

Index

TRADING STRATEGIES

Day of the Week Phenomenon	6
Why Momentum Trading Works In Crypto	8

PRACTICE MANAGEMENT

SEC Keeps Raising the Stakes For Text Messaging Recordkeeping Failures	10
Junk Science, Junk Analysis!	12

NAAIM NEWS

President's Letter	1
Uncommon Knowledge 2024 Heads for Orlando, Florida	1
Featured Uncommon Knowledge 2024 Speakers	2
Uncommon Knowledge 2024 Agenda	4
Welcome 2024 UK Sponsors	5
Join the NAAIM Exchange	5
NAAIM Founders Award Competition-Call for Papers	5
Put NAAIM Confidential on Your Schedule	7
Join NAAIM on Social Media	7
Welcome New Members	9

President's Letter



Ryan Redfern

2024 IS OFF TO A FAST START for NAAIM and for our member firms. After a good year for investing in 2023 (with a great finish in the fourth quarter), financial markets are now facing a lot of uncertainty. From the Middle East and Ukraine to the upcoming US elections in November, from saber rattling from China and North Korea to inflation unknowns, 2024 promises to be an interesting year. And that means it's a good time to be an active manager.

We have a lot underway at NAAIM. The agenda is coming together for the NAAIM Uncommon Knowledge conference, which will be April 28-May 1, in Florida at the Rosen Shingle Creek Orlando. The preliminary agenda can be found on page 4. Uncommon Knowledge (UK) is a great way to catch up with members you know and meet more active managers who can change the way you think.

UK traditionally gets an early start on Sunday with the NAAIM Golf Classic, evening Welcome Reception and afternoon Solo Advisors Meeting. I will be hosting the Solo Advisors meeting again this year and I look forward to welcoming both new and veteran attendees! While the name says "solo," the meeting is open to all members. Our typical attendee started out "solo" but is growing and looking for ideas on creating greater efficiency, better marketing and smarter ways of doing business. It's one of the best parts of Uncommon Knowledge for my firm and why I am delighted to host the meeting once again.

Once again, the agenda committee has put together an outstanding lineup of speakers. Topics this year range from technical analysis, opportunities for active management, zero-dated options, and data mining, to regulatory compliance, marketing, cybersecurity and more. The 2024 NAAIM Founders Award winner will be introduced, sponsor breakout sessions are back again, as well as roundtable discussions and all your favorite parts of a NAAIM conference.

A new NAAIM website, taking shape under the leadership of board member Jacob Deschenes, will be presented – something we're all eager to see. And if that doesn't excite you, know this: Corn Hole will be back with vengeance.

Our hotel is a great site for the meeting. In addition to an 18-hole, par 72 championship golf course (the site of Sunday's NAAIM Golf Classic), the Rosen Shingle Creek offers a full-service spa, 15 dining/lounging options, four outdoor swimming pools, and two lit tennis courts. I hope you take some time out to enjoy this great setting!

NAAIM conferences can change your business for the better. One of my takeaways from the 2023 NAAIM Outlook

continued on page 11

The views and opinions of the authors are not necessarily those of NAAIM, its officers or Board of Directors.



Experience three unforgettable, information-filled days of presentations, panel discussions, networking exchanges and more at Uncommon Knowledge 2024.

It all takes place at the Rosen Shingle Creek Orlando, with opening activities on Sunday, April 28 followed by three days of conference sessions through Wednesday, May 1. Registration and hotel reservations are open.

Make your plans now to attend the only conference specifically designed to meet the needs of active investment managers who believe in risk management and adapting portfolios to changing market environments.

see more on page 2



6732 W. Coal Mine Ave., #446
Littleton, CO 80123
888-261-0787
info@naaim.org
www.naaim.org



Featured Uncommon Knowledge 2024 Speakers



Dean Christians, CMT
Senior Research Analyst,
SentimenTrader.com

TOPIC: Data Mining

A self-confessed market junky, Dean Christians has extensive experience as a coder, indicator, and system designer who has independently coded hundreds

of custom models including the one-of-a-kind Tactical Composite Trend Model (TCTM). His research is based on identifying and testing signals that can identify changes and trends in the financial markets. Dean puts his coding skills to work as a research analyst by building models that integrate existing data to project possible outcomes for the markets.

Dean's past work includes over 20 years of experience as a trader with an institutional money management firm. His ability to reliably analyze the market in his previous role and for current subscribers depends on an approach that prioritizes data and quantitative research.



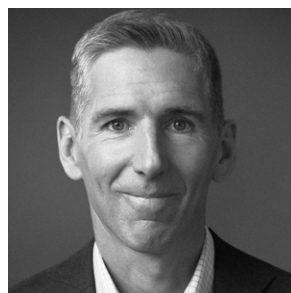
Charles Stucke
Adjunct Lecturer, Washington
University in St. Louis
Chief Investment Officer,
SIMCO

TOPIC: 2025 and 2030 -- Today's Opportunities for Active Management

"In our quest for uncommon knowledge, we'll hold the market's feet to the fire to make it confess a few potentially interesting opportunities for active management today. We may smash an idol or two along the way. And we'll use fictions to inform our views of reality. Let the betting begin," says Charles Stucke, CFA.

