



NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
ONE STATE STREET
NEW YORK, NEW YORK 10004

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In the Matter of :

THE GOLDMAN SACHS GROUP, INC. :

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**CONSENT ORDER UNDER
NEW YORK BANKING LAW §§ 39 and 44**

The New York State Department of Financial Services (the “Department”) and The Goldman Sachs Group, Inc. (“GS Group”), the parent company of Goldman Sachs Bank USA (“GSBUSA”) (together with any of GS Group’s subsidiaries or affiliates, “Goldman Sachs”), are willing to resolve the matters described herein without further proceedings.

WHEREAS, Goldman Sachs is a global banking and financial services institution, with total assets exceeding \$1 trillion and more than 38,000 employees worldwide;

WHEREAS, Goldman Sachs operates in New York State, and GSBUSA is licensed and regulated by the Department;

WHEREAS, the Department has been investigating Goldman Sachs relating to the fraudulent misappropriation of funds from Malaysia’s strategic investment development fund, known as 1Malaysia Development Berhad (“1MDB”);

NOW THEREFORE, to resolve this matter without further proceedings pursuant to the Superintendent's authority under Sections 39 and 44 of the Banking Law, the Department finds as follows:

THE DEPARTMENT'S FINDINGS FOLLOWING INVESTIGATION

Introduction

1. Over a 10-month period in 2012 and 2013, Goldman Sachs facilitated the issuance of \$6.5 billion in bonds for IMDB. It has since become public that billions of dollars raised from those bonds — meant to support the people of Malaysia by acquiring and improving that nation's energy facilities — were siphoned off via fraudulent shell companies to provide lavish bribes to the then-Prime Minister of Malaysia and to personally profit the individuals at the center of this scheme.

2. Since then, the then-Malaysian Prime Minister, after a failed bid for re-election, has been tried and convicted on seven counts of corruption, breach of trust, and money laundering in Malaysia, with an additional 35 such counts pending against him; another individual at the center of the scandal (herein, "FINANCIER-1") has been charged criminally and has become a fugitive, hiding from authorities while also agreeing to forfeit hundreds of millions of dollars of assets seized by U.S. authorities; the Goldman Sachs partner who led the IMDB financing team (herein, "GS PARTNER-1") has pleaded guilty to money laundering and foreign bribery charges and has been barred from working ever again in finance; and criminal charges against another Goldman Sachs employee (herein, "GS MANAGING DIRECTOR-1") are pending.

Overview of the IMDB Transactions

3. Goldman Sachs' relationship with IMDB began in 2009, when Goldman Sachs was retained to help establish a Malaysian sovereign development company called Terengganu Investment Authority ("TIA"). A Malaysian financier, FINANCIER-1, who openly served as an advisor to the Chairman of the TIA Board of Advisors, discussed the opportunity with two senior Goldman Sachs employees, GS PARTNER-1 and GS MANAGING DIRECTOR-1. Shortly thereafter, TIA was taken over by the Malaysian federal government, and its name was changed to IMDB. The then-Prime Minister of Malaysia became the Chairman of IMDB's Board.

4. In 2010 and again in 2011, FINANCIER-1 sought to become a personal client of Goldman Sachs' Private Wealth Management group. However, both times he was rejected by Goldman Sachs' control functions, due to his "colorful and questionable public profile" and because "his explanations of [his] source of wealth raised more red flags than removing them."

5. Although Goldman Sachs refused to work with FINANCIER-1 in his personal capacity, the firm did not hesitate to participate in financing IMDB, an entity with which FINANCIER-1 was known to have had connections. In March 2012, IMDB engaged Goldman Sachs to serve as the "sole bookrunner and arranger" in connection with a bond offering of \$1.75 billion. These proceeds were purportedly to be used to acquire an energy plant, to pay transaction fees, expenses, and interest payments, and, significantly, to establish cash reserves for future acquisitions. Using a structure devised by its Principal Funding and Investment ("PFI") desk, Goldman Sachs arranged and purchased all of the bonds up front, and then sold the bonds via private placement to third-party investors, including third parties affiliated with entities licensed by the Department. This project was known internally at Goldman Sachs as "Magnolia." For Magnolia, Goldman Sachs received \$193 million in deal fees.

