Goldman Sachs' sweeping legal effort to crush 'United Capital' advisor exodus may prove largely meaningless -- with little chilling effect on flood of defections

The New York City investment bank is filing FINRA arbitrations with abandon as RIA departures pile up, but the squid may not get much sympathy -- in court or the court of public opinion.

Author **Brooke Southall** October 9, 2023 at 11:32 PM

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Ari Sonneberg: It would not be a good look for Goldman Sachs to be bullying small RIAs.

As advisors leave Goldman Sachs' (GS) advisory business ahead of its sale to Creative Planning, the vampire squid is extending its tentacles in all directions to legally corral defectors.

The New York investment bank is chasing them with FINRA arbitration claims and a stark warning.

But few advisors seem fazed by the effort, which says as much about the validity of the filings as it does about Goldman's true intentions.

Goldman CEO David Solomon's foray into mid-market money management is turning into a can of worms.

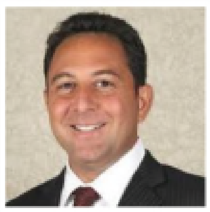
"We have filed claims against advisors across multiple states for violating their non-compete obligations and their fiduciary duties to the firm," a spokesperson told Financial Planning magazine.

“We take these matters seriously and will take appropriate action against any adviser who attempts to violate their contractual obligations,” it said.

Legal saber rattling can have a chilling effect. Yet, RIA fears seem to be in short supply.

Legal hurdles

Dozens more advisors may leave the RIA unit this week, according to multiple sources close to the deal.



Will Creative Planning CEO Peter Mallouk be left holding the bag?

What's happening here is that RIAs are both reading the lawbooks and reading the room, said Ari Sonneberg, partner with Wagner Law Group.

“Without being privy to what the GS agreement with the RIAs looks like, the likely existence of a non-compete clause is not really a trump card for GS,” he writes by email.

“RIAs, who tend to move around a bit, and their lawyers, are keenly aware, as I am sure GS is, that non-competes are difficult to enforce.”

Indeed, RIAs in 2023 can simply regard these legalistic parting shots as nuisances, because the law is preponderantly favorable, says John Furey, CEO of Advisor Growth Strategies, a business management consultant in Phoenix, Ariz.

“At the end of the day, advisors and their clients have a choice: It simply becomes a legal entanglement and financial issue that will be resolved. This doesn’t mean getting from A-to-B could be without some pain.”

Limited support

In fact, Goldman Sachs' power may bias judges against it, Sonneberg says.

“Many judges are very liberal in interpreting non-competes and hesitant to enforce them, especially in ‘David v. Goliath’ situations, such as this.”

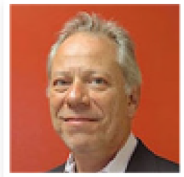
"Goldman Sachs might have mud on its face, as they sold an asset with limited support from the advisors," he says.

And it's not just courts of law that might limit how much force Goldman Sachs can exert under these circumstances, Sonneberg adds. The court of public opinion will make it aware of brand risk.

Holding the bag

"The PR component is also not something to be overlooked as a factor in GS decision making in this situation," he says. "It would not be a good look for GS to be bullying small RIAs.

"While it is no surprise that they are making threats at this juncture, I think it is unlikely that they will turn this into an all-out legal battle – especially knowing they might face unsympathetic judges in the end anyway."



Phil Waxelbaum: 'This deal must include a loyalty payment.'

The investment bank, nicknamed "The Vampire Squid," no doubt has all the legal resources it needs to field maximal obstacles to keep staff and AUM it acquired from walking out the door.

Other sources asking not to be named say the other wild card is whether Creative Planning or Goldman Sachs has been left holding the bag, if the advisors leave.

It's possible, sources say, that Goldman is really doing a best-effort on behalf of its buyer before handing off the imbroglio of legal skirmishes at closing.

