



Kenneth T. Marceron/National/AUDIT/EYLLP/US

08/13/2008 03:51 PM

To Randy G. Fletchall/AEB/EYLLP/US@EY-NAmerica
cc Margaret Finan/NewYork/AUDIT/EYLLP/US@EY-NAmerica,
Mark V. Sever/LakeMichigan/AUDIT/EYLLP/US@EY-NAmerica,
Robert Schirling/NewYork/AUDIT/EYLLP/US@EY-NAmerica,
William Schlich/NewYork/AUDIT/EYLLP/US@EY-NAmerica

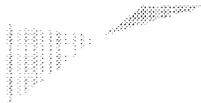
bcc

Subject Re: Lehman bros request to examine forecast

Randy,

I spoke to Bill this AM to get the background regarding the meetings at the SEC staff. It's unfortunate that it played out this way and I think Bill was a bit blindsided. I have never seen an examination report on a forecast before and while conceptually it may be permissible under the literature, it's just not done in practice and it certainly doesn't make sense from a firm risk perspective, especially given this fact pattern. Presumably the SEC wanted to be very accommodating, especially given the meeting with the Chairman, so they said "put something together for us to review and we'll look at it quickly and get back to you but we expect an examination report on the forecast (i.e. balls in your court)". This obviously puts us on the hot seat. In this example, at least as I understand it, the client is proposing to move \$6 billion in various assets (loans, securities and partnership interests) into a newco to take public. They can't prepare historical financial statements so they wanted to seek relief from the SEC staff from that requirement. I suspect the suggestion for an examination of the forecast came from legal counsel based on a prior example since they had prior discussions with the SEC staff on the issue and had arranged the meeting. The team did subsequently find an example 20 yrs. ago where AY signed an examination report on a forecast. In that example the company also had included historical financial statements in the registration statement and there was a forecast of how the company would do for the remainder of the year. While rare in practice, this at least makes some sense. In this fact pattern, the client would sell securities based solely on a financial forecast rather than any historical financial statements. Frankly, while I don't have all the details, I don't see practically how we could ever get there given the information that would be required in order to do a forecast even if we wanted to accept this type of engagement.

Ken



Ernst & Young ®

Ernst & Young LLP

Kenneth T. Marceron | Partner | National AABS Professional Practice



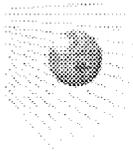
Thank you for considering the environmental impact of printing emails.

Randy G. Fletchall/AEB/EYLLP/US



Randy G. Fletchall/AEB/EYLLP/US

To Robert



08/12/2008 07:56 PM

Schirling/NewYork/AUDIT/EYLLP/US@EY-NAmerica, Mark
V. Sever/LakeMichigan/AUDIT/EYLLP/US@EY-NAmerica,
Kenneth T. Marceron/National/AUDIT/EYLLP/US
cc William Schlich/NewYork/AUDIT/EYLLP/US@EY-NAmerica,
Margaret Finan/NewYork/AUDIT/EYLLP/US@EY-NAmerica
Subject Re: Lehman bros request to examine forecast

Sorry - have been tied up on other matters - very nice of the SEC to offer to provide some relief to a registrant with us placed in the role of bad guy if we don't agree. I would like to know from Ken Marceron whether we or other firms have seen this before - I sure do not recall seeing or hearing.

Am at dinner and then heading home - not sure what we can resolve this evening - or what needs to be resolved tonight - can chat if desired - I am available in the morning before 8:30 and probably between 9:30 and 10:00 am - and then from 11 am on

Robert Schirling

From: Robert Schirling
Sent: 08/12/2008 05:34 PM EDT
To: Randy Fletchall; Mark Sever
Cc: William Schlich; Margaret Finan
Subject: Lehman bros request to examine forecast

Bill Schlich participated in a mtg with the SEC today regarding a potential transaction where Lehman would spin out its commercial real estate assets into a newco. In discussing whether Lehman would be granted a waiver from providing 3 years of historical financial statements, the SEC stated it would consider such a request (ie looking at the spin out as a spin out of assets), but would expect the auditors to provide a general distribution examination report on the forecast Lehman would prepare.

Bill and I have briefly discussed this and our policy, and recognize we need to consult. Our preference is clearly not to do this, but it appears us issuing such a report would be required to afford Lehman the flexibility to not prepare historical financial statements.

I am heading to the airport, but wanted to alert you to this as Bill needs to discuss ASAP.

Let us know if you would be available to discuss. Bill's cell is [Redacted], and needs to discuss this evening if possible. I know mark is travelling back to Chicago which is why we are going to you directly.

Bob
Robert Schirling
Partner, Financial Services Professional Practice

