WORKING TITLE: WOMEN GET LOST ON WALL STREET

Laura M. Davis, Bloomsburg University of Pennsylvania
Victoria Geyfman, Bloomsburg University of Pennsylvania

ABSTRACT

The Equal Employment Opportunity Commission (EEOC) has recently issued a special report on the status of women and minorities in the field of finance. While being an important aspect of the economy, the report finds that the industry has a much lower ratio of officials and managers to professionals and sales workers for women and minorities. Other studies report that chances of advancement are also unfavorable to these groups. The EEOC report along with a number of successful sex discrimination suits filed against members of the industry brings into question the treatment of women on Wall Street and in the field of finance as a whole. This paper examines the question of why women get lost on Wall Street by discussing the empirical studies done on the status of women in the finance industry, looking at the history of women in the finance industry, reporting on cases brought against the industry alleging sex discrimination, and concludes with some thoughts about why the problems of sex discrimination persist.

INTRODUCTION

The financial services industry is an important aspect of the US economy, which constitutes one of the largest groups of companies in the world in terms of market capitalization and earnings. Companies such as Citigroup, JP Morgan Chase, and Bank of America are included in this category. The industry employs a large number of people and offers many well-paying jobs. According to the projections of the Bureau of Labor Statistics (BLS), employment in the financial services industry is expected to increase faster than average for the economy over the next decade (BLS, 2006). It is therefore not surprising that the industry attracts a highly qualified, talented workforce.

However, the finance industry has a poor history when it comes to attracting, managing, and retaining women. Harassment lawsuits of the 1990s described in the infamous “boom-boom room” (Antilla, 2003) and more recent cases brought against Morgan Stanley and Merrill Lynch revealed flagrant patterns of discrimination and unfair compensation practices. The failure to advance and promote talented women has negative consequences for workplace diversity, creativity, competitiveness, and overall profitability of firms.

This paper addresses the issue of recruitment, retention, and promotion of women in the field of finance by reviewing recent empirical evidence from demographic reports, looking at the history of women in the finance industry, and reporting on cases brought against the industry alleging sex discrimination. The paper concludes by examining factors that may contribute to gender-based employment practices that hinder career advancement of women in the industry.

EMPIRICAL STUDIES

There have been several demographic studies that address the issue of women and minorities in the financial services industry. We present the main findings of these studies below.

Periodically the Equal Employment Opportunity Commission (EEOC) issues special reports on various industries based on data from surveys, complaints they have received, and other sources. Recently, the EEOC issued a special report on the finance industry (EEOC, 2006). The finance industry is composed of credit, securities, insurance, and funds sub-sectors. The report acknowledges that the industry plays an important role in the economy by employing a large number of people at high levels of compensation. However, the evidence found in the report suggests that throughout the finance industry there was a much lower ratio of officials and managers to professionals and sales workers for women and minorities. In other words, women and minorities are under-represented at the top tier of their organizations.

The EEOC study performed an analysis for five occupational groups: officials and managers, professionals, technicians, sales, and clerical job categories. The report particularly focused on the professionals category from which the officials and managers category was drawn. First, the report

found that women representation in the officials and managers category varied among sub-sectors, with the highest percent of women in the credit sub-sector (48.6 percent) and the lowest percent of women in the securities sub-sector (33.8 percent). A mixed pattern emerged for various race/ethnic groups.

One of the most important findings of the study was that women are under-represented among officials and managers compared to their white male counterparts. The report calculated the odds or probability of women being in the officials and managers job category compared to such odds for white males. The report showed that the probability of being a management employee out of the total pool of professionals and sales workers is 48.4 percent for female employees compared to 64.7 percent for male employees. Except for the securities sector, the odds of women being managers were less than the odds of men being managers.

In a similar study of the investment banking sector, EEOC focused on demographic changes within the industry during 1995-2000 (EEOC, 2003). The study found that although women representation has increased over the sample period, they were still under-represented among officials and managers.

These results can be placed in the context of other studies that focus on access, opportunities, and career advancement for women. In its 2005 report, the Securities Industry Association found that women representation increased from 37 percent in 2003 to 44 percent in 2005 (SIA, 2005). Among 48 of group's member companies, women held 29 percent of senior-level positions, 57 percent of mid-level positions, and 88 percent of assistant positions. The SIA also found that women have been steadily gaining managerial ground. In 2001, 14 percent of women were managing directors and by 2003 that number was 19 percent. However, these numbers still show lack of significant progress in the field still largely dominated by men.