6. Shortly thereafter, in July 2012, Goldman Sachs was retained to finance another acquisition for IMDB, this time the energy assets of another entity (as well as fees, expenses, and additional cash reserves). These bonds were issued in October 2012, just five months after the Magnolia bonds were issued. Although the “cash reserves for future acquisitions” remaining after the Magnolia acquisition should have been close to sufficient to acquire the new assets, IMDB sought to finance from Goldman Sachs another \$1.75 billion — equal to the Magnolia transaction and more than double what was needed to purchase the energy assets at issue — for the new acquisition. In this offering, Goldman Sachs arranged and purchased all of the bonds up front; deposited the bonds into a special purpose vehicle that repackaged them into credit-linked notes (“CLNs”) and credit-linked loans (“CLLs”) collateralized by the Maximus bonds; and sold the CLLs and CLNs to other entities at a profit. Within Goldman Sachs, this second bond offering was called “Maximus.” For Maximus, Goldman Sachs received \$110 million in fees.

7. Just five months after the Maximus issuance, Goldman Sachs was called on to finance yet another project for IMDB. This time, IMDB required \$3 billion to fund Malaysia’s contribution to a joint venture investment vehicle with Abu Dhabi. This project was known within Goldman Sachs as “Catalyze.” Goldman Sachs arranged and purchased all of the bonds and then sold the bonds via private placement to third-party investors at a profit. For its work on Catalyze, Goldman Sachs received \$279 million in fees.

8. The fees earned by Goldman Sachs for the IMDB transactions were very lucrative. Goldman Sachs earned fees of 11%, 6.3%, and 9.3% of the total funds raised in Magnolia, Maximus, and Catalyze, respectively, percentages that were significantly higher than if Malaysia had issued debt through a fully-marketed sovereign debt issuance.

The Unsafe and Unsound Conduct

9. As discussed in more detail below, GSBUSA made two investments in 1MDB-related instruments. In March 2013, GSBUSA purchased \$250 million of bonds in the third 1MDB bond offering, Catalyze, to hold as an investment for its long-term investment portfolio. In May 2013, GSBUSA extended a \$50 million loan to a special purchase vehicle that was collateralized with the bonds from the Maximus bond offering. These investments were reviewed and approved by GSBUSA's Bank Capital Committee ("BCC"). Although such purchases of loan and debt securities were generally intended to be held until repayment in full/maturity, GSBUSA sold these Maximus- and Catalyze-related positions at a profit in 2014 at the recommendation of the PFI desk, *i.e.*, the same desk that worked with GS PARTNER-1 to structure the 1MDB bond deals in the first instance.

10. In making its investment decisions in connection with the 1MDB bond offerings, GSBUSA substantially relied on GS Group's due diligence and committee reviews relating to the underlying 1MDB bond transactions. In providing such services to GSBUSA, GS Group failed adequately to detect or address certain red flags in connection with the 1MDB bond transactions, which exposed GSBUSA to undue financial and reputational risk. Among other things:

- GS Group failed to investigate and address adequately the involvement of an intermediary, FINANCIER-1, in the bond transactions, which was a glaring red flag. In 2020, a federal regulator permanently barred another Goldman Sachs partner (herein, "GS PARTNER-2") from working in the banking industry for "failing to ensure that the involvement of third-party

[FINANCIER-1] in the IMDB offerings . . . was fully escalated within the firm.”

- GS Group failed to prevent or detect the wrongdoing of one of its partners, GS PARTNER-1, who in 2018 pleaded guilty to criminal charges in connection with such misconduct.
- GS Group failed to prevent or detect the alleged wrongdoing of one of its managing directors, GS MANAGING DIRECTOR-1, who was charged criminally in connection with such misconduct in 2018.

11. For example, GS Group failed to investigate adequately the involvement of FINANCIER-1 even after learning that FINANCIER-1 had arranged a meeting between GS PARTNER-1 and the Chairman of International Petroleum Investment Company (“IPIC”), the party that was supposed to guarantee the first IMDB bond offering. GS Group instead relied on statements by GS PARTNER-1 and written representations and warranties from IMDB, IPIC, and the Government of Malaysia that there were no intermediaries in the IMDB bond transactions, which statements were later shown to be false.

12. GS Group also failed to escalate or address allegations of bribery that were communicated to certain senior business personnel following the completion of the IMDB bond offerings. For example, on May 8, 2013, a Goldman Sachs managing director called a senior Goldman Sachs International (“GSI”) official to report that “the main reason for the delay for IPIC not having funded their three billion into the JB—JV—with IMDB, is [a senior IPIC official] is trying to get something on the side in his pocket.” He further stated, “I think it’s quite disturbing to have come across this piece of information.” The senior GSI official replied,

“what’s disturbing about that? It’s nothing new, is it?” In response, the managing director agreed that “[i]t’s nothing new[.]”

