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Reinforcements Arrive for Whistleblowers in Financial Services

By Kevin Chiu, J.D. Candidate 2018 | February 23, 2015

Whistleblowing is the ultimate form of burning your bridges. So it comes as no surprise that while whistleblowers are lauded for their courage and willingness to call out their companies for material financial wrongdoing, the celebration pales in comparison to the common risks they face from their current and future employers. Whistleblowers are often mishandled, ignored, and their allegations lead to job terminations and being blacklisted from other prospective companies in the industry. In response, a new group seeks to change this recurring story.

Four former whistleblowers in the industry have banded together to form the Bank Whistleblowers United, a public advocacy group whose mission is to reinforce the protected status of whistleblowers on Wall Street and push for improved regulations surrounding whistleblower protections that expand on existing ones set forth by Sarbanes-Oxley or SOX and Dodd Frank. The founding members are certainly not strangers to blowing the whistle and/or suffering the repercussions.

The group released its manifesto earlier this year and is calling for a number of reforms that address a number of gaps in the current regulatory framework around banks and other financial service providers. One strategy being used by the group is directly calling out current candidates in this election cycle. By doing so, the group hopes to increase accountability for policies and platforms that encourage responsible practices in an industry marred by the "Main St. versus Wall St." narrative. As opposed to the financial mantra of high-risk-high-rewards, whistleblowers face high risk and low rewards despite statutory rewards for doing their job.

Since the early 2000's, the legal landscape surrounding the scope of whistleblowers, specifically those in financial services, has continued to broaden through reactive legislation. Stakeholders in the industry saw the events of financial reporting fraud lay the groundwork for whistleblower protections in SOX in 2002, particularly setting up internal controls including confidential hotlines and anti-retaliatory measures. The 2008 financial crisis led to a reactive effort to crack down on systemic risks in the banking sector that led to the economic downturn in the form of the Dodd Frank Act in 2010, which included increased anti-retaliatory provisions and monetary incentives for whistleblowers to report directly to federal regulators. Both of these bodies of law hoped to address systemic fraud and risk respectively through internal actors recognizing wrongdoings from within their organizations.

The combination of expanding whistleblower protections under SOX and the substantial financial incentives provided by Dodd Frank should've been the right recipe for increased watchfulness. Institutionally, Dodd Frank created the SEC's new Office of the Whistleblower as well as an award of 10% to 30% of monies recovered through successful enforcement on actions worth over $1 million. Moreover, the Second Circuit has upheld these broad protections in an effort to afford protective incentives for future whistleblowers who prefer to keep their reporting through internal channels. Nevertheless, these protections can only do so much as whistleblowers

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will inevitably face hesitant future employers who may be reluctant to hire someone with a history of turning over too many stones.