CORPORATE CODES OF CONDUCT AND BUSINESS PRINCIPLES IN LIGHT OF THE GOLDMAN SACHS LAWSUIT SETTLEMENT

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ABSTRACT

The Securities and Exchange Commission recently settled a monumental lawsuit against the investment firm of Goldman Sachs, Inc. The settlement mandated that the Wall Street titan agree to strengthen its ethical policies and procedures. This paper will discuss Goldman Sachs as a complicated corporate entity and examine its relationship to its own Code of Conduct and Ethics in light of the lawsuit. It will present an historical perspective and a summary of the research and efficacy of Codes. This review postulates that business should implement their Codes and ethical programs by way of thorough and effective analysis of new investment products such as mortgage-backed securities. It explains how Goldman should have better utilized ethical mechanisms to examine these products. The paper condenses the more relevant recommendations of the Report of the Business Standards Committee of Goldman Sachs. Finally, this review evaluates the definition of waivers contained in Codes and concludes that businesses should eliminate this exception.

JEL: K19; K22; K42

KEYWORDS: Ethics, Implementation, Code of Conduct or Ethics, Business Principles, Business Standards Committee, Waiver, Conflict of Interest, SEC, Abacus, Mortgage Backed Securities

INTRODUCTION

Goldman Sachs, Inc., arguably the most successful firm in the history of Wall Street suffered a serious setback this year when it settled an ignominious lawsuit brought by the SEC for fraud and misrepresentation in the structuring and selling of mortgage backed securities to its own clients. The gravamen of the legal complaint was that Goldman did so with full knowledge that the investments presented a serious negative credit risk. (Securities and Exchange Commission v. Goldman, Sachs & Co. and Fabrice Tourre, 2010). Despite settlement of the suit for $550 million dollars, the largest in the history of Wall Street (Goldman Sachs & Co. Settlement with SEC, 2010), the financial services titan has tarnished its own reputation for unfailing client loyalty and brilliant business decision making. Goldman, in its dealings with respect to this lawsuit, may have breached conflicts of interest, placed its own profits well above those of its clients, and added to a breakdown of fairness and efficacy in the financial markets. (Jeffers and Mogielnicki, 2010). Goldman's activities of misrepresentation and infractions of the anti-fraud statutes governing the finance sector leading to this lawsuit are troubling in light of its adoption of a Code of Conduct and a set of Business Principles. (Jeffers and Mogielnicki, 2010). These documents contain a policy that seeks to provide an ethical path for its employee's behavior, encourage elevated moral principles, and establish a standard of fairness and equity in its dealings with and treatment of its clients.

This inquiry examines the nature of Codes of Conduct or Codes of Ethics, and postulates that codes must undergo meaningful and constant review and revision, provide guidance in the investment field for novel products, and be properly and thoroughly implemented with a view towards conflict of interest principles. This paper takes the view that financial sector businesses should test investment vehicles such as mortgage-backed securities within the confines of the ethical rubric before they utilize them. Goldman

failed to implement the values and priorities established in their Code and in their Business Principles and thus may not have behaved ethically with respect to selling and packaging of mortgage-backed securities. Included in this analysis is a discussion of Waivers of Codes of Conduct, which is a part of the Goldman document. The conclusion is that the term itself is inappropriate to and axiomatic of the symbol and purpose for which institutions need Codes of Ethics. Thus, businesses should unilaterally excise them from the language of Codes.

The paper reviews codes in their historical context and provides a brief summation of the status of empirical research. It further discusses optimal standards for ongoing code re-evaluation, implementation of codes and guiding principles, and corporate governance with respect to conflicts of interest issues. In relation thereto, the inquiry discusses Goldman's response to the lawsuit and ensuing public relations morass.

Finally, this review evaluates some of the recommendations contained in the Goldman Sachs Report of the Business Standards Committee of January 2011 and touches upon the philosophical intent and pragmatic steps that Goldman intends to take to restore client confidence.