13. The same Goldman Sachs managing director had substantially similar telephone calls with others within Goldman Sachs.

14. There is no indication that the senior Goldman Sachs officials on these calls followed-up appropriately on any of these allegations.

15. GS Group further failed to meaningfully address allegations of the suspected involvement of GS PARTNER-1 in the 1MDB misconduct. On October 12, 2015, an email was circulated to senior Goldman Sachs officials by a Goldman Sachs employee that purported to note the beliefs of an official of a third-party entity related to the 1MDB transactions about “the roles of some of the intermediaries in what happened” with respect to the 1MDB misconduct. The same Goldman Sachs managing director revealed to a senior GSI official that “one piece of information that was not on the email and this was deliberate, [the same third-party official] is of the view that there are a number of key people who are involved in, let’s call it the situation. . . . He thinks [FINANCIER-1] is the leader of the pack. And he has a very strong view that [GS PARTNER-1] is involved.”

16. On October 12 and October 13, 2015, the same Goldman Sachs managing director had substantially similar telephone calls with two other senior officials within Goldman Sachs. On one of those calls, the managing director noted the close relationship between GS PARTNER-1 and FINANCIER-1, and, in discussing an unrelated transaction, noted that it was FINANCIER-1’s “style” to “spread [money] around, . . . you know, feed and be fed, if you see what I mean.”

17. There is no indication that the control functions took appropriate steps to address these allegations.

18. The United States Department of Justice has brought criminal charges against GS PARTNER-1, GS MANAGING DIRECTOR-1, and FINANCIER-1, alleging that they participated in conspiracies to violate the Foreign Corrupt Practices Act and to commit money laundering. According to those charges, among other things:

- Of the total \$6.5 billion raised in the three IMDB bond offerings, more than \$2.7 billion was misappropriated by GS PARTNER-1, GS MANAGING DIRECTOR-1, FINANCIER-1, and others to pay bribes and kickbacks to government officials in Malaysia and Abu Dhabi and for the personal benefit of the conspirators, including GS PARTNER-1, GS MANAGING DIRECTOR-1, and FINANCIER-1;
- GS PARTNER-1, GS MANAGING DIRECTOR-1, FINANCIER-1, and others paid the bribes and kickbacks in part to obtain and retain the IMDB business for Goldman Sachs;
- GS PARTNER-1, GS MANAGING DIRECTOR-1, FINANCIER-1, and others conspired to launder the proceeds of the misappropriation through the U.S. financial system; and
- GS PARTNER-1 and GS MANAGING DIRECTOR-1 knowingly and willfully conspired to circumvent Goldman Sachs' internal accounting controls and to conceal the misappropriation from Goldman Sachs' compliance officials.

19. GS PARTNER-1 has pleaded guilty to participating in conspiracies to commit money laundering and to violate the Foreign Corrupt Practices Act. During his guilty plea, GS PARTNER-1 admitted, among other things, that, “with the intent to benefit Goldman Sachs and myself,” some of these improperly funneled funds were used “to pay bribes and kickbacks to obtain and retain business from IMDB to Goldman Sachs.”

Failure to Report to the Department

20. As discussed above, in May 2013, senior Goldman Sachs officials were informed of allegations that a senior IPIC official may have sought or obtained a bribe from Malaysia in connection with the IMDB bond offerings.

21. In early 2015, in connection with a review of one of the bond transactions, senior Goldman Sachs’ control function personnel received earlier communications among compliance officials from February 2013 questioning IMDB’s need to raise additional funds in Catalyze given unused proceeds from the prior bond transactions.

22. On March 25, 2015, a news source reported upon the creation of a task force by Malaysian authorities to investigate IMDB.

23. In July 2015, the Wall Street Journal reported that Malaysian authorities traced the source of nearly \$700 million from the then-Malaysian Prime Minister’s personal accounts to entities and government authorities linked to IMDB, clearly indicating that the sovereign wealth fund was engaging in improper activities.

24. By October 2015, the Wall Street Journal was reporting that the Department of Justice and the Federal Bureau of Investigation were examining Goldman Sachs’ role in connection with the IMDB transactions.

25. As previously discussed, in October 2015, senior Goldman Sachs officials were informed that GS PARTNER-1 was suspected to be involved in the 1MDB misconduct.

