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Goldman Whistleblower: High on Indignation, Low on Facts

By Ben W. Heineman Jr.

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Greg Smith, a former Goldman Sachs executive, marked his exit with a public condemnation of his employer. He missed the opportunity to hit them even harder.

Greg Smith's public resignation on the *Times* op-ed page raised a host of important, recurring issues about Goldman Sachs and the financial services industry. The immediate result has been a typical media event: volleys of opinion pieces in print and electronic media repeating anti-or-pro positions on all those issues, praising Smith for candor or criticizing him for delay and disloyalty.

But this week's media event will in all likelihood soon wisp away with no meaningful movement on the host of important issues. The reason is simple: Smith flunked the first test of whistleblowing. He didn't present a single hard fact.

Take his main assertion that, at least in his derivatives business, Goldman put its interests ahead of clients (people "....pitch lucrative and complicated products to clients even if they are not the simplest investments or the ones most directly aligned with the client's goals."). But no example. No real parties. No real transaction. A very dramatic but very general assertion.

Contrast this with the complaint filed by the SEC in 2010, alleging detailed, specific facts about how Goldman misled some of the parties to a billion dollar synthetic, collateralized debt obligation transaction. These factual allegations led to a robust debate on the propriety of the actual transaction, which was emblematic of excess in the financial system; congressional hearings and grilling of Goldman execs; a Goldman settlement with the SEC for $550 million; and a Goldman report from a new, internal business-standards committee on how to approve products and reduce conflicts across the firm (which Smith doesn't discuss). Similarly, after a Delaware Court recently criticized Goldman for very specific failures to disclose a banker's interest in a company on the opposite side of a merger, the firm and other Wall Street banks have tougher rules under consideration for constantly tracking and automatically disclosing banker's stock holdings.

Take another major, related assertion: that people are promoted to leadership positions in the firm by foisting products on clients that were not suitable for them. But, again, the article offers no examples of firm leaders who committed these sins, or clients harmed by them. Very dramatic allegations, but, without concreteness, what are we to make of them?

And the ultimate assertion -- that Goldman's culture of teamwork, integrity, humility, and client concern has given way to a culture of avarice and self-interest -- is boldly stated but murky in its scope. Goldman performs a number of different functions: from advisor to fiduciary to market-maker to underwriter to asset manager to investor for its own account. But there is no discussion in the article of the different roles and the possibility of different cultures for the groups that play them.

Make no mistake. I have no interest in defending Goldman. I have long been a harsh critic of the role played by major financial institutions in causing the 2008 meltdown and in their response to needed financial-services regulation. Nor do I mean to say that Greg Smith does not make potentially important points about Goldman and other financial-services institutions, although the points are not new.

But without vivid facts, not just vivid language, Smith's article is highly unlikely to energize any public authority to open an inquiry (he makes no allegations of illegality) or to hold hearings on whether industry practices require some additional law or regulation. Nor, despite his role in derivatives, does Smith offer any facts or make any concrete proposal that has any relation to the ongoing debate about how to regulate derivatives under Dodd-Frank.

Similarly, although he directs his resignation article to the Goldman board of directors ("I hope this can be a wake-up call"), he doesn't put them on the spot with specific facts, like the names of disgruntled clients, and charges. Without the pressure of harsh factual allegations that the media could examine and follow, the board and senior management most likely will continue to hew to the standard whistleblower defense: disgruntled employee only saw a small fraction of company, our culture is good, our clients are loyal, we will review his issues -- in private. (See Blankfein's statement following the usual script.) And, it is hard to predict whether Goldman will be any more sensitive to the charge of a greedy and selfish culture -- the traders dominating the bankers -- after the article than before, because for more than two years this has been a very public and very widespread charge.

Some might say that Mr. Smith did not want to present hard facts because to do so would violate a confidentiality agreement with Goldman. But if he had a non-disparagement and non-disclosure agreement, as is typical in the industry, he appears to have violated it with the article in any event. (It would seem unlikely in any case that Goldman would sue, on those grounds because it would just prolong the story.)

So the Goldman letter may be a good example of our media age: a huge story that ricochets around the world at hyper-speed and allows people with preconceived opinions to restate them with force. But the story will have minimal if any lasting effect because there are no hard, new facts that force inquiries, follow-up stories, detailed Goldman responses, or sharp-edged debates on particulars with large implications.

To have impact, whistleblowers need to have facts, not just opinions. The absence of facts, and the predominance of opinion, no doubt explains why the resignation piece was not initially the subject of a news story, but instead appeared on the *Times'* op-ed page.

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