

MEMORANDUM FOR THE RECORD

Event: Interview with Owen Littman, General Counsel at Ramius

Type of Event: Telephonic interview

Date of Event: Tuesday, August 17, 2010 10 a.m.

Team Leader: Chris Seefer

Location: FCIC small conference room

Participants - Non-Commission:

- Owen Littman
- Michael Benwitt

Participants - Commission:

- Chris Seefer
- Art Wilmarth
- Bruce McWilliams
- Jobe Danganan
- Sarah Knaus

MFR Prepared by: Sarah Knaus

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Summary of the Interview or Submission:

This is a paraphrasing of the interview dialogue and is not a transcript and should not be quoted except where clearly indicated as such.

Seefer: We're with the FCIC and are currently looking at Lehman and specifically we're looking at them in the context of systemically important institutions and too big to fail. One of the ways we're looking at that is looking at a bunch of their counterparties and finding out whether they were reducing their exposure to Lehman and when and why. We haven't talked to a lot of hedge funds yet, but we've talked to some of the triparty repo banks and commercial paper counterparties. For the most part, these counterparties were there until the bitter end because they believed Lehman wouldn't be allowed to fail or would receive assistance. We would like to find out about how you were managing your accounts, particularly in the time frame post-Bear Stearns. Could you generally describe your relationship with Lehman in this time period and how it changed over time?

Littman: I was the general counsel of Ramius. I became the GC in February 2009. In 2008, I was one of the members of the legal department. Having now heard you describe what you're interested in, I'm concerned that we may not have the people here that may be able to give you all of the information you're looking for. That information touches various parts of the organization from operations to the principals

to legal. It covers all of the areas. Honestly, when Michael heard about this call, he wasn't exactly sure of all of the topics that covered. I just want to say as an initial matter, I'm happy to give you my views of what was going on at the time, but I do think there are others in the organization. There are other people in the organization that could have interesting things to say to you. Ramius is one of the creditors on the creditors committee on LBIE the UK entity, and I have been attending Creditors Committee meetings for the last 20 months or so. I do have a pretty good understanding of the complexity of the issues on the London side of the business. I'm happy to give you some of my own observations, but to the extent that you're focused on the days leading up to the insolvency. Depending on what you want to use that information for, it may be worthwhile to have a follow-up discussion with others.

Sefer: I was approaching this as a background call to find out who would be the people to talk to at Ramius. I think that makes a lot of sense. I appreciate the ability to talk to the operational folk who were dealing with it at the time. I'd love to spend a few minutes talking about your general beliefs about how it was managed and what you have been seeing as a member of the LBIE credit committee.

Littman: Sure. Let me start with an overall observation. As an overall matter, I think from my perspective, one of the biggest problems with what happened in 2008 was that Lehman wasn't permitted to – what would have been much better would have been if Lehman was able to stay open for business for a few days so trading counterparties could move their positions in an orderly way. The fact that they were not allowed to do that and there were different insolvency days, created a very big mess for all of the Lehman estates once they entered into insolvency. There were tremendous amounts of trades at all of the different entities. You have different insolvency regimes and different relevant dates to determining when the music stopped and where the securities are. In the UK you have September 12 and in the US you have September 19 for the broker-dealer. The big hindsight comment that I have, maybe setting aside whether the US had the authority to do this, but if someone could stand behind Lehman and say Lehman is shutting down, but for the next 5-7 trading days let their counterparties move to other brokers, this would have greatly simplified the task. It wouldn't have completely taken away the complexity, but it would have taken away the less-liquid complex positions. It would have potentially greatly sped up the process of winding down Lehman.

Sefer: One of the things we've learned is that on Sunday September 14, before the bankruptcy filing from Lehman, from 2-6pm there was a massive counterparty derivative exercise. Were you involved? Did that involve any foreign counterparties?

Littman: I'm aware that's something that happened. I think that was something done with the bigger dealers in derivatives. I don't know whether or not it affected the foreign entities. The other big macro piece that I would say is that – the other thing I think is worth having in mind for future knowledge is that to the extent the government is going to get involved and strongly encourage a transaction, which I think they did with Barclays/Lehman, I think it's critically important that the government own that and stay involved in that and not just put the pressure on to get a deal done. The reason I bring that up is that one of the significant impediments to the US broker-dealer returning assets to customers is that they have a significant litigation going on with Barclays regarding the transfers that occurred around the insolvency. I have no doubt that there are interesting interviews being put forth by both sides, but I think had the government stayed more involved in that transfer, they might have had a better view on what could have happened and could have a more active role in managing a dispute so that it gets resolved quickly. Those

