

**IX. *Developments in Internal Scrutiny of Data Security as Illustrated by Goldman Sachs’s Unauthorized Use of Confidential Supervisory Information***

**A. Introduction**

This article will discuss recent developments in internal security as illustrated through a recent event involving Goldman Sachs’s unauthorized use of confidential supervisory information and the resulting investigation by the Federal Reserve. Section B will discuss the background of data security and regulation of confidential supervisory information. Section C will discuss the enforcement actions against Goldman Sachs for their involvement with the misuse of confidential supervisory information. Finally, Section D will touch on the future implications stemming from the policies outlined in the enforcement settlements.

**B. Background**

**1. Data Security**

Data security is generally defined as the process of protecting data “from destructive forces or from unauthorized access” during its “communication or storage”.<sup>1</sup> In the banking industry, data security regulation is ideally designed to prevent a leak of important information to the public and control the internal use of sensitive information.<sup>2</sup> With the rise in hacking<sup>3</sup> and the use of personal devices for business purposes, data security has become a constant issue for

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<sup>1</sup> Mahmoud Elkhodr, Seyed Shahrestani & Hon Cheungpg, *The Internet of Things: New Interoperability, Management and Security Challenges*, in 8 INT’L J. NETWORK SECURITY & ITS APPLICATIONS 2, 85, 94 (2016).

<sup>2</sup> See Allison Grande, *Goldman’s \$36M Fine Turns Data Security Scrutiny Inward*, LAW360 (Aug. 4, 2016, 9:35 PM), <http://www.law360.com.ezproxy.bu.edu/articles/825142/goldman-s-36m-fine-turns-data-security-scrutiny-inward> [<https://perma.cc/QFS7-MJD3>].

<sup>3</sup> Dictionary.com defines hacking as: “to circumvent security and break into (a network, computer, file, etc.), usually with malicious intent.” *Hacking*, DICTIONARY.COM, <http://www.dictionary.com/browse/hacking> [<https://perma.cc/FF2J-KHMK>].

many companies, including those in the financial sector.<sup>4</sup> Failures in data security have become costly events for many companies, even before fines are imposed.<sup>5</sup> IBM has reported that a 2015 global study concluded that data breaches cost on average \$154 per record and \$3.79 million per incident.<sup>6</sup> Data breaches are not an uncommon occurrence.<sup>7</sup> According to a study from the data security firm Gemalto<sup>8</sup>, in the first half of 2015, companies reported 888 data breaches containing more than 245 million records of personal information.<sup>9</sup> Roughly 50 percent of the incidents had an unknown number of records breached.<sup>10</sup>

The list of regulators covering data security is extensive.<sup>11</sup> The regulatory body is determined by the charter the banking institution chooses.<sup>12</sup> All institutions with federal depository insurance have a federal regulatory body.<sup>13</sup> In the banking and finance sectors, the

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<sup>4</sup> See David R. Owen & Bradley J. Bondi, *Defending the Data—A Director’s Cybersecurity Duty*, NAT’L ASS’N OF CORP. DIRS. (Mar. 16, 2016), <http://blog.nacdonline.org/2016/03/defending-the-data-a-directors-cybersecurity-duty/> [https://perma.cc/45L7-FQBM]; Mark S. Sidoti & R. Scott Garley, *The Rogue Insider: Protecting Against Trade Secret Theft*, LAW360 (Sept. 16, 2016, 12:58PM), <http://www.law360.com/articles/840122/the-rogue-insider-protecting-against-trade-secret-theft> [https://perma.cc/JG4T-HDXG].

<sup>5</sup> See Owen & Bondi, *supra* note 4 (explaining the expenses incurred by IBM and a study conducted by Gemalto, a data security firm); PONEMON INST. & IBM, 2015 COST OF DATA BREACH STUDY: GLOBAL ANALYSIS (May 2015) (detailing the findings of a study conducted by Ponemon and sponsored by IBM into the frequency and cost of data breaches); GEMALTO, FINDINGS FROM THE BREACH LEVEL INDEX: 2015 FIRST HALF REVIEW (2015) (detailing the number and patterns concerning data breaches in the United States).