A recent Harvard Business Review article summarized the findings of a special task force on the status of women in the private sector. Sponsored by Goldman Sachs and Lehman Brothers, the task force surveyed 2,443 "highly qualified" women with high-honors undergraduate, graduate or professional degrees. The survey found that despite significant progress on the access front, still far too many highly qualified women are failing to progress to senior management positions in the private sector and university tenured faculty jobs (Center for Work-Life Policy, 2005). Particularly for women with children, the study reported that 43 percent of women surveyed left work voluntarily at some point in their careers. Of those, 93 percent wanted to return and only 74 percent actually managed to do so and only 40 percent among these women came back to work full time. This study sheds light on a workplace environment that is very demanding and competitive.

Competition for jobs in the industry is quite high, so job seekers must be flexible, mobile, able to adapt to changes, and prepared to develop their work skills. Among the most valued work skills are team working, problem solving, communication, organization and management. The 2001 study by Catalyst, a nonprofit research and advisory organization that serves to advance women in business, reported on similarities and differences between men and women with respect to job satisfaction, perceptions, attitudes, and experiences in the financial services industry. The study surveyed more than 2,200 women and men employed at leading securities firms and reported that in general more than three-quarters of men and women were satisfied with their jobs in the finance industry (Catalyst, 2001). However, more women reported the existence of discriminatory practices in their workforce. Particularly, more than half of women surveyed believed that they are paid less than men for doing similar work. 65 percent of women reported that they have to work harder than men to get the same rewards. More than ten percent of women reported some components of sexual harassment at their workplace.

THE HISTORY OF WOMEN ON WALL STREET

Wall Street, a metonymy for the American financial industry, has long been a male enclave. Beginning in 1792 under a buttonwood tree at 64 Wall Street, 24 male brokers signed an agreement that required the signers to trade securities only among themselves, to set trading fees, and not to participate in other auctions of securities. These 24 men had founded what was to become the New York Stock Exchange (NYSE) (Ketchum, 2005).

It was not until 1943 that women were allowed to work on the trading floor, and not until 1967 that Muriel Siebert became the first woman - one among 1,365 men - to own a seat on the NYSE (Fisher, 1989). Her seat on the exchange hardly started a revolution; in the late seventies, the vast majority of women working in investment firms were still secretaries. It was only in 1987 that Goldman

Sachs hired its first woman partner – one among 106 men. Even after women began to be hired, often they were kept out of important meetings, lunches and social gatherings with clients, because the meetings took place in male only clubs. Twenty years after Muriel Siebert purchased her seat, she still could not dine with business associates or entertain clients at many preferred clubs. The practices were ended in 1987, not by any efforts on the part of Wall Street, but due to pressure from New York City officials who reminded the industry that city ordinances prohibited sex discrimination by clubs, if the premises were used for business purposes. Thereafter, as alleged in a suit filed against Morgan Stanley, the practice shifted to entertaining clients in venues where women were allowed, but uncomfortable or unwilling to attend, such as "topless bars" and golf outings at male only member clubs (EEOC v. Morgan Stanley).

OVERVIEW OF THE LAW PROHIBITING SEX DISCRIMINATION IN THE WORKPLACE

In an attempt to prohibit discrimination in the workplace, in 1964 Congress passed Title VII of the Civil Rights Act and created the Equal Employment Opportunity Commission (EEOC) to implement its provisions (Civil Rights Act of 1964). Title VII protects individuals against employment discrimination on the basis of sex as well as race, color, national origin, and religion. It applies to employers with 15 or more employees, including state and local governments. Title VII also applies to employment agencies and to labor organizations, as well as to the federal government.

Title VII makes it unlawful to discriminate against any employee or applicant for employment because of his/her sex in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals on the basis of sex. Title VII prohibits both intentional discrimination and neutral job policies that disproportionately exclude individuals on the basis of sex and that are not job related.

It was not until 1986 that the United States Supreme Court ruled that Title VII's bar on discrimination "because of sex" prohibited an employer from subjecting an employee to a sexually hostile work environment. To state a claim for sexual harassment under Title VII, the offensive conduct must be sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment. Although a claimant's own perception of the severity of the challenged treatment must be considered, it is not dispositive of the question. To create a hostile environment, the harasser's conduct must be such that a "reasonable person" would find it abusive, and one that the victim in fact did perceive to be so (Lewis, Jr. and Norman, 2001).

When the plaintiff seeks to hold the employer liable for the sexual harassment created by the plaintiff's supervisor or coworker, she must show that the employer knew or should have known of the harassment in question and failed to take prompt remedial action. The employee can demonstrate that the employer knew of the harassment by showing that she complained about it to higher management, or by showing the pervasiveness of the harassment, which gives rise to the inference of knowledge or constructive knowledge – circumstances which existed in the Smith Barney, Merrill Lynch and Morgan Stanley cases discussed infra.

