File Number S7-33-10. Proposed Rule for Implementing the Whistleblower ("WB") Provisions of Section 12F of the Securities Exchange Act of 1934 ("the Draft")

From Matthew Lee
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I am offering comments to representatives of the Securities and Exchange Commission ("SEC") for consideration in amending the Proposed Rule for Implementing the WB Provisions of Section 12F of the Securities Exchange Act of 1934 ("the Draft"). Page 3 of the Draft states, "… we have taken several steps to address Congress's suggestion that the Commission's WB rules be clearly defined and user friendly. ..." ; my first comment is to suggest that the Drafters continue to spend more time simplifying the Draft and also provide a cross referenced short summary targeted to the least educated individuals in all industries affected by securities laws, which individuals realistically cannot afford counsel. In addition, an easily searchable Internet World Wide Web link containing multi-lingual written, audio and video instructions and explanations would be helpful.

Based on my Lehman Brothers experiences, I have chosen to provide general and not specific comments on the Draft, which general comments include pertinent introspective comments, complete answers to which I had difficulty finding in the Draft. These summary general comment topics are as follows:

1. WHAT THE PUBLIC MAY WANT?
2. GLOBAL IMPLICATIONS.
3. BACK UP PLAN FOR WB's WHO DO NOT BELIEVE THEY ARE BEING HEARD.
4. WHISTLE BLOWING IN CASES WHERE NO MONETARY SANCTIONS ARE FORTHCOMING BUT IT IS IN THE PUBLIC INTEREST TO HEAR WHAT THE WB HAS TO SAY.
5. PREEMPTIVE ALERTS AND PUBLIC ACCESS TO SUCH ALERTS.
6. SHORT-TERM WB ASSISTANCE.
7. STAFFING, FUNDING AND FRIVOLOUS WHISTLE BLOWING.

The summaries are included as an attachment to this cover letter, which summaries I would be pleased to discuss with SEC representatives and answer any questions they may have. In all cases in the attached summaries where I use the word "should", I mean "should, in my opinion, respectfully submitted".

Very truly yours,

Matthew Lee (Dated December 13, 2010)
(SEC representatives have contact details on file)
cc Bijan Amini

1. WHAT THE PUBLIC MAY WANT?

Arguably, the prime purpose of whistle blowing is to protect the Public from loss. The Public benefits primarily from the substance of what a WB is effectively communicating to them and not from the WB the person. E-mail, letter, fax, etc. whistle blowing should be encouraged, not just for monetary gain to the WB, but primarily to protect the Public. If individuals working for appropriate or self-regulatory organizations feel they are not being heard within their organizations and the Public are at risk of loss, those individuals should be encouraged to come forward regardless of any future monetary reward. My reading of the Draft indicated that too great a focus of the Draft is on monetary reward for certain types of information provided by a WB and not enough focus appears in the Draft on "protection of the Public from loss". There are probably too many combinations and permutations of possible WB information that Draft wording should effectively allow the SEC some flexible discretion in monetary WB compensation so as not to put off bona fide WB's from coming forward. The Draft wording appears to me to be cumbersome instead of user friendly and inviting.

There are several Regulators in the Financial Services Industry in the United States and it may not be clear to an unsophisticated yet legitimate WB who to blow the whistle at. For example, an institution may be under the primary Regulation of the Federal Reserve Bank ("FRB") yet have securities related activities. A bona fide WB employed by such an institution may be confused as to which Regulator they should blow the whistle at. Consequently, I recommend that the Draft include provisions to centralize in one Government organization the initial whistle blowing documentation process (to avoid duplication of effort at non SEC Regulators) prior to delegating follow up to the appropriate Regulator in the Financial Services Industry (including the Internal Revenue Service) similar to the current Draft inclusion of the Commodity Futures Trading Commission ("CFTC").

