Grant & Eisenhofer P.A.

123 Justison Street Wilmington, DE 19801 Tel: 302-622-7000 Fax: 302-622-7100

485 Lexington Avenue
New York, NY 10017
Tel: 646-722-8500
Fax: 646-722-8501

30 N. LaSalle Street, Suite 2350
Chicago, IL 60602
Tel: 312-214-0000
Fax: 312-214-0001

WRITER'S DIRECT DIAL NUMBER

May 3, 2019

**VIA HAND DELIVERY**
Board of Directors
The Goldman Sachs Group, Inc.
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

**Re: DEMAND FOR BOARD ACTION**

To the Members of the Board of Directors:

We write on behalf of Cleveland Bakers & Teamsters Pension Fund and the Cleveland Bakers and Teamsters Health and Welfare Fund (collectively, "Cleveland Bakers & Teamsters Funds" or the "Stockholders"). Stockholders are stockholders of the Company and have owned common stock of The Goldman Sachs Group, Inc. ("Goldman" or the "Company") at all relevant times discussed below.

This letter constitutes a formal demand by Stockholders that the Board of Directors (the "Board") of Goldman take immediate and necessary action to cause the Company to investigate all claims it may have and, if appropriate, to commence legal proceedings for breaches of fiduciary duties to the Company against the individuals and entities responsible for Goldman's facilitation of bribery, money laundering, and kickbacks in connection with 1MDB, a Malaysian sovereign wealth fund. These individuals include current and former officers and directors of Goldman, as well as officers, members, or managers of Goldman's subsidiaries, including, Goldman Sachs (Asia) LLC ("GS Asia"), Goldman Sachs International Bank ("Goldman UK"), and Goldman Sachs (Singapore) PTE ("GS Singapore"), who consciously disregarded their duties and failed to act in good faith to promote compliance with anti-money-laundering and bribery laws. These individuals and entities also include third-party participants in the scheme.

## BACKGROUND

### A. GOLDMAN SEEKS GREATER PROFITS BY EXPANDING ITS PRESENCE IN MALAYSIA

Following the global economic downturn, Goldman's CEO, Lloyd Blankfein ("Blankfein") sought to grow the Company's business by leveraging its name and reputation to

increase its presence in emerging markets, a strategy referred to within the firm as "Be[ing] Goldman in More Places." One of those places was Asia, which Blankfein saw as ripe with opportunity for deals. Recognizing this as a prime untapped market, the Company doubled its staff in the Southeast Asia region in an effort to increase its presence and better compete in those markets, including Malaysia.[1]

Goldman had been doing some business in Malaysia for years and had developed a "cozy relationship" with the Malaysian government. One of Goldman's most successful investment bankers in the region, and its main point of contact in Malaysia, was Southeast Asia Chairman Tim Leissner ("Leissner"). Leissner helped develop these government relationships through frequent trips to Malaysia in search of new investment opportunities. Because Leissner was so successful in bringing in new deals, "he operated with a virtually free hand,"[2] with his superiors "allow[ing] him a very long leash."[3]

In 2009, during one of Leissner's Malaysia trips, Roger Ng ("Ng")—a Goldman colleague and local banker—introduced Leissner to a flashy, striving, well-connected young Malaysian financier, Low Taek Jho ("Low"). Low developed the idea of creating a sovereign wealth fund in the country and he convinced Malaysian officials to make it happen. It began as a regional fund intended to develop resources in the oil-rich Terengganu area of the country.

1MDB

On April 3, 2009, Najib Razak ("Najib" or the "Prime Minister") became Prime Minister of Malaysia. Najib was the head of the United Malays National Organization ("UMNO") political party, which had been in power since Malaysia became independent in 1963. Low, who was friends with Najib's son, soon ingratiated himself with Najib and became one of his confidantes and unofficial aides, speaking with him frequently. Four months after Najib took power, and at Low's urging, the national government took over what had been a regional fund. It became a federal entity called 1Malaysia Development Berhad or "1MDB." Najib appointed himself chairman of 1MDB's advisory board. 1MDB was purportedly created to spur economic development by investing in green energy, tourism, and infrastructure projects throughout Malaysia.[4] Instead, it served as a cash cow for political support in favor of Najib and his party.

Leissner and Ng were well aware of Low's connection to the Prime Minister, which was not a secret. Like Low, Leissner and Ng sought to curry favor with Najib. As one example, on November 1, 2009, Ng met with Najib's children at Low's apartment, and, according to an e-mail he sent to Leissner, Ng was working to get them employment positions at Goldman.

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[1] Tom Wright and Liz Hoffman, *Goldman Sachs Ignored 1MDB Warning Signs in Pursuit of Asia Business*, WALL ST. J. , Dec. 17, 2018.

[2] Brooke Masters, *Goldman Sachs Has Serious Questions to Answer*, FINANCIAL TIMES, Nov. 6, 2018.

[3] TOM WRIGHT & BRADLEY HOPE, BILLION DOLLAR WHALE 57 (Hachette Books 1st ed. 2018) ("BDW").

[4] Justin Baer, Tom Wright and Ken Brown, *Goldman Sachs Ties to Scandal-Plagued 1MDB Run Deep*, WALL ST. J., Dec. 22, 2016 ("WSJ 2016"); BDW at 62.

Goldman has been involved in 1MDB since its creation. When Malaysian officials needed advice on the formation of the fund, they turned to Goldman. These early assignments went by the name "Project Tiara" among the bankers at Goldman. Leissner and Ng were responsible for developing relationships with 1MDB officials.[5] They immediately began viewing the fund as a potentially lucrative source of business for Goldman. For instance, as early as January 5, 2009, Ng described in an e-mail to Leissner how he and Low had met and were strategizing the many business opportunities presented by the formation of the fund.

Low was not too shy to enjoy his riches, spending conspicuously the money that it was rumored he had obtained from the fund. In November 2009, the *NY Post* revealed Low as a "mystery man of [New York's] club scene" who spent hundreds of thousands of dollars over the previous three months at the hottest spots in the city.[6] Low spent his money lavishly: on yachts, real estate, premium liquor, and jewelry. With all of his garish spending, questions persisted about where, exactly, the money was coming from.

Despite the sensationalized press surrounding Low, Goldman's investment bankers bent over backwards to secure deals with him and 1MDB. The same month that the *NY Post* wrote the article chronicling Low's tabloid-worthy spending habits, Goldman's then-CEO Blankfein met with Leissner, Low, and Najib in person at the Four Seasons Hotel in New York. Low drafted the agenda,[7] which included a discussion about the potential for financing deals between Goldman and 1MDB. After Goldman executives had left the meeting, Low planned for a "debrief" with Najib and the "1MDB boys."[8]

While the Company was willing—and even eager—to discuss possible deals involving the 1MDB fund, Goldman's banking divisions rejected Low as a customer. Goldman had concerns about Low because of the questionable provenance of his wealth. As a result, the bank repeatedly turned him down for an account at the Company. The first attempt to set him up with an account came in September 2009, when Ng urged the private wealth management ("PWM") division at Goldman to approve Low for an account, describing him as "our partner in a lot of transactions in [M]alaysia. Largely the mid-east and [M]alaysia r[el]ationship." The PWM division evaluated Low and his finances and contacted Leissner and Ng for their opinions. Both men supported the application. Despite their efforts, however, the PWM division refused to open an account for Low because of persistent questions about the source of his money.

In March 2011, Leissner again tried to get Low approved for a PWM account. After Low was evaluated by the bank's European, Middle East and Africa compliance team and the Intelligence Group, the PWM department said no, explaining that "we have pretty much zero appetite for a relationship with this individual . . . . no business will be allowed due to significant

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[5] Justin Baer and Bradley Hope, *Fed Warned Goldman on Malaysia Bond Deals*, WALL ST. J., Apr. 6, 2016.

[6] Brian Niemietz and Jennifer Gould Keil, *Big-Spending Malaysian is the Mystery Man of City Club Scene*, N.Y. POST, Nov. 8, 2009.

[7] Sridhar Natarajan and Elffie Chew, *Lloyd Blankfein Was the Unidentified Goldman Executive Present at 2009 1MDB Meeting*, BLOOMBERG, Nov. 8, 2018 ("Bloomberg 2018").

[8] Bloomberg 2018.

adverse information and questionable source of wealth." An effective anti-money laundering program would have required the compliance team's concerns about Low to be shared throughout the bank. The Board must investigate whether this occurred and to whom the information was available.