<sup>6</sup> PONEMON INST. & IBM, *supra* note 5, at 1.

<sup>7</sup> GEMALTO, *supra* note 5.

<sup>8</sup> Gemalto is the world’s largest manufacturer of SIM cards. *The Endangered SIM Card*, THE ECONOMIST (Nov. 22, 2014), <http://www.economist.com/news/business/21633870-moves-reinvent-or-even-abolish-sim-card-could-have-big-consequences-endangered-sim> [https://perma.cc/23S6-T55B]; *Who We Are*, GEMALTO, <http://www.gemalto.com/companyinfo/about> [https://perma.cc/KS4R-X3GC].

<sup>9</sup> GEMALTO, *supra* note 5.

<sup>10</sup> *Id.*

<sup>11</sup> Owen, *supra* note 4; Grande, *supra* note 2.

<sup>12</sup> MICHAEL S. BARR ET AL., FINANCIAL REGULATION: LAW AND POLICY 78 (16th ed. 2016).

<sup>13</sup> *Id.*

federal regulators can range from the Securities and Exchange Commission and the Consumer Financial Protection Bureau to the Federal Reserve Board of Governors and the Financial Industry Regulatory Authority.<sup>14</sup> The list gets even longer when state regulators are involved.<sup>15</sup>

Because states can issue charters, they would be involved in regulating banking institutions with state charters.<sup>16</sup> These regulatory bodies include fifty State Attorneys General along with state financial regulators, such as the New York Department of Financial Services and state financial consumer protection bodies, such as the Massachusetts Office of Consumer Affairs and Business Regulation.<sup>17</sup> Some federal banking regulators—the Board of Governors of the Federal Reserve System (Fed), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB)—have come together to create the Federal Financial Institute Examination Council (FFIEC).<sup>18</sup> The FFIEC is “empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions” and to make recommendations to promote uniformity in the supervision of financial institutions.<sup>19</sup> Each institution, however, still releases its own regulations regarding the handling of confidential information, including supervisory confidential information.<sup>20</sup>

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<sup>14</sup> Owen & Bondi, *supra* note 4; see Martin O’Sullivan, *Ex-Goldman Director Sues Bank For Investigation Costs*, LAW360 (July 29, 2016, 12:44 PM), <http://www.law360.com.ezproxy.bu.edu/articles/822957> [<https://perma.cc/9XJX-36WU>].

<sup>15</sup> Owen & Bondi, *supra* note 4; Evan Weinberger, *Goldman Sachs Reaches \$50M Settlement Over NY Fed Leak*, LAW360 (Oct. 28, 2015, 1:40 PM), <https://www-law360-com.ezproxy.bu.edu/articles/720162> [<https://perma.cc/4HB5-Z4PK>].

<sup>16</sup> BARR ET AL., *supra* note 12.

<sup>17</sup> Owen & Bondi, *supra* note 4; Weinberger, *supra* note 15; *State and Local Consumer Agencies in Massachusetts*, USA.GOV, <https://www.usa.gov/state-consumer/massachusetts> [<https://perma.cc/7FK8-Y8L6>].

<sup>18</sup> Matthew Stone & John Geiringer, *Bank Examination and Enforcement*, in *THE KEYS TO BANKING LAW: A HANDBOOK FOR LAWYERS* 225, 225–31 (Karol K Sparks & Harding de C. Williams ed., 2012); FED. FIN. INSTS. EXAMINATION COUNCIL, <https://www.ffiec.gov/> [<https://perma.cc/2YNJ-TZ7S>].

<sup>19</sup> FED. FIN. INSTS. EXAMINATION COUNCIL, *supra* note 18.