Walking out

Dozens of advisors representing several billion dollars worth of AUM have declared intent to break away from Goldman Sachs, which is selling its advisor unit to Creative Planning, according to sources who asked to speak anonymously to be candid.

The advisors are wary about being swept up into another deal where they believe they will lose more control of their destiny as "independents."

"Arbitration claims" sound less scary than being served an outright lawsuit, but it hardly precludes litigation.

"If the parties agree to mediate, they will not give up any right to arbitrate or litigate if they cannot reach a satisfactory settlement," according to FINRA's website.

Creating Planning CEO Peter Mallouk inked the deal in just eight days after Goldman's initial sale to Osaic Wealth faltered, which was low confidence in retaining many advisors.See: Source: Goldman Sachs expected to announce sale of 'United Capital' on Monday or Tuesday, which tells more about the Wall Street bank's dysfunction than Joe Duran's old rollup

Loyalty payments

Mallouk seemingly solved Goldman Sachs' dilemma about what to do with the $750 million acquisition now that it no longer fits its long-range plans. But he may have created one for himself. See: Goldman Sachs fought the squid, but the squid won as CEO David Solomon puts the United Capital-Ayco RIA back under the control of house asset managers

Mallouk said when the deal was announced in August that any contract enforcement would be a last-resort measure,

"Of course, as any buyer would do, we would enforce contracts if necessary, but I think there is a path for nearly everyone."

Philip Waxelbaum, principal of Masada Consulting, predicted the possibility of an advisor exodus.

"This deal must include a loyalty payment to advisors and a big one at that," he told RIABiz. "Without that, there will be a double-digit departure rate."

Brooke lives on a houseboat, works in an office and juggles calls across the five time zones and four countries his small team works. He's out to prove an economic major can make a living as a journalist and that articles need not be a loss leader if they are written well and geared to an intelligent readership. @RIABiz

Keith Girard contributed to the editing of this article.

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Goldman Sachs fought the squid, but the squid won as CEO David Solomon puts the United Capital-Ayco RIA back under the control of house asset managers

Solomon acknowledges he's largely reunifying wealth management and asset management to regain synergies after trying to give the in-house RIA agency.

Author **Oisin Breen** November 1, 2022 at 12:03 AM

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David Solomon: 'It's not that by doing this that we're doing something dramatically different.'

> ***Brooke's Note: Goldman Sachs is both a company and a myth, and there's some overlap between the two. The company is crazy successful as an investment bank and trading house known for hiring the best people and pushing them hard to get every ounce of their output. The Goldman Sachs myth takes it a step further into what we know as the vampire squid – a ubiquitous presence that also wins because it surrounds us, peoples key government posts and does it ruthlessly. That squid, the myth says, will suck life from the mass economy and funnel it to the 1%, without getting squeamish about collateral bloodshed. So when Goldman Sachs said it was shifting gears to consumer investing and banking six years ago, investors were excited that finally they could bring the that competence to bear on their more meager personal fortunes. Madison Avenue could have gone with: Make squid power work for you. The problem for Goldman is that that kind of market segmentation, never mind Jekyll-and-Hyde cultural malleability, doesn't really work in the real world. Luckily for Goldman, it had a fall-back solution. It could return to its comfort zone and call it restructuring.***

Goldman Sachs went to the bottom, then it went to the top; then it stopped and it turned and it went to the bottom. Now it's back at the top, right where it started… again.

"Helter Skelter" might be the best way to describe the New York City investment bank's six-year quest to answer its penultimate, soul-defining question: Is it a "vampire squid" investment bank or a budding middlebrow wirehouse?

Christian Bolu: I'm struggling to understand what the broader point of the reorganization really is.

CEO David Solomon finally seemed to provide an answer during a third-quarter earnings call (Oct. 18).

The squid won.

A succession of chief executives have grappled with the bank's long-term future in the burgeoning digital banking world. It hasn't been easy.

