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Wall Street probe illustrates clout of Carl Levin's Senate committee

By By Clea Benson and Phil Mattingly
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NEW YORK — When Sen. Carl Levin declared that Goldman Sachs Group "clearly misled their clients and misled the Congress," few analysts predicted his allegations would still be reverberating two months later.

Instead, the firm's shares have fallen 16 percent in New York trading since April 13, when Levin's investigative panel released an exhaustive report on the roots of the 2008 economic meltdown. The Justice Department and Securities and Exchange Commission are examining the findings. Last week the Manhattan District Attorney joined in with a subpoena to Goldman Sachs.

The bank stuck to muted criticism of the Levin report until Tuesday, when people briefed on Goldman Sachs's strategy said the firm was considering preparing its own document to refute the Senate report's contention it held a "big short" against the housing market while marketing mortgage-backed securities.

The impact of the two-year inquiry is only the latest illustration of the clout of Levin and his Permanent Subcommittee on Investigations. The Michigan Democrat, who's headed the panel on and off for a total of six years since 2001, has helped fuel legislative and court action with his focus on issues including sham accounting at Enron, credit-card rules, money-laundering and tax shelters for the wealthy.

The subcommittee is "not just overturning some rocks," Levin, 76, said during a recent interview in his Washington office. "Success is when we lead to reforms or lead to justice and accountability."

On Levin's terms, the panel has succeeded, whether or not regulators and law-enforcement agencies move against Goldman Sachs or others named in the report. At hearings in 2010, Levin deployed e-mails and documents obtained by his investigators as he grilled Goldman Sachs's leaders, including Chairman and Chief Executive Officer Lloyd Blankfein. The publicity helped get the Dodd-Frank bill through the Senate, Levin said.

Goldman Sachs is taking on a panel whose structure and history contribute to a record of successful investigations that may be unparalleled among congressional committees. The staff and Levin take pride in being meticulous. As a permanent fixture in a chamber whose members have to run for office only every six years, the panel has the resources for spending months or years issuing subpoenas, interviewing witnesses and poring over documents.

The subcommittee's work also stands out in a town where investigations and white papers often dissolve into partisan strife. By a tradition unique in Congress, the minority party's staff is involved throughout the inquiry. Members from both parties tend to stick together when presenting conclusions.

The subcommittee's unusual level of bipartisanship helps explain the position of Sen. Tom Coburn of Oklahoma, the ranking Republican, when the panel issued its findings. After the press conference, at which Coburn also lauded the report, his office began fielding phone calls on behalf of Goldman Sachs, according to two people briefed on the bank's response. The callers asked Coburn to disavow Levin's plan to send the report to authorities.

Coburn didn't contradict Levin. Instead, within two weeks, he joined the Democrat in formally referring the 639-page document to the Justice Department and Securities and Exchange Commission.

"Facts are facts," Coburn said in an interview.

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The facts are unearthed in a cluttered set of rooms on the ground floor of the white marble Russell Senate Office Building, where the panel known as PSI has been headquartered since then-Chairman Sen. Joseph McCarthy carried out his discredited 1950s hunt for communists in the government.

Ironically, the Wisconsin Republican laid the foundation for today's bipartisanship -- after his abuses Democrats demanded rules that allowed the panel's minority to participate fully in its work.

The two dozen subcommittee staff members include lawyers, law clerks, interns and employees borrowed from other government agencies. Interviews with witnesses can last for eight hours in a cramped subterranean room.

"PSI is known and perceived as not a committee that you mess around with," said Lance Cole, a law professor at Pennsylvania State University and author of a book on congressional investigations.

Cole said the impact of the panel's work stands in contrast to the separate Financial Crisis Inquiry Commission set up by Congress in 2009 and headed by former California Treasurer Phil Angelides. The bickering group ended up publishing dueling reports by Democrats and Republicans.

In choosing topics to investigate, Levin prefers a challenge, said staff director and general counsel Elise Bean.

"Levin has said to us, 'If it's not complicated, I don't want to do it,' " said Bean, who has worked for Levin since 1985.

Levin was brought up in a politically engaged family in Detroit. His uncle was a judge; his father, a lawyer for the Michigan Corrections Commission. Levin's older brother, Sander, has been a U.S. congressman representing Detroit's northern suburbs since 1986.