THE LAWSUIT: SECURITIES AND EXCHANGE COMMISSION V GOLDMAN SACHS & CO. AND FABRICE TOURRE

On April 16, 2010 the Securities and Exchange Commission, in a scathing civil lawsuit, alleged that Goldman, Sachs & Co as well as its employee, Fabrice Tourre made materially misleading statements and omissions in connection with a synthetic collateralized debt obligation (CDO), called Abacus 2007-AC1 that it sold to its investor clients in early 2007. Because the transaction occurred at a time when the U.S. housing market was beginning to show signs of weakness, the SEC believed that certain activities and misrepresentations of Goldman and Tourre constituted misconduct in violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the SEC Act of 1934, and Exchange Act Rule 10b-5. (Securities and Exchange Commission v. Goldman, Sachs & Co. and Fabrice Tourre, 2010). Collectively, these federal anti-fraud statutes make transactions that constitute "a scheme or artifice to defraud", and other untrue statements or omissions a clear violation for which liability would attach. (U.S.C. Sec. 77q (a) ("The Securities Act"); 15 U.S.C. Sec. 77j (b) (Authority: Sec. 10; 48 Stat. 891); 15 U.S.C. 78 (j)).

Goldman had structured Abacus 2007-ACI with Paulson & Co. Inc, a hedge fund notable for winning huge profits by taking short positions. (Zuckerman, 2010; Teather, 2010). The marketing materials that Goldman provided to its foreign institutional investors stated that ACA management, an independent third party whose role it was to analyze credit risk in mortgage-backed securities, selected the underlying mortgages contained in the Abacus investment. Goldman represented that these were sound investments but at the same time the marketing materials presented did not disclose that Paulson & Co. Inc. with economic interests directly opposite to Goldman's clients played a significant role in the selection of the underlying portfolio mortgages. Paulson was bearish on the housing market and helped to choose mortgage backed securities that were expected to experience a negative credit event and subsequently default. After the Abacus portfolio selection, Paulson entered into Credit Default Swaps (CDS) and shorted these securities, essentially betting that the mortgages contained in the Abacus deal would fail. The government alleged that Goldman might not have disclosed any of these facts in the marketing materials provided to its clients, and that this omission was a statutory violation. (Securities and Exchange Commission v Goldman Sachs & Co. and Fabrice Tourre, 2010).

Furthermore, the SEC claimed that Fabrice Tourre, who was the Goldman representative on the deal worked directly with Paulson, personally devised, and marketed the transaction, and misled ACA into believing that Paulson's interest in Abacus was long and that his interests in the collateral selection were

aligned with ACA's. In fact, nothing could have been further from the truth. (Goldman Sachs & Co. Settlement with the SEC, 2010; SEC. gov 2010, New York Times DealBook, 2010). By January 29, 2008, just 9 months after inception, 99 percent of the portfolio had been downgraded. According to the litigation, Paulson profited by 1 billion dollars while deal investors lost a commensurate amount.
Goldman's response in opposition to the suit was that they were merely mitigating business risk and operating within a legal zone of business 'as usual' and filed an Answer denying such accusations.
(Jeffers and Mogielnicki, 2010). Nevertheless, in April 2010, The SEC announced a settlement and Goldman agreed to pay a total of 550 million dollars to defrauded clients and the SEC as well as to review and revise its ethical policies and procedures. Goldman, in its settlement only admitted to making a "mistake" in not disclosing the role of Paulson in the marketing materials. (Goldman Sachs & Co. Settlement with the SEC, 2010).

