

MEMORANDUM

To: File No. S7-33-10

From: Sarit Klein
Counsel to the Director, Division of Enforcement

Date: February 1, 2011

Re: Proposed Rules for Implementing the Whistleblower Provisions
of Section 21F of the Securities Exchange Act of 1934

On February 1, 2011, staff from the Securities and Exchange Commission met with attorneys from the law firm of Vinson & Elkins, LP and representatives from Huntsman Corporation to discuss the Commission's proposed rules implementing the whistleblower provisions of Section 21F of the Securities Exchange Act of 1934.

The following persons were in attendance:

Thomas Sporkin, Chief of Office of Market Intelligence
Jordan Thomas, Assistant Director, Division of Enforcement
Sarit Klein, Counsel to the Director, Division of Enforcement
Tom Karr, Office of the General Counsel
William Shirey, Counsel to the General Counsel
Jim Moore, EVP, General Counsel and Corporate Compliance Officer, Huntsman Corp.
David Bunker, VP, Associate General Counsel & Associate Corporate Compliance Officer, Huntsman Corp.
William E. Lawler, III, Vinson & Elkins, LLP
Amy L. Riella, Vinson & Elkins, LLP

The specific areas discussed during the meeting are reflected in the attached agenda. In addition, the staff discussed the items included in the attached power point presentation.

AGENDA

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- Introductions and company background
- Importance of the well-meaning company receiving timely whistleblower information
 - Importance to the company
 - Importance to the public interest
- Overview of difficulties to be faced by well-meaning multi-national companies as a result of the whistleblower provisions
- Proposed regulations' attempt to address those difficulties
- Overview of the key components of an effective compliance program for a multi-national company
- Huntsman Proposal



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February 1, 2011

**Presentation to the SEC Staff:
A Proposal for Win-Win Implementation of
the Dodd-Frank Whistleblower Program**

Jim Moore, EVP, General Counsel & Corporate Compliance Officer

David Bunker, VP, Associate General Counsel & Associate
Corporate Compliance Officer

Background

- Huntsman has empowered several senior lawyers to lead the implementation of its compliance program who are dedicated to doing “the right thing” in terms of ethics and compliance
 - GC: 17 years of federal law enforcement experience. Played key role in building the company’s EHS management system.
 - AGC: One of the most committed compliance leaders in the company. Brings EU and APAC experience to the role.
 - Managing Counsel, Investigations: Former state prosecutor and federal law enforcer.

Key Components of a Quality Company Whistleblower Reporting Program

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- *“Compliance with federal securities laws is promoted when companies have effective compliance programs for identifying, correcting, and self-reporting unlawful conduct by company officers or employees.”*
Proposed Regulations, p. 31.
- Components of an Effective Compliance Program:
 1. Clear compliance requirements
 2. Involvement of top management in implementation of program
 3. Enforcement of the requirements within the company
 4. Effective communication of requirements throughout company
 5. Safe way for employees to communicate potential issues anonymously
 6. Clear communication that retaliation will not be tolerated
 7. Active encouragement to report violations
 8. Effective training
 9. Timely and effective investigative follow-up on reports
 10. Full correction and appropriate preventive actions
 11. Periodic review and testing of processes and procedures

The Huntsman Compliance Program

- The Program includes all of the elements identified on the previous slide.
- The Corporate Compliance Committee members are the CEO, senior managers of each of the five business divisions, and heads of key functions (Legal, Finance, HR, EHS).
 - The Corporate Compliance Officer is the GC
 - The AGC, Compliance, also is the ACCO
 - We have a Corporate Compliance Manager reporting to the ACCO
- The Addendum to this presentation has more detail on the program.

Importance of Whistleblowers to Compliance Programs

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- When a company makes a major effort to communicate the importance of ethics and compliance to its employees, it tends to have two effects:
 1. It shows the company's commitment and causes many in the company to alter their behavior to be consistent with company policy.
 2. Conversely, it also has the potential to drive aberrant behavior completely under the rug.
- Thus, for any company with a significant compliance program, WBs are one of the most important sources of potential non-compliance information.
 - Recognized by the SEC: *"[I]nternal compliance and reporting systems are essential sources of information for companies about misconduct that may not be securities-related (e.g., employment discrimination or harassment complaints), as well as for securities-related complaints."* Proposed Regulations, p. 34.
- WBs are an important source of information for reporting many types of misconduct - FCPA compliance is one area where WBs are essential to companies.