Charles serves on the faculty of the Olin Business School at Washington University in St. Louis, as the Chief Investment Officer of Subtext, and is a co-founder and the Chief Investment Officer of Subtext Investment Management Company (SIMCO). Previously, Charles served as the Chief Executive Officer of Lepercq de Neuville Asset Management, the Chief Investment Officer and Co-Head of Guggenheim Investment Advisors, and Executive Director of Morgan Stanley Alternative Investment Partners. He currently serves on the Boards of Trustees of Webster University and The Wilson School.

He holds degrees from the Washington University School of Law in St. Louis, Columbia University in New York, and the University of Missouri in Columbia.



Matt Hougan
Chief Investment Officer,
Bitwise Asset Management

TOPIC: Crypto is the Future

Matt Hougan's version of Crypto 101 includes Regulation/market updates, Crypto Valuations and how to position crypto in a portfolio, as well as information on

the Spot Bitcoin ETF launch.

Matt is one of the world's leading experts on crypto, ETFs, and financial technology. He was previously CEO of ETF.com and Inside ETFs, where he helped build the world's first ETF data and analytics system, the leading ETF media site, and the world's largest ETF conference. He is co-author of two publications from the CFA Institute Research Foundation: "A Comprehensive Guide to Exchange-Traded Funds" and "Cryptoassets: The Guide to Bitcoin, Blockchain and Cryptocurrencies for Professional Investors."



James McQuiggan
Security Awareness Advocate,
KnowBe4

TOPIC: The ABC's of Cyber Security Awareness

"The next evolution in security awareness is the behaviors of users and the need to increase the security culture within each

organization," maintains James McQuiggan. According to the 2023 Verizon data breach report, over 80% of the data breaches were related to people, mainly due to phishing attacks. By educating people and making them aware, they can be the most vital asset and, in turn, become the human firewall for an organization.

Security Awareness Training programs are crucial to reducing the organization's risk of an attack. What does it take to operate and maintain these programs successfully? James explains what it takes to have a robust security awareness and training program for all employees from the front desk to the boardroom, incorporating the ABCs, Awareness, Behaviors, and Culture.

James McQuiggan is a Security Awareness Advocate for KnowBe4. Prior to joining KnowBe4, James worked for

continued next page



Featured Uncommon Knowledge 2024 Speakers

Siemens for 18 years where he was responsible for various roles, including Product & Solution Security Officer for Siemens Gamesa Renewable Energy. In addition to his work at Siemens, McQuiggan is also a part-time faculty professor at Valencia College in the Engineering, Computer Programming & Technology Division.



Anthony Lombardi
Managing Director, Layton Road Group

TOPIC: Big Picture of Institutional Marketing

Learn success points for working with fund manager presentations from a 20+ year investor in alternatives. Anthony Lombardi

is a Managing Director at Layton Road Group where he works with institutional investors and family offices globally, connecting them with alternative investment managers on the Layton Road platform.

Tony previously worked at Aon where he was an Associate Partner and led the emerging manager managed account platform there with responsibility for operations, sales, counterparty risk management, and relationship management. Prior to Aon, Tony worked in the hedge fund managed account space for Wilshire Associates, HedgeMark and Man Investments in NYC, London and Zurich; as well as in Prime Brokerage relationship management at Bear Stearns. Tony graduated from the University of Chicago with a BA in Linguistics; holds a Masters in Strategic Intelligence and a Masters in International Relations from American Military University as well as an LLM from Thomas Jefferson School of Law. Prior to attending college, he spent six years in the US Army Special Forces. He is a frequent panelist and moderator at industry events and has guest lectured at the De Paul and USC business schools on hedge funds, risk management and operational due diligence.



Thomas D. Giachetti
*Chair of the Investment Management & Securities Practice Group
Stark & Stark Attorneys at Law*

TOPIC: How to Navigate a Regulatory Exam and Avoid/Address Client Complaints in an Ever-Increasing

Aggressive Regulatory Environment

Thomas Giachetti will discuss the ever-increasing regulatory environment, and how advisers, with diligent compliance

efforts, appropriate disclosures, and the use of practice protection measures, can successfully complete a regulatory exam and avoid/address client complaints.

A former investment banker and NASD registered representative, Tom's legal practice is devoted to investment-related matters, including the representation of investment advisers, financial planners, broker-dealers, public and private investment companies (e.g., mutual funds, hedge funds, etc.), CPA firms and registered representatives throughout the United States. He also advises claimants and respondents in securities regulatory, arbitration and litigation matters. The Investment Management & Securities Practice Group of Stark & Stark represents investment advisers, financial planners, broker-dealers, CPA firms, registered representatives, public and private investment companies (e.g., mutual funds, hedge funds, etc.), and investors throughout the United States.



Ann Brennan
Owner, ASMM Digital Marketing

TOPIC: How To Use ChatGPT To Create A Strategic Marketing Plan

Think marketing is too "touchy-feely" or AI too complex? Think again. Ann Brennan breaks it

down in this easy-to-digest presentation. You don't need a background in marketing or tech to walk away with real, actionable steps. Discover the top marketing mistake to avoid, learn how to uncover your customers' pain points, and create a clear, strategic marketing plan using ChatGPT. It's straightforward, effective, and jargon-free. Get ready to transform your approach with Ann Brennan's expert guidance.