Leissner and Ng continued to work with Low to advance their interests and to ingratiate themselves with the Prime Minister, with whom Low had a close relationship. Their efforts paid off in September 2009 when, following a liberalization measure mandated by Najib, Goldman became one of the first financial services firms permitted to establish fund management and corporate advisory operations in the country in more than two decades.

Ng's and Leissner's efforts to ingratiate themselves with the Prime Minister included doing favors for Najib's wife, Rosmah Mansor ("Mansor"). For example, on April 7, 2010, Low e-mailed Ng to ask for assistance with getting a former high-ranking politician to attend an event in New York honoring Mansor's wife. Leissner forwarded the request to a senior executive at the Company. On April 16, 2010, Mansor attended a dinner in New York City at which former Secretary of State Lawrence Eagleburger gave her the inaugural "International Peace and Harmony Award." Leissner and Ng also later endeavored to have Goldman's charity foundation make a $300,000 donation to Mansor's charity.

### A. Bond Transactions

For 1MDB to serve its purposes for Low, Najib, Leissner, Ng, and others, it needed to raise a significant amount of cash. Goldman was instrumental in making that happen, facilitating three separate bond issuances. Each of the bond issuances was done quietly, contained terms unfavorable to 1MDB, resulted in gargantuan fees for Goldman, and ended with significant amounts of the bond proceeds diverted to shell accounts associated with private individuals. In return for its efforts, Goldman pocketed ***$593 million*** in just over 12 months, amounting to ***9%*** of the total bond proceeds—fees far higher than firms typically earn in such transactions.[9]

#### 1. Project Magnolia

Goldman's first bond deal for 1MDB arose in early 2012. 1MDB, advised by Low, wanted to acquire Tanjong Energy, a group of power companies doing business in Malaysia, Abu Dhabi, and other locations.[10] To do so, 1MDB needed to raise a substantial amount of capital. Leissner and Ng conspired with Low to have Goldman chosen by 1MDB as the banker for the deal.

Leissner, Ng, and Low worked with Goldman's Andrea Vella ("Vella"), head of Goldman's debt and structured finance business in Asia, to arrange for Goldman's participation. Because 1MDB was so new and, in fact, did not even have a credit rating, Goldman recommended that it obtain a guarantee for the bond deal. In a February 2012 meeting, Ng, Low, and a 1MDB

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[9] Collum Burroughs, *The Bizarre Story of the Goldman Sachs 1MDB Malaysia Fund Scandal Now Has a Trump Link*, BUSINESS INSIDER, Mar. 14, 2019 ("BI 2019").

[10] Camilla Hall, *1MDB of Malaysia's $1.75bd Bond: One Puzzle Wrapped Up in Another*, FINANCIAL TIMES, July 2, 2012 ("FT 2012").

official discussed obtaining a guarantee for the project not from Malaysia's own government, but from a fund in Abu Dhabi. The proposed deal, with a Malaysian sovereign wealth fund selling bonds guaranteed by an Abu Dhabi sovereign wealth fund, was so unusual that Goldman's own bankers in Dubai—who frequently did business with IPIC—found it sufficiently bizarre that they refused to have anything to do with it.

Low informed the others that to obtain the guarantee, they would have to pay government officials in Malaysia and Abu Dhabi bribes and kickbacks.[11] Soon thereafter, Ng told Vella about the meeting and passed along the information about needing to pay bribes and kickbacks. Despite knowing about the scheme, Vella advocated for the deal and for Goldman's role in it. In a later meeting of Goldman's Asia-Pacific committee—which approved the deal before sending it to the capital committee in New York—Vella was the most influential advocate for approving the deal.[12] Though he formally recused himself at the meeting, Vella stayed in the room and continued to participate in the discussion.[13]

Leissner and Low were in frequent communication regarding the bond deal, and even took trips together to make arrangements for the deal. For example, on March 5, 2012, Leissner accompanied Low to Abu Dhabi where Low was meeting with a foreign agency to raise funds for 1MBD. Low also arranged a meeting with a high-ranking official from Abu Dhabi, and Leissner delivered a letter to the official on behalf of Najib.

On March 8, 2012, Goldman began its review of the project. The next day, Low told a 1MBD official that Low would "Give u big present" once the energy deal was done, and then he asked the official to "Pls delete from email and destroy once done." Less than two weeks later, Goldman was formally retained by 1MDB. On March 19, 2012, Leissner executed a letter agreement whereby Goldman became the "sole bookrunner and arranger" for the $1.75 billion debt transaction, which Goldman bankers dubbed "Project Magnolia."[14]

On April 4, 2012, Goldman's Firmwide Capital and Suitability Committees—which are tasked with reviewing potential deals to ensure they will not cause harm to clients or the firm—met to consider whether to move forward with Project Magnolia. During the meeting, the Global Co-Head of Goldman's due diligence office, called the "Business Intelligence Group," asked Leissner about his March 5 meeting in Abu Dhabi with Low. Leissner denied that Low was there but did admit to the Committee that Low had helped arrange the meeting.

In advance of the bond deal, Low devised a plan to divert some of the funds from 1MDB—a plan that depended on the cachet conveyed by the Goldman brand. In May 2012, Low arranged

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[11] Criminal Indictment, *United States of America v. Low Taek Ho and Ng Chong Hwa* (E.D.N.Y Oct. 3, 2018) at ¶ 27.

[12] John Gapper & Laura Noonan, *NY Fed Told Goldman to Improve Risk Reporting Shortly After 1MDB*, FINANCIAL TIMES, Nov. 25, 2018 ("FT – NY Fed").

[13] *Id.*

[14] Criminal Information, *United States of America v. Tim Leissner*, (E.D.N.Y. Aug. 28, 2018) at ¶ 28 ("Leissner Information").

a dinner in Singapore to discuss the transaction with compliance officers from a small Swiss bank, BSI, through which the diverted funds would flow. Low explained to the BSI compliance officers that once the $1.75 billion in bond proceeds were deposited with 1MDB, $576 million would immediately be moved out and transferred through BSI into the account of a British Virgin Islands company called Aabar Investments Ltd. ("Aabar-BVI"). The BSI compliance officers were uneasy, recognizing that moving such large sums through such a small bank was suspicious. Low used Leissner's presence at the dinner, as a representative of the renowned financial powerhouse Goldman Sachs, to convey legitimacy of the plan and alleviate the bankers' concerns.[15]

Aabar-BVI, however, was a company created by Low in the British Virgin Islands in March 2012. The company's name was intended to create the appearance of a relationship with Aabar Investments PJS ("Aabar"), the subsidiary of International Petroleum Investment Co. ("IPIC"). IPIC is the government-owned investment organization that manages Abu Dhabi's sovereign wealth fund. Low went a step further and had Khadem al-Qubaisi ("al-Qubaisi") and Mohamed al-Husseiny ("al-Husseiny"), the chairman and CEO, respectively, of the real Aabar, appointed as Aabar-BVI's directors.[16]

On May 16, 2012, Goldman's Capital and Suitability Committee met and approved Project Magnolia. On May 20, 2012, Leissner contacted a family member to work out the details of having the account of a shell company owned by that relative receive a large deposit. Leissner intended that some of the 1MDB funds would be transferred into that fund.

The bond transaction closed on May 21, 2012. According to the Offering Circular for the bond issuance, $810 million of the total $1.55 billion in net proceeds was to be used to acquire Tanjong Energy. The rest—about $744 million—was purportedly going to "general corporate purposes."[17]

In reality, within a day of the closing, nearly $577 million, or ***more than a third*** of the net proceeds of the bond issuance, was transferred to Aabar-BVI.[18] This was the first deposit ever received by Aabar-BVI.[19] From there, the money was further distributed to other shell companies, typically controlled by Low or his associates. This money was then used to pay bribes and kickbacks to "officials at 1MDB, IPIC, and Aabar, including al-Qubaisi . . . and al-Husseiny."[20] Although anti-money-laundering rules require banks involved in dollar-denominated transactions to investigate the sources and uses of money for transactions they handle—which would have involved diligence concerning where the funds would ultimately end up—Goldman never hesitated to move forward with the transaction.

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[15] BDW at 187.

[16] *Id.*

[17] Verified Complaint for Forfeiture *In Rem, United States of America v. Real Property Located in London, UK Titled in the Name of Red Mountain Global Ltd.* (C.D. Cal. Feb. 22, 2019) at ¶ 174 ("*In Rem*").

[18] *Id.* at ¶ 192.

[19] *Id.*

[20] *Id.* at ¶ 175.