Goldman's Response to the Lawsuit Settlement

Indeed, Goldman has been well known for its client-centered emphasis and at the same time for its aggressive stance on Wall Street. It includes a conglomerate with some of the largest hedge and equity funds in history resulting in monumental profits. It is a global investment bank, and an investment management company that operates in trading and securities services. (New York Times Goldman Sachs Group Inc. News, 2010). Goldman has prided itself on the well-healed image of a firm that elevates its clients. This has now been shattered, though, because of duplicitous conflict of interest dealings in the sub-prime mess. Rolling Stones Magazine, in a scathing turn of phrase has characterized the Wall Street firm as " a great vampire squid wrapped around the face of humanity relentlessly jamming its blood funnel into anything that smells like money." (Taibbi, 2010). Because it has operated a private equity business, and allowed proprietary traders to flourish, the opportunity for self-dealing flowing from an unbridled path of information from one entity to another has helped to contribute to improper ethical behavior at the expense of valuable clients. Goldman traders can access information that affords them great advantage over competitors, and the business, through its powerful and omnipresent corporate persona can move the market in its favor as a result. (New York Times Goldman-Sachs Group Inc. Online 2010).

To its credit, Goldman apparently recognizes that changes must be made from the inside out. In May 2010, it convened a Business Standards Committee ("BSC") to strengthen its client- centered focus and review and improve upon its transparency as a business entity. In January 2011, Goldman Sachs, after a six-month review, issued a 39 page Report of the Business Standards Committee, which are hereafter discussed (Goldman Sachs Report of Business Standards Committee, 2011) .

Goldman Sachs Code of Conduct and Business Principals

Goldman has created an ethical policy for its workers that include a Code of Business Conduct and Ethics, ("the Code"), and a statement of Business Principles that represent the company's view of expected ethical standards on the job. (Goldman Sachs Code of Business Conduct and Ethics, 2009). According to the Code, the institution "embodies the commitment …to conduct our business in accordance with all applicable laws, rules and regulations and the highest ethical standards."

Section B of the Code mandates that "Any employee or director who is aware of a material transaction or relationship that could reasonably be expected to give rise to a conflict of interest or perceived conflict of interest should discuss the matter promptly with an Appropriate Ethics Contact." Furthermore, the Company includes a Compendium of laws, rules and regulations as a part of the Code that is pertinent to firm business and provide further guidance for its employees.

In Section 2C of the Code the Company asserts that it only succeeds through "honest business competition" and will not engage in "illegal or unethical business practices". Its ethical posture also includes fair dealing with clients, and other contractors. Finally, unfair advantage in the manner of "manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or unfair dealing practice" is disallowed under the policy.

The Goldman Sachs official website makes the Code available to its employees and the company further urges that employees and others read the Code in conjunction with the online-published statement of Business Principles. At the top of this document is the tenet: "Our clients' interests always come first." In addition, the last statement reads "Integrity and honesty are at the heart of our business". (Goldman Sachs Code of Business Conduct and Ethics, 2009). Clearly, Goldman has set forth a policy embedded in their Code that alleges that high ethical standards are paramount in its business operation and that it values a client focused approach based on integrity and disclosure.

Waiver of the Code

The Goldman code does include a waiver and devotes two paragraphs to describing how employees and board members can obtain a waiver.

It states,
"From time to time, the firm may waive certain provisions of this code. Any employee or director who believes that a waiver may be called for should discuss the matter with the Appropriate Ethics contact. Only the Board of Directors or a committee of the Board may make waivers for executive officers (including Senior Financial Officers) or directors of the firm.
An employee or director who is aware of a material transaction or relationship that could reasonably be expected to give rise to a conflict of interest should discuss the matter promptly with the Appropriate Ethics Contact."

Waiver of Codes: Misleading Misnomer

The classic legal definition of a "waiver" is "an intentional relinquishment or abandonment of a known right or privilege." (Ballentine's Law Dictionary, Third Edition, 1969 ; Regional Properties, Inc. v. Financial & Real Estate Consulting Co.,1985; Hart Engineering Co. v. FMC Corp., 1984). Many codes do contains waivers which have been variously characterized as gross loopholes, (Housel, 2010), "safety valves", (Unruh, 2010) and "flexible ethics"(Saxon, 2010).