26. In early 2016, Goldman Sachs discovered that the banker leading Goldman Sachs' 1MDB team, GS PARTNER-1, had submitted a letter of reference to another bank on behalf of FINANCIER-1, the Malaysian financier at the center of the 1MDB scandal. In that letter, GS PARTNER-1 untruthfully represented that "Goldman Sachs conducted all required regulatory due diligence on the [FINANCIER-1's family] and hereby confirms that the [FINANCIER-1's family's] wealth of an estimated US \$1.8 billion . . . was generated through legal means and poses no AML/regulatory/CFT risks" when, in fact, Goldman Sachs had made the opposite determination. GS PARTNER-1 was immediately placed on a leave of absence, and, shortly thereafter, he submitted his resignation to Goldman Sachs.

27. These red flags and information about misconduct concerning 1MDB were information that would have been of interest to other licensees of the Department. An affiliate of at least one Department licensee, for example, purchased a significant amount of Project Catalyze bonds. Another Department licensee was involved in financing transactions with 1MDB after the three 1MDB transactions financed by Goldman Sachs.

28. Notwithstanding GSBUSA's prior investments in certain 1MDB instruments, at no time did Goldman Sachs convey to GSBUSA the red flags or information detailed above about the 1MDB transactions or the misconduct of GS PARTNER-1, GS MANAGING DIRECTOR-1, and FINANCIER-1, so that GSBUSA could affirmatively report the incident to the Department, as is required by regulation.

29. GS Group employs a single, enterprise-wide compliance system. Accordingly, GS Group is primarily responsible for the design, implementation, and execution of an enterprise-

wide compliance program for GS Group as well as its subsidiaries, including GSBUSA. Such a global system must incorporate open lines of communications between the centralized compliance function and relevant subsidiaries for the seamless reporting of compliance concerns, compliance issues, and the identification of compliance challenges relevant to that subsidiary. The seamless transfer of information between the central compliance function and subsidiaries is particularly crucial where a subsidiary has its own separate regulatory obligations to report certain compliance concerns to regulators, such as the obligations that GSBUSA has to report to the Superintendent.

VIOLATIONS OF LAW AND REGULATIONS

30. GS Group's failures to provide adequate due diligence and committee review services to GSBUSA in connection with the 1MDB transactions has resulted in the conduct of banking business in an unsafe and unsound manner, in violation of Banking Law § 44.

31. GS Group's failure to convey to GSBUSA the red flags and information about the 1MDB transactions or the misconduct of certain Goldman Sachs employees and others resulted in a failure to submit a report to the Superintendent of one or more incidents that appear to relate to a plan or scheme that would be of interest to similar organizations located in the same area or throughout the State, in violation of the 3 N.Y.C.R.R. § 300.4.

SETTLEMENT PROVISIONS

Monetary Payment

32. GS Group shall pay to the Department a civil monetary penalty pursuant to Banking Law § 44 in the amount of one hundred and fifty million U.S. dollars (\$150,000,000.00) within ten (10) days of executing this Consent Order.

33. GS Group agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

34. GS Group further agrees that it shall neither seek nor accept, directly or indirectly, reimbursement or indemnification with respect to payment of the penalty amount, including but not limited to payment made pursuant to any insurance policy.

Remediation

35. Within ninety (90) days of this Order, GS Group and its subsidiary GSBUSA shall jointly submit a written plan (the "Written Plan") acceptable to the Department on enhancements to the policies and procedures that control how GS Group provides services to GSBUSA. At a minimum, the Written Plan shall address:

- a. Policies and procedures that ensure that GSBUSA Compliance is adequately staffed by employees who are independent of the business and that its procedures are effective and well-defined;
- b. Policies and procedures that ensure that investment decisions made by and for GSBUSA are in the independent, best interests of GSBUSA, including ensuring adequate GSBUSA-specific deal review;
- c. Policies and procedures that are designed to promote appropriate intra-affiliate information sharing whenever GS Group provides due diligence, committee review, or compliance services to GSBUSA, including, without limitation, ensuring: (i) any material negative information about a transaction is conveyed to GSBUSA personnel; (ii) GSBUSA has the ability to escalate effectively any questions or concerns about a transaction to the relevant

- affiliate within Goldman Sachs that can address the question or concern; and
- (iii) Goldman Sachs conveys information to GSBUSA whenever that information, if in GSBUSA's possession, would be required to be