethical or illegal activity in order to gain an edge in the market. This represents a spike from the 39% who reported as such when surveyed in 2012. **This figure jumps to 51% for individuals earning \$500,000 or more per year.**
- More than one-third (34%) of those earning \$500,000 or more annually have witnessed or have first hand knowledge of wrongdoing in the workplace.
- 23% of respondents believe it is likely that fellow employees have engaged in illegal or unethical activity in order to gain an edge, **nearly double the 12% that reported as such in 2012.**
- 25% would likely use non-public information to make a guaranteed \$10 million if there was no chance of getting arrested for insider trading. Employees with less than 10 years' experience are more than two times as likely as those with over 20 years' experience, reporting 32% and 14% respectively.
- In the UK, 32% of individuals said they would likely engage in insider trading to earn \$10 million if there was no chance of getting arrested, compared to 24% of respondents from the US.
- Nearly one in five respondents feel financial services professionals must at least sometimes engage in illegal or unethical activity to be successful.
- 27% of those surveyed disagree that the financial services industry puts the best interests of clients first. This figure rises to 38% for those earning \$500,000 or more per year.
- Nearly one-third of respondents (32%) believe compensation structures or bonus plans in place at their company could incentivize employees to compromise ethics or violate the law.
- 33% of financial services professionals feel the industry hasn't changed for the better since the financial crisis.

Whistleblowing: Hope and Challenges

There is hope. The marked increase in whistleblower activity along with the strengthening of internal compliance procedures serve as a powerful deterrent to wrongdoers. Still, an alarming number of people report being subject to corporate policies and confidentiality agreements that they believe prevent them from reporting wrongdoing to outside authorities. These troubling policies and agreements can silence the reporting of *all* local, state, and federal violations. We applaud recent efforts by Congress and the SEC to address these questionable secrecy policies and agreements.

- While the majority of industry professionals (89%) would report misconduct given the incentives and protections such as those offered by the SEC whistleblower program, 37% of respondents are still not aware of the SEC's program.
- 25% of respondents earning \$500,000 or more annually have signed or been asked to sign a confidentiality agreement that would prohibit reporting illegal or unethical activities to the authorities.
- 28% of respondents earning \$500,000 or more per year (16% for all employees) say their company's confidentiality policies and procedures bar the reporting of potential illegal or unethical activities directly to law enforcement or regulatory authorities. In the UK, this rises to 21% for all employees.
- 19% of respondents find it likely that their employer would retaliate if they were to report wrongdoing in the workplace. This jumps to 24% for respondents from the UK.

The Professional in Crisis

We uncovered some of our most astounding results when we examined the ethos of the financial services professional, and the key influencers of bad behavior. Despite three years of significant reforms and high-profile prosecutions since Labaton Sucharow's 2012 survey, this year, many figures are unchanged and many more have changed for the worse. Our evidence reveals a large number of individuals in the midst of—and losing—an ethical battle of the highest order.

When looking at their own companies, 23% of all respondents believe it is likely that fellow employees have engaged in illegal or unethical activity in order to gain an advantage over competitors or others at the company, **nearly double the 12% that reported as such in 2012.**

- This rises to 28% for respondents in the UK, *a full 6 points higher than the US.*
- With no small amount of dismay, we note that individuals with the fewest years in the industry have the least confidence in their colleagues' ethical conduct. Nearly one out of every four respondents with less than 10 years, compared to one out of five respondents with more than 21 years, indicate that they believe it is likely that colleagues have made ethical or illegal compromises in order to get ahead.

What would you do if no one was watching? This year, we again ask individuals how likely they would be to utilize nonpublic information to make a quick \$10 million if there was no chance of being arrested for insider trading. **Consistent with prior years,** 25% admit they would likely do so.

- We are particularly dismayed by the ethical standards of the most junior employees in the industry. Looking at the total sample, 32% of employees with less than a decade in the financial services industry said they would likely engage in insider trading to make \$10 million if there was no chance of being arrested. This compares to 14% of employees with more than 21 years in the industry.

◦ Respondents from the UK are either more willing to commit a crime they could get away with, or are more frank about it. A full 32% of individuals from the UK say they would likely engage in insider trading to make \$10 million if there was no chance of being arrested, compared to 24% of respondents from the US.

