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Goldman Sachs: Why is the SEC trying to pin a tail on this donkey?
By Curtis Seltzer

BLUE GRASS, Va.—Not many of my friends know that I run a financial powerhouse called Goldman Seltzer Group Inc.

One division sells bow-wow loans before they start barking—our employees still refer to this as "banking"; a second division merges and acquires; a third trades things I can't dream up; and a fourth books bets for and against horses we know are lame.

It wasn't always like this. Few Main-Street Americans understand that our financial system now rests not on gold, cash, stocks or bonds, but on the hammer of grammar and the nail of syntax. In the trade, it's known as G&S.

That is why Goldman Seltzer is recruiting Bill Clinton to advise us on word definitions as well as the occasional land deal.

At the heart of the civil-fraud complaint the Securities and Exchange Commission brought against Goldman Sachs Group Inc. last week is the meaning of the word, "materiality." For the record, Goldman Sachs is not currently a division of Goldman Seltzer, though we are preparing a no-cash offer.

Goldman Sachs is accused of not disclosing certain information to buyers betting long on one of its synthetic credit-default deals. At issue, is whether the information not disclosed was "material" to an informed purchase. Goldman Sachs withheld information about the how and why of the deal's creation, not about the "goods" themselves.

Paolo Pellegrini at Paulson & Co. worked with Goldman Sachs to put together a pool of subprime-debt bonds that investors expected would generate cash through mortgage payments. John Paulson, the firm's founder, wanted to bet that this debt would go bad. He needed Goldman Sachs to find investors to take the other side, to bet long that the debt would be serviced.

Paulson bought insurance on the bonds that required him to pay investors a little bit if the bonds performed well. If the bonds tanked, those investors would compensate him big time.

Goldman Sachs got ACA Management, LLC to choose the "mortgage assets" in the pool, though Paulson had already selected the "assets" he wanted included. ACA went along with most of his choices.

Two rating agencies -- Moody's and McGraw-Hill's Standard & Poor -- blessed the final pool's 90 bonds -- some 500,000 mortgages in 48 states -- with triple-As. Eight months later in January, 2008, 89 had been downgraded to "junk" because the homeowners weren't paying their notes. More than half the mortgages are foreclosed or in default.

Goldman Sachs found a couple of investors who thought the homeowners would make their payments. Goldman didn't disclose to them that Paulson was both the brains behind the deal and betting against it.

When Goldman couldn't find enough chumps to go long, it had to put its own money long to get this horse out of the gate. So Goldman lost too, which proves, the firm says, that it did nothing wrong. Loss establishes innocence. See.

Losers, including Goldman, lost $1 billion. Goldman made $15 million in fees and lost $90 million on the deal because it had to fill out the action. Paulson made $1 billion, and Pellegrini got a $175 million bonus.

Other Wall Street financial institutions were booking bets, sometimes on the side of their clients, sometimes not. None of this seems clearly against any law.

Were Goldman Seltzer to find itself in the SEC's crosshairs, who better to defend the many interpretations of a concept like "material disclosure" than Bill Clinton?

Recall Bill's disclosure under oath that there "is" no sexual relationship going on with that woman, by which he meant that nothing "is" going on at the moment he was being deposed. His masterful exclusion of all "was" from any "is" was his Presidency's defining moment.

Bill is the gold standard in G&S matters. He argues that whether or not undisclosed information is -- there's that word again -- material depends on who is (or is not) in the White House, because we are a Nation of laws and not men…and not women either, he is quick to add.

I also plan to recruit John Gutfreund, once hailed as the King of Wall Street. (A little deposed royalty will dress up our corporate offices.) John is a fellow alumnus of Ohio's Oberlin College, located on the grim tundra southwest of Cleveland.

Like other Oberlin graduates in the 50s and 60s, John and I were stunted by the pre-Earth-Day ethers of death sweeping down from Lake Eerie and the school's bizarre social rules that allowed a female to visit a male's dorm room only between 8 and 10 p.m. on Saturday as long as the door was open

the width of a College wastebasket, a 60-watt bulb was on and three feet were on the floor.

You could violate Oberlin's regulations while complying with them if you were fast, sneaky and inventive. We at Goldman Seltzer use these very qualities to avoid SEC enforcement, which is a snap in comparison with evading a patrolling housemother armed with rectitude and a loud knock.

John became famous when he headed Salomon Inc. in the 1980s. First, he was the guy who fired Michael Bloomberg with a $10 million severance package, which Bloomberg used to start his financial-news-terminal network and communication business.

Second, as CEO, John pushed Salomon into Wall Street's first rank, expanding many of its practice areas, particularly trading. Was it really his fault that he failed to notify regulators (and his own board) about one of his traders who was making a lot of money by submitting false bids for Treasury bonds? John was fined $100,000 in the early 1990s and barred from running a brokerage, but the Street's smarts figured he had simply been protecting the firm.

Goldman Seltzer needs John because he's been seasoned with scapegoat experience.

John had this to say in a 1998 New York Times profile about Wall Street's culture: "'You'll find many, many short-term mercenaries there.' Big securities houses, he said, look out for themselves and not their customers."

Goldman Sachs says that it has broken no law. I think that's likely to be true, if only because no law seems to prohibit gaming a bet as they did. As long as Goldman made the required disclosures about the 90 bonds, Bill says that the pre-deal footsy with Paulson won't rise to the level of being material information that Goldman Sachs should have disclosed. Goldman is right when it says that investors should have done better due diligence.

America's mortgage mess and banking crisis came from people acting largely within the law, not outside of it. The problem is Wall Street acting normally, acting legally. Fraud of the Madoff type did not cause the Recession.

So why might Goldman Sachs be the target of a chancy civil -- not criminal -- prosecution? How come neither Pellegrini nor Paulson, who sired the deal, was charged? Why no charges against ACA or the rating agencies? Why no charges against other bookies who were touting the same bad horse -- "Mortgage Assets" -- and then taking bets and making them too.

The complaint against Goldman Sachs appears to be a very public effort to

pin a very small tail on the biggest donkey in the barnyard.

This rumble over mumble-jumble will make it appear that Democrats are standing up to Wall Street, which neither they nor Republicans really want to do. It will shine up a “financial-reform” bill that appears to leave many of Wall Street’s worst habits either untouched or touched only for show. The Hill is alive with the sound of lobbyists punching loopholes through this legislation.

The SEC’s tiff with Goldman Sachs looks a lot like a decoy that’s been set out to draw fire away from “reform” legislation that offers little reform.

Goldman Seltzer is also recruiting Manny Kant, a grizzled blogger who posted this advice to Wall Street: "Act only according to that maxim whereby you can at the same time will that it should become a universal law."

All of us at Goldman Seltzer -- Bill, John, Manny and I -- think that Americans need Wall Street to define a new and different normal for the way it operates. New regulations might nudge the herd in this direction, but real change has to come from inside. The bookies have to reform themselves if they want the country to stay in business.

Goldman Seltzer, by the way, is a leader in the personal-makeover industry. We also drive the market in G&S derivatives and stand ready to provide definitions for all occasions. On the stand, we’ve never been able to recall anything.

Curtis Seltzer is a land consultant who works with buyers and helps sellers with marketing plans. He is author of How To Be a DIRT-SMART Buyer of Country Property at www.curtis-seltzer.com where his weekly columns are posted.

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