For its role in arranging and underwriting the bond issuance, Goldman received $17.5 million in arrangement fees and $175 million in commission. The total $192.5 million that Goldman pocketed amounted to about ***11%*** of the principal of the bonds issued. In addition to bringing in all this money, Goldman executives saw the bond deals with 1MDB as a means to increase Goldman's toehold in Asia.[21]

2. Project Maximus

Within a couple weeks of Project Magnolia closing, Leissner informed a Goldman colleague that 1MDB intended to buy power assets from another energy company, and that the fund had retained Goldman to advise on the second bond deal. Even as Goldman prepared for the next project, questions were being raised about Project Magnolia. On June 2, 2012, an article in *International Financing Review* claimed that Goldman was too close to the Malaysian government and that 1MDB had become a "fee-printing machine." A month later, the *Financial Times* characterized Project Magnolia as "one puzzle wrapped in another."[22]

Low and Leissner began preparing for the next bond offering, Project Maximus. Once again, 1MDB offered the engagement exclusively to Goldman, an offering which Goldman would fully underwrite.[23] Once again, Low was behind the scenes, orchestrating the deal to best serve his interests and those of his co-conspirators.

Leissner was only too eager to ensure that Goldman played its role in the scheme. For example, on June 15, 2012, Low sent e-mails to Leissner and officials from 1MDB at their personal e-mail addresses. The e-mails transmitted a "Financial Plan—Key Points to Adhere to for [Goldman]," which presented a multi-year plan for 1MDB as to how it should acquire energy companies with financing based on the strength of target acquisitions. In the e-mail, Low instructed Leissner to "PLEASE HAVE [GOLDMAN] STATE THE FOLLOWING AND FOLLOW THE FOLLOWINGS [sic] IN FINANCIAL GUIDELINES." Leissner agreed. Three days later, a member of the Goldman deal team sent a presentation to a high-ranking 1MDB official for the 1MDB board's use. The presentation set forth a number of the points that Low had wanted Goldman to make to 1MDB's board.

As with Project Magnolia, for Goldman to move forward on the project, the Company's internal committees had to approve the deal. These committees were established to evaluate transactions for the potential to cause harm to the bank, its clients, or the bank's reputation.[24] A number of high-ranking executives sat on the committees, including Stephen M. Scherr ("Scherr"), Goldman's current CFO.

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[21] Emily Flitter, Matthew Goldstein, and Kate Kelly, *Goldman Chairman Met Privately With Fugitive Accused in Malaysia Fraud*, N.Y. TIMES, Nov. 22, 2018 ("Times Nov. 2018").

[22] FT 2012.

[23] Times Nov. 2018.

[24] Times Nov. 2018.

Unlike with Project Magnolia, IPIC did not guarantee the Project Maximus bonds. It did, however, agree to privately secure them on a bilateral basis with Goldman, a commitment that was never mentioned in the Offering Circular.[25] 1MDB entered into a "Collaboration Agreement (Option)" with Aabar, entitling Aabar to acquire 49% in IMDB's energy subsidiary within 10 years, in exchange for Aabar "procuring the Guarantee from IPIC."[26]

Despite the diversion of Project Magnolia funds into private accounts associated with Low and others following the first bond deal, Goldman did not conduct an investigation prior to approving Project Maximus to determine whether 1MDB's representation as to sources and uses of the Project Magnolia deal had been truthful. The transfer of hundreds of millions of dollars into accounts that had no connection to 1MDB after the Magnolia deal should have alerted Goldman not to proceed with Project Maximus. Instead, the deal was readily approved.

Project Maximus closed on October 17, 2012. The bond issuance raised $1.75 billion for 1MDB's energy subsidiary. Goldman pocketed a $114 million fee. Of the bonds' net proceeds, the Offering Circular represented that $692 million would be used for the purchase of power assets and the rest would be used for "general corporate proceeds."

Nearly half the money from the bond offerings never made it to 1MDB. In fact, about $1.367 billion from the two bond offerings was transferred to Aabar-BVI's Swiss bank account.[27] Once the funds were transferred to Aabar-BVI, they were further diverted to "a small set of beneficiaries connected to the deal,"[28] including Leissner, Prime Minister Najib, Low, al-Qubaisi, and other Malaysian and Abu Dhabi officials.

Some money from Low's shell accounts was then transferred to Leissner's shell accounts, and then further transferred on to high-ranking officials within Malaysia. Later in October 2012, about $200 million was transferred from Leissner's shell account to an account beneficially owned by Low. Low used the funds to "purchase jewelry, pay off credit card bills, and pay expenses related to a private jet." Low also transferred additional funds to his family's other accounts. In December 2012, hundreds of thousands of dollars was sent to a 1MDB official.

Not long after Project Maximus closed, 1MDB began planning yet another bond deal. Meanwhile, the aides for then-Chairman and CEO Blankfein were considering a request that Blankfein had received for a meeting with Low.[29] The aides called Leissner to discuss whether they should have Blankfein meet with Low, and he said yes.[30] Within days, Low was sitting down in a one-on-one meeting with Blankfein in Goldman's New York headquarters, discussing

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[25] *In Rem* at ¶ 187.

[26] *Id.*

[27] *Id.* at ¶ 189.

[28] BDW at 190.

[29] Times Nov. 2018.

[30] Times Nov. 2018.

investment opportunities in the Southeast Asia region.[31] Among other avenues of investigation, the Board must determine what was discussed at this meeting and what Blankfein knew about Low and 1MDB before the meeting.

3. Project Catalyze

In late January 2013—some three months after Project Maximus closed—Leissner met with Prime Minister Najib at the World Economic Forum in Davos, Switzerland.[32] They were joined by Goldman's Vice Chairman for "growth markets," Michael Evans ("Evans"). Najib told the bankers that he wanted to raise more money through 1MDB, this time for a joint venture with Aabar. The joint venture would be called Abu Dhabi Malaysia ("ADMIC").[33]

To establish and capitalize ADMIC, Najib wanted to raise $3 billion, with Aabar to contribute an additional $3 billion. Najib said the funds would be used for construction of a large commercial complex in Kuala Lampur.[34] It would be named the Tun Razak Exchange, after Najib's father.[35] Najib stressed that Goldman and 1MDB needed to move quickly and quietly. Evans told Najib that, of course, Goldman would be more than willing to take on the new project. The bankers moved forward with the bond deal even though neither Najib nor 1MDB could present any business or investment plan for the 1MDB-Aabar joint venture.[36] Low again served as the main point of contact between 1MDB and Goldman with respect to the deal.[37]

On the basis of this casual conversation among Najib, Leissner, and Evans—rather than a traditional pitching process—Goldman was hired and Project Catalyze was born. This departure from procedure raised suspicions for David Ryan ("Ryan"), President of Goldman in Asia, who was concerned that Goldman had won this lucrative deal without having to compete for it. Days after Goldman was hired, Leissner transferred $1 million each into two accounts beneficially owned by 1MDB officials.

Ryan was also concerned because the bond issuance was scheduled to close shortly before an election that was projected to be a very close one for Najib. The bond issuance was a significant factor because 1MDB was a plank in Prime Minister Najib's "New Economic Policy."[38] During this time, with the election fast approaching, "concerns that [Najib] might be tapping 1MDB for money to help him win were discussed openly within Goldman."[39] Indeed, Ryan tried to persuade his colleagues to delay the bond issuance until after the next election, but he was overruled by

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[31] Times Nov. 2018.

[32] WSJ 2016.

[33] *In Rem* at ¶ 298.

[34] BDW at 218-19.

[35] *Id.*

[36] *Id.* at 219.

[37] *In Rem* at ¶ 305.

[38] Jonathan Rogers, *Comment: Time for 1MDB to Come Out In The Open*, REUTERS, Apr. 14, 2013.

[39] WSJ 2016.

Cohn and David Schwartz ("Schwartz").[40] Within about a year of Project Catalyze closing, Ryan left Goldman, reportedly in part because the Company did not take his concerns about the bond deals seriously.[41]

On March 12, 2013, 1MDB entered into a joint venture agreement with Aabar to create ADMIC.[42] The joint venture agreement provided that 1MDB and Aabar would each contribute $3 billion.[43] Al-Qubaisi signed the joint venture agreement on behalf of Aabar and became a director of ADMIC.

Goldman retained Linklaters LLP ("Linklaters") as its attorneys for the Project Catalyze deal. Kevin Wong ("Wong"), a Singapore-based attorney at Linklaters, raised questions about the deal, including as to why the $3 billion proceeds of the deal would be sent to BSI, a small, private bank. Officials at Goldman rejected Wong's concerns. They justified the unusual structure on the basis that 1MDB sought to keep the deal confidential and to close it quickly. No one at 1MDB, however, explained why the deal needed to be quick and quiet. And no one at Goldman endeavored to find out.