- Testing the total sample, there is a 5-point spread, with 27% of males saying they would likely engage in insider trading to make \$10 million if there was no chance of being arrested, against 22% of females. In the UK, the gender spread is even more remarkable; 34% of male respondents say they would engage in this insider trading scenario, compared to 23% of females.

Nearly one third of employees with less than two decades in the industry say they would likely engage in insider trading to make \$10 million if there was no chance of being arrested. That's more than two times the figure for employees with more than two decades in the financial services sector.

With the effects of the financial crisis still in our midst, it is shocking that nearly one-third of those surveyed (32%) believe there are compensation structures/bonus plans at their company that could incentivize employees to compromise ethical standards or violate the law.

Not surprisingly, when we ask a more pointed question—*have you ever felt pressure at your company to compromise ethical standards or violate the law*—only 10% of all respondents admit to feeling such pressure.

- There is a 6-point spread based on geography, with 14% of respondents from the UK affirming such pressure, compared to 8% of their US counterparts.
- Most disconcerting is the evidence that individuals at the top face more ethical dilemmas. 23% of those earning \$500,000 or more per year report experiencing pressure to compromise, compared with 9% of those earning less than \$50,000 year.

The sliver of good news is a modest decline in the witnessing of misconduct: 22% of respondents have personally observed or have first-hand knowledge of wrongdoing in the workplace, down from 26% in 2012.

- Our data indicates a correlation between income level and the likelihood of witnessing misconduct. More than one-third (34%) of those earning \$500,000 or more annually have witnessed or have first-hand knowledge of wrongdoing in the workplace, compared to 21% of those earning less than \$50,000 per annum.
- Years in the industry factors similarly into the calculus. 29% of individuals with more than 21 years in the industry say they have witnessed or have first-hand knowledge of wrongdoing, compared to 18% of those with less than a decade in the business.
- While the number of individuals who say they have observed or have first-hand knowledge of wrongdoing in the workplace did not change for US respondents since our prior survey, individuals in the UK reveal a decline—dropping to 25% this year from 30% in 2012.

*A change coming?
In April 2015, the SEC
announced a landmark
enforcement action
against KBR, Inc., a
Texas-based technology
and engineering
firm, for using
restrictive language
in confidentiality
agreements that could
stifle whistleblowers.*

An Industry on the Edge

We recognize that respondents may sometimes be unwilling to reckon with and divulge personal truths—especially negative ones—and it is probable that respondents' views about their own companies are understated. Therefore, we believe respondents' views of their competitors may represent the most accurate snapshot of industry reality. So we are alarmed to report that nearly half (47%) of all respondents find it likely that their competitors have engaged in illegal or unethical activity in order to gain an edge in the market. This represents a spike from 39% in 2012. This figure jumps to 51% for individuals earning \$500,000 or more per year.

Customer focused? With trillions of dollars in customer assets under management, 27% of those surveyed disagree that the financial services industry puts the best interests of clients first.

- This figure rises to 38% for those earning \$500,000 or more per year.
- Remarkably, in the UK, professionals with fewer than 10 years in the industry are the least confident in a client-first culture. Indeed, 42% disagree that clients come first in the industry.

Despite numerous reform efforts and severe fines levied against industry Goliaths, one-third of those surveyed do not believe the financial services industry has changed for the better since the financial crisis.

- We detect a significant variation based on gender. Across the total sample, 35% of males, compared to 28% of females, do not feel the industry has changed for the better.
- Across the sample, we find the highest degree of skepticism among high wage earners, with 38% of those making \$500,000 or more per year feeling the industry has not changed for the better.

To what extent, in the current environment, do industry professionals have to engage in illegal or unethical activity in order to be successful? Nearly one in five respondents—19%—feel misconduct is part of the recipe for success, nearly double the 11% who remarked as such in 2012.

33% of financial services professionals do not feel the industry has changed for the better since the financial crisis and 27% disagree that the financial services industry puts the interests of clients first.

The Employers, The Enforcers: Are Safeguards Working?

