

Professional Insights

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Interview with Emily Gordy



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Emily Gordy

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How and why did you pursue a career in law?

My father was a tax lawyer for multinational corporations, so I was exposed to the legal profession very early, and I knew that I wanted to be a lawyer before I was 10 years old. I loved the issues, and in many ways viewed the law like solving a puzzle, and I continue to find it very interesting.

My first position out of law school was with the Department of Labor, where I wrote appellate opinions for its Benefits Review Board. It was a great first job since it involved a lot of writing and applying the law to facts in preparing draft decisions. That said, it was not where I ultimately wanted to be. The Securities and Exchange Commission is always a difficult place to break into, because a lot of people want to work there. Although I didn't have a significant amount of securities experience when I applied, I was in the right place at the right time.

What prompted your move from the SEC to the NASD (FINRA)? How did their cultures differ?

When I moved to NASD (now FINRA), I had been at the SEC for 13 years, and really loved it there. I had spent 2 years in the Office of the General Counsel in the broker-dealer counseling group, and then moved over to Enforcement, where I helped regional enforcement offices

to get their cases authorized by the Commission. Over the years, I had been promoted to positions of increasing responsibility at the SEC, but ultimately felt as though I had learned as much as I was going to learn there. When the NASD reached out to me with a policy position in their examinations group, it was an opportunity for me to grow in a different direction, and it was the right job for me at that time.

The SEC and SROs are similar in that they are both securities regulators with missions to protect investors and the markets. But the SEC is the federal government. FINRA, as a self-regulator and a member organization, is closer to member firms. With FINRA, there were more opportunities to try to assist firms in their ongoing compliance efforts.

At that time, the SEC did not have as many pro-active compliance assistance programs as they do now. Also, being in Enforcement, I was in a division focused on sanctioning firms and individuals. It felt more heavy-handed than what I experienced when I joined the self-regulator. But at the SRO, at that time, there was an opportunity and desire within the organization to identify gaps in understanding by the firms regarding what the requirements were, and how to implement them properly. So you could really jump in with both feet and try to help firms to comply, as opposed to acting as the scary regulator.

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Do you have an opinion on the current environments at FINRA and the SEC?

Under Robert Cook's leadership and the organizational effort behind FINRA 360, they're working to, among other things, enhance their regulatory efforts, with the goal of being a more effective and efficient regulator. A key part of that effort is finding ways to foster member firms' compliance. Most firms want to comply. There will always be a handful of bad firms that don't care what the rules are or are actively circumventing the rules, and FINRA and the SEC are identifying those firms and taking appropriate actions. Both organizations are also now striving to work with firms to identify ways to help through education programs – both for investors and the firms – to assist in compliance and supervision, so that firms understand their obligations and have the tools to comply.

Was it a difficult for you to transition from public service to private practice?

Many people work at the SEC or an SRO for no more than 5 years before joining the private sector, or conversely, they will stay there for their entire career. My career path has been different, in that I served as a regulator for both the SEC and FINRA for long periods of time, and also worked as inside counsel at a large broker-dealer, prior to entering private legal practice.

I think of securities regulation as a four-legged stool that consists of the federal government, the SROs, state agencies,

and the private sector's internal compliance programs. All four legs are critically important, and they share a similar mandate: to ensure investor protection and market integrity. Largely for that reason, I welcomed the opportunity to transition to private practice. As a former federal regulator who had also worked closely with state agencies, and having been directly involved in addressing the internal challenges of compliance, it has been a natural progression for me to take on a role as outside legal counsel to advise firms and individuals on compliance issues.

In that capacity, I help clients to identify and remedy problems or gaps they may have in their supervisory and compliance programs. When there's an issue, I can help them determine what happened, how it occurred, what can be learned, and how to ensure it does not happen again. My outside perspective also enables clients to navigate a regulatory examination or enforcement process, and not to over-react in those circumstances. The opportunity to apply the regulatory insights I've gained over the course of my career continues to be professionally rewarding for me.

Have you seen a pattern in the way that firms respond when there's a regulatory problem?

The regulatory requirements surrounding the broker-dealer and investment adviser businesses are complicated. There will always be situations where regulatory requirements are misunderstood or misinterpreted, newly issued guidance is missed, or programs are not updated

to meet new requirements or changes in business models that create new obligations.

When a firm discovers a problem, its natural inclination is to deal with the issue quickly – to fire the rogue broker immediately and to remediate any harm to customers – in order to mitigate or avoid financial, legal, regulatory and reputational risks. Unfortunately, sometimes this approach doesn't address a deeper analysis of root causes or may not identify the full scope of the problem.

Many firms, for example, will fail to examine a rogue broker's entire book of business, to look at other brokers in the branch, or seek to determine whether there is condition at the branch office that facilitated the problem. In all cases, a rigorous examination of problems is good business for the firm, its customers and its reputation. Additionally, adopting a more comprehensive and proactive response will be viewed positively by the regulators.

Having worked "all sides" of compliance, are you ever surprised by new situations?

There are "hair on fire" surprises that occur every once in a while. Those often involve situations where regulatory requirements are very clear, but somewhere along the line it was misunderstood, or applied in the wrong way. In those instances, unless the misapplication gets caught and remedied early, and it continues for a long period of time, there are going to be unpleasant surprises.