The bond issue closed on March 19, 2013.[44] On April 24, 2013, a senior Goldman executive, who was a member of the firm's Capital Committee, e-mailed Leissner to ask, "Is there a story circulating about an intermediary on the Magnolia trades??" Leissner responded that there was not, and that "[t]he blogs in Malaysia always try to link a young Chinese business man, Low, to 1MDB. That it is not the case other than he was an advisor alongside other prominent figures to the King of Malaysia at the time of the creation of 1MDB."

Through Project Catalyze, 1MDB issued about $3 billion in bonds, redeemable in 2023, at 4.4% interest.[45] The net proceeds for the bond issue—after Goldman took its fees—was about $2.716 billion.[46] Goldman made about $300 million in profits from Project Catalyze.[47] Combined with its earnings from the prior two bonds, Goldman had received ***two hundred times*** the typical fee for these types of transactions.

On May 1, 2013, the *Financial Times* published an article noting the "sharp criticism" of Goldman over the Project Catalyze deal.[48] It highlighted the characteristics of the deal that raised concern: the high fees, the fact that there were few details regarding how the proceeds would be

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[40] BDW at 219; Times Nov. 2018.

[41] Times Nov. 2018.

[42] *In Rem* at ¶ 301.

[43] *Id.* at ¶ 302

[44] *Id.* at ¶ 307.

[45] *Id.*

[46] *Id.*

[47] BDW at 219.

[48] Jeremy Grant and Paul J. Davies, *Goldman Sachs Criticised Over $3bn Malaysia Bond Deal*, FINANCIAL TIMES (May 1, 2013) (FT May 1).

used (which was unusual for government-related deals); and the transaction was done so quickly that the rating for the bonds came only ***after*** the deal. The following day, *Bloomberg* also raised questions about the deal, including the lack of transparency and high fees, and it reiterated the question over fees in a subsequent article on May 9.

Although the cash raised from Project Catalyze was intended to be used to fund AMBIC for the benefit of 1MDB,[49] more than $1.26 billion of the $2.716 billion of net proceeds was immediately diverted to shell accounts unassociated with 1MDB.[50] Soon thereafter, $681 million was transferred from one of those accounts to an account beneficially owned by Najib.[51] Najib later sent back $620 million, from which Low purchased a 22-carat pink diamond necklace for Mansor, costing $27.3 million.[52] The rest of the money remained in accounts controlled by Low, from which he purchased artwork and an interest in a luxury hotel, and distributed funds to other associates. Much of the money was then used by or on behalf of Najib to support his re-election campaign.[53] Fueled by this tainted cash, Najib pulled out the narrowest of victories on May 5, 2013 and kept his position as Prime Minister.[54]

Several months after Project Catalyze closed, in July 2013, Prime Minister Najib invited Evans to join him and Abu Dhabi's crown prince on a yacht in Saint-Tropez.[55] As the *Wall Street Journal* described it, "[t]he bank earned its place [on the yacht] through years of cultivating Mr. Najib and a state investment fund he founded."[56] The cozy relationship between the bankers and Najib did not end there: in September 2013, Najib headlined a meeting that Blankfein had arranged for clients in New York.[57] There, Blankfein met not only with Najib, but also with Low.[58] Determining what was discussed in these meetings must be part of the focus of the Board's investigation.

Meanwhile, Goldman flourished in Malaysia. In large part due to these three bond deals, the Company's market share in foreign-currency bond financing in the country exploded from 4% in 2009, to 29% in 2012, to 66% by mid-2013.[59]

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[49] *In Rem* at ¶ 310.

[50] *Id.* at ¶ 311.

[51] *Id.* at ¶ 299.

[52] *Id.* at ¶ 346.

[53] BDW at 223.

[54] *Id.* at 224.

[55] WSJ 2016.

[56] WSJ 2016.

[57] WSJ 2016.

[58] Greg Farrell and Sridhar Natarajan, *Mystery Goldman Exec at 1MDB Meeting Signals New Woes for Bank*, BLOOMBERG, Nov. 2, 2018 ("Bloomberg Nov. 2018").

[59] FT May 1.

From the three bond transactions, $6.5 billion was supposed to be raised for the benefit of 1MDB and, therefore, for the people of Malaysia. After taking on approximately $10 billion of debt in just four years with the help of Goldman, only about half made it into 1MDB accounts. In addition to helping shore up support for Najib in his electoral endeavors, much of the rest of the money went to fund what the *New York Times* referred to as an "enormous spending spree by business executives and officials . . . ."[60] These were spread so widely and used so lavishly that investigators are still attempting to determine where all the money went.

***Investigation Into The Bond Deals Reveals Lavish Use Of The Ill-Gotten Funds***

Investigators in Malaysia and the United States have located some of the ill-gotten assets from the deal. They have determined that stolen funds were used to buy a $250 million yacht,[61] a $35 million Bombardier jet,[62] a see-through grand piano, Van Gogh paintings and other artwork, and many more types of luxury items. As noted above, $27.3 million of the proceeds were used to buy the 22-carat diamond necklace for Mansor.[63] Low used some of the stolen revenue to pay off gambling debts, including for himself and for a 1MDB official.[64] Low purchased Beverly Hills mansions with some of the proceeds.[65] Money from the funds was even used to help finance the Hollywood film, "The Wolf of Wall Street."[66]

Investigations have begun elsewhere, too. Singapore authorities have been investigating Goldman Sachs' involvement with 1MDB for a number of years.[67] Specifically, regulators have been following the flow of funds to determine whether any of Goldman Sachs' profits made it into the accounts of GS Singapore, the Company's subsidiary in Singapore, which employed Leissner, and through much of Goldman's 1MDB bond transaction business had been run. Separately, Malaysia's prosecutors have charged GS Singapore, as well as Goldman and Goldman UK, with misleading investors.[68]

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[60] Alexandra Stevenson and Sharon Tan, *Malaysia Files Criminal Charges Against Goldman Sachs Over 1MDB Scandal*, N.Y. TIMES, Dec. 17, 2018 ("Times Dec. 2018").

[61] *Id.*

[62] *Id.*

[63] *In Rem* at ¶ 346.

[64] *Id.* at ¶ 290.

[65] David Crow and Lauran Noonan, *Tim Leissner: Goldman Sachs Banker at the Heart of 1MDB Scandal*, FINANCIAL TIMES, Dec. 23, 2018.

[66] BI 2019.

[67] Andrea Tan, *Singapore to Expand 1MDB Criminal Probe to Include Goldman*, BLOOMBERG, Dec. 21, 2018.

[68] Anisah Shukry and Srudhar Natarajan, *Goldman's Woes Mount as Malaysia Slaps First Criminal Charge*, BLOOMBERG, Dec. 17, 2018.

## LEGAL DISCUSSION

### A. GOLDMAN HAS CLAIMS AGAINST LEISSNER AND NG FOR ACTIVELY PERPETRATING ACTS OF FRAUD, BRIBERY, AND MONEY LAUNDERING

Leissner was the Southeast Asia Chairman and a Participating Managing Director at Goldman until February 2016.[69] In October 2006, Leissner made partner at the Company. Ng served as a banker in Malaysia, helping Leissner make connections with local officials and potential clients. During the time that Goldman employed them, Leissner and Ng were subject to Goldman's Code of Business Conduct and Ethics (the "Code"). The Code requires employees of the Company and its subsidiaries to abide by the law. They are also required to "maintain high ethical standards in everything they do." The Code also prohibits employees from using their positions to obtain any personal benefits. [redacted]

[redacted]

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[redacted]

The Board must evaluate a variety of claims that the Company could possibly bring against Leissner, Ng, and Low. Among other claims it might evaluate are civil Racketeer Influenced and Corrupt Organizations Act ("RICO") claims premised on, among other things, the predicate acts of fraud, bribery, and money laundering. These claims could be asserted against Leissner, Ng, Low, and Najib, and potentially others, including Mansour and Vella. In addition, the Company could assert claims for the predicate act of fraud against Leissner, Ng, and potentially others, including Vella. Similarly, the Company could assert claims for civil conspiracy to commit fraud against, among others, Najib, Low, and Mansour.

Goldman's employment contracts with Leissner and Ng likely prohibited them from taking any actions that would violate the Code (which incorporates "all applicable laws, rules and regulations and the highest ethical standards"). Leissner has already admitted under oath to violating Goldman's policies and procedures,[78] as well as U.S. federal law. Prosecutors accuse Ng of similar conduct. As a result, Goldman also has potentials claim for breach of contract against them.