<sup>20</sup> Gerald Sachs et al., *CFPB Treatment of Confidential Supervisory Information: Comparative Analysis and Overlapping Jurisdiction of the*

## 2. Regulation of Confidential Supervisory Information

Confidential supervisory information is created during the regulatory process.<sup>21</sup> During the examination, regulators create reports and other communication that are deemed confidential.<sup>22</sup> In addition to being confidential, the records are the property of the regulating agency.<sup>23</sup> Examples of confidential supervisory information as described by the Fed include reports of examinations, information gathered in the course of inspection, and supervisory ratings.<sup>24</sup>

Quite a few regulatory bodies have released procedures for handling confidential supervisory information, including the CFPB, the OCC, the Fed, and the FDIC.<sup>25</sup> Agencies lay out their specifications in the Code of Federal Regulations under Title 12 in the chapter specific to the organization.<sup>26</sup> For example, the Fed codified their regulations in 12 C.F.R. § 261.<sup>27</sup> Each agency's regulations differ with respect to the scope of what is confidential supervisory information and when it can be disclosed.<sup>28</sup> The CFPB, for instance, unlike other supervisory bodies, has designated all confidential supervisory information produced for the CFPB and also any other state, federal, or foreign entity as CFPB property.<sup>29</sup> Generally, when an entity is regulated by one of these regulatory bodies, records are created which are deemed confidential and then become the property of the agency.<sup>30</sup> Improper disclosure of confidential supervisory information could lead to fines or imprisonment.<sup>31</sup>

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*Federal Banking Agencies*, PAUL HASTINGS (Apr. 2, 2015), <http://www.paulhastings.com/publications-items/details/?id=4cede369-2334-6428-811c-ff00004cbded> [<https://perma.cc/TS7Q-7VXP>].

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See 12 C.F.R. § 261 (2016); Sachs et al., *supra* note 20.

<sup>25</sup> Sachs et al., *supra* note 20.

<sup>26</sup> §§ 261, 4.32, 1070.2, 309.5; see Sachs et al., *supra* note 20.

<sup>27</sup> § 261; *Supervisory and Confidential Information (Treatment and Communication)*, BD. GOVERNORS FED. RESERVE SYS., [https://www.federalreserve.gov/bankinforeg/topics/supervisory\\_n\\_confidential\\_info.htm](https://www.federalreserve.gov/bankinforeg/topics/supervisory_n_confidential_info.htm) [<https://perma.cc/67YH-PDRG>].

<sup>28</sup> *Id.*

<sup>29</sup> Sachs et al., *supra* note 20; 12 C.F.R. § 1070.2(i)(1)(ii) (2016).

<sup>30</sup> Sachs et al., *supra* note 20.

<sup>31</sup> 18 U.S.C.S. § 641 (LexisNexis 2016); Stone & Geiringer, *supra* note 18, at

### C. Enforcement Actions Against Goldman Sachs for Data Security Failures

#### 1. Joseph Jampietro and Rohit Bansal

Goldman Sachs (Goldman) settled with federal and state regulators on August 3, 2016 and October 28, 2015, respectively, after an investigation was launched into its mishandling of confidential supervisory information.<sup>32</sup> Goldman paid \$50 million to the New York Department of Financial Services and \$36 million to the Fed in order to settle allegations that an employee was wrongfully in possession of confidential information and used it to attract clients.<sup>33</sup>

The Fed alleged that Joseph Jampietro, a former Managing Director in the Financial Institutions Group, improperly obtained and disseminated confidential supervisory information for financial gain.<sup>34</sup> The Fed defines confidential supervisory information under 12 C.F.R. § 261.2(c)<sup>35</sup> as:

[I]nformation consisting of reports of examination, inspection and visitation, confidential operating and condition reports, and any information derived from, related to, or contained in such reports [and] [a]ny documents prepared by, on behalf of, or for the use of the Board, a Federal Reserve Bank, a federal or state financial institution supervisory agency, or a bank or bank holding company or other supervised financial institution.<sup>36</sup>

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<sup>32</sup> Grande, *supra* note 2; Weinberger, *supra* note 15.