Ann is the owner of ASMM Digital Marketing, a full-service agency known for its innovative approach to marketing. With over five years of hands-on experience in integrating AI into marketing strategies, Ann has positioned ASMM at the forefront of the industry, helping businesses amplify their digital presence and achieve remarkable growth. In addition to leading her successful agency, she is a trailblazer in AI education and advocacy. Ann is the creator of She Knows AI, an initiative dedicated to demystifying artificial intelligence and making it accessible to a wider audience. Her passion for knowledge sharing extends to the airwaves as the host of the No Bullshit Marketing Podcast, where she delivers actionable insights and advice to entrepreneurs and business leaders. Her forthcoming book, "No Bullshit Guide to Marketing," is eagerly anticipated for its straight-talking, jargon-free approach and practical strategies.

AGENDA

Uncommon Knowledge 2024

Sunday, April 28

4:00 – 6:00 PM
10:00 AM
7:00 PM

Solo Advisor Meeting – Ryan Redfern
Golf Tournament – Rosen Shingle Creek Golf Course (tee-off 11:30 AM)
NAAIM Welcome Party

Monday, April 29

7:00 – 8:30 AM
7:30 – 8:30 AM
7:30 AM
8:30 AM
8:45 – 9:45 AM

9:45 – 10:45 AM

10:45 – 11:15 AM
11:15– 12:15 PM

12:00– 1:15 PM
1:15 – 2:15 PM

2:15– 3:15 PM

3:15 – 3:45 PM
3:45 – 4:45 PM
5:00 – 5:30 PM
5:30 – 9:00 PM

NAAIM Board Meeting
New Member Welcome Orientation & Breakfast
Registration | Sponsor Hall Opens – Continental Breakfast
Welcome – Ryan Redfern, NAAIM President
2025 and 2030 -- Today's Opportunities for Active Management - Charles Stucke, Washington University in St. Louis, MO
How to Use ChatGPT to Create A Strategic Marketing Plan - Ann Brennan, Consultant, ASMM
Digital Marketing – AI Marketing
Refreshment Break – Sponsor Hall
Spotting Stock Market Peaks through the Lens of Market Breadth Indicators - Dean Christians, CMT, Senior Research Analyst, SentimenTrader.com
Lunch and Sponsor Introductions
How to Navigate a Regulatory Exam and Avoid/Address Client Complaints in an Ever-Increasing Aggressive Regulatory Environment - Thomas Giachetti, Esq., Stark & Stark Attorneys at Law
The ABC's of Cyber Security Awareness - James McQuiggan, Security Awareness Advocate, knowbe4.com
Refreshment Break – Sponsor Hall
TBA
Break before evening event
Platinum Sponsor Event - TBA

Tuesday, April 30

7:30 – 8:30 AM
8:30 - 9:30 AM
9:30 – 10:30 AM

10:30– 11:00 AM
11:00– 12:00 PM

12:00– 1:15 PM
1:15 – 2:15 PM

2:15 – 3:15 PM
3:15 – 4:00 PM

4:00 – 4:30 PM
4:30 – 5:45 PM

6:00 – 8:00 PM

Continental Breakfast – Sponsor Hall
Crypto 101 - Matt Hougan, Chief Investment Officer, Bitwise Asset Management
Abrupt - Speaking to Institutional Investors - Tony Lombardi, Managing Director, Layton Road Group, LLC
Refreshment Break – Sponsor Hall
Zero Dated Options: What they are and how to use them to analyze the stock market – Larry McMillan, Founder, McMillan Analysis Corp.
Lunch
The Million Dollar Blueprint: A Proven Method to Growing a 7-Figure Firm – Adam Koos, President, Libertas Wealth Management
TBA
Gold Sponsor Breakouts (concurrent sessions)
a. **RexShares**
b. **Efficient Expression of Risk, the High Yield Opportunity** - MassMutual Wealth Management
Refreshment Break – Sponsor Hall
NAAIM Round Tables (Two 35-minute segments). Topics to include: Traditional Marketing; Digital Marketing; Quantitative Trading; Financial Planning; and Practice Management & Custodians
NAAIM All Conference Event – Sponsor Hall

Wednesday, May 1

7:30 – 8:30 AM
8:30 - 9:30 AM
9:30 – 10:30 AM
10:30 – 11:00 AM
11:00 – 12:00 PM
1:00 PM

Continental Breakfast – Sponsor Hall
Founders Award Winner Paper Presentation: TBA
Member Panel – Financial Planning
Refreshment Break – Sponsor Hall
TBA
Conference Ends



Welcome, Uncommon Knowledge 2024 Sponsors

PLATINUM

GUGGENHEIM

Direxion
ETFs | Funds

GOLD

MICROSECTORS
by REXSHARES

MassMutual
Investments

Join the NAAIM Exchange Thursday, February 29

NAAIM EXCHANGE IS AN INFORMAL CONFERENCE call gathering of NAAIM members to share charts, investing ideas and much more. Our next phone gathering will be Thursday, February 29th at 4:15 p.m. Eastern. We will start with sharing our favorite charts, but per the usual, the discussion may morph to other topics such as the current market, what's new with your business, etc. This is an informal gathering - open mic - free to attend.