Goldman likely also has a breach-of-fiduciary-duty claim against Leissner and Vella, who were partner managing directors of the Company. At the time he was suspended in 2016, Leissner was Goldman's Southeast Asia Chairman. Vella was the co-head of Asia investment banking for the Company at the time he was placed on leave in 2018. Goldman would also have a claim against others—such as Low, Najib, and Mansour—for aiding and abetting Leissner and Vella's breach of duties.

The Board must also investigate Leissner and Vella's interactions with Cyrus Shey ("Shey"). Shey had worked closely with Vella in structuring the 1MDB bond deals.[79] In 2015, when Goldman moved to fire employees in the GS Singapore office as news of the 1MDB scandal began to emerge, Vella intervened on his behalf to keep him from being fired for some time, concerned that Shey would go public with details of the 1MDB bond deals.[80] Shey later received a $1.5 million loan from Leissner. Leissner and Vella's efforts on behalf of an employee who might have disclosed damaging information about them suggest an improper attempt to induce Shey to remain silent about what he knew. The Board should investigate, including by attempting to obtain Shey's cooperation with respect to fully revealing the involvement of Leissner, Vella, and others, as well as the role of the Company, in the fraud, bribery and money laundering at 1MDB.

Goldman must also conduct a thorough investigation to determine who else at the Company or its subsidiaries (such as GS Singapore, Goldman UK, and GS Asia) was involved in the 1MDB bond deals, whether through arranging for them in Malaysia, structuring the bond deals, conspiring with 1MDB and Malaysian government officials, obtaining the Company's approval for the deals,

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[78] Transcript of Criminal Cause for Pleading Before the Hon. Margo K. Brodie, U.S. District Judge, *United States of America v. John Doe*, 18-CR-439 (E.D.N.Y. Nov. 9, 2018) ("Leissner Plea Transcript") at 40.

[79] Tom Wright and Liz Hoffman, *Goldman Sachs's Ex-CEO Lloyd Blankfein Met Malaysian at Center of 1MDB Scandal*, WALL ST. J., Nov. 9, 2018 ("WSJ Nov. 2018").

[80] WSJ Nov. 2018.

or facilitating the flow of funds from 1MDB to the various accounts, including accounts associated with Low.

## B. CERTAIN CURRENT AND FORMER DIRECTORS OF THE GOLDMAN BOARD HAVE BREACHED THEIR FIDUCIARY DUTIES BY FAILING TO EXERCISE DUE CARE AND TO ACT IN GOOD FAITH TO PREVENT AND REMEDY VIOLATIONS OF ANTI-BRIBERY AND ANTI-MONEY-LAUNDERING RULES AND REGULATIONS

A director of a Delaware corporation breaches her fiduciary duty of loyalty where she fails "to act in the face of a known duty to act, thereby demonstrating a conscious disregard for [her] responsibilities . . . ."[81] When "red flags" alert the director to the systemic wrongdoing, and the director fails to act in good faith to promote compliance, the director may be liable for a breach of the duty of loyalty.[82] Such breaches are not subject to exculpation.[83]

Goldman has claims for breach of the fiduciary duty of loyalty against at least the following current and former members of the Board: Blankfein, Martha Michele Burns, Gary Cohn, Claes Dahlbäck, Drew Faust, Mark Flaherty, William M. George, James A. Johnson, Ellen Kullman, Lakshmi Mittal, Adebayo Ogunlesi, Peter Oppenheimer, David M. Solomon, Jan E. Tighe, David Viniar, and Mark Winkelman.

Despite a number of conspicuous red flags, Goldman facilitated "one of the most audacious multinational financial heists of recent times,"[84] resulting in the theft of billions of dollars. The Company's orchestration of the three problematic bond offerings is a consequence of the Board's failure to ensure that there were adequate systems in place to detect and prevent this massive fraud. As the co-head of Goldman's securities division remarked, the bankers and traders closest to 1MDB did not work alone. "Goldman Sachs did these deals," he said.[85] Unfortunately, as the U.S. government has alleged, Goldman's business culture "particularly in Southeast Asia, was highly focused on consummating deals, at times prioritizing this goal ahead of the proper operation of its compliance functions."

There are at least three types of red flags that should have signaled to the Board and senior management that the bond offerings were suspect. First, the Company should have been on alert to detect and prevent political corruption, as it was widely known that such corruption was prevalent in Malaysia at the time. Second, Low was the mastermind of the deals, a figure with whom the Company otherwise had no desire to do business. Finally, the characteristics of the bond deals themselves—including the sky-high fees the Company earned—were highly unusual.

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[81] *Stone v. Ritter*, 911 A.2d 362, 370 (Del. 2006).

[82] *Okla. Firefighters Pension & Ret. Sys. v. Corbat*, 2017 WL 6452240, at *1 (Del. Ch. Dec. 18, 2017).

[83] 8 *Del. C.* § 102(b)(7).

[84] Roomy Khan, *Goldman Sachs an Unwilling Villain? 1MDB and Rogues: It Takes More than One to Tango*, FORBES, Jan. 23, 2019.

[85] WSJ 2016.

*Endemic Corruption in Malaysia*

First, at the relevant time, political corruption—often manifested in bribes and kickbacks—was endemic in Malaysia. This was a well-known problem. As Transparency International explained in 2012, "bribery in the public sector could be systemic and in a sense institutionalized." The advocacy organization warned that "[f]oreign companies looking to supply to the government have to be aware that they're likely to be asked for a bribe." Given the frequent attention brought to endemic corruption in Malaysia, the Company was required to approach any business opportunities in the country—particularly those involving state-affiliated persons or entities—with caution and to perform extensive due diligence to ensure that the Company would not be facilitating any unlawful acts.

*Concerns About 1MDB*

Second, Goldman should have heeded the warnings about 1MDB specifically and sovereign wealth funds generally. Almost from its creation, 1MDB's activities raised serious questions within Malaysia, giving Goldman specific reasons to be diligent with respect to its dealings with the fund. As early as 2010, questions were raised about 1MDB's financial statements. 1MBD's external auditor, KMPG, raised concerns about 1MDB's reported revenue. In its first year of operations, 1MDB reported profits of approximately $100 million.[86] But these profits were just the result of "fancy financial footwork": the fund purportedly sold back its investment in its first venture with PetroSaudi within six months of making the investment, getting in return not cash, but instead an 11-year repayment scheme.[87] In September 2010, *The Straits Times* wrote that "[b]ankers tracking developments at 1MDB are also puzzled over the fund's reporting of its financial position."[88] It was also clear that 1MDB had vastly overpaid for energy company assets it had purchased in Project Magnolia.

1MDB hired Ernst & Young ("E&Y") as its initial auditor on March 25, 2009.[89] When preparing the financial statements for the FY2010, E&Y sought additional information about the assets owned by the joint venture E&Y had established with PetroSaudi Int'l Ltd. From the fund it sought financial statements from the joint venture so that it could value the venture's assets and shares. When E&Y raised these issues at a 1MDB meeting, and indicated it was not satisfied with the information and supporting documents being provided, the board terminated E&Y's engagement. In place E&Y hired KPMG, which then provided unqualified audit opinions for FY2010, 2011, and 2012. KPMG, though, was sufficiently concerned about the documents that for the 2010 financial year, it issued an "Emphasis of Matter"—defined as indication of significant uncertainty regarding a matter. To anyone paying attention that would have raised flags. KPMG issued a qualified opinion in 2013 because it disagreed with the valuation of a fund investment.

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[86] Leslie Lopez, *The Big Gamble: Secretive Malaysian Fund Stirs Controversy at Home and Abroad*, EDGE REVIEW, July 25, 2013.

[87] *Id.*

[88] Leslie Lopez, *KL Fund's New Loans Plan Raises Eyebrows*, STRAITS TIMES (Singapore), Sept. 30, 2010.

[89] Wong Wei-Shen, *PAC Notes 1MDB Changed Auditors Twice in 4 Years*, THE STAR (Malaysia), Apr. 8, 2016.

Because of this, 1MDB fired the firm and replaced it with Deloitte. To the extent Goldman relied on 1MDB's audited financial statements in deciding to approve the deals, the Board must investigate whether it has a claim against KPMG, which Malaysia's securities authorities are investigating for possibly aiding and abetting the fraud.