Solomon, who took over the executive suite from Lloyd Blankfein in 2018, is in the middle of his third restructuring in the last four years.

The last "reorganization" was announced in the fourth quarter 2019. Notably, it created separate asset management and wealth management units.

The separation not only gave wealth management its own P&L and identity inside the company but opened the architecture. The sectioning off also built a fire wall between product and product distribution.

But the latest reorganization puts them back together again. The rest of the reorganization seems less than apparent.

Christian Bolu, managing director and senior research analyst for US Capital Markets at New York City consultancy Autonomous Research summed up the dilemma in a question he put directly to Solomon during the call.

"I'm struggling to understand what the broader point of this reorganization really is; what does this reorganization mean practically?" he asked.

Goldman declined to comment.

He also seems determined to shoehorn the investment bank and trading division into the same unit, even though both, traditionally, were powerful fiefdoms – and intense rivals – within the bank.

Of note, Blankfein came from the trading division and Solomon from the investment side.

An undisclosed portion of the firm's financial technology will be consolidated in a third unit.

"It's not that by doing this that we're doing something dramatically different ... We put a big, big spotlight on the synergies we thought [come from] bringing asset management and wealth management closer together," he said in continuing his response to Bolu's question.

"We've looked … and we've learned … [three units] makes it easier for investors to understand and see how we look at our client set … [and it] strengthens our ability to deliver … with the big businesses, banking and markets, and asset and wealth management."

Goldman culturally doesn't believe in or accept the concept of loss leaders.

Goldman investors seemed to get it.

The bank's stock (GS) closed at $306.71 the day before the announcement, and climbed steadily after, topping out at $344.51 today (Oct. 31). The 12% gain bucked the overall market.

The dilemma

The "vampire squid" image has dogged the bank ever since Rolling Stone writer Matt Taibbi used the colorful adjective a dozen years ago to describe Goldman Sachs' business -- making the wealthiest even wealthier.

"The first thing you need to know about Goldman Sachs is… the world's most powerful investment bank is a great vampire squid wrapped around the face of humanity, relentlessly jamming its blood funnel into anything that smells like money," Taibbi wrote.

"The bank is a huge, highly sophisticated engine for converting the useful, deployed wealth of society into the least useful, most wasteful and insoluble substance on Earth — pure profit for rich individuals."

Therein lies the dilemma.

The future of financial services lies with digital banking and the mass affluent market, generally households with $100,000 to $1 million in investable assets. Goldman has yet to find a way to crack it.

That upper crust blueprint can't be applied effectively to lower crust investors and depositors, says Philip Waxelbaum, principal of Masada Consulting, via email.

"It's not in Goldman's DNA to play in the consumer markets. The right decision is to limit and/or exit without further embarrassment," he says.

"Retail does not fit the core revenue model and repeated faceplants will put a stink on the whole company," he adds.

But it's not for lack of trying.

Philip Waxelbaum: Goldman is inextricably tied to [a] now orphaned business line.

Stops and starts

Goldman Sachs tried to re-engineer its own genome after it said it would build a national RIA custodian and a national RIA.

But now those initiatives appear to have faded into the ether.

"RIA custody certainly seems to have become much more peripheral to Goldman's current strategy," says Andrew Besheer, director of Wealth Management Practice at Boston consultancy, Aite-Novarica, via email.

"Is that because they want lower expectations for the near term to buy some time … [or] because [it] is no longer as clear-cut a fit with the strategy?" he asks.

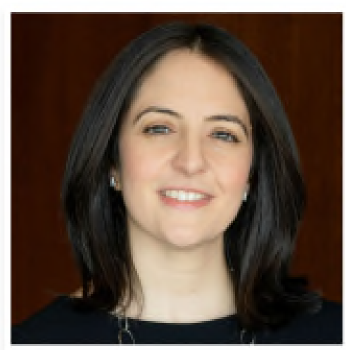
"The next six months probably will be a pretty good indicator."