Given the tremendous responsibility shouldered by the financial services professional, employers *should* take every step to foster a culture of integrity. To the contrary, our findings reveal an alarming tendency on the part of industry employers to construct an 'omerta culture,' characterized by policies that demand silence and complicity. Even more egregious, is the growing preponderance of explicit, and often targeted, confidentiality agreements crafted in large part to deter specific employees from reporting wrongdoing to the appropriate authorities.

One in 10 respondents has signed or been asked to sign a confidentiality agreement that would prohibit reporting illegal or unethical activities to the authorities.

- This figure surges to 25% for those respondents earning \$500,000 or more annually.

- Surprisingly, more junior employees report being issued these gag orders than the most senior statesmen, with 13% of those with fewer than 10 years in the industry, compared to 7% of those with more than 21 years.

- Respondents from the UK note a higher exposure to gag orders, at 14%, a full five points higher than US respondents.

As troubling as formal agreements that silence employee reporting is the cultivation of a culture where policies and procedures enforce the same code of silence.

- 16% of those surveyed report their company's confidentiality policies and procedures prohibit the reporting of potential illegal or unethical activities directly to law enforcement or regulatory authorities.

- In the UK, this figure surges to 21%, a full six points higher than US respondents.

- 28% of respondents earning \$500,000 or more per year say their company's confidentiality policies and procedures bar the reporting of potential illegal or unethical activities directly to law enforcement or regulatory authorities.

What is the 'tone from the top'? We ask if respondents believe company leaders would ignore suspicions that a top performer was earning large profits from insider trading. A disheartening 15% feel it is likely that leaders would look the other way.

- This rises to 21% for respondents earning \$500,000 or more per year.

- Respondents from the UK have slightly less faith in company leaders, with 18% believing it is likely that leaders would ignore a profitable problem.

Taking the examination a step deeper, we ask respondents a slightly different question: If company leaders learned a top performer had engaged in insider trading, how likely or unlikely is it that leadership would report the matter to the law enforcement or regulatory authorities?

- An astonishing 17% of all respondents find it unlikely that company leaders would report misconduct to law enforcement.

- Respondents with more years in the industry have more confidence in the brass; 13% feel that leaders would be unlikely to report the misconduct, as compared to 19% of those with fewer than 10 years in the industry.

- This question stands as one of a few with a notable gender disparity; 20% of females find it unlikely that company leaders would report the crime, against 16% of males.

Employers simply cannot stand in the way of an individual's unwaivable right to report possible violations of law to the government.

Given the proportion of respondents who feel that leaders are inclined to 'look the other way' when a top performer engages in wrongdoing, how might leaders handle those who report misconduct?

- 19% find it likely that their employer would retaliate if they were to report wrongdoing in the workplace.
- This figure jumps to 24% of respondents from the UK.
- Tenure appears to factor into fear of retaliation with 21% of respondents working less than 10 years fearing retaliation as opposed to only 13% of respondents with over 20 years in the industry.

One in five females in the financial services industry doubt that company leaders would report a top performer's insider trading to the authorities.

Despite the role of corporate malfeasance in bringing on the financial crisis, our survey suggests that more corporate reform is necessary. Against the backdrop of a culture that effectively ignores—and perhaps even encourages—misconduct, enforcement may be the only way to create meaningful change and safeguard against another crisis.

- 39% of respondents think law enforcement and regulatory authorities in their country are ineffective in detecting, investigating and prosecuting securities violations.
- This rises to 46% for professionals earning \$500,000 or more per year.
- We note a 5-point spread when looking at gender, with 41% of males finding the authorities to be ineffective, compared to 36% of females.

With perception of authorities' efficacy in the balance, we ask if respondents would report misconduct in their workplace if they could do so anonymously, with protection from retaliation, and if they had the potential to receive a monetary award.

Affirming the core components of the SEC whistleblower program— anonymity, employment protections and the potential for a monetary award—89% of industry professionals say they would report misconduct, a figure that has remained consistent since the 2012 survey of the industry.

- Respondents in the US are more inclined to report misconduct with these protections and incentives at 90% versus 83% of those in the UK.