In part for these reasons, individuals within Goldman raised questions about the propriety of working with 1MDB, questions that management dismissed. Goldman failed to investigate its own role in the bonds and whether money raised through the offerings had, in fact, been used as alleged. Even an adviser on the Project Magnolia deal who worked for Najib's government, John Pang, later remarked that 1MDB "was dodgy from the beginning. There is no excuse for not knowing this fund had to do with Najib's political patronage and his election plans. This was an open secret."[90]

*Risks of Sovereign Wealth Fund Deals*

The Board and senior management also knew or should have known that sovereign wealth funds were particular sources of concern with respect to Foreign Corrupt Practices Act ("FCPA") violations and other corruption. For example, in August 2011, less than a year before Project Magnolia, Goldman acknowledged that it had received notice that securities regulators were investigating whether the Company violated the FCPA with respect to a different sovereign wealth fund.[91] According to the *Wall Street Journal*, sources indicated that the SEC was looking into Goldman's deals with Libya's sovereign-wealth fund, Libyan Investment Authority ("LIA").[92] LIA would eventually file an unsuccessful $1 billion lawsuit against Goldman on the basis of LIA's loss of 98% of the $1.3 billion that it had invested with Goldman in 2007. Notably, it was Vella who oversaw Goldman's relationship with the newly formed LIA in 2007. Earlier in 2011, the *Wall Street Journal* also reported that the SEC was investigating whether a number of investment banks had been violating the FCPA in their dealings with sovereign-wealth funds.[93]

[redacted]

[90] Times Nov. 2018.

[91] Liz Rappaport and Ruth Simon, *SEC Probes Goldman Over Libyan Dealings*, WALL ST. J., Aug. 10, 2011 ("WSJ Aug. 2011").

[92] WSJ Aug. 2011.

[93] Dionne Searcey and Randall Smith, *SEC Probes Banks, Buyout Shops Over Dealings with Sovereign Funds,* WALL ST. J., Jan. 14, 2011.

[94] [redacted].

[95] [redacted].

[redacted]."[96]

*Jho Low's Connections to 1MDB and the Bond Deals*

The rampant political corruption and the contemporaneous concerns regarding 1MDB should have been enough for Goldman to exercise extreme caution with respect to any business opportunities with 1MDB. But there was another, even more acute reason to abstain from the bond deals: the involvement of Jho Low.

Low was notorious in the Malaysian finance community for his extravagant spending and his political connections. As early as 2009, the *NY Post* was chronicling Low's swanky lifestyle and reputation for partying with celebrities.

In addition, it was clear at the time of the bond offerings that Low had connections with "politically exposed persons," most particularly, Prime Minister Najib. Both the Bank Secrecy Act [redacted].[97]

Others at the Company recognized the serious questions surrounding the provenance of Low's remarkable wealth, repeatedly refusing to open a private wealth management account for him, despite Leissner's and Ng's repeated interventions on his behalf.

Second, the Company easily could have determined that Low was not just involved in, but central to, 1MDB and the three bond transactions. After all, Blankfein met with Najib and Low in 2009—in a meeting arranged by Leissner and Ng—to discuss opportunities in Malaysia.[98] As *Bloomberg* described it, "The high-level gathering laid the groundwork for a relationship that would prove profitable for the investment bank." The agenda provided that following the meeting, Low would "debrief" with Najib and the "1MDB boys."[99] Moreover, Goldman could simply have inquired of the members of 1MDB's advisory board whether Low had a role in the fund generally or the bond deals specifically. The board members were aware of Low and knew that he was Najib's representative with respect to 1MDB. Low even had coffee regularly with board members.

Since 2009, articles in the Malaysian press had frequently linked Low to TIA and 1MDB. For example, *The Edge Malaysia* wrote a cover story about 1MDB on December 14, 2009, which noted that Low was "one of the key people" advising on the creation of the fund, and it described him as a "young man" who is "said to be well connected" and has "strong links to the Middle East." On May 6, 2013, the same paper described him as "one of the prime movers" of the fund and "a key figure in the joint ventures between 1MDB and Middle Eastern companies." On March

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[96] [redacted]

[97] [redacted].

[98] Bloomberg 2018.

[99] *Id.*

27, 2012, a managing director for Goldman-Asia sent an e-mail referring to Low as "the 1MDB Operator or intermediary in Malaysia."[100]

Goldman executives were aware that Low had introduced people from Goldman and 1MDB to officials at IPIC in Abu Dhabi.[101] Indeed, Leissner was traveling all over the world for meetings with Low, including Kuala Lampur, Hong Kong, and Switzerland.[102] They also frequently went to parties together, hobnobbing with celebrities and supermodels.[103]

Given the plain evidence of Low's connection to 1MDB, Goldman should have been extra vigilant with respect to its dealings with him. [redacted]

*Structure of the Bond Deals—The Terms*

The characteristics of the bond deals alone should have set off alarm bells for Goldman. As a book about Low summarized the problem, Goldman "appeared to be overcharging a client in Malaysia whose willingness to pay above the odds was illogical."

One of the more unusual components of Project Malaysia was the guarantee provided by IPIC. In March 2012, Leissner and Low met with IPIC's Chairman, Sheikh Mansour bin Zayed al Nahyan ("Mansour"), to discuss IPIC guaranteeing the debt that would soon be issued by 1MDB as part of Project Magnolia. Mansour agreed.

IPIC's bond guarantee, though, was so unusual that it should have caused Goldman to inquire further into the structure of the deal and the intended use of the funds. Even Goldman's own bankers who worked in the Middle East and regularly interacted with IPIC found the guarantee "preposterous and declined to get involved." Other bankers were "wondering why an Abu Dhabi government investment fund would guarantee what is essentially Malaysian sovereign debt. . . . Why is a Gulf emirate, many miles away, guaranteeing this bond?" It caused them to wonder what, exactly, IPIC got in exchange for the deal. It was not just investment bankers who questioned the guarantee—IPIC's own finance director puzzled over why IPIC would guarantee the debt of another country's sovereign wealth fund, particularly since the sovereign wealth fund had no track record on which to rely. Goldman understood that the guarantee was not normal. Before the bond transaction closed, Goldman prepared a presentation that referred to the bond guarantee as "unusual by previous IPIC standards."

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[100] *In Rem* at ¶ 171.

[101] WSJ 2016.

[102] BDW at 183.

[103] Times Nov. 2018.

In exchange for the guarantee, the terms of the deal called for 1MDB to pay a substantial fee to IPIC. In reality, though, the bond proceeds were not sent to IPIC, but rather to Aabar-BVI, and from there to Low and his co-conspirators.

In addition, the terms of the bonds themselves were relatively unfavorable for 1MDB, without any justification. As a result of the IPIC guarantee, the Project Magnolia bond was rated Aa3 by Moody's. Comparable securities in Asia typically result in a spread for 10-year credit of around 210 basis points above the Treasuries. The Project Malaysia bond, though, was priced at Treasuries plus 425 basis points, with a yield just shy of 6 percent. In contrast, Petronas—a Malaysian oil and gas company with a higher credit rating than IPIC—was trading at 185 basis points over comparable Treasuries.

Thus, the bonds issued by 1MDB between May 2012 and March 2013 were priced to yield much more than other bonds on the market. As a consequence, the bond prices were far below where they should have been relative to the market. Because of this structure, Goldman was able to purchase the bonds at the heavily discounted price and then sell them to the market at market rates, which were considerably higher, and pocket the profit. This "expensive, overly complex structure" benefited Goldman, but cost 1MDB over $1 billion. Under the circumstances, this served as a substantial red flag.

*The Bond Offering Process*

The process by which the bonds were offered was blatantly suspect. For example, Project Magnolia "was essentially a private placement." It was meant to be kept quiet. Indeed, one Goldman employee was instructed "to keep all correspondence about the bond off email."

There is little question that a public offering of the bonds would have served 1MDB better. A public offering would "have meant more clarity on pricing and fees." It would have created a "benchmark from which [1MDB] could compile a full offshore dollar curve over time," and "would have opened up a universe of investors to whom it [could] return repeatedly." "[T]he bookbuilding process" involved in a public offering "can often uncover hitherto unimagined demand for an issuer's paper which in turn allows leads to drastically tighten pricing."

Indeed, observers were wondering why "the transaction [was not] launched, marketed and distributed like any conventional bond transaction rather than placed privately." Although private placements in Asia are certainly feasible, typically "issuers take the public route because it best serves their interests." Such a process, though, would not have earned Goldman its gargantuan fees and would not have provided Low and other 1MDB officials with the shroud of secrecy they sought. As other bankers observed, it was "highly unusual for the use of proceeds not to be spelt out in more detail."