WOMEN VS. WALL STREET[1.]

In the last decade a number of significant (in terms of numbers of claimants and settlement dollars) have been filed against members of the finance industry. In addition to the cases discussed in this article, since 1993, class action lawsuits have been filed against American Express, Lew Lieberman, US Bancorp and other firms. The concern about the treatment of women in the industry had become so great that in April 2004, the National Council of Women's Organizations (NCWO), a bipartisan network of national women's organizations, launched the Women on Wall Street Project to investigate claims of gender discrimination in the financial sector (NCWO, 2006). Some of the most notable cases against the industry are described below.

Smith Barney

The most notorious sex discrimination case filed against the finance industry was Martens v. Smith, Barney, Inc. The case was filed in 1996 as a class action in which Pamela Martens and other named plaintiffs sued Smith Barney for gender discrimination, harassment, and retaliation in violation of Title VII. Plaintiffs also challenged the compulsory arbitration policies of Smith Barney, the NYSE, and the National Association of Securities

Dealers. Ms. Martens was a fifty-year-old woman who had worked at the firm for ten years and who managed $ 187 million for the company. She was fired after she complained about discriminatory behavior in her suburban New York office and retained an attorney to pursue her complaints.

The case alleged that Smith Barney had systematically discriminated against women in hiring, assignments, pay and promotions, as well as through pervasive sexual harassment in some of the firm's branch offices. The plaintiffs alleged that they were denied lucrative broker jobs and instead channeled into low-paying positions as sales assistants. Those women who became brokers were denied the most lucrative accounts, received little to no mentoring, and were subjected to blatant and repeated harassment (Selmi, 2005). The harassment was recounted in the popular book ***Tales from the Boom-Boom Room: Women vs. Wall Street*** (Antilla, 2002). The "boom-boom room" was located in the basement of the Smith, Barney Garden City, New York office. Male brokers would "open" the room the end of the day and mix drinks in large garbage cans located below a toilet hanging from the ceiling.. At that same office, women were ordered to wear short skirts, and strippers were a frequent accompaniment for the male brokers and some of their clients (Antilla, 2002).

Importantly, the case also challenged the mandatory arbitration proceedings that had been instituted by the brokerage houses for all of their employees. Ultimately, in 1998, the case was settled in a way that allowed the plaintiffs class to avoid the company's private arbitration proceedings in favor of a more neutral arbitration forum. Most of the claims were successfully settled for amounts that were not disclosed. In addition to the individual relief, the settlement required Smith Barney to spend $ 15 million toward various diversity initiatives, including training (Selmi, 2005).

Smith Barney's problems did not end with the settlement. In March 2005, another case seeking class action status was filed challenging compensation practices on behalf of female brokers against the company, now a division of Citigroup Inc. In Amochaev v. CitiGroup Global Markets d/b/a Smith Barney, the plaintiffs contend that they were discriminated against in account distribution, business referrals and partnership opportunities. They also claim they received less sales support than male colleagues, less desirable offices, less training, and that male colleagues retaliated against them after they complained (Pacelle, 2005). The case is pending in the U.S. District Court in the Northern District of California.

Merrill Lynch

One year after the Smith Barney case was filed, a similar class action claim was initiated against Merrill Lynch, which at the time of the lawsuit, was the nation's largest brokerage firm. This was not the first time Merrill Lynch had been sued for sex discrimination. In 1974 the EEOC sued the firm, and settled the case with commitment by Merrill Lynch to hire more women over the next five-year period. The company never met their targets (Selmi, 2005). By the time the suit was filed some twenty years later in 1996, only 15.8 percent of Merrill Lynch's brokers were women, about the same percentage that had existed in 1990, and not significantly more than had existed in the 1970s.

In the 1996 case, the plaintiff class consisted of 22,000 past and present employees. Except for the allegations of pervasive lewd behavior, the substance of the claims of discrimination was similar to the claims in Smith Barney. The plaintiffs claimed that they were systematically discriminated against in pay and promotions, largely by the subjective way in which business was channeled to male brokers. Like Smith Barney, and other cases alleging discrimination in the securities industry, the women also contended that they had been excluded from social outings with clients. At a firm meeting attended by more than 100 female brokers, it was discovered that none of the women present had been chosen to participate in a new program aimed at generating new investor accounts. The plaintiffs also challenged mandatory arbitration for discrimination claims at Merrill Lynch. One year after the case was filed, the parties settled on terms that were much like those adopted in the Smith Barney case, with the important exception that Merrill Lynch did not commit any funds to diversity efforts. The settlement eliminated the practice of mandatory arbitration and instead permitted the women to pursue their claims before neutral mediators and arbitrators. Each woman could accept a settlement amount, go to arbitration or have a hearing. The vast majority settled, with Merrill paying out more than $100 million in claims (Anderson, 2005).

