**BLOWING THE WHISTLE ON FRAUDULENT REPORTING**

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Some insiders of business corporations know when others are carrying out untoward actions or are neglecting their affirmative duties with respect to the securities laws. To crack down on fraudulent accounting, society needs to elicit information from these insiders to learn what actually took place. We need to find ways to convert these insiders into whistleblowers!

[Jordan Thomas](http://www.labaton.com/en/ourpeople/Jordan-Thomas.cfm) recently spoke at the mid-year meeting of the Forensic and Investigative Accounting section of the American Accounting Association on this topic. Mr. Thomas currently is a partner at [Labaton Sucharow](http://www.labaton.com/), and is the chair of the firm’s Whistleblower Representation practice. Previously, he was an Assistant Director at the SEC, where he had a leadership role in the development of the [Commission’s Whistleblower Program](http://www.sec.gov/spotlight/dodd-frank/whistleblower.shtml). He also led fact-finding visits to other federal agencies with whistleblower programs, ultimately drafted legislation and implementation rules, and briefed House and Senate staffs on the proposed legislation.

Jordan Thomas began his March 30 speech by noting that regulators have a hard time fighting crimes on their own. “The reality is that securities fraud schemes are often difficult to detect and prosecute without inside information or assistance from participants in the scheme, or their associates.” The issue is how to bring these individuals to the table with regulators and prosecutors.

There are always people who observe the shenanigans of these schemers. Whether the fraud was Enron, Fannie Mae, Citicorp, MF Global, or Olympus, there were witnesses to the crime. The point is that we need to protect these witnesses from the fear of retaliation, and we must provide incentives to get them to testify about what they know.

Mr. Thomas noted that after Sarbanes-Oxley, many managers and independent auditors reported compliance with its requirements, and claimed that the scandals of the past were indeed in the past. As we all now know, these assurances were hollow, as evidenced by the Madoff, MF Global, and other recent scandals.

“Conventional reporting mechanisms have been inadequate because witnesses doubt their organizations will appropriately act on internal reports of misconduct and protect them from retaliation.” Genuine fear holds back these potential whistleblowers.

Dodd-Frank attempts to overcome this reticence by offering protections and by supplying incentives. If the employer retaliates, Dodd-Frank provides remedies in terms of double back pay plus interest, reinstatement of seniority, and reimbursement of expenses including attorney fees. As incentive, Dodd-Frank also offers monetary awards equal to 10-30 percent of the monies collected by enforcement agencies.

Such protections and incentives should prove enticing to at least some witnesses and analysts. Jordan Thomas predicts “that in the coming years, many of the SEC’s most significant cases will be the result of whistleblowers.”

Everyone can benefit from the employment protections and the ability to report anonymously. Even the company’s external auditor and members of the audit committee can be whistleblowers, though they may not receive a monetary award unless certain preconditions are present. The bottom line is that everybody can be a whistleblower.

More details can be found on Thomas’ website entitled [SEC Whistleblower Advocate](http://www.secwhistlebloweradvocate.com/).

Mr. Thomas’ speech was followed by a panel discussion on the SEC whistleblower program. Michael Pakter, from [Gould & Pakter Associates, LLC](http://www.litcpa.com/index.php?option=com_content&view=article&id=50&Itemid=59), added that assertions of fraud must be investigated by forensic accountants. When taking a lead role, they likely will devise the investigative plan, supervise the investigation, and advise the client about the findings and implications of the investigation.

Also on the panel was Francine McKenna, blogger at [re: The Auditors](http://retheauditors.com/). She mentioned that the PCAOB also has a tips hotline and employees of audit firms can report any issues to the PCAOB directly. She also repeated a comment by Sherron Watkins—if doing the “right thing” is one’s motive instead of money, one can report problems anonymously to Wikileaks. Ms. McKenna concluded by pointing out that OSHA’s record when administering the Sarbanes-Oxley provisions was terrible. It could find merit in only 21 out of 1,232 complaints; worse, OSHA did a lousy job of protecting the whistleblowers.

Let’s hope Thomas is correct and that the Dodd-Frank provisions on whistleblowing will prove a success. After all, none of us wants to see more Enrons, WorldComs, Adelphias, Tycos, Citicorps, AIGs, Dells, ProQuests, GEs, Lehmans, MF Globals, ….

*This essay reflects the opinion of the authors and not necessarily the opinions of The Pennsylvania State University, The American College, or Villanova University.*