The first problem with the use of the term is that only the person receiving the benefit may grant the waiver and then only after full disclosure. It is therefore not correct to say that the firm under the auspices of the Board of Directors can waive a right that would typically belong to a client, customer, provider or contractor, etc. Are we to think that before a Goldman employee seeks to commit, let us say a conflict of interest, that he or she would give advance notice to their client?

Apart from the inappropriate use of the word, the entire idea of granting a "waiver" smacks of hypocrisy and self-dealing whenever the ethics embodied in the code is inconvenient for the company. It does not suggest to the corporate body that ethics values are meaningful to any serious degree. It also can have dire consequences, as it did for Enron, the giant energy corporation that committed gross infractions by allowing individuals to create off the book entities that were presumably doing business with the company. Enron upper management was able to waive the requirements under the wording of the waiver if the CEO believed it would not affect the company. (Elson and Gyves, 2003). Enron ultimately failed because of mismanagement and corrupt dealings.

Finally, in light of the BSC report Waivers no longer seem to fit in with its recommendations, and may even be inconsistent with the report's intent and proposed new procedures.

AN HISTORICAL PERSPECTIVE OF ETHICAL CODES OF CONDUCT IN BUSINESS

Commercial crime and business misconduct is certainly not a phenomenon of recent history. Businesses, in an effort to stem improper behavior and provide ethical guidelines for employee behavior began to set forth statements that reflected ethical "codes" or "creeds" as early as the middle of the last century. In the 1970's and 1980's the use of codes became more fashionable, especially in the wake of the domestic and foreign bribery scandals of the time, resulting in the Foreign Corrupt Practices Control Act of 1977. (Benson, 1989). In the 80's quality of life issues involving pollution, smoking, lead poisoning, acid rain and radiation, amongst others, led corporate officers to seize upon Corporate Codes as a way to stress better corporate values. (Brooks,1989). Corporate giants such as Tyco, WorldCom, Enron, AIG and Adelphia outraged the public by engaging in corruption, excessive risk taking, self-dealing, conflict of interest, and criminal activity. (Sims and Brinkman, 2003). The Sarbanes-Oxley Act, a federal law passed in 2002, required that financial officers of certain large corporations publish their Codes of Ethics and any subsequent changes thereto. (Sarbanes-Oxley, 5 U.S.C. §§ 7201 et.seq.). In 2004, the United States Sentencing Commission amended its guidelines and set forth criteria for effective corporate ethics programs, which would ameliorate punishment for white-collar crimes if implemented. (US Sentencing Commission, 2005). This further spurred absorption with Codes as a means to diminish corporate criminal liability.

In the past twenty years there has been a trend towards an increased use of Codes in large part due to globalization, increased internet and media attention on a Company's corporate ethical culture, and a business' willingness to use Codes as "marketing instruments of legitimization" (Stohl, Stohl and Popova, 2009).

In 2004 Kaptein conducted a landmark empirical phone survey of 200 of the largest multi-national corporations in the world and found that 52% of them had a Code referred to either as the Stakeholder Statute (75%), the Values statement (49%), or the Code of Conduct (46%), thus establishing the high prevalence of a Company Code of some sort. (Kapstein, 2004). Recent studies have focused on whether multinationals have taken a global perspective towards the contents of Codes of Ethics, and indeed one recent study conducted by Stohl, et. al, looked at Codes established by global companies across sectors. The researchers asked whether the contents of Codes of multinational organizations are converging; in effect, do the Codes reflect standards of the global community that identify more desired ethical, and humane practices throughout the world? This "third generation of ethics" is marked by heightened awareness of the "larger connected environment" . The results of the study of 157 Corporations on the Global 500 found that while convergence is seen in communication features that only the companies based in the European Union demonstrated real reflexivity and universal consciousness in the language of their Codes to any significant degree. However, it was noted that there is progress amongst other companies as more than three quarters of businesses did associate with third generation thinking in some manner. (Stohl, Stohl, and Popova, 2009).