<sup>33</sup> Kevin McCoy, *Fed fines Goldman Sachs \$36.3M over Leaked Documents*, USA TODAY (Aug. 3, 2016), <http://www.usatoday.com/story/money/2016/08/03/goldman-sachs-fed-reserve-fine/87999410/> [<https://perma.cc/H55D-AEZ2>].

<sup>34</sup> Notice of Intent to Prohibit and Notice of Assessment of a Civil Money Penalty, In re Jampietro (Nos. 16-012-E-I & 16-012-CMP-I), 2016 WL 4432524, at \*1–3 [hereinafter Notice of Intent to Prohibit].

<sup>35</sup> *Supervisory and Confidential Information (Treatment and Communication)*, *supra* note 27 (“The Federal Reserve’s rules regarding the availability of information are found in 12 C.F.R. Part 261.”).

<sup>36</sup> Notice of Intent to Prohibit, *supra* note 34, at 3; *see* 12 C.F.R. § 261.2(c)(1) (2016).

In the Notice of Intent to Prohibit, the Fed alleges that Jiampietro's year-end review in 2013 placed him in the lowest 10 percent of managers nationally and internationally.<sup>37</sup> The report reflected concern about Jiampietro's handling of confidential information and also advised him to increase the amount of revenue generating business he brought to the firm.<sup>38</sup> In 2014, Goldman personnel interviewed Rohit Bansal, a former Federal Reserve supervisor, for a position in Goldman's Financial Institutions Group.<sup>39</sup> The Fed alleges that Jiampietro met with Bansal at least three times and exchanged emails and phone calls with Bansal, in which Jiampietro asked for information regarding regulatory and supervisory issues and counseled Bansal on getting a position with Goldman.<sup>40</sup>

During the hiring process, Bansal inquired with the New York Ethics Office regarding his transition.<sup>41</sup> The office provided him with a Notice of Post-Employment Restriction, which restricted him from "knowingly accepting compensation as an employee, officer, director, or consultant from [the Regulated Entity]" until February 1, 2015.<sup>42</sup> Bansal signed a copy of the form and provided a copy to Goldman.<sup>43</sup> Bansal was hired as an associate and began his employment on July 21, 2014.<sup>44</sup> That same month, the Goldman's Financial Institutions Group began an initiative to pitch its regulatory advisory services to the Regulated Entity, including information regarding regulations from the Fed.<sup>45</sup> The Fed alleged that Jiampietro asked Bansal to obtain the confidential framework for an evaluation that was conducted by the Fed to use in a pitch to a client.<sup>46</sup> Bansal obtained the information from Jason Gross, an

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<sup>37</sup> *Id.* at 4.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 4–5.

<sup>41</sup> Press Release, N.Y. State Dep't of Fin. Servs., NYDFS Announces Goldman Sachs to Pay \$50 Million; Accept Three-Year Regulatory Consulting Abstention; Admit Failure to Supervise for Banking Law Violations (Oct. 28, 2015), <http://www.dfs.ny.gov/about/press/pr1510281.htm> [<https://perma.cc/77PT-F6WQ>].

<sup>42</sup> The Regulated Entity is an unnamed financial institution, which Bansal supervised. The name of the entity has not been disclosed. Notice of Intent to Prohibit, *supra* note 34; Press Release, *supra* note 41.

<sup>43</sup> Press Release, *supra* note 41.

<sup>44</sup> Notice of Intent to Prohibit, *supra* note 34, at 5.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

analyst working for the Fed, with whom Bansal had a previous working relationship.<sup>47</sup> Jampietro and Bansal subsequently used the non-public enterprise-wide risk management (ERM) framework in at least five pitches.<sup>48</sup> Jampietro continued to ask Bansal for information, which Bansal would then provide via email or hard copy.<sup>49</sup>

