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At Olympus and Goldman Sachs, Two Very Different Whistleblowers

By: Ben W. Heineman, Jr.

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One of the great challenges for business leaders is to separate fact from opinion. Bad facts *must* lead to action. Bad opinions *may* lead to action, but not necessarily. The different implications arising from hard fact and harsh opinion are illustrated by two whistleblowers who have recently published books.

The first whistleblower — using facts — is former Olympus CEO Michael Woodford, who uncovered a huge accounting fraud at the company. In 2011, Woodford was asked to lead the Japanese maker of optical equipment, first as president (in April) then as CEO (in September). In July, he was confronted with a piece of investigative journalism in Japan alleging improprieties in two large Olympus acquisitions. The newly-minted English corporate leader was met with total indifference by his board chair and his colleagues in Japan when he inquired about the company's response.

Concerned about the stonewalling, Woodford asked for a PricewaterhouseCoopers investigation. When word reached the Olympus board in Tokyo of the inquiry, Woodford was fired.

He then went public. (Hence the title of the book: *Exposure — Inside the Olympus Scandal: How I Went From CEO to Whistleblower*.) In essence, Olympus had been hiding huge losses from derivative trading which started about 20 years ago. Then accounting changes forced them to cover up the losses in a different way. So, in a huge fraud, they spent $1.7B on virtually worthless acquisitions and paid themselves grotesque "deal fees" through phony advisors. These funds were used to fill the balance sheet hole caused by the prior derivative losses. As Woodford began to untangle this web of fraud and corruption, he was blocked by company governance and Japanese business culture — and, like many whistleblowers, felt threatened and friendless.

But the international media forced the company to appoint a group of independent investigators who publicly detailed the massive fraud which Woodford had alleged. This led to guilty pleas in September by the company and its former board chair, executive vice-president, and auditor. They are awaiting sentencing. The case was a mammoth black eye for a prominent Japanese company — and became a major international

story, challenging (once again) the nation's corporate governance culture and cozy company-government relationships. Damning facts had been covered up — and then manipulated for years, with large sums involved.

It was a major event, with significant impact.

The second whistleblower — wielding harsh opinions, not hard facts — is Greg Smith, who resigned from Goldman Sachs in March with a *New York Times* op-ed blast at his employer of 12 years, entitled "Why I am Leaving Goldman Sachs." In contrast to Olympus CEO Woodford, Smith was a middle level employee, an executive director and vice president in Goldman's London office selling U.S. equity derivatives to European clients (one of 13,000 Goldman VPs according to Bloomberg). The March op-ed was followed by an October book, *Why I Left Goldman Sachs: A Wall Street Story*.

As I, and others, noted at the time, the *Times* op-ed was high on indignation and low on facts. Smith charged that Goldman put its own interests ahead of clients; people were promoted by foisting profitable but unsuitable products on customers; and that Goldman's culture of service had given way to a culture of greed. But, in the op-ed, not a single charge was backed up with a single fact.

More importantly, Smith was repeating general criticisms of Goldman that had been in circulation for months following the financial meltdown. For example, the SEC in 2010 had charged Goldman with misleading some of the parties to a billion dollar transaction (involving a complex derivative called a synthetic collateralized debt obligation), alleging specific facts about undisclosed conflicts of interest. Goldman settled within months for $550 billion. And in January 2011, more than a year before Smith's op-ed (and in response to the SEC complaint), Goldman issued a report on business standards seeking to make more transparent how it would handle with clients its different roles of advisor, fiduciary, market-maker, underwriter, asset manager and investor for its own account. The point here is only that Goldman was ostensibly and explicitly addressing many of the issues raised by Smith a year before his op-ed and a year-and-a-half before his book. (Whether or how those efforts have been meaningful is a wholly different matter and not the subject of this piece).

Despite an alleged $1.5 million advance and 270 plus pages of text, Smith's book is also devoid of any details, according to a review by respected *Times* Columnist James B. Stewart. Says Stewart simply: "The book...fails to deliver concrete examples to back up his sweeping conclusions."

Opinions, not facts. And Smith's lack of facts means that, as far as the public knows, his harsh opinions, in contrast to Woodford's hard facts, have not led to a single inquiry or action by public regulators or enforcers. Woodford's revelation of facts had dramatic results. Smith's "insiders" opinions seem, in retrospect, to have added another voice to general criticisms which had been leveled at the firm for some time prior. No doubt they added incremental pressure to Goldman's efforts to untangle its conflicting roles and to build client confidence, but, without specifics, any general impact is hard to assess.

Business leaders must respond directly to bad facts (carefully developed!), as Olympus eventually did by appointing an independent committee that exposed the mammoth, years-long fraud and brought down high level executives. Business leaders may respond indirectly, or not at all, to harsh opinions, utterly lacking in factual foundation, although they would surely be wise internally to take credible criticisms to heart, even if not clearly "proven."

For these reasons, the public interest is far better served by insider charges rooted in detailed facts that require a corporate response than vague (if rhetorically provocative) insider opinions which do not require — indeed cannot prompt — a detailed company rebuttal.

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