Studying Codes of Ethics

There is a sharp difference of opinion amongst scholars as to whether Codes of Conduct are good, bad or neutral for the company itself or simply not effective to stem the tide of unethical behavior. (Kapstein and Schwartz, 2008). Some view codes as contributing to the company's overall reputation, morality and business success. (Bowie and Duska, 1992). Other researchers believe codes to be beneficial to

employee's attitudes and behaviors when the corporate culture takes ethical programs seriously. (Trevino and Weaver, 1991). They also may help to avoid legal liability or ameliorate criminal sanctions. (Pitt and Groskaufmanis, 1990). On the other hand, some scholars believe that they are mere "window dressing" (White and Montgomery, 1980), are costly when compared to what they presumably add to the organization (Hess, McWhorter and Fort, 2006), and possibly counter-productive. (Grundstein-Amado, 2001).

Nevertheless, because ethics is widely viewed as an essential component of business success by shareholders and corporate governance, and especially in light of the recent scandals in the financial industry, firms believe ethical codes are highly necessary. (Svensson, Wood, et. al., 2009).

The scientific research on the effectiveness of codes is clearly a mixed bag. While admittedly difficult to assess, no fewer than 79 studies have attempted to examine the empirical efficacy of codes. (Kaptein and Schwartz, 2008). The development of a generally accepted terminology for doing so is still in its infancy. (Gaumnitz and Lere, 2004). However in 2008 Kaptein and Schwartz formulated an integrated research model for the effectiveness of business codes and they submit that future research should rely upon the following control variables for analysis; expectations of stakeholders, environmental and organizational characteristics, objectives of the organization, development process, content, sub-codes, implementation, personal characteristics, internal context, and conduct and consequences. Kaptein, in subsequent research, has further defined eight organizational virtues when, if improved by an ethics program, could result in multi dimensional relationships that have practical relevance that adds to an understanding of how codes work. While analyzing components of ethics programs, and the dimensions of ethical culture, Kaptein found that 'clarity' was most highly related to codes of ethics, ethics officers, ethics communication and training but that other dimensions had negative relationships with components of ethics programs. (Kaptein, 2008). As a practical matter, organizations might be able to improve programs based on this information.

Codes Must Be Effectively Implemented Through Product Analysis

Following the disclosure that Goldman had helped to foist upon its clients investments that it had reason to believe would fail, and the ensuing admission that it had made a "mistake" , presumably on both a legal and ethical level, the obvious question that remained was how could these investments pass ethical muster in the first place? Should companies have subjected them to an analysis of what is considered unethical conduct pursuant to and embodied in the Code of Ethics and its ethical culture? Was there a mechanism for such a review? Did companies use internal controls for such activities that are comprehended within the ethical rubric of the firm? Should, in fact, there be an ethical audit of new products with company committee's that have strict oversight?

Corporate management should be results oriented in the use of codes. CEO's should demonstrate a high commitment to the values they espouse, and should in effect be their "champion". They must not only organize and develop codes, but also implement programs developed around them. (Murphy, 1998). The codes need to have a prophylactic function. (Brenner, 1969). A question that large multi-dimensional firms such as Goldman need to ask is how can the ethics program be utilized to forestall and prevent problems of conflict of interest due to what may be at first a novel situation employing new and untried investment products? Before the company allows widespread use, they should subject products to a rigorous ethical audit.

Codes can be effectively implemented as long as the strong message they send cascades down within the organization through tangible programs, training and overview. While real life situations will erupt that may not be foreseeable that compel businesses to call upon the ethics of their culture, these messages

should more importantly prevent ethical conduct from happening in the first place. According to Svensson , there must be tangible implementation, communication and benefits that enable the ethos of the code to come to life in all that the organization does" (Svensson, Wood, et.al, 2009).