*The Outlandish Fees Paid to Goldman*

Another sign that something was amiss with respect to the three bond transactions was the high fees that 1MDB agreed to pay Goldman. The bond deals—all completed in just over twelve months—earned Goldman almost $600 million dollars or two hundred times the typical fee. As

described in a book about Low, "This amount of profit was too implausible to go unnoticed." Malaysia's finance minister referred to the fees Goldman earned as "astronomical" and described the terms of the bond deals as "very unfavorable" for 1MDB. 1MDB was, for Goldman, a "fee-printing machine."

Even Ryan, who was Leissner's boss, thought that Goldman should lower the fees for Project Maximus, given how easily Goldman had been able to sell the bonds for Project Magnolia, and thereby reduce its risk. Even though Goldman had lined up buyers for the notes—and thereby reduced its risk—it still purchased the bonds at a discount, keeping for itself the out-sized profits. For example, with respect to Project Magnolia, Tanjong had already agreed to purchase a significant portion of the bond offering before the deal even closed.

Concerns over the high fees were shared by Goldman bankers who were not involved in the deal. Alex Turnbull ("Turnbull"), who worked out of Goldman's Hong Kong office (and whose father, Malcolm Turnbull, would later become Australia's prime minister) raised concerns within Goldman about the Company's likely profit on Project Magnolia, given his knowledge of how the bond market works. He also questioned why there was so little clarity about how the funds were intended to be used. Instead of taking a deeper look, Turnbull's e-mail earned him a reprimand from Goldman's compliance department. Turnbull was also scolded by his boss, who told him that he should keep his mouth shut if he wanted to be promoted. He was subsequently "B-tracked," or sidelined at Goldman, for raising these concerns. Turnbull later said that his concerns "were widely shared by the market participants at the time." According to Bloomberg, "Two . . . former top partners [at Goldman] said the amount of money Goldman Sachs made from relatively plain bond deals **should have been a bright warning to its highest executives**."

Ryan's and Turnbull's concerns were overruled, however, by more senior officials, including Cohn. Cohn was a "powerful supporter" of the "unorthodox dealmaking" in Goldman's Malaysia business. He created a specialized unit focused on making deals with sovereign wealth funds. In Malaysia (and elsewhere), he sought to "monetize[ ] the state," doing deals with Singapore's sovereign wealth fund, Temasek Holdings, and the very different 1MDB fund. Cohn would later brag to the press about the high profits Goldman had earned.

The fee structure was also defended by Leissner and supported by Vella, a proponent of the deal. Similarly, while Project Maximus was pending, Goldman installed Schwartz, a strong defender of the 1MDB deals, as Chairman of the Asia Pacific region, a position above Ryan, and Ryan was sidelined.

The Company generously compensated Leissner for his role in securing the 1MDB business. In 2012, he made more than $10 million in salary and bonuses, becoming one of the highest paid employees. Project Magnolia resulted in the Company awarding its highest internal prize, the Michael P. Mortara Award, for "solving an important client's problem through outstanding firmwide cooperation." In a mid-2014 meeting, Blankfein praised Leissner and Vella, telling attendees, "Look at what Tim and Andrea did in Malaysia. We have to do more of that."

*No Due Diligence Concerning the Deals*

Fourth, had Goldman desired to unveil the truth, it would have conducted reasonable diligence at the time of Project Maximus and/or Project Catalyze, which would have disclosed the misappropriation of the Project Magnolia funds. Instead, Goldman was too eager for the deals and the fees they generated. As the New York Times observed, the bond deals were "a huge win for Goldman as it sought to make inroads in Asia."

The three bond deals were "bought deals," meaning that Goldman would itself provide the capital and purchase the bonds, and then attempt to resell them. Whenever firm capital is at risk, deals must be approved by several committees. As a former Goldman employee observed, "**[Y]ou can't do big things [at Goldman] without senior people knowing, period**. . . . So a lot of people had to decide they were comfortable committing billions of dollars to this."

With respect to the 1MDB deals, high-ranking executives approved them, including Blankfein, the Company's then-CEO; Solomon, who was the joint head of the Company's investment banking division of the time; and Cohn, who served as the Company's COO. Scherr, the Company's current CFO, who was serving at the time as the Global Head of the Financing Group, also approved the deals as part of a committee responsible for reviewing large transactions. In all, more than 30 Goldman executives approved the deals.

According to a Goldman employee knowledgeable about the process by which the deals were approved, no one involved in the process had a "concern that the money was going to be stolen." In their rush to reap the bounty of the bond deals, it apparently never occurred to Goldman's executives to vet the entity they were doing business with or the individuals facilitating the deal.

In fact, Goldman rushed the deal through, in advance of the election. "In a sign of the hurried nature of the deal, Goldman bought the bonds first, then asked Standard & Poor's to provide a rating."[104] An independent bond analyst observed that "it was unusual for unrated bonds to gain a rating after they had been sold."[105]

Goldman apparently did not question why 1MDB was raising such massive sums in return for so little, nor did the Company question why, for example, 1MBD needed to raise $3 billion in Project Catalyze so soon after having just raised $1.75 billion with Project Maximus.

Notably, around the time that Goldman was facilitating the bond transactions, the Federal Reserve was questioning the Company as to why the firm's committees rejected so few deals as being too risky. As a result, Goldman instituted reforms, including to its capital and client suitability committees. Those reforms came too late, though, for the three 1MDB transactions in Malaysia.

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[104] FT May 1.

[105] *Id.*

As the noteworthy exposé of the 1MDB scandal, *Billion Dollar Whale*, put it, "A series of red flags—from the involvement of Jho Low, to the unusual decision to obtain a guarantee from the fund of another country, to 1MDB's willingness to overpay for the power plants—were all overlooked."[106]

## C. GOLDMAN HAS CLAIMS FOR BREACHES OF FIDUCIARY DUTY AGAINST CERTAIN CURRENT AND FORMER OFFICERS

Goldman's senior officers owed the Company fiduciary duties of loyalty and care. They breached these duties by facilitating Goldman's role in the issuance of the disastrous bonds, including by providing internal approval of the bond deals; by failing to implement reasonable controls to prevent the Company's involvement in political corruption, including in Malaysia; and by failing to investigate the deals in a timely manner to prevent further harm to the Company and its reputation. The summaries below highlight some of the individuals who are responsible for enabling the 1MDB scandal. There are surely others, though, whose roles have not been made public. The Board must ensure there is a timely and thorough investigation to determine what role the Company's officers played in the debacle.

### 1. Lloyd C. Blankfein

Blankfein served as Goldman's Chief Executive Officer from 2006 until October 1, 2008, and Chairman of Goldman's Board from 2006 through the end of 2018. In that role, he encouraged Goldman to focus on Asia, which he saw as a potential source of exceptional growth, part of his strategy for the Company to be "Goldman Sachs in more places."

Because Blankfein believed that the bank should place more emphasis on higher-growth, less-regulated countries—such as those in Southeast Asia—he took steps to encourage Goldman's participation with the 1MDB fund. Blankfein met a number of times with Malaysia's prime minister, Najib, to discuss deals with the country, and he met with Low himself, even after journalists had highlighted his lavish spending of money of questionable provenance. Blankfein personally reviewed the deals and approved them. When Leissner and Vella began to rake in tremendous amounts of fees for the deals, Blankfein haled them as examples of what other bankers should be doing. In one meeting in New York, Blankfein said to other bankers, "Look at what Tim and Andrea did in Malaysia. We have to do more of that."[107]

Blankfein's actions in the face of clear red flags about the prevalence of political corruption in Malaysia and Low's involvement in the fund reveal, at best, deliberate neglect of his fiduciary duties of due care and good faith. He pursued quick profits while failing to focus management's attention on ensuring robust controls in deals with the Malaysian government. He also failed to keep the Board informed about the risks the Company faced because of its dealings with Low, Najib, and 1MBD, and it failed to properly monitor Leissner's activities. Indeed, Solomon has acknowledged that, referring to Leissner, Goldman hired, promoted and made partner "a criminal"

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[106] BDW at 185.

[107] *Id.* at 278.

and that Goldman "owns that, that's on us." Instead of remaining faithful to the Company's interests and exercising due care in his obligations, he supplied the kindling for what would become an epic financial conflagration that would tank Malaysia's economy, unseat a prime minister, and engender civil and criminal investigations across the globe against Goldman, its bankers, and Malaysian politicians.