Login on the NAAIM Info Hub to register to receive a call LINK. And, as a reminder, this is open to members only. We will try to end in an hour, but sometimes the discussion is so GREAT ... we go a little later! As a reminder...you are welcome to hop on the call any time after 4:15 pm ET, and if you have to leave early it isn't a problem!

NAAIM Founders Award Competition - Call for Papers

NAAIM IS SEEKING ENTRIES TO ITS 15TH NAAIM Founders Award white paper competition, open to anyone involved in financial services including academic faculty, researchers and graduate students, investment advisors, analysts, and other financial professionals.

Papers need to focus on describing an investment technique, its pros and cons and the market conditions under which it is expected to fare well or poorly or should explore topics in active investing that are of broad interest to the investment community.

The winning author will receive a \$5,000 cash prize and the opportunity to present the winning paper at the 2024 NAAIM Uncommon Knowledge conference, April 28 – May 1, at the Rosen Shingle Creek Orlando in Orlando, Florida. Registration to Uncommon Knowledge, domestic coach airfare and one-night lodging for one author of the winning paper is included.

The FINAL PAPER (up to 30 pages) together with a required 750-1000 word abstract must be submitted electronically to info@naaim.org by 11:59 pm Eastern Standard Time on Monday, March 25. Winners will be notified on or before April 15, 2024.

Rules are available on the NAAIM website at <https://www.naaim.org/programs/naaim-founders-award-2024/>

Day of the Week Phenomenon

ADAM QUIRING

AT Q3TACTICAL, WE SPEND A LOT OF TIME RESEARCHING AND studying historical market tendencies. One recent study that a number of advisors have found particularly interesting is the tendency for:

1. Markets to “mean revert”
2. Mondays to underperform the rest of the week.

You might be surprised just how prevalent this phenomenon has been over the last 124 years.

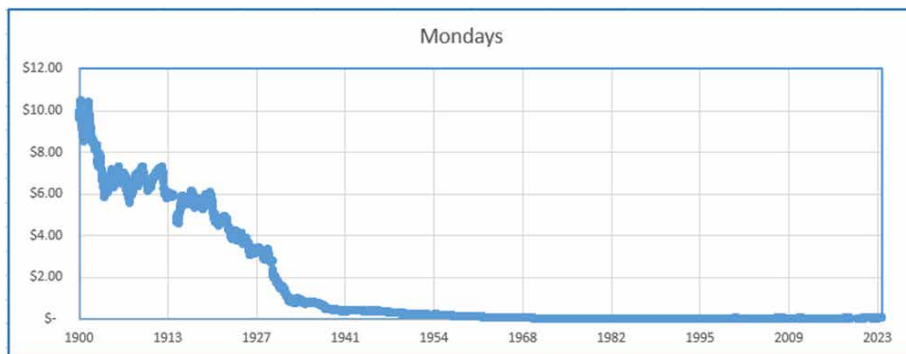
Study: Day of Week Phenomenon

Investment Vehicle: Dow Jones Industrial Average (DJIA)

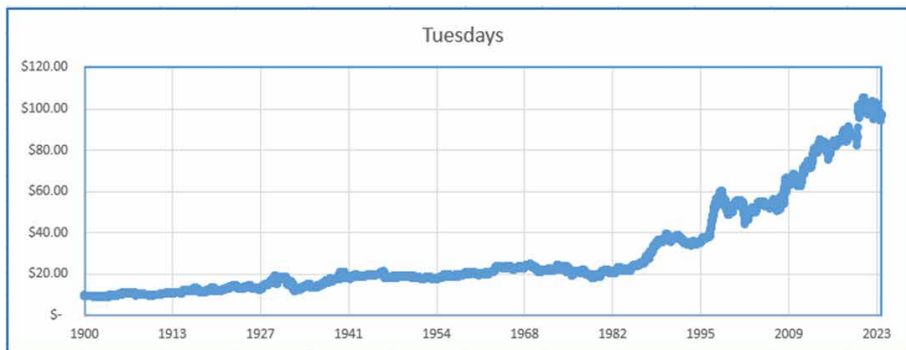
Time Period: 1/1/1900 – 11/30/2023

Here are a few takeaways:

- If you had only invested on Mondays, not only would you have lost money, but a \$100,000 investment in 1900 would only be worth \$771 today. A loss of 99.2%.



- “Turnaround Tuesday” is a real thing – where Monday’s pullback is followed by a rally the remainder of the week.



- If you had only invested on Fridays, a \$100,000 investment would be worth \$5,556,157. A gain of 5,456%. Fridays are historically the strongest day of the week.
- There were nine consecutive decades of Mondays being the worst day of the week to invest in stocks. Some might argue that investor “mood” contributes to buy / sell habits.

