

MARKET COMMENTARY – OCTOBER 1, 2016

*Down the Rabbit-Hole.*

Since its first publication on the Fourth of July in 1865, many aspects of Alice's Adventures in Wonderland have captured the imagination. Particularly useful to his readers has been Lewis Carroll's charming use of language that conveys profound ideas quickly with a bit of nonsensical humor. There are dozens. A sample might include:

*"I can't go back to yesterday because I was a different person then."*

*"Off with their heads!"*

*"Curiouser and curiouser!"*

*"If everybody minded their own business, the world would go around a great deal faster..."*

*"How long is forever?" ... "Sometimes, just one second."*

*"We're all mad here."*

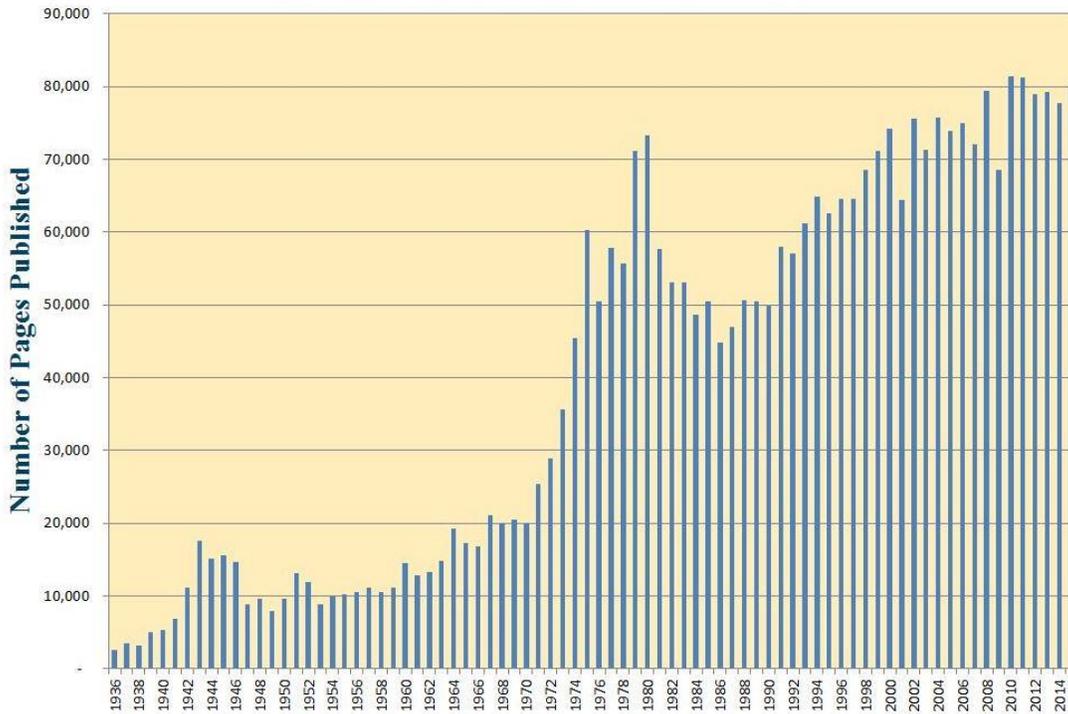
*"I knew who I was this morning."*

"Down the Rabbit-Hole" is actually the title of the novel's first chapter. It, and variations of the phrase, means to follow an idea to an unexpected or strange end. Last month we chronicled the paucity of small business formation in the U.S. Furthermore, we hypothesized that over-regulation and the law of unintended consequences at the Federal level may be at least part of the cause. It is costly and time-consuming for a small business owner to comply with more regulations. Conversely, large companies with their existing bureaucracies can better absorb the incremental burdens placed on them by new rules. To prepare for this month's commentary we dug a little deeper into the size and scope of Federal rulemaking and just how it has changed over the years. We now find ourselves in a serpentine warren chasing after the white rabbit.

Supreme Court decisions such as Wickard v. Filburn in 1942 and others, while little known to the layman, have suddenly become paramount to our understanding. We have a new appreciation for the words bureaucracy and byzantine. We catalogued the number of new rules and pages added to the Federal Register annually. We looked into the DOJ, DOE, FCC, and a dozen other agencies, each of them cranking out new rules every single day to carry out the broad functions granted them by Congress and the broader functions they've assumed once created.

Our findings, we're afraid, are disheartening and can be summarized in a single chart from George Washington University.

Pages in the Federal Register (1936 - 2015)



We are swimming in regulation which has a direct staff cost of nearly \$100 billion annually and an opportunity cost of lost business perhaps in the trillions.

Please do not think us beating a certain political drum. The chart shows that all presidential administrations since the New Deal have used/abused their newly found power. We are also not opposed to limited regulation. However, it is clear from our research that we are nowhere near “limited” with regard to rules. Companies with scale (even new ones) have inherent advantages over tiny ones in this type of system.

We hope to escape from our rabbit-hole next month, but with the coming election, we fear we might decide to stay in the warren a while longer.

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Sincerely  
Jason Born, CFA  
President