Morgan Stanley

In 2001, the EEOC filed suit against Morgan Stanley alleging that the company discriminated against women in its Institutional Equity Division

(IED) with respect to promotion, compensation and the terms, conditions and privileges of employment. Alison Shieffelin, who initiated the complaint to the EEOC, had been a successful convertible bond salesperson with an annual salary that exceeded $ 1 million but who was fired shortly after she complained about not being promoted to a managing partner position. Morgan Stanley settled the case in 2004, literally moments before the trial was set to begin and a lawyer for the EEOC was to have switched on a projector and presented the statistical evidence to a jury regarding the pay and promotion of women as compared to men at the international securities house. Ms. Shieffelin was scheduled to testify as part of the case and planned to tell the jury how she arranged a group dinner with an important client at a New York restaurant, only to be escorted to a cab afterward while her male co-workers took the client to a strip club. Morgan Stanley agreed to provide $54 million to the plaintiffs including $ 12 million for Ms. Shieffelin; to appoint an internal ombudsperson and an outside monitor; implement management training on the federal anti-discrimination laws; perform promotion and compensation analyses; maintain a complaint data base; and implement programs to address the promotion and retention of women (EEOC, 2004).

Like Smith Barney, Morgan Stanley's problems did not end with the settlement. In June 2006, two class action suits were filed against the firm in accordance with NCWO's Women on Wall Street Project. The plaintiff classes are comprised of all female financial advisors who were employed at the firm from August 2003 to the present. The suit alleges that Morgan Stanley executives assigned the most lucrative accounts to male brokers, and failed to promote and give partnership assignments to its female employees. (The Buzz: Morgan Stanley is hit with suit, 2006)

FACTORS THAT MAY CONTRIBUTE TO THE PERSISITENCE OF SEX DISCRIMINATION ON WALL STREET

There appears to be a consensus, both in and outside of academia, that workplace discrimination against women has decreased dramatically since the passage of Title VII. Many believe that the workplace barriers women now face are more often the result of the choices women make between their professional and family obligations, rather than discrimination. Any remaining vestiges of the "good old boy network" is generally seen as subtle, often unconscious in nature, and relatively free of the intent to discriminate (Selmi, 2005).

However, the empirical studies, the seriousness of the allegations made in the cases brought against the industry, and the large number of women class members suggest more than an ebbing problem. These factors suggest that finance industry remains resistant to change and hostile to women.

1. The culture

Scholars have recently promoted a view that sex discrimination is less about objectifying women as primarily sex objects, but more about men's desire to perpetuate male workplace norms (Abrams, 1998) and (Shultz, 1998). Discriminatory behavior preserves male control and entrenches masculine norms - a position that may be more comfortable than charting the new territory and new opportunities that would result from including female colleagues. Sadly, preserving male norms may be rational for men. Studies demonstrate that female dominated industries suffer lower wages and less prestige. Therefore, breaking down the male norms in the workplace would both threaten men's own sense of self, and their wage status.

2. A code of silence

For decades mandatory arbitration of employment disputes existed in the finance industry. Until 1999 any broker or other employee of a Wall Street firm, as a condition of his license, had to agree to resolve a dispute in a closed-door negotiation session run by a stock exchange. However, after the Boom-Boom Room case and the Merrill Lynch lawsuit, the Securities and Exchange Commission changed the rules and said Wall Street employees with civil rights claims could not be forced to arbitrate. Before the change had taken effect, though, firms had discovered a new tactic: having employees sign private contracts that bound them to arbitrate anyway.

The author of the Boom-Boom Room believes that the settlement of cases, rather than a public airing of the facts in a courtroom, perpetuates the problem (Antilla, 2004). While the cases against Merrill Lynch, Smith Barney and Morgan Stanley settled for huge amounts, perhaps it was the firms that came out winners. The businesses were able to keep confidential the actual documents regarding their hiring, promotion and treatment of women employees. Ingrained cultural misconduct changes

only when customers, colleagues and the public get wind of the nasty facts and companies are embarrassed. Those who can afford to keep their problems quiet may never have to change. Perhaps Wall Street will make changes only when its culture, and compensation and promotion practices are exposed in open court.