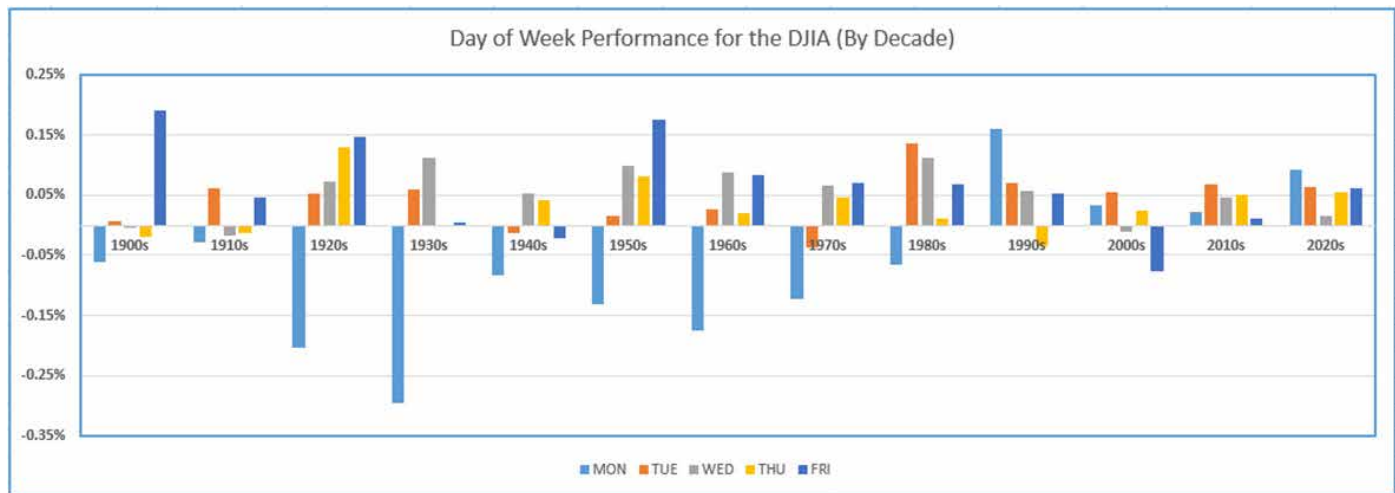
Value of \$100,000 on 11/30/2023	
Monday	\$771
Tuesday	\$1,419,448
Wednesday	\$3,355,519
Thursday	\$540,581
Friday	\$5,556,157

- Interestingly, there was a dramatic shift starting in the 1990’s where Mondays were no longer the “worst day” to be in the market. In fact, in the 1990’s Mondays were the best day of the week to be invested. Markets change. Or perhaps “irrational exuberance” played a role.
- One possible reason for weakness on Mondays can be attributed to the dissemination of news. Over the weekend, there’s a lot of time for “negative” news to be released. In turn, investors will then “over-react” on Monday.

continued next page

Day of the Week Phenomenon

CONTINUED



- While the consistency of the “Monday Effect” has waned over the years, there are still meaningful takeaways from the study. Those include:
 - Over the long term, the stock market has a bias to go up (no-duh).
 - An investment strategy that looks to “go long” on pullbacks makes sense.
 - Q3’s Bull Cipher strategy does exactly that. When the market dips and reverts too far from its mean, a compelling buying opportunity presents itself.
 - In other words, when investors overreact -> buy the dip.

If you’d like to learn more about our Bull Cipher strategy, don’t hesitate to reach out.

Adam Quiring is a Principal Partner with Q3 Asset Management. The firm manages over \$700 million for financial professionals that are focused on mitigating downside volatility. Adam began his career on the floor of the Chicago Board Options Exchange, where he worked for a proprietary trading group specializing in equity options. <https://www.q3tactical.com/>

Put NAAIM Confidential on Your Schedule

NAAIM CONFIDENTIAL LIVESTREAMS EVERY Friday afternoon at 4:30 p.m EST on the NAAIM YouTube Channel. The 30-minute weekly program interviews NAAIM members and how they manage clients as well as the active manager’s views on the market for the past week, how their firm makes trading decisions and the outlook for the upcoming week. Programs are recorded and available for playback on the NAAIM YouTube Channel if you can’t make the live stream. Follow youtube.com/@naaimofficial