Goldman May Not Have Implemented Values Contained in its Codes

Businesses should intertwine product development with ethics. Companies would do well to avoid ignoring potential troubling practices because they were technically legal. The 1999 repeal of the Glass-Steagall Act took down the barriers between investment banking and retail banking and increased fluidity in the information flow between consumer and investment departments. (Gramm-Leach-Bliley Act, 1999). In view of the lack of barriers, re-packaging of loans may not have been scrutinized enough in light of the ethical "ethos" of the company in the Goldman scenario and probably for many other banks. (Story, L., Morgenson, G., 2011). Questionable practices and products may have been utilized in an effort to remain competitive and retain market share. If committees within Goldman Sachs had subjected these products to a more comprehensive ethical review, and if senior management eliminated or modified products that could have potentially created serious ethical breaches under the codes, negative repercussions for Goldman, and, to some extent, for the broader economy, might have been mitigated. Goldman may have fared much better with successful implementation of its Code through well-regulated corporate analytical structures of new products. This confirms a well -settled ethical principle that companies who rush headlong towards the nirvana of short-term profits might be heading in the wrong direction. (Jennings, M., 2006)

Report of the Goldman Sachs Business Standards Committee

It is interesting that Goldman initially states in the January, 2011 Report of the Goldman Sachs Business Standards Committee that the Business Principles were codified 30 years ago, that the world is more complicated now and that the Codes need to be re-visited. (Report of the Goldman Sachs Business Standards Committee, 2011). Many of the acknowledgements and resolutions in the report are promising.

Clearly, it is appropriate that Goldman's purpose for taking a long look at itself centers on re-establishing the client focus for which they are so famously known and which has now been so infamously tarnished. Towards that end, they have put forth in this report some encouraging philosophical goals that have been missing as well as defined some new structures and organizations for preventing ethical problems.

They are dedicating their future approach, according to the report, to a decision of "should we" undertake a certain activity, rather than "can we". This future oriented thinking is a step in the right direction toward identification of ethical problems and possibly better ethics program implementation under the business principles of the firm. Other philosophical underpinnings of the document include a "re-commitment to transparency", and to the strong resolution of conflict of interest issues.

The firm, perhaps more importantly, is proposing to develop and implement processes and structures that resolve some of these important concerns. First, the firm is re-committed to "strong accountability processes", "risk management practices", and methods for strengthening conflict of interest procedures. The Report gives focus to the subject of structured products and emphasizes the need to undertake heightened review including evaluation, and suitability of products. Goldman proposes to reinvigorate identification, review, approval and documentation of structured products within this framework. Accordingly, a Firm wide New Activity Committee and a Firm wide Suitability Committee, under the auspices of the Board of Directors will be established to approve new products, and oversee standard setting for products.

Finally, Goldman apparently recognizes that the free flow of information between businesses has presented serious conflict of interest matters. Thus, they are targeting wall crossing and informational barriers throughout the corporate system. It is recommended that some asset backed and mortgage-backed securitization activities should be removed to the Financing Group rather than remain with the Securities Division as a result.

IMPLICATIONS

The implications for Goldman Sachs and, indeed, many of the major banks that engaged in unethical and possibly illegal practices within the context of Abacus-like deals could be massive. According to the recently released United States Senate Subcommittee Financial Crisis Report, Goldman Sachs "securitized high risk mortgages" from 2004-2007 for "lucrative fees", "magnified the impact of toxic mortgages on financial markets", "took a short position on the mortgage market", "created a conflict between the firm's proprietary interests and the interests of its clients,", did not disclose "taking a short position" in the Abacus deal, and "used Credit Default Swaps… to bet against the mortgage market". (United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, 2011). The Committee report states "during the course of its investigation into the Goldman Sachs case study, the Subcommittee issued 13 document subpoenas as well as multiple document request letters to financial institutions, government agencies, hedge funds, due diligence firms, insurance companies, individuals, and others. The Subcommittee obtained tens of millions of pages of documents, including internal reports, memoranda, correspondence, spreadsheets, and email. The Subcommittee conducted over 55 interviews and one deposition, including interviews with a variety of senior executives and Mortgage Department personnel at Goldman Sachs." The thrust of the complaint against Goldman is its "failing to manage conflicts of interest". Because of this, the Committee is recommending "strong implementation of the new restrictions on proprietary trading and conflicts of interest"…