Some of the doubt regarding the government's ability to affect change may be the result of limited knowledge of the SEC whistleblower program and its successes. Astonishingly, while the lion's share of industry professionals would report misconduct given the incentives and protections such as those offered by the SEC whistleblower program, 37% of respondents are still unaware of the agency's program.

- This is a significant improvement over the 2012 survey, when 56% of the sample was unfamiliar with the program. However, more industry and public worldwide education is warranted. Any investment in this area is likely to yield a substantial increase in high-quality tips and assistance.

- While there is greater awareness among US respondents—63% are aware of the SEC program, against 56% of UK professionals—due to the significant law enforcement potential of the program, the SEC should attempt to raise awareness through a more sophisticated and robust education campaign.

Conclusion

In examining our results, we return to the same question: Are we destined for another financial crisis? Given the troubling attitudes toward corruption in the financial services industry, we fear that the industry has not learned its lesson. Our concerns are further exacerbated by new evidence of employers actively seeking to suppress employee truth-telling through the widespread use of restrictive, and often illegal, confidentiality agreements.

Without an aggressive plan to stamp out misconduct, we are simply sitting and waiting for another financial disaster to strike. We needn't be so powerless. We can formulate and initiate such a recovery plan, but it must start with an implicit partnership between employees and employers to speak up about possible wrongdoing in the workplace.

The SEC Whistleblower Program is a powerful investor protection tool that is quietly revolutionizing the way securities laws are enforced. However, this tool cannot be fully utilized without empowered individuals. Both the government and corporate leadership must educate employees of their right *and their responsibility* to report misconduct, internally or externally, whenever and wherever it occurs.

We also must encourage an honest dialogue among the industry's most junior employees who are demonstrating a surprising and disturbing cynicism regarding corporate ethics. Educating a generation of young professionals—early and often—on the importance of ethics, transparency and honesty is crucial if we wish to affect real change in the industry and avert another, perhaps more destructive, financial crisis.

“SEC rules prohibit employers from taking measures through confidentiality, employment, severance, or other type of agreements that may silence potential whistleblowers before they can reach out to the SEC. We will vigorously enforce this provision.”

Andrew J. Ceresney, Director of the SEC's Division of Enforcement

Methodology

This report presents the findings of 1223 participants who were surveyed using an email-based online panel. Respondents were employed in the financial services/banking industry in the US (925) and UK (298), worked more than 35 hours per week, were employed at firms with 10 employees or more and were employed as account executives, financial/investment/wealth advisors, financial analysts, investment bankers, branch/operations management, and portfolio managers. This survey was conducted December 22, 2014 – January 23, 2015.

In this report, we occasionally make comparisons with figures in the 2012 survey. In those cases, we have made the appropriate adjustments for differences in question structure, including a varying number of answer options.

The majority of UK respondents were from England, but the survey included professionals from Northern Ireland, Scotland and Wales. Within the US, respondents were generally well distributed among the four census bureau divisions of Northeast, Midwest, South, and West.

About Us

The **University of Notre Dame** provides a distinctive voice in higher education that is at once rigorously intellectual, unapologetically moral in orientation, and firmly embracing of a service ethos. Founded in 1842 by a priest of the Congregation of Holy Cross, Notre Dame is an independent, national Catholic research university located adjacent to the city of South Bend, Indiana. The University is home to **The Mendoza College of Business**, which, as evident by its motto “Ask More of Business,” fosters academic excellence, professional effectiveness and personal accountability in a context that strives to be faithful to the ideals of community, human development and individual integrity.

For more than 50 years, **Labaton Sucharow** has been one of the country’s premier law firms comprehensively representing businesses, institutional investors and consumers in complex securities and business litigation. It was the first law firm in the country to establish a practice exclusively focused on protecting and advocating for whistleblowers who report possible securities violations to the SEC. The Whistleblower Representation Practice leverages a world-class in-house team of investigators, financial analysts and forensic accountants with federal and state law enforcement experience to provide unparalleled representation for whistleblowers. Labaton Sucharow is consistently among the top plaintiff litigation firms based upon its rankings in *Chambers & Partners*, *The Legal 500*, *The National Law Journal’s Plaintiffs’ Hot List* and *Benchmark Litigation*. More information about the firm and its Whistleblower Representation Practice is available at www.labaton.com.

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