Join NAAIM on Social Media

YouTube

<https://www.youtube.com/@naaimofficial>

X

https://twitter.com/NAAIM_Official
@NAAIM_Official | Twitter

LinkedIn

<https://www.linkedin.com/company/naaim>

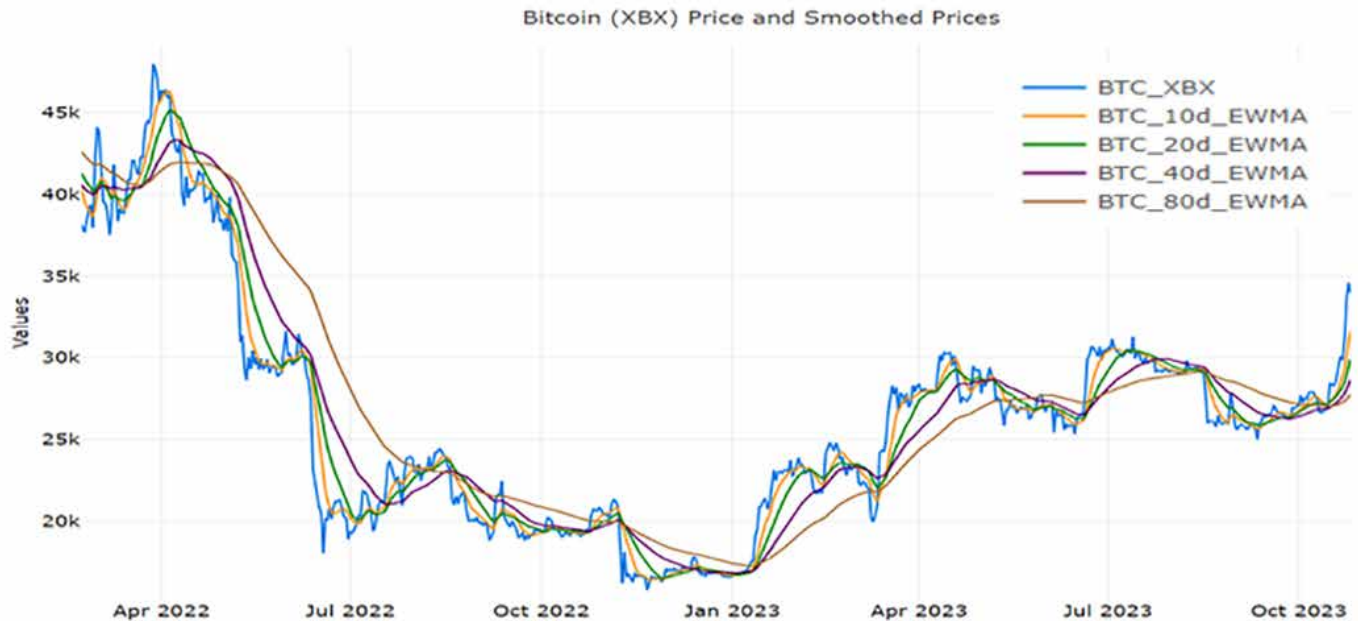
Facebook

<https://www.facebook.com/naaiminfo>

Why Momentum Trading Works In Crypto

TODD GROTH

Crypto markets have specific characteristics that align with a strategy of riding momentum in price movements.



CRYPTOCURRENCY MARKETS HAVE EMERGED as a highly dynamic, global financial market offering unparalleled opportunities for both active traders and investors alike. With the introduction of the CoinDesk Trend Indicator suite of signals, the company hopes to assist crypto investors in identifying new opportunities and managing risk in this emergent and volatile asset class.

In this post, we'll delve into the reasons why price trends exist and tend to persist in digital asset markets.

Why Does Momentum Trading Work Well in Cryptocurrency Markets?

While it is difficult to determine the exact rationale why a specific market price can exhibit persistent price changes and trending phenomena, there are a few that come to mind when considering the cryptocurrency market:

- **Limited Attention of Investors**

One of the key reasons momentum trading thrives in cryptocurrency markets is the constant availability of trading opportunities. Unlike traditional stock markets that have set trading hours, cryptocurrency markets are open 24/7, 365 days a year. This continuous trading environment means investors may miss important developments, and their portfolios and trading activities may lag to market news headlines or price changes.

On top of the human limitations of trading a market that never closes, many participants within the crypto markets are non-professional retail investors, who have a

lot of other daily responsibilities besides crypto markets and news flow. The net effect of these constraints on attention to the market creates opportunities for rules-based momentum traders to capitalize on the delayed reactions of market participants.

- **Mechanical Feedback Trading**

Leveraged trading and stop-loss orders often lead to mechanical feedback trading in cryptocurrency markets. When prices move in a sustained direction, stop-loss orders can be triggered and leveraged traders can be forced out of their losing positions, which adds to marginal buys or sells in the direction of the price move. This technical phenomenon can support and reinforce trending behavior, making momentum trading strategies particularly effective.

- **Network Effects**

Cryptocurrencies, especially bitcoin, ether and native blockchain tokens, are supported and driven by network effects – which is to say the value and utility of these token assets increase as more users and developers join the ecosystem. This compounded growth inherently promotes momentum. As the network effect strengthens, more investors are attracted, and prices tend to follow a continuous upward trajectory.

- **Delay in Updating Views**

Investor behavior is often characterized by a delay in updating views and an inclination to stick to strongly held

continued next page

Why Momentum Trading Works In Crypto

CONTINUED

prior beliefs. And for better or for worse, the cryptocurrency asset class is significantly more polarizing than existing and more established markets. This psychological bias can lead to investors holding outdated market views, despite contradictory market price developments.

For example, Trader A might stubbornly hold the belief that the market is still in a bull market cycle while the price trends lower. Conversely, Trader B might insist they are in the midst of a Crypto Winter, even as ether and bitcoin rally. Does this sound like anyone's experience between 2022 into 2023?

For the reasons listed above, we should expect trending prices to persist in digital asset markets, making momentum indicators a useful strategy tool for any manager of crypto assets.