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Is any of your current work outside the scope of securities industry compliance?

My current work predominantly involves securities-related compliance issues, with some exceptions. Chief among them is my focus on Anti-Money Laundering (AML) and Sanctions compliance. I played a significant role in developing the program at NASD after the PATRIOT Act was adopted, which required that broker-dealers implement Anti-Money Laundering programs. As the new regulations were adopted requiring customer identification programs and suspicious activity reporting procedures, we needed to develop guidance and examination and enforcement protocols.

Additionally, many firms need guidance on Office of Foreign Assets Control (OFAC) sanctions compliance. Because of my experience, I'm often asked to assist in these areas, not only for financial firms that are required to comply with AML and OFAC regulations, but also for firms outside of financial services. In some circumstances, firms will voluntarily adopt AML programs because they may be owned or affiliated with financial firms required to have AML programs, or they may do business with financial firms. In those situations, having the compliance procedures in place provides comfort for their clients and counterparties. It is good for business.

Which of your many industry recognitions is most meaningful for you?

At the NASD, I received the Susan Lewis Award for Collaboration and Shared

Commitment in 2005, which was particularly meaningful to me for a few reasons. Most importantly, Susan Lewis was a colleague who had passed away too early in life. She was well known for her commitment to the NASD and for her collaboration with her colleagues. She was highly respected there. I was the first individual to receive that award, and it validated my long-held belief that teamwork and collaboration are essential elements for success within any organization.

What's ONE best practice in compliance for firms to follow?

When a firm identifies a problem – by internal surveillance or supervision, or through an outside party – it's important for the firm to be proactive in investigating the cause and scope of the issue, in addressing procedures and system deficiencies as soon as possible, and in remediating customers if they have been harmed. They should also consider self-reporting to the regulator. Being proactive and thorough in addressing a problem is hugely important with regulators. Although the firm may not entirely avoid enforcement action, it can certainly mitigate the impact.

In fact, from my own experience as a regulator and in my private sector roles, I have seen situations where the SEC, FINRA and state agencies have reduced sanctions, and on rare occasions, have brought no enforcement action against a self-reporting firm that proactively addressed and remediated the issues. My best practice advice for firms is to address problems head on, and to show good faith by communicating with regulators, because their honesty and transparency will most likely be rewarded.

Have you seen any significant changes in the securities industry?

The most significant industry trend has involved the shift of professionals, firms and assets from traditional brokerage over to the advisory space. While this may make a lot of sense for some types of investors, for many small, buy-and-hold investors, a fee-based advisory account could end up costing them more than a traditional brokerage relationship. Discussions regarding fiduciary standards and harmonizing standards of care are worthwhile, but moving everything over to an advisory model would not be beneficial to all investors. It's important for the industry to provide investors with a clear choice that's based on their situation and needs.

There are negative perceptions of the industry. Based on my experience, however, I believe that most firms treat their customers fairly; so I do have a positive view of the industry and remain extremely optimistic regarding its future. Although it has a complicated regulatory structure – with huge rule books, and with requirements that can be burdensome – those safeguards are in place to help maintain the integrity and public faith in the capital markets system. All segments of the industry need to continue to work together to ensure that regulation is not inconsistent or duplicative.

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Is there an individual who has served as a source of inspiration?

My dad was certainly an early inspiration for me, in terms of my career path. There have also been a number of women I've had the good fortune to work with, who served as role models, and who provided me with the perspective and tools necessary for success. These individuals – including Joan McKown, Colleen Mahoney and Commissioner Aulana Peters – are incredibly smart and articulate, and they possessed a

sense of mission that was inspirational for me. I also had the honor of working with Mary Shapiro, when she first joined the SEC as a Commissioner. Mary had come from a commodities regulatory background, which although there were similar regulatory issues, there were different requirements she needed to learn. It was amazing to watch the way she listened, asked smart questions and quickly gained an understanding of the key issues on her pathway to ultimately being an incredibly effective Commissioner and leading the agency.

Any insights into your personal life?

Mostly, my passions are work and family, and I've not yet found the proper work / life balance. I'm married and have twin sons, and being their mom has been a huge part of my life. In terms of hobbies, I like to read, and love anything to do with water, whether it's the ocean, a lake or stream. In fact, I'm trying to figure out how to integrate kayaking into my life as a leisure time activity.

Emily Gordy Biography

Emily Gordy advises clients on the complexities inherent in the securities regulatory environment. Drawing on her wealth of experience as a regulator, she handles a wide range of compliance and enforcement issues affecting broker-dealers, investment advisers, investment companies, and municipal securities dealers. Emily has extensive Anti-Money Laundering (AML) experience, as well as other regulatory areas, including supervision, suitability, disclosure, books and records, municipal securities and public finance, and statutory disqualification. Emily is also well-versed in the examination and enforcement practices and policies of the financial services regulators.

Prior to joining McGuireWoods, Emily served as Deputy General Counsel, Executive Vice President for one of the largest retail investment advisory firms and independent broker-dealers. She also worked as a financial industry regulator, having served in a variety of senior management positions within Enforcement and Member Regulation, Financial Industry Regulatory Authority, Inc. (FINRA), including serving as Deputy of Enforcement. Additionally, she served as Deputy Chief Counsel of the Division of Enforcement at the Securities and Exchange Commission.

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