Likewise, Goldman's much vaunted entry into consumer digital banking with "Marcus," is suddenly being sidetracked.

Marcus, like the RIA, was added to the asset management unit.

But Solomon is now curbing the initiative after it was hit by product delays, executive turnover, branding confusion, regulatory missteps and deepening financial losses, according to CNBC.

"Goldman culturally doesn't believe in or accept the concept of loss leaders," says Besheer.



Stephanie Cohen will manage Goldman Platform Solutions.

Digital flop?

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"The race [since its launch] was to have a robust balance sheet before rates climbed and the honey pot of spreading margins kicked in," he adds.

Yet Marcus has gathered $110 billion in client deposits from 15 million customers since 2016, which may extend its lease on life, according to Besheer.

"[Goldman likely has] a plan and a path forward for Marcus to make money … I just don't see them continuing … if they don't see it contributing to shareholder equity over time," Besheer explains.

Goldman, last February, also wound down its 2018-acquisition of Clarity Money, after buying it for around $100 million. It added its most popular features to Marcus. See: Goldman Sachs turns big page on United Capital.

Accretive returns

Solomon told analysts during the earnings call that Marcus will now turn its "focus on existing deposit customers and consumers that we already have access to through channels like workplace and personal wealth, rather than seeking to acquire customers on a mass scale."

Yet he insists that once Marcus is freed from the fetters of having to keep finding new retail customers, it will stop bleeding money.

"[As we] stop the pace of growth that we've had, so you're not front-loading reserves the same way … [it] will deliver accretive returns," he told analysts.

> "[The restructuring means] the forward spend for customer acquisition is meaningfully lower."

Solomon has also tasked close ally, Stephanie Cohen, co-head of Goldman's $667 billion AUM consumer and wealth management division, to head up one of three* restructured units, Platform Solutions.

"Does [Platforms Solutions] involve selling or sunsetting [software and services]? … Probably, there is a little of both," says Besheer.

Checking out

Marcus' checking account also may not survive the company's latest re-organization, after repeated delays to a 2021 launch date, 2022 beta-testing, and a reported new 2023 launch date.

Its credit card and mobile phone payment services are equally topsy-turvy.

They're a smash hit with customers, yet the Apple and General Motors-backed cards also funnel a lot of the cards' profits out of the firm, according to Waxelbaum.

"It is prototypical of the Goldman disconnect with mass market brand positioning.

"They relied on the hip Apple joint venture on the credit card and the more mature middle-class consumer with the General Motors version. Now how [does Goldman] break from Apple and General Motors?" he asks.

"Goldman is inextricably tied to this now orphaned business line."

Goldman's recent 'fintech' and wealth acquisitions

- 401(k) robo, Honest Dollar. (2016)
- Personal finance start-up, Clarity Money. (2018)
- United Capital -- for $750 million. (2019)
- RIA custodian Folio Financial (2020)
- Home improvement loan company, GreenSky -- for $2.24 billion. (2021)

Re-organized into Goldman Platform Solutions

- Consumer partnerships, likely including Apple and GM.
- An undisclosed set of 'financial Technology platforms'.
- 'Transaction Banking' services
- Home Improvement lender, GreenSky.

** Goldman partners Dan Dees, Jim Esposito and Ashok Varadhan will run Goldman's combined investment-banking and trading unit. Partner, Marc Nachman will run the combined asset management and wealth business. Each unit will report to president John Waldron.*

Dublin-native and Edinburgh-based Oisín Breen has spent seven years writing about finance, including five whirlwind years diving into the advisor world for RIABiz. A widely published and well regarded poet with two full collections under his belt, Breen is also an academic in English Literature with a deep fondness for his Scottish rabbit, Hessell. @Breen

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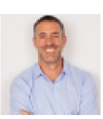

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Goldman Sachs RIA custodian delayed indefinitely, as 'technical details' bedevil launch date

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