are sort of two of the bigger thematic points. Getting more specific as it relates to Ramius, we had a longstanding relationship with Lehman. We used Lehman as a prime-broker. We also used other prime-brokers. We did monitor the situation with Lehman. We did, in general, reduce our exposures to Lehman where we deemed it appropriate. I would say that we probably did not anticipate Lehman being allowed to fail. I think, another issue that we faced and that other hedge funds faced is that we probably did not have – until we got right into that weekend, we probably did not have an ideal understanding of how the US and UK insolvency regimes would or would not correlate with each other if there was a problem with Lehman. We probably did not have sufficient appreciation for the different insolvency dates for the entities. We did understand that we had securities and assets held at a London affiliate, so we did understand that, but we didn't quite understand the ramifications for that. I think the thing a lot of people didn't understand, was that even though your assets were held at Lehman in the UK, you were essentially subject to two insolvency regimes. You also had a relationship with the US broker-dealer. Your UK asset – the stuff you held in the UK – was subject to the US regime, because the UK was holding the US securities in the US. That whole jurisdictional puzzle, we didn't understand that until we were forced to understand that. In terms of why we had any exposure to Lehman, others may have more developed views on this, but the answers I'd offer, in the weeks leading up to the insolvency, it was not necessarily easy to move positions out of Lehman to other brokers. After the Lehman insolvency, when we took another look at our various prime brokers exposures, we decided to reduce our exposure to one prime broker. It was hard to move our positions from one to that one. We actually needed to send litigation threatening-type letters. In the month leading up to the Lehman insolvency, it was difficult to move positions. The second thing was that we were sensitive to not necessarily wanting to be an accelerant to “run on the bank” at Lehman. Others may have felt the same way. You want to manage your counterparty risk, which we were doing, and our derivatives exposure was reasonably modest to Lehman because we were managing that and putting risk on elsewhere, but we were mindful of not wanting to move massive amounts of securities to other brokers in case that would create a run on the bank to Lehman. We ended up with whatever assets were at Lehman. They were significant, but in a relative basis, they were not overly significant compared to the size of our funds and that we held assets at other prime brokers.

Sefer: Why was it, do you believe, so difficult to move from one prime brokerage account to another that you had to send litigation threats?

Littman: I can speak more about the one after the insolvency. We said we wanted to move positions and they said no. There were a lot of excuses, that's a significant move, we need a few days to clear that through our risk department, etc. They were throwing up a bunch of delay tactics. They were at that point, they themselves were trying to manage their own liquidity and not want to have their own run on the bank at that point.

Sefer: You mentioned earlier that you didn't anticipate Lehman to be allowed to fail, but you were monitoring your exposure to Lehman and reducing them to what would be appropriate. Why was Ramius reducing its exposures and why did it deem them appropriate?

Littman: I think this is a topic better suited to others here. What I described to you was my perspective on it, but at the time I was not privy to all of the meetings where the exposure was discussed. Take what I'm saying with a grain of salt, because it's my opinion on it. Back to 2008, people were questioning

Lehman's liquidity and whether they could survive or not. If they had a choice of putting a derivative on at Lehman and put a trade on at Goldman, that's what I'm getting at with reducing our exposure. You had a choice in trades. Intuitively, it would make sense to put new trades on at other prime brokers where you felt there was less potential risk.

Seefer: One of the things we've heard from others that we've talked to is that some prime brokerage agreements would allow to rehypothecate some securities to a third party, which would be more difficult to get them back after the bankruptcy. Was that anything that Ramius dealt with?

Littman: Yeah, I think that was very common. The way it worked, they had the right to rehypothecate their securities, which is how they were providing you with refinancing terms. When they went into administration in the UK, to the extent they had rehypothecated those assets, they had pledged those assets to their financing sources, and those sources had sold the assets in the market to cover the loans they had to Lehman.

Seefer: Did it create more complications?

Littman: The rehypothecated securities, you would not get them back, you'd have an unsecured claim with respect to those securities. I don't know... the distinction is that if you had an arrangement with a US broker-dealer, under the broker-dealer rules, there was a limitation on how much they could rehypothecate. Those did not exist in the foreign entity. The foreign entity had the discretion to pick and chose the securities to be rehypothecated. I think there was a difference on what securities...in terms of what was being pledged.

Seefer: Is it accurate to say that the rehypothecation power transforms a secured claim into an unsecured claim?

Littman: I think, under the UK insolvency laws and under the administration, to the extent that you had securities rehypothecated from the account, you don't have a trust claim to get those assets back, you have an unsecured claim to get those back from the broker. It depends on what date you used to value those securities to value the unsecured claim. One of the things the creditors committee did with the administrators is that we came up with a Trust Asset Committee to facilitate the return of assets. They still needed to figure out what their counterparties did or didn't owe to them. That was a complex assignment, because there was just a – because they had complex relationships with their prime broker clients, because they had longs and shorts. What were the rights versus what they had versus you. What this claim resolution agreement did was it set out a bunch of rules on how you addressed these complexities. We went out and solicited approval for this framework from the Trust Asset Committee, we wanted to get enough people on board for this approach and it did go affective last year. What that framework did, for those who signed up for it, it did set out the date that you would use for the rehypothecated unsecured assets. I think, unfortunately, I don't think the rehypothecation issue has been other than the fact that people are disappointed that they had a disproportionately high amount of rehypothecation.

