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Investors Demand Goldman Execs' Evals In Bid-Rigging Row

By **Karlee Weinmann**

Law360, New York (April 18, 2012, 3:45 PM ET) -- Investors leading a putative class action against Goldman Sachs Group Inc. on Tuesday asked a Massachusetts federal judge to force the company to turn over executives' self-evaluations, which they say detail a price-fixing scheme to profit from more than 20 leveraged buyouts.

The evaluations allegedly show that Goldman executives deliberately bet against investments in a conspiracy with other private equity firms to keep prices down, and could prove that Goldman is at the center of a multibillion-dollar antitrust scheme, according to the plaintiffs' memorandum, filed in conjunction with a motion to compel.

Investors learned of the firsthand reflections, written about the firm's most profitable deals, after a U.S. Senate subcommittee heavily cited them in a 2011 report on the lead-up to the 2008 financial collapse, the motion says. Goldman has rebuffed repeated requests for the documents, according to the memorandum.

"Goldman evaluations of the sort sought by plaintiffs contain information available nowhere else — first-person accounts of the very deals at issue by the individuals who conducted those deals," the memorandum said, noting that they "are likely to contain highly relevant evidence and, indeed, may in and of themselves confirm the existence of the combination or conspiracy at the center of plaintiffs' [claim]."

In the evaluations, Goldman management purportedly sketches out its participation in the deals, the purpose of the transactions, its interactions with other parties ahead of the buyouts and the profits generated — including compensation for executives — for Goldman, according to the memorandum.

"We fully expect there will be discussion of some of the deals that they worked on [in the evaluations]," investor attorney Stacey P. Slaughter, of Robins Kaplan Miller & Ciresi LLP, told Law360 on Wednesday.

The case, first brought in 2007, involves 27 transactions between 2003 and 2008 in which Goldman allegedly spearheaded an effort to short mortgage-backed securities, according to the fifth amended complaint. Other companies accused of being involved in the scam include Aramark Corp., Kinder Morgan Inc., the Neiman Marcus Group and Alltel Corp.

The firms that agreed not to bid competitively were rewarded with ownership interests in the targeted companies, according to the suit, which specifically names the $27.5 billion Kinder Morgan buyout in 2007 and the $44 billion takeover of TXU Energy Retail Co. LLC the same year.

Goldman has so far contended that it isn't required to turn over the evaluations, but the investors say the firm's reliance on previous general objections for withholding the “critically important, plainly discoverable” documents is flimsy.

“To date, Goldman has never even specified what particular general objection it believes relieved it of its obligation to turn over the evaluations that mention or are otherwise relevant to the transactions at issue,” the memorandum said. “Goldman’s improper reliance on such objections is simply improper and underscores the fact that it has no substantive basis for opposing production of relevant evaluations.”

Goldman also contends that, if the evaluations are so important to the plaintiffs' claims, they should have asked for them in an earlier stage of discovery, according to the memorandum. But Goldman never acknowledged the documents' existence, which was disclosed in the Senate report issued years after the initial complaint, the plaintiffs say.

Late last month, the investors filed a separate motion to compel Goldman to produce files belonging to CEO Lloyd Blankfein and former CEO Hank Paulson. In response, Goldman fired off a motion for a protective order to prevent Blankfein's deposition.

Slaughter declined to comment specifically on those motions, which were filed under seal because they include confidential information, but said generally that she expects Blankfein's documents and deposition would show discussions of some of the deals named in the complaint.

The suit originally covered 17 alleged rigged buyouts, but was expanded to included 10 more last fall. Other private equity firms named as defendants include Apollo Global Management LLC, Bain Capital Partners LLC and the Blackstone Group LP.

Attorneys for Goldman were not immediately available for comment Wednesday.

The investors are represented by Robins Kaplan Miller & Ciresi LLP, Lockridge Grindal Nauen PLLP, Scott & Scott LLP, Wagstaff & Cartmell LLP, Branstetter Stranch & Jennings PLLC, Landskroner Grieco Madden LLC, Reinhardt Wendorf & Blanchfield, Robbins Umeda LLP and Robbins Geller Rudman & Dowd LLP, among others.

Goldman is represented by Sullivan & Cromwell LLP.

--Additional reporting by Samuel Howard. Editing by John Quinn.