“Difficulties” Presented by the WB Award Provision

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- Companies want to correct non-compliance problems for a plethora of reasons:
 - To eliminate non-compliant behavior that is inconsistent with the company’s ethics and, accordingly, undermines employee morale;
 - To demonstrate to employees, shareholders and regulators that the company cares about doing the right thing;
 - To avoid criminal liability and minimize liability; and
 - To protect its reputation (including shareholder value), generally.
- The WB award provision creates powerful economic incentives for WBs to avoid reporting violations to the company.
 - Our great fear is that the company’s efforts to protect itself and meaningfully address each of the foregoing issues will be undermined if WBs’ information is not available to the company so that the company can do an appropriate investigation.

Proposed Regulations

- We recognize that the SEC attempted to address the “difficulties” created by the WBs award provision.
- Despite the effort in the proposed regulations to encourage WBs to report first to well-meaning companies, we believe that encouragement will be inadequate.
- Problems:
 - The amount of money potentially in play for the WB if the government does the investigating rather than the company.
 - The lack of a clear requirement that the WB must give the company a chance to identify and rectify the non-compliance.
 - The likely influence of the WB’s counsel.

Huntsman Proposal (Slide 1 of 4)

1. Recognize the importance of self-policing and the important role the WB plays in those efforts.
2. Recognize that it is in the public interest that companies have high quality compliance programs with certain specific components.
3. Provide that with regard to a company having an appropriate quality compliance program, a WB must report potential violations to the company and, if an award is sought, must certify to the SEC that he/she (a) is aware of the company's reporting processes, (b) made use of such processes, and (c) endeavored to provide all relevant information to the company.

Huntsman Proposal (Slide 2 of 4)

4. Provide that where the WB has not reported a potential violation to a qualifying company, the SEC will presumptively, consistent with the obligation of preserving anonymity of the WB when requested, report the WB's information to the company and allow the company time to investigate and report the results of the investigation to the SEC.
 - a. The only exception to #4 would be the following: If the SEC finds there is a substantial and legitimate reason not to make the report to the company (e.g., based upon known history or other compelling facts, there likely will be either retaliation on the WB or the company will not follow up appropriately on the report).

Huntsman Proposal (Slide 3 of 4)

5. Provide that when a company is made aware of a WB's allegations, it should undertake the following if it is to get credit for cooperation and reporting any violation that is discovered:
 - a. Initiate an investigation within 10 days.
 - b. Disclose preliminary results to the SEC within 45 days.
 - c. Submit a final report within 90 days (unless a longer period is authorized by the SEC).
 - Timeline designed to work within the timeline proposed by the SEC for the 90-day look back exception for WBs who report internally but the company fails to take appropriate action within a reasonable time period.
 - d. Take timely and appropriate corrective action.
 - e. Pay a fine appropriate to the nature of the violation and the company's response, fully considering the company's actions after learning of the allegations.

Huntsman Proposal (Slide 4 of 4)

6. The SEC will determine the percentage of the fine to be paid to the WB; if the fine is less than \$1M and there is a settlement, the settlement terms could provide the % to be paid to the WB by the company.
7. Failure of the WB to disclose all known relevant information to a qualifying company or the SEC will disqualify the WB from receiving an award unless the circumstances fall within the exception noted in 4.a above.

MEETING ATTENDEES

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- Jim Moore, EVP, General Counsel & Corporate Compliance Officer, Huntsman
- David Bunker, VP, Associate General Counsel & Associate Corporate Compliance Officer, Huntsman
- William E. Lawler, III, Vinson & Elkins LLP (Washington, D.C.)
- Amy L. Riella, Vinson & Elkins LLP (Washington, D.C.)