Wilmarth: Just a couple of follow-up questions. You say that you were obviously monitoring and reducing exposures to Lehman leading up to that weekend. Was that course of action based on the assumption that Lehman may in fact not be able to survive as an independent stand alone firm without US

government assistance? That there would be some assisted merger, or an open bank deal? Did you think that in any case, you'd be dealing with a different Lehman? For that reason, you would tend to draw down exposure? Another set of assumptions is that we think that Lehman is going to fail, go bankrupt, and we're going to be involved in the kind of proceedings you were involved in. Which of these assumptions were more in the mind of the management? Resolution or an outright bankruptcy and failure?

Littman: I think that question is better-suited for the people here who were directly involved in the decision making. I'm happy to give my personal view on the likely – what I think was the case was the former rather than the latter.

Wilmarth: Do you think the Street, other sophisticated investors in your position, do you think that a majority of the Street would have assumed that the first scenario was more than likely resolved and the second scenario was the more likely event?

Littman: I think that's accurate. Benefit of hindsight, but if I were a smaller institutional investor back then, I might have just look at that and said I don't care if it's scenario 1 or 2, there's just too much volatility here and too much risk. If I'm very small and able to move it to someone else, that's a no brainer. I suspect there were a lot of people in that camp. I also think that by definition it has to be the case that there were a lot of people in camp one. I think there were plenty of people who were small who left assets in Lehman and could have moved them. They must have concluded that bankruptcy was remote. Otherwise, there's no rational explanation that they otherwise would have moved them. There were a lot of people out there that did not think it was too late that Lehman could fail. I think this is an important point – if you thought Lehman could fail on Weds/Thurs/Fri that week before, at that point it was probably too late. Even if you tried to move a security at that point, they got stuck and became fail trades and you may be worse off because it's harder to reconcile your account because it's stuck in Limbo. I'm not sure if we fall in this camp or not, but if you felt there was a good chance of Lehman to fail, I think there was little chance to do anything about it.

Wilmarth: At your level, a large significant counterparty of Lehman, is it fair to say that other major hedge funds or counterparties would have had some of the same feelings that you had (maybe I can whittle down my derivatives exposures because they're not transparent to the market. The repo and CP are more transparent, I don't dare move large positions out because I don't want to precipitate a run, which could be worse for the market and me. Is that a common view for other counterparties?

Littman: That's a hard thing to say. We did not have securities on repos with Lehman. Our exposure was limited to securities and some derivatives. Our view at the time was that we felt that we'd have better protection under the broker-dealer rules whether US or foreign. We'd have better protection with respect to securities than derivatives. From our perspective, we did recognize that distinction. Whether or not other hedge funds were sensitive to being able to move things, it wouldn't be in public view of the markets. I haven't had those kinds of conversations with other hedge funds.

Wilmarth: To our knowledge, when the regulators knew there was not going to be a resolution, they then brought all of the major dealers together and did this massive netting and closeout session on the Sunday afternoon from 2-6. This has been trumpeted by some as to why the Section 11 bankruptcy wasn't so bad. I would suspect there were some major foreign banks involved in that, I don't know. I wondered

whether in the bankruptcy proceedings, the smaller derivatives counterparties who were not given that opportunity, at least arguably, those smaller counterparties were at a distinct competitive disadvantage. Has that issue come up at all to your knowledge?

Littman: I'm not aware of that issue. First, we've been more focused here on following and being involved in the UK side of it. That's where the bulk of our exposure is. Even though our US securities through LBIE are held at LBI, the US broker dealer, we have been more focused on the UK side. I haven't been focused on the LBHI bankruptcy proceedings. Another observation I would make, while that sounds like it would be helpful to do on the eve of the insolvency, there could have been other things done as well, they could have arranged to move liquid positions. They could reduce the amount of stuff that went to Lehman in insolvency. Someone could have forced Barclays to move over the prime brokerage accounts, even if it was on a temporary basis. That would have greatly simplified the administration of the assets.

Sefer: One of the other things we're looking at, we are looking at what the fallout has been in the bankruptcy.

Littman: On that front, I do think we have a pretty good perspective on it, and I think we have pretty strong views on that. I do think it's important. One of the things we struggle with, in the environment we live in, hedge funds don't get a lot of sympathy, but at the time, in 2008, when hedge funds were scrambling around, one of the things that did not get enough play, is the fact that a lot investors and hedge funds are pension funds and do affect the American public in a meaningful way. It's who's invested in the funds. A lot of the investments in the funds at Lehman do have the interests of the American people in mind to get the value out of the estate.