## 2. Goldman Sachs's Policies and Internal Investigation

As this was taking place, Goldman maintained a Code of Business Conduct and Ethics, which “prohibited personnel from seeking an unfair competitive advantage through illegal or unethical business practices, and a Policy of Use of Materials from Previous Employers, which prohibited” Bansal’s use of information he obtained while working for the Fed.<sup>50</sup> On September 26, 2014, while Bansal was on a conference call, he forwarded an email to a partner at Goldman, which the partner recognized as containing confidential supervisory information.<sup>51</sup> The partner reported the incident to the compliance department who interviewed Jampietro and Bansal about their handling of confidential supervisory information.<sup>52</sup> Jampietro admitted to having hard copies of the documents received by Bansal in his office.<sup>53</sup> Jampietro later stated that he had not read the documents nor knew that they contained confidential supervisory information.<sup>54</sup>

Once Goldman discovered the actions of Jampietro and Bansal, Goldman terminated both employees and reported the leak to

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<sup>47</sup> *Id.* at 5–6; Ben Protess & Peter Eavis, *Ex-Goldman Banker and Fed Employee Will Plead Guilty in Document Leak*, N.Y. TIMES: DEALBOOK (Oct. 26, 2015), <http://www.nytimes.com/2015/10/27/business/dealbook/criminal-charges-and-50-million-fine-expected-in-goldman-new-york-fed-case.html> [https://perma.cc/5NPD-3XEJ].

<sup>48</sup> Jeff Cox, *Fed fines Goldman for Profiting off Confidential Information*, CNBC (Aug. 3, 2016), <http://www.cnbc.com/2016/08/03/fed-fines-goldman-sachs-for-profiting-off-confidential-information.html> [https://perma.cc/SA3D-R87Z].

<sup>49</sup> Notice of Intent to Prohibit, *supra* note 34, at 6.

<sup>50</sup> *Id.* at 7–8.

<sup>51</sup> *Id.* at 8.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Protess & Eavis, *supra* note 47.

Federal Reserve Bank of New York.<sup>55</sup> Bansal and Gross pled guilty to stealing government property in a deal that could send them to prison for up to a year.<sup>56</sup> Jiampietro has been the subject of multiple investigations, including the U.S. Attorney's Office of the Southern District of New York, the New York Department of Financial Services, the Financial Industry Regulatory Authority, and the Fed.<sup>57</sup> Jiampietro has since filed suit for at least \$800,000 to recover the costs of the investigations from Goldman.<sup>58</sup> The Fed also launched an investigation into Goldman's internal security practices.<sup>59</sup> The Fed accused Goldman of failing to institute adequate policies and procedures designed to protect unlawful dissemination and use of confidential supervisory information.<sup>60</sup>

### 3. The Settlement Agreements

On October 28, 2015, Goldman reached a settlement for \$50 million with the New York State Department of Financial Services (NYDFS).<sup>61</sup> The NYDFS alleged that not only did Goldman not respect the Post-Employment Restriction, Bansal was affirmatively placed on assignments that would regulate the entity he was restricted from regulating.<sup>62</sup> Again, the Post-Employment Restriction made it impermissible for Bansal to "knowingly accepting compensation as an employee, officer, director, or consultant from [the Regulated Entity]" until February 1, 2015.<sup>63</sup> Bansal signed a copy of the form and provided a copy to Goldman.<sup>64</sup> The NYDFS also points to failures in

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<sup>55</sup> Order to Cease and Desist and Order of Assessment of Civil Money Penalty Issued Upon Consent at 2, *In re* Goldman Sachs Group, Inc. and Goldman, Sachs & Co. (Nos. 16-011-BH-C & 16-011-CMP-HC), 2016 WL 4432523, at \*1 [hereinafter Order to Cease and Desist].

<sup>56</sup> Protess & Eavis, *supra* note 47; Stewart Bishop, *Ex-Fed Staffer Cops to Leaking Secrets to Goldman Sachs*, LAW360 (Nov. 4, 2015, 9:29 PM), [https://www-law360-com.ezproxy.bu.edu/articles/723388/ex-fed-staffer-cops-to-leaking-secrets-to-goldman-sachs?article\\_related\\_content=1](https://www-law360-com.ezproxy.bu.edu/articles/723388/ex-fed-staffer-cops-to-leaking-secrets-to-goldman-sachs?article_related_content=1) [<https://perma.cc/MED4-YWPM>].