### 2. Gary Cohn

From 2006 to 2017, Gary Cohn served as the President and Chief Operating Officer for the Company. During his tenure, Cohn pushed the Company's bankers hard to develop relationships and secure deals with sovereign wealth funds in emerging markets. To this end, Cohn had established a cross-division group that sought out deals with sovereign wealth funds. Within Goldman, this was referred to as "monetizing the state."[108] Cohn was one of its biggest proponents, particularly in Southeast Asia, where he travelled frequently for meetings.[109] Even when others raised objections—as did the president of Goldman's Asia division, David Ryan, with respect to 1MDB—Cohn overruled them. He failed to inquire further after learning that Goldman had secured the momentous Project Catalyst deal with 1MDB through nothing more formal than an in-person conversation between Najib, Leissner, and Evans on the sidelines of Davos. To the contrary, he bragged to journalists about the high fees Goldman was receiving from the deal.

In short, Cohn failed to exercise due care by failing to require management in the regional offices to scrutinize the 1MDB deals more closely given the risks and the unusual nature of the deals. He violated his duty of loyalty by failing to ensure that adequate controls were in place as he pushed Goldman to expand quickly in risky markets.

### 3. Andrea Vella

Andrea Vella served at the relevant time as the head of Goldman's debt and structure finance business in Asia, and later as co-head of investment banking for Asia. With Leissner, he was a prime force in developing a line of business focused on sovereign wealth funds located in Asian countries, particularly Malaysia.[110]

He had been a primary force with respect to Goldman selling complex derivatives to the LIA, a sovereign wealth fund established by Muammar Qaddafi.[111] The LIA subsequently lost $1 billion as a result of the deal, while Goldman pocketed $200 million. One of Evans' former colleagues on the Libyan deal remarked that Vella was relentless in squeezing high fees from "stupid" clients.[112] That is just what he did in Malaysia.

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[108] BDW at 182.

[109] *Id.*

[110] *Id.*.

[111] *Id.* at 122.

[112] *Id.* at 123.

In a February 2012 meeting, when Goldman's bankers were eager to take a lead in 1MDB deals, Low informed the participants—including Ng—that to obtain a guarantee for a bond issuance, they would have to pay bribes to government officials in Malaysia and Abu Dhabi. Ng passed this information along to Vella but Vella appears not to have taken any steps to report this up the chain at Goldman or to pull the Company back from its participation in the fund's deals. To the contrary, Vella proceeded to advocate for the deal and Goldman's role in it. As discussed above, he was a vocal proponent for the deal at a meeting of the Company's Asia-Pacific committee. After his advocacy, the committee approved the deal, which was a necessary predicate for the deal proceeding for approval to the capital committee in New York. In the Information filed by U.S. prosecutors against Leissner, there is an allegation that another Company banker located in Asia was a co-conspirator to the bribery scheme, and individuals familiar with the matter have identified Vella as that banker.[113]

Vella's successes in Asia—including 1MDB—made him a rising star within the Company. He was thus richly rewarded for cutting corners with respect to the 1MDB deals. He violated his duty of loyalty by choosing to promote his own interests in headline deals with countries susceptible to graft rather than ensuring that the Company took no part in unlawful activity. In fact, Vella apparently even knew that Low intended to pay bribes in order to obtain a guarantee in connection with the bond deal. In response, Vella appears to have done nothing to investigate Low's activities or the connection of 1MDB with political figures. He also violated his duty of due care by helping to structure expensive deals that would subsequently tank the sovereign wealth fund and with it, Goldman's reputation in the country.

### 4. Richard Gnodde and Claes Dahlbäck

The Board should also investigate whether the Company has claims against Richard Gnodde ("Gnodde") and Claes Dahlbäck ("Dahlbäck"). During the relevant period, Gnodde was Vice Chairman of the Company, a member of the Company's Management Committee, and co-head of the Investment Banking Division. He also served as CEO of Goldman UK. As an executive of the Company's subsidiary, Gnodde owed the Company the fiduciary duties of loyalty and due care.

Goldman UK—located in London—houses much of the Company's international operations. According to Malaysia's securities regulators, while Gnodde was CEO, Goldman UK committed securities fraud in connection with the 1MDB deals. Gnodde also served as a member of the Company's Firmwide Risk Management Committee, which reviewed and approved the 1MDB bond deals. Notably, Leissner—the banker heavily involved in pushing for the 1MDB deals—had previously served as Gnodde's chief of staff. The Company should investigate whether the relationship between the two men caused Gnodde to improperly approve the 1MDB deal and thereby violate his fiduciary duties to the Company.

In addition—during the time Gnodde was CEO—Goldman UK engaged in a deal with the Libyan Investment Authority to sell it highly complex derivatives, ultimately costing the fund $1.2

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[113] Matthew Goldstein and Emily Flitter, *Ex-Goldman Sachs Bankers Said Colleagues Were Involved in 1MDB Scandal*, N.Y. TIMES, Nov. 9, 2018.

billion. LIA sued, in part because it accused Goldman UK of having exercised undue influence. That influence consisted of a banker hiring a prostitute for the brother of one of the LIA's key decision makers during a trip to Morocco. Goldman UK also offered that brother an internship in the London office. While the LIA's suit against the Company was ultimately unsuccessful, the Company should determine whether it has claims against Gnodde. These claims could include a claims for breaches of the duties of care and loyalty arising from Gnodde's failure to properly oversee the bond deals with LIA and to ensure that the bankers he oversaw did not engage in highly improper conduct, such as arranging for prostitutes or offering coveted internships. The Company should also investigate whether it has claims for violation of the duties of loyalty and care against Gnodde in connection with his review and approval of that deal.

Dahlbäck was a member of the Company's Board and the board of Goldman UK at the time of the 1MDB deals and also owed fiduciary duties. [redacted] The Company must also investigate whether it has a claim for breach of the duty of loyalty arising from a failure to oversee the operations of Goldman UK, which, as described above, has been charged with securities fraud in connection with 1MDB.

## DEMAND FOR BOARD ACTION

The Goldman Board's obligation to avoid wasting corporate assets compels the Board to pursue all remedies against persons such as current and former Goldman officers and Board members, who, through their bad faith misconduct, bad faith inaction, disloyal behavior and/or their recklessness or negligence permitted Goldman to facilitate disastrous bond deals that proved ruinous for Malaysia's sovereign wealth fund while enriching Low, Najib, and their friends and political supporters, as well as Goldman's own Leissner and Ng. As a consequence, Goldman now expects to expend $1.9 billion more than it had reserved for legal matters as a result of the scandal, to say nothing of the incalculable reputational harm it caused.

The investigation must be led by independent and disinterested directors with the assistance of independent outside legal counsel. The investigation should, among other things, be sufficient to determine: (i) which current or former Goldman employees, officers, and directors are liable for the wrongful conduct causing harm to the Company; and (ii) determine the extent to which Goldman was damaged by the wrongdoing described herein.

Following the investigation, the Stockholders demand that Goldman commence appropriate legal action against current and former Goldman directors, officers, and employees, as well as third parties, identified as being responsible for the mismanagement and other related misconduct described herein. The legal proceedings should bring claims for breaches of the fiduciary duties of loyalty and of care; aiding and abetting those breaches; unjust enrichment; RICO claims, and other violations of the law.

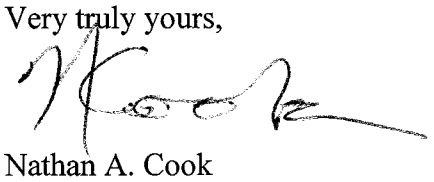
The Board must commence these legal proceedings as expeditiously as possible, keeping in mind the relevant statutes-of-limitations periods. Because of the concern that the proceedings cannot be initiated prior to the expiration of the relevant statute of limitations, the Board should secure tolling agreements from all potential defendants, which will allow the Board to complete its investigation and pursue all appropriate legal remedies. Moreover, to the extent that relevant statute of limitations periods expire prior to the Board commencing legal proceedings or obtaining tolling agreements, the Board must investigate and pursue claims for breaches of fiduciary duties and/or legal malpractice against those who allowed any statute of limitations periods to expire.

For the foregoing reasons, Stockholders demand that the Board immediately take all necessary steps to accomplish the following:

- investigate current and former directors, officers, and employees of Goldman, as well as entities and third parties, who may be liable for the wrongful conduct described herein;
- obtain tolling agreements from all of those responsible persons and entities;
- pursue claims—including for fraud, breaches of fiduciary duty, waste, unjust enrichment, and indemnification—against those who are liable for the wrongful conduct causing harm to the Company; and
- take all other actions that the Board deems just, appropriate, and consistent with its fiduciary obligations.

As you move promptly to address these matters, please keep us apprised, including as to the tolling agreements you obtain to preserve the Company's rights.

Very truly yours,



Nathan A. Cook