2. GLOBAL IMPLICATIONS

Lehman Brothers successfully fostered a "One Firm" global culture, a formerly formidable unitary global force in the Investment Banking Industry. In the United States, regulation of the domestic Financial Services Industry is decentralized and global regulation is not centralized by say a United Nations entity. Consequently, the Global Financial Services industry is able to continue to arbitrage regulation, which is often not for the Global Public good (e.g. credit default swaps). At Lehman Brothers, several individuals reported to me indirectly from many countries around the world and a rapidly growing group in Mumbai, India reported directly to me. It is very possible that a WB is not a US citizen or is non resident in the United States. Repo 105 could have been whistle blown from any country in the world that transacted securities to the United Kingdom to be "Repo105ed". Similarly, Lehman Brothers Mumbai Office could have whistle blown inventory valuation issues. Global whistle blowing affecting US headquartered multinational corporations should be encouraged and the Draft should address such.

3. BACK UP PLAN FOR WB's WHO BELIEVE THEY ARE NOT BEING HEARD.

The Draft assumes that the Securities and Exchange Commission ("SEC") will understand the substance of what is being "whistle blown" and then take appropriate and timely remedial action. Two recent high profile cases, Madoff Investments Securities and Lehman Brothers were not apparently sufficiently addressed by the SEC prior to significant Public loss. The Madoff case has been well documented and the Lehman Brothers case is ongoing. The Draft appears to

provide no sense of urgency for the SEC to perform an immediate investigation such that the Public are protected in a timely manner.

It is also possible that due to the complexity of dynamic global financial products the SEC representatives may not fully understand the significance of what is being described to them until it is too late and the Public have incurred substantial loss. For example when discussing Repo 105, page 914 of the Report of Anton R. Valukas, Examiner ("Examiner's Report") states, "…..would not have signaled to them (SEC) "that something was terribly wrong."". Consequently, there should be a back up process described in the Draft, which is independent of the SEC and other financial services industry Regulators, which secondary process allows a WB to be heard for Public global debate. I am not familiar enough with Government to suggest where such a process should reside.

4. WHISTLE BLOWING IN CASES WHERE NO MONETARY SANCTIONS ARE FORTHCOMING BUT IT IS IN THE PUBLIC INTEREST TO HEAR WHAT THE WB HAS TO SAY.

The Madoff case is an example of what I mean here; i.e. where there is apparently no-one to recover sufficient monetary sanctions from to pay the WB, yet a WB is crucial for the Public good. I am assuming that any monies recovered will first go to mitigate the loss of the defrauded Public and second to any WB. It is my belief that well over ninety nine per cent of Private and Public Corporations have a sufficiently ethical and control conscious culture (including robust compliance mechanisms) to warrant that whistle blowing is a non event. It is that less than one per cent of Corporations where there is a possibility for significant Public loss. It is unrealistic to suggest that all future WB's contact their employers in an attempt resolve all issues and I respectfully suggest that the Draft clearly state that even if internal compliance processes appear robust, whistle blowing directly to the SEC, etc. should be encouraged in those certain cases where the WB has little faith in the compliance processes of its employer. Two recent high profile cases, Enron and Madoff, both demonstrated that the ultimate weakness was that most senior management and compliance systems at these organizations were ineffective, regardless.

In my own case, one of my May 16 letter points was that certain members of Lehman Brothers Internal Audit Senior management were ineffective. During the six months prior to issuing my letter, Lehman Brothers Senior Financial management did hear the majority of the points contained in my May 16, 2008 letter, since they included such points in a presentation embedded in the Examiner's Report on page 939 (footnote 3618 LBEX-DOCID 1999716; I was not aware of this document nor did I read it prior to 2010) yet Senior Internal Audit management were presenting a contrary view to the Lehman Brothers Audit Committee in a Presentation embedded in the Examiner's Report on page 960 (footnote 3716 of the Examiner's Report at LBEX-AM 003861; I was not aware of this document nor did I read it prior to 2009). My conclusion from this is that Lehman Brothers "robust" Internal Audit Department and Senior Financial Management appeared to know the issues yet chose to hide such matters from the Audit Committee. Accordingly, I respectfully suggest that the Draft make it clear that robust Compliance mechanisms cannot and should not always be relied upon. The real issue is not necessarily competence, it is independent fair honesty.