<sup>57</sup> O'Sullivan, *supra* note 14.

<sup>58</sup> *Id.*

<sup>59</sup> Order to Cease and Desist, *supra* note 55.

<sup>60</sup> *Id.*

<sup>61</sup> Press Release, *supra* note 41.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*



training regarding confidential information.<sup>65</sup> NYDFS alleges that Goldman instructed employees that confidential information should only be shared on a need-to-know basis but did not distinguish between confidential information and the confidential supervisory information provided by government regulators.<sup>66</sup> As part of the settlement agreement, Goldman accepted a three-year voluntary abstention from accepting new consulting activities that would require authorization to disclose confidential information under Section 36(1) of the New York Banking Law.<sup>67</sup> Goldman also agreed to create policies to ensure that Goldman is aware of post-employment restrictions and to create processes to monitor emails for possible misuse of confidential supervisory information.<sup>68</sup>

After settling with the NYDFS, Goldman also settled with the Fed for \$36.3 million.<sup>69</sup> The Fed alleged that Goldman failed to properly monitor electronic communication for confidential supervisory information and institute proper training for handling confidential supervisory information.<sup>70</sup> Goldman agreed to establish a committee to monitor compliance with the settlement, the committee being responsible for submitted minutes to the Fed.<sup>71</sup> The committee then has ninety days to submit a plan to establish:

(a) enhanced policies governing the identification, receipt and use of confidential supervisory information; (b) controls necessary to ensure the proper identification and management of confidential supervisory information; and (c) measures to ensure management's effective oversight of Goldman Sachs personnel's compliance with policies, procedures, and internal controls, including monitoring of employee emails on the Firm's internal email systems, designed to deter and detect potential employee misconduct in connection with use or dissemination of confidential supervisory information.<sup>72</sup>

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> McCoy, *supra* note 33.

<sup>70</sup> Order to Cease and Desist, *supra* note 55, at 2.

<sup>71</sup> *Id.* at 4–6.

<sup>72</sup> *Id.* at 5.

The Committee also has ninety days to create:

(a) a requirement that training be conducted and documented no less frequently than annually; (b) procedures to escalate to appropriate firm personnel if the unauthorized use of confidential supervisory information is identified; and (c) procedures to timely inform appropriate Goldman Sachs personnel of any new requirements, restrictions, or supervisory guidance from the Board of Governors regarding confidential supervisory information.<sup>73</sup>

Lastly, Goldman is also required to certify to the Fed that they have deleted all confidential supervisory information that it is not authorized to possess.<sup>74</sup>

#### **D. Future Concerns**

##### **1. Current Developments with Goldman**

In a statement released by Goldman, the firm stated, “We previously reviewed and strengthened our policies and procedures after Bansal was terminated. We have no tolerance for the improper handling of confidential supervisory information.”<sup>75</sup> As of November 29, 2016, Goldman has not released an updated Code of Business Conduct and Ethics to comply with the order above.<sup>76</sup> The most recent version that is available became effective on April 22, 2015, after Bansal was termination, and was meant to reflect “additional information regarding the firm’s reporting hotline.”<sup>77</sup> The code contains a paragraph encouraging proper use of confidential information belonging to the firm and third parties.<sup>78</sup> The code does not mention confidential supervisory

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<sup>73</sup> *Id.* at 5–6.

<sup>74</sup> *Id.* at 6.

<sup>75</sup> Cox, *supra* note 48.

<sup>76</sup> *Corporate Governance Code of Business Conduct and Ethics*, GOLDMAN SACHS, <http://www.goldmansachs.com/investor-relations/corporate-governance/corporate-governance-documents/business-conduct-and-ethics.html> [https://perma.cc/V3MK-M7CK].

<sup>77</sup> *Id.*

<sup>78</sup> Lloyd C. Blankfein, *Code of Business Conduct and Ethics*, GOLDMAN SACHS (Apr. 22, 2015), <http://www.goldmansachs.com/investor-relations/>

information.<sup>79</sup> It is possible that Goldman has instituted some of the policies required by the Fed; however, any such policies are not reflected in information available online.

