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SILENCE GRANTS THE POINT

By Fraser P. Seitel

Last week, Greg Smith's eagerly-anticipated memoir, *"Why I Quit Goldman Sachs,"* hit the book stores – or Amazon.coms or whatever books are hitting these days.

Smith, of course, is the erstwhile Goldman Sachs vice president who, disheartened and exasperated over the deteriorating culture at his grand old firm, walked away from his $500,000 job and spilled his guts in a *New York Times* op-ed.

Almost immediately, Smith received a $1.5 million book deal, which no doubt cushioned the blow of the 12 years he had invested in the tiresome first class flights and four-star hotel stays that is the thankless lot of a Goldman equities salesman.

Smith was all set for a rip-roaring publicity tour when a funny thing happened.

Goldman answered back.

The normally tight-lipped investment bank – the softest political punching bag this side of Big Bird – launched its own campaign to discredit Mr. Smith and his meritorious musings.

- Smith, said one Goldman source, regularly received performance ratings in the bottom half of the company's scale, even though he, himself, picked the reviewers.
- Although Smith claimed that Goldman executives called their clients "muppets," the company produced a nine-page document that turned up a lot of references to the Muppets movie, but no systematic discussion of clients as muppets.
- The coup de grace, said Goldman, was that three months before his poison pen letter in the *Times* -- Smith demanded to be paid more than $1 million and sought a promotion from vice president to managing director.

It was all deliciously diabolical. And whether you're a Goldman *"fan"* or, more likely, "*despiser,"* you've got to admire the company for striking back in the face of an antagonist.

More often than not, closed-mouth companies and their CEOs -- fearful of fighting back – choose the coward's way out, hiding behind oppressive attorneys who always counsel, "*Say nothing."*

But "*silence,"* as they say in politics, "*grants the point."*

And in the 21st century in the minds of most, "*no comment"* generally means you're *"guilty."*

Just ask Steve Ells and Montgomery F. Moran, co-chief executive officers of Chipotle Mexico Grill, Inc. Notwithstanding the fact that it's usually never a good idea to have "co-CEOs," Ells and Moran run a hot Mexican restaurant chain (and I'm not just talking about the burritos!)

Chipotle, with 1,350 restaurants and a decade of business experience, is a *real* company and a high-flying stock. And I know because, full disclosure, I'm a shareholder.

Chipotle was doing just fine until a month or so ago when it ran into a human wrecking ball by the name of David Einhorn.

Einhorn, a notorious short-seller who runs a hedge fund named Greenlight Capital, got in trouble several years ago as a board member of crooked sub-prime lender New Century Corp. After the New Century went bankrupt, Einhorn joined 12 others in ponying up $90 million to settle various lawsuits against the company.

While traditional hedge fund managers shun publicity and make their fortunes quietly, Einhorn represents a new breed. He bathes in the limelight, relishes notoriety and commands carte blanche entrée to CNBC and other outlets, which roll over when he deigns to honor them with his presence.

When Einhorn appears, it's for one purpose – to promote his personal portfolio. Most famously, he was the first to bad mouth Lehman Brothers, greasing that company's skids to extinction.

In a prior day, outspoken short-sellers like Einhorn would have been ostracized for *"talking their book"* – publically extolling their investment positions – but today, with lowered journalistic standards and a toothless Securities and Exchange Commission, such individuals freely roam the airwaves touting their bets.

And so one day two weeks ago when Einhorn went after Chipotle, it wasn't entirely unexpected. But what was unexpected was the *nature* of his criticism; rather than citing *financial* reasons for knocking the company, his argument was *gastronomic.*

Chipotle competitor Yum Brand's Taco Bell, said the short seller-turned-food critic, *"has a new 'Cantina Bell' menu, which features items closer to Chipotle's menu than the typical Taco Bell offering and is going to be a big hit and draw away customers."*

The fact that Einhorn likely was long Yum and short Chipotle didn't faze friendly CNBC, which plugged the comments incessantly. When a number of other reporters, including those at the *Wall Street Journal,* challenged Einhorn's epicurean assumptions, the stage was set for Chipotle management to lash out at the tout, pummel him with facts, punish him for conjecturing on areas about which he knew little, and expose him for the blatant self-interest that drove his comments.

But sadly, Chipotle said nothing in its own defense. With the company silent, its stock – yes, *my* stock! – plummeted.

Finally, two weeks after the Einhorn eruption had caused all the damage, the company announced earnings that were up 20% but fell short of expectations, and the stock plunged further. Lost in the earnings announcement was an obtuse, throwaway comment from co-CEO Moran:

"There was a lot of noise during the quarter about somebody taking market share away from us. They did a lot of very, very heavy advertising. A lot of the advertising was intended to attract our customers for obvious reasons, but our transaction trends in the second quarter, when none of that advertising happened, were identical to the third quarter when there was very, very heavy advertising in the quarter. So we're not seeing any kind of loss whatsoever in our transactions moving from us to any other competitor."

In other words, Einhorn's bloviating was blatant baloney; the short seller was wrong.

But it didn't matter. Chipotle was crushed; its silence had granted the point.