The younger Levin went to Harvard Law School and then served as the general counsel for Michigan's Civil Rights Commission. He served nine years on the Detroit City Council before running for Senate in 1978. He said he's drawn to finance investigations for the same reason he was interested in civil rights: "a sense of a just society and the rich and the powerful being treated the same as everybody else."

The two-year financial-crisis inquiry was the subcommittee's longest probe under Levin. By the end, the staff amassed 56 million pages of memos, documents, prospectuses and e-mails, most of it on computer disks. Levin said he did not publicize the number for fear that no one would believe it.

Levin and his staff read voraciously and held long discussions searching for case studies that would best highlight the issues.

"He really respects people who push back," said Robert Roach, the subcommittee's lead investigator. "It's not like he's sitting there saying, 'My mind's made up. Don't confuse me with the facts.' "

They decided to conduct case studies on Goldman Sachs and Deutsche Bank while looking into the failure of Washington Mutual, federal regulators and credit-rating firms. Levin's staff would load him down with binders as he prepared for 14-hour flights to Afghanistan as leader of the Armed Services Committee. The material would come back filled with notes.

Toward the end of 2009, after about nine months of investigation, Levin told the staff to accelerate their plans for hearings, hoping the revelations would galvanize the public and provide velocity to congressional negotiators wrangling over the new package of financial regulatory rules. Four hearings were scheduled for April 2010.

Just in time for the last hearing of the series, the April 27 session on Goldman Sachs, Levin's staff discovered an internal Goldman Sachs e-mail describing one of its own bond offerings as "one shitty deal."

Levin recited the profane message repeatedly as he grilled Blankfein and his team. The footage rocketed through the media, stoking outrage at big banks. Within a day, Senate Republicans halted a filibuster of Dodd-Frank.

"The key is, you've got to have the material," Levin said.

The Levin-Coburn panel's final report accused Goldman Sachs and Deutsche Bank of peddling collateralized debt obligations backed by risky loans that the banks' own traders believed were likely to lose value. Levin also called on federal prosecutors to review whether to bring perjury charges against Blankfein and other current and former employees who appeared at the hearing last year.

The bank said the testimony was "truthful and accurate" and that its employees never misled anyone. Analysts then said the subcommittee's findings were unlikely to lead to new claims or charges because Goldman Sachs had already paid $550 million last year to settle SEC claims related to CDOs.

After Manhattan District Attorney Cyrus Vance Jr. subpoenaed Goldman Sachs last week, the bank signaled it would harden the tone of its response to Levin. It has prepared documentation to argue that descriptions of Goldman Sachs's market positions in the report are inaccurate, the person briefed on the bank's strategy said Tuesday. The bank's strategy was reported earlier by the Wall Street Journal.

In a recent interview, Mark Calabria, a former member of the Republican staff of the Senate Banking Committee, said the Levin panel may have mischaracterized some of the transactions.

"I would have a concern that the lack of financial market expertise on the subcommittee gets reflected in how you'd want to spin this," said Calabria, who now directs regulation studies at the Cato Institute, a research organization that supports limited government. "Things that look mischievous may have some common-sense functions."

While it's an open question whether the SEC, Justice Department or New York authorities will follow the subcommittee's report with civil or criminal allegations, it wouldn't be the first time the panel's efforts have led to prosecutions.

Daniel Boyle, Enron's vice president of global finance, was sentenced to almost four years in prison in 2005, in part for his role in a sham transaction that inflated earnings and for lying under oath to the PSI. Thirteen executives at accounting firm KPMG LLC were indicted on criminal fraud charges in 2005 for helping wealthy clients evade taxes, according to subcommittee staff.

The staff is already at work on its next investigation: a look at the role of speculation in crude oil prices. Much of the work will be done in a room with a photo of Sen. McCarthy that was hung by Raymond Shepherd, the subcommittee's staff director from 2003 through 2005 when Sen. Norm Coleman, R-Minn., was in charge.

Shepherd, now a partner at Venable in Washington, said he put it up as a warning to members of the investigative unit:

"It stands as a stark reminder of how bad partisanship can be."

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