The Committee referred the Senate Report to the United States Department of Justice and the Securities and Exchange Commission for investigation. In addition, the Manhattan district attorney's office recently sent a broad subpoena to Goldman for documents concerning mortgage-related transactions that led to the 2008 financial crisis. (Hennings, 2011). Authorities could find that Goldman is criminally liable for activities associated with the previous charges and indict top Executives for criminal wrongdoing.

The negative ramifications for a society in which the financial markets do not operate in a fair and efficient way are staggering if judged by the recent economic collapse. The lack of ethical conduct therefore has broad implications within the business world and the real world, and a more rigorous ethical analysis of financial products could go far to right this wrong.

CONCLUSION

This inquiry asks the question whether Code of Ethics should be a real and meaningful stricture on unethical practices within the financial sector, especially during the review of investments products that are not tried and true.

The paper reviews the case of SEC v. Goldman Sachs and Fabrice Tourre and examines the relationship of Goldman Sachs to its Code of Ethics in light of its role in the Abacus deal and the settlement of the lawsuit. The suit alleged that the company had committed securities fraud by not disclosing to its clients material information about a third party's short position vis á vis the Abacus deal. Ultimately, Goldman Sachs admitted making a 'mistake' and paid 550 million dollars and made other promises to settle the matter. Thereafter, it issued a Report of the Business Standards Committee presumably in an attempt to

ameliorate behaviors that could lead to future conflicts of interest. Nevertheless, the United States Senate conducted an investigation, and the SEC, the Manhattan District Attorney's Office, and the U.S. Department of Justice have continue to conduct additional investigations into Goldman's activities that could result in the identification of criminal activity.

This paper describes Goldman's current Code of Conduct and Business Principles, and the Waiver of the Code. Companies should eliminate Waivers from Codes because only those who are entitled to the benefit can "waive", not the corporation, and they give the business an opportunity to side-step ethics. It then outlines an historical perspective of Ethical Codes of Conduct in Business. This paper sets forth a brief review of the study of Codes of Ethics and finds that the research on the effectiveness of Codes is not entirely consistent. Nevertheless, businesses continue to formulate and include Codes of Ethics into their corporate culture even as the world becomes more inter-connected.

This paper postulates that Goldman did not follow its own Code of Ethics with respect to the Abacus case and possibly other deals and committed unethical conflict of interest. Had it done so, and further, had it subjected the Credit Default Swaps and other similar or novel products to a more serious and rigorous ethical analysis under the rubric of the Code, this may have forestalled the troublesome lawsuit and avalanche of scrutiny by governmental enforcement agencies. Indeed, these activities may have also added to the wider economic societal meltdown to a significant degree and a true adherence to ethical codes may have ameliorated such consequences to some extent.

Going forward it is necessary to continue to ask how business should implement Codes in morally correct ways when postulating and instituting new and complicated investment products. What quality control structures and mechanisms should top executives put into place that give Codes meaning and attempt to avoid conflict of interest? These methods, once advanced, should be tested against ethical expectations, and the words and meaning of the Code. Obviously, the sky can no longer be the limit, as huge negative consequences ensue, not just for Wall Street, but also for Main Street when ethics are merely "empty words". Studies on the value and efficacy of codes must continue so that businesses do not lose focus of them as necessary and effective tools for good and morally correct behavior. As governmental agencies pursue proof of criminal activity and evince a desire to see accountability for the dire nature of the economy researchers must continue to attempt to understand the role that business ethics plays in such a scenario.

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