Most high profile whistle blowing involving significant Public loss can be linked to the most Senior Management of a Corporation, which robust Compliance systems will almost never detect or be effective against. I suggest, therefore, that the Draft encourage the preemptive notification of apparently overly aggressive individuals and the ability of Government to remove them from corporate office possibly through timely recommendations to shareholders who will then vote on such.

In preventing or mitigating the Global financial crisis of 2008, the effectiveness of the Sarbanes Oxley Act failed the Public and it is unrealistic to assume that superficially robust compliance mechanisms will be effective in preventing material Public loss. I suggest that the Draft emphasize the need for WB's to freely come forward in a timely manner yet the SEC should have discretion as to any WB monetary compensation. The Draft should make it a Public ethical duty to whistle blow if individuals should have reasonably known of ethical or common sense wrong doing yet did nothing about it, which inaction causes material Public loss. Compensation should be an afterthought not the main reason for coming forward. A WB should understand that the primary duty is to whistle blow for Public protection and compensation is a secondary discretionary issue.

5. PREEMPTIVE ALERTS AND PUBLIC ACCESS TO SUCH ALERTS.

In the dynamic real world, securities laws often lag behind advances in global financial products and the Public may benefit from what are perceived possible unethical or common sense wrongdoings in the absence of existing related securities laws. In other words the Draft should encourage whistle blowing for preemptive information, which may lead to future securities laws or regulations being enacted on a timely basis. Whistle blowing should include prescience and encourage early Alert to possible future problems that may adversely affect the Public. e.g. collateralized debt obligations, credit default swaps, tangible or synthetic, aggressive individuals, etc. There should be a burden of proof on the SEC to demonstrate where they obtained original information from if not the WB. It may be appropriate to award the WB's some form of compensation for such Alerts.

6. SHORT TERM WB ASSISTANCE.

It is paradoxical that the Public want to hear what potential WB's have to say yet tend to treat a WB as a persona non grata in the workplace once they have whistle blown. Several studies show that to be labeled a WB is a long term traumatic and in many ways costly experience for the WB. I suggest that the SEC consult WB psychology academia to more fully understand the difficulties of WBs in society, especially in the workplace. The Draft provides possible significant windfall gains for a bona fide WB but arguably a significantly long time after the WB event. In most cases, the more senior the WB is in a corporate management structure the more unrealistic it is that the WB will be reinstated, ceteris paribus. The Draft provisions should provide for immediate short term assistance to bona fide WB's including, financial assistance medical and other benefits and successful job placement services assistance in another industry, all possibly funded by the WB target or its bankruptcy estate and not the SEC.

7. STAFFING, FUNDING and FRIVOLOUS WHISTLE BLOWING

The SEC's WB claims review process needs to be sufficiently staffed with qualified individuals who possess a broad industrial knowledge base and a diversity of professional experience (business, legal, accounting, regulatory, etc.). The Draft should fully address such and include a cost effective professional outsourcing plan to deal with fluctuations in the incidence of whistle blowing events.

To minimize frivolous claims and to encourage Alerts (See 5. above) a refundable inflation indexed linked processing fee payable to the SEC by the WB should be considered in the Draft. The fee should cover a de minimis administration cost of processing a whistle blowing event including a careful one time reading by a senior qualified individual who should document a Publicly available preliminary conclusion within thirty days of submission. To encourage integrity, prospective legislation and possible future Public loss, the fee should be refunded if the Alert has sufficient bona fide merit. Determination of qualification of original source information and any WB award should not fall within this thirty day deadline, just a comment on the substance of the claim itself so far as it may cause Public loss if no immediate action is taken.