3. Women's choice

Some recent articles have suggested that the lack of advancement of women in the industry is due to their own choice. The desire for a better balance between professional and family life, the interruption of their career path to raise children or care for aging parents, rather than overt discrimination, has been theorized to be the cause of the glass ceiling (Nyberg, 2006). However, while it is likely that all employees, men and women alike, would want more time at home, this explanation belies the facts of the suits brought against the industry. The discrimination complained of in the Smith Barney, Merrill Lynch, or the Morgan Stanley cases was not tied to child or family care issues, but issues related to compensation, promotions and flagrant sexual harassment.

CONCLUSION

The evidence found in demographic and perception studies, as well as cases alleging sex discrimination in the finance industry show that women continue to suffer a disparity in wages, promotion and working conditions compared to their male colleagues. It is likely that there are many factors that combine to cause the disparity, including a long history of male dominance, secret settlement agreements, and choices that the female employees make in terms of career advancement and work-life balance. However, as we try to identify the factors that lead to sex discrimination on Wall Street, we must be honest about the role that intentional discrimination may play in the problem.

REFERENCES

Abrams, K. (1998).The new jurisprudence of sexual harassment. *Cornell Law Review*. *83*, 1169.

Anderson, J. (2005, July 22). After she sued Merrill, it's back to the job. *New York Times*, p. C2.

Antilla, S. (2002). *Tales from the boom-boom room: Women vs. Wall Street*. Princeton, N.J.: Bloomberg, L.P.

Antilla, S. (July 22, 2004). Money talks, then women don't. *Chicago Daily Law Bulletin*, p. 6.

Bureau of Labor Statistics (2006). *Occupational Outlook Handbook* [Electronic version] http://www.bls.gov/oco/

Catalyst (2001). *Women in Financial Services: The Word on the Street*.

Center for Work-Life Policy (2005). The Hidden Brain Drain Task Force: Women and Minorities as Unrealized Assets.

Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17 (2005).

EEOC v. Morgan Stanley, No. 01 CV 8424 (RMB) (S.D.N.Y. filed Sept. 10, 2001).

Equal Employment Opportunity Commission (2006). *Investment Banking Report* [Electronic version] *http://www.eeoc.gov/stats/reports/investmentbanking/index.html*

Equal Employment Opportunity Commission (2006). *Diversity in the Finance Industry* [Electronic version] http://www.eeoc.gov/stats/reports/finance/finance.pdf

Equal Employment Opportunity Commission, (2004, July 12). EEOC and Morgan Stanley announce settlement of sex discrimination lawsuit. Retrieved October 1, 2006, http://www.eeoc.gov/press/7-12-04.html

Fisher, A. (1989). *Wall Street women*. New York, New York: Alfred A. Knopf.

Ketchum, R. (2005).The Fifth Annual A. A. Sommer, Jr. Lecture on Corporate, Securities & Financial Law. *Fordham Journal of Corporate & Financial Law. 10*, 203.

Lewis, Jr., H., & Norman, E. (2001). *Employment Discrimination Law and Practice*s. Paul: West Group.

The National Council of Women's Organizations (NCWO), Retrieved September 30, 2006, from (NCWO) Corporate Accountability Project website http://www.augustadiscriminates.org/

Nyberg S. (June 1, 2006). What Women Want. *CFO Magazine*, *June Issue 2006*.

Pacelle, M. (2005, April 1). *Wall Street Journal*, p. C3.

Schultz, V. (1998).Reconceptualizing sexual harassment. *Yale Law Journal*. *107*, 1683.

Securities Industry Association (2005). *2005 Report on Diversity Strategy, Development, and Demographics* [Electronic version] http://www.sia.com/hrdiversity/pdf/2005fullDiversityReport.pdf

Selmi, M. (2005). Sex Discrimination in the Nineties, Seventies Style: Case Studies in the Preservation of Workplace Norms. *Employee Rights and Employment Policy Journal*, *9*, 1-49.

The Buzz: Morgan Stanley is hit with suit claiming gender discrimination. (2006, June 24). *Wall Street Journal*. p. B.3.

[1.] Women vs. Wall Street is the subtitle of Susan Antilla's book, "The Boom Boom Room."

Laura M. Davis is an assistant professor of legal studies at Bloomsburg University of Pennsylvania. She received her JD from Southern Illinois University School of Law.

Victoria Geyfman is an assistant professor of finance at Bloomsburg University of Pennsylvania. She received her PhD in economics from Temple University.