## 2. Close Relationships Between Regulators and the Regulated

A general concern that has cropped up during the Goldman investigation and enforcement action is the close relationship between the regulatory body and the related entity.<sup>80</sup> Goldman is often seen as a revolving door for a career in Washington, so much so that it has earned the nickname “Government Sachs”.<sup>81</sup> Two Secretaries of the Treasury, Robert Rubin and Henry Paulson, have run Goldman.<sup>82</sup> In the specific case mentioned above, Bansal and Gross both worked previously for the Fed, and Jampietro worked as an advisor for the FDIC and as legal counsel to the Senate Banking Counsel.<sup>83</sup> Some industry officials dismiss the claims that the regulatory body may be too close to the regulated, stating that there are laws in place to combat conflicts of interest.<sup>84</sup> The conflict of interest law, 18 U.S.C. § 208, requires officials to step aside if they are working on an issue in which the official has any financial interest.<sup>85</sup> This is enforced through public disclosures and other periodic and confidential disclosures.<sup>86</sup> These disclosures are reviewed by the executive agency ethics personnel.<sup>87</sup> However, the conflict of interest laws are financial in nature, and

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corporate-governance/corporate-governance-documents/revise-code-of-conduct.pdf [https://perma.cc/Z9ZE-KAAN].

<sup>79</sup> *Id.*

<sup>80</sup> See Renae Merie, *How a Goldman Sachs Executive Allegedly Stole Government Data to Woo Clients*, WASH. POST (Aug. 4, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/08/04/how-a-goldman-sachs-executive-allegedly-stole-government-data-to-woo-clients/> [https://perma.cc/JZ89-JZ2X].

<sup>81</sup> See *id.*; Julie Creswell & Ben White, *The Guys from “Government Sachs”*, N.Y. TIMES (Oct. 17, 2008), [http://www.nytimes.com/2008/10/19/business/19gold.html?\\_r=0](http://www.nytimes.com/2008/10/19/business/19gold.html?_r=0) [https://perma.cc/C7EH-MN95].

<sup>82</sup> Merie, *supra* note 80.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> 18 U.S.C. § 208 (2012); see JACK MASKELL, CONG. RESEARCH SERV., R43365, FINANCIAL ASSETS AND CONFLICTS OF INTEREST IN THE EXECUTIVE BRANCH (2014).

<sup>86</sup> MASKELL, *supra* note 85.

<sup>87</sup> *Id.*

would not cover other possible conflicts such as previous employment or personal relationships.<sup>88</sup>

### 3. Issues with Future Reporting

The actions of the Fed discussed above, could discourage future reporting. The leaked documents came from a Fed employee and were requested by a former Fed employee.<sup>89</sup> Goldman itself uncovered the leak and reported it to the Fed,<sup>90</sup> yet the Fed chose to launch an investigation.<sup>91</sup> With the Fed cracking down on alleged Wall Street misconduct, there can be discouraging repercussions for a firm reporting this type of incident.<sup>92</sup>

### E. Conclusion

The Goldman incident demonstrates the difficulty of navigating the complex world of regulation of confidential supervisory information. Other firms looking to avoid this type of investigation should be sure they are familiar with the regulations issued by their supervisory body and check to see that internal regulations are up to date. Firms should be cognizant of and respect Post-Employment Restrictions by ensuring that the agreements are followed and proper internal walls are in place.

Danielle Simard<sup>93</sup>

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<sup>88</sup> *See id.* at 2–3.

<sup>89</sup> Ben Protess, *Federal Reserve Fines Goldman Sachs \$36 Million in Document Leak*, N.Y. TIMES: DEALBOOK (Aug. 3, 2016), <http://www.nytimes.com/2016/08/04/business/dealbook/federal-reserve-fines-goldman-sachs-36-million-in-document-leak.html> [https://perma.cc/6GF5-CYAZ].

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Student, Boston University School of Law (J.D. 2018).