For the most current signals, the [Bitcoin Trend Indicator](https://www.coindesk.com/indices/crypto-index-offerings#systematic-strategies-bti) (<https://www.coindesk.com/indices/crypto-index-offerings#systematic-strategies-bti>) and [Ether Trend Indicator](https://www.coindesk.com/indices/crypto-index-offerings#systematic-strategies-eti) (<https://www.coindesk.com/indices/crypto-index-offerings#systematic-strategies-eti>) publish every day at 4:00 p.m. ET.

Todd Groth, CFA, is Head of Index Research at CoinDesk Indices. He has over 10 years of experience involving systematic multi-asset risk premia and alternative investment strategies.

New Member Welcomes

New Regular/Special Members

Chad Karnes
Absolute Strategies LLC
913 Dartmoor Dr
Austin, TX 78746
(678) 451-7927

Michael Lopiansky
Addigence Corporation
200 Vesey Street, 24th Fl
New York, NY 10281
(917) 710-5530

Leigh Eichel
Alpha Vee Solutions
13 Hubbard Rd
Amherst, NH 03031
(617) 212-8691

Jason Erickson
Alternative Strategies Group, Inc.
196 E 6th St, Ste. 102
Sioux Falls, SD 57104
(605) 321-3298

Vivek Verma
AQS Management, LLC
299 Prospect Place, Ste. 3R
Brooklyn, NY 11238
(412) 901-7503

Buff Dormeier
Kingsview Investment Management
10431 Illinois Rd
Fort Wayne, IN 46814
(260) 264-0099

Michael Thornton
Octant Quantitative Investment Management
PO Box 9318
Salt Lake City, UT 84109
(307) 201-6275

Associate Member:

Geoffrey Irungu
MassMutual Wealth Management
10 Fan Pier Blvd.
Boston, MA 02210
(415) 246-7010

SEC Keeps Raising the Stakes for Text Messaging Recordkeeping Failures

HARRIET CHRISTIE

When JP Morgan Chase was fined \$200 million for recordkeeping failures in 2021, it felt monumental. While ‘ephemeral messaging’ penalties were admittedly a new proposition, the size of the levy should have drawn a line in the sand and led to a tectonic shift in compliance procedures for financial services organizations. What has unfolded since has been cautionary, captivating, and indeed costly for many firms caught off guard by the regulator’s strict enforcement.

This article provides a timeline of the SEC’s investigation so far including the measures taken, who is affected, how the stakes continue to escalate, and how firms can keep themselves out of the firing line. But before that, it’s important to establish why the probe is happening in the first place, and how such a fundamental oversight caught the entire sector cold.

Why is text messaging in the firing line?

The SEC mandates that financial firms maintain records of all communication between clients and brokers, and routinely conducts investigations to ensure compliance.

Exchanges like those occurring through WhatsApp and other ‘off channel’ mobile platforms are far more difficult to monitor and capture than email, for example, and so have not traditionally featured in organizations’ record-keeping strategies. Interacting with clients on these platforms is non-compliant in such cases, leading to most firms deeming it best practice to ban their use entirely.

This was jeopardized by the disruption of the COVID-19 pandemic, which led to far greater reliance on messaging apps, and more workers using personal phones or tablets for business. Since the shift to hybrid working, organizations have struggled to impose restrictions on staff that rely on the prevalence and convenience of these platforms. Resultantly, the scope for regulatory infraction has grown.

Establishing a culture of compliance

Since July 26, 2021, Gurbir Grewal has been acting as the SEC’s enforcement director. He recently revealed that his ambition in the role was to enhance public trust in institutions, and that he wished to ‘impose penalties that would have a lasting impact across the industry’. Grewal inherited a role in which the issue of keeping tabs on staff communications ‘had dogged Wall Street compliance departments for years.

The SEC began to take action in December 2021, when JPMorgan Chase failed to provide documents from 2018 pertaining to an unrelated probe. This eventually led to the bank admitting the charges over record-keeping lapses and accepting a settlement with the SEC for \$125 million – an unprecedented punishment for a crime that had thus far evaded regulator’s attention.

Continued Escalation

While some firms did take heed of JP Morgan’s public sanction and revise their compliance policies and procedures,

it wasn’t enough to convince regulators that things had moved sufficiently in the right direction.

By September 2022, the SEC had fined another 16 leading financial firms (including Barclays, Goldman Sachs and Morgan Stanley) a combined \$1.1 billion, as the situation escalated dramatically in ‘a landscape case for the agency’.

“Since the 1930s, such recordkeeping has been vital to preserve market integrity. As technology changes, it’s even more important that registrants appropriately conduct their communications about business matters within only approved channels, and they must maintain and preserve those communications,” said SEC Chairman Gary Gensler.

The SEC subsequently expanded its probe, with investment funds/advisors finding themselves in the spotlight that October, while major hedge funds (including Point72 and Citadel) were requested to review employee handsets in February 2023.

A few months passed before another round of large penalties landed in August, as the probe continued to haunt financial services firms. Nine Wall Street broker-dealers, including Wells Fargo and BNP Paribas, agreed to pay penalties totaling \$549 million to the SEC and CTFC.

As SEC deputy enforcement director, Sanjay Wadha, explained in the aftermath, “We know that other SEC-regulated entities have committed similar violations, and so our work to enforce industry-wide compliance continues.” This statement, and the consistency it justifies, are not surprising. The aforementioned Gurbir Grewal occupies the role senior to Mr Wadha, and views books and records obligations as vital to market integrity. It’s clear that this mindset is ingrained throughout the division.

Raising the bar

The escalation of this probe doesn’t just constitute additional companies being examined; the investigation process has also become more severe, with numerous sources reporting that the agency has now confiscated thousands of phones. Previously, businesses were asked to review employee handsets themselves. The new approach leaves them more open, with nowhere to hide and no control over how their findings are reported back.

The next round of fines landed in September as broker-dealers and investment advisers, including Interactive Brokers and William Blair & Co, received multi-million dollar levies for similar record-keeping violations.

The SEC’s Gurbir Grewal shared an interesting revelation in the aftermath, spelling out the perks of co-operation to firms that may feel vulnerable. “One of the orders included in today’s announced actions is not like the others. There are real benefits to self-reporting, remediating and cooperating.” This

continued next page

SEC Keeps Raising the Stakes for Text Messaging Recordkeeping Failures

CONTINUED

refers to Perella Weinberg Partners, who self-reported their failures, and whose penalty of \$2.5 million was the smallest by quite a distance. The next smallest was Fifth Third Securities Inc with an \$8 million penalty.

What's next?

Almost two years have passed since the SEC fired its first shot in the 'WhatsApp fines' probe, making an example of JP Morgan just in time for Christmas. After a subsequent pause, the investigation exploded back into life in September 2022, and has since shown no sign of slowing down. There have been several significant moments in the investigation where the agency may have relented, but they continue to double down, exacting their standards across the board.

It's natural to wonder what the endgame might look like in this saga. The SEC posted record enforcement penalty figures last year, and so their approach has clearly been lucrative. As Gurbir Grewal has repeatedly asserted; for the sake of integrity, these laws must be applied across the entire industry, regardless of a company's size or the potential scale of wrongdoing.

Firms can't escape this scenario by retrospectively gathering messages that have already been overlooked. By prolonging their investigation and regularly drip-feeding details of new firms (of all shapes and sizes) that are being held to account, the SEC has made it abundantly clear that mobile communications capture is now an inescapable requirement. With the incentivization of self-reporting and remediation, they have also shown that proactivity will be rewarded, and that no good will come from firm's sitting on their hands or, even worse, pleading ignorance.

Harriet Christie is Chief Operating Officer at MirrorWeb. Harriet graduated from the University of Sheffield in 2010. She entered the Tourism space at LateRooms.com, earning the title of Global Accounts Manager within 3 years. In 2018 she began working as a Key Account Manager with [MirrorWeb](#), a communications surveillance solution based in Manchester. Harriet was appointed Chief Operating Officer in 2020 and has overseen the business' impressive growth.

President's Letter

CONTINUED FROM PAGE 1

conference was a greater appreciation for incorporating seasonality factors into my buy and sell decisions. The cyclical nature of the human psyche continually amazes me. It doesn't seem to matter whether it has been 10 years, 100 years or 1000 years – whether the economy or society is different – we are still people, repeating the same seasonal patterns.

Along other lines, the board is continuing to grow NAAIM's social media visibility. The NAAIM Sentiment Indicator is posted weekly to Facebook, X (Twitter) and LinkedIn. We are excited to see this resulting in thousands of views and followers. In addition, "NAAIM Confidential" is a new weekly YouTube livestream we have started this year. Each week, a rotating host interviews a NAAIM member, focusing on how they manage money, their take on the market environment, and interesting indications of the market's future direction. Snippets from the livestream videos are used on social media as teasers. Among the interviewers are Ben Fox, Asher Rogovy, Branden DuCharme, and me. Featured guests have included Matt Spangler, David Morton, Rob Hanna, and Rob Bernstein. Interviews are live-streamed every Friday night at 4:30 EST, then recorded and posted to NAAIM's YouTube channel. Please check them out – "like" and "subscribe!"

One big change ahead for my firm this year is becoming SEC registered this spring. It's not something I am looking forward to, but it is the cost of growth. We considered for a while whether it would be best to keep the firm under the SEC threshold. But it came down to the fact that it is more exciting,

more engaging, more interesting (and simply more fun) to be part of a company that is growing than one that is just trying to maintain.

The same applies to NAAIM. We've focused on growing the membership because it is more fun to be around a growing group than a maintaining one. When we grow, we don't have to worry about conversations getting stagnant or a lack of new ideas. We all benefit together because new ideas bring fresh energy, camaraderie, and optimism.

At some level, investing takes optimism. You have to believe in the future of the economy, in businesses and corporate leadership, and in the ability of innovation to keep new opportunities arising.

As Simon Sinek has said: "The primary ingredient for progress is optimism. The unwavering belief that something can be better drives the human race onward."

With that said, let's move onward. I look forward to seeing you in a few short months.

Sincerely,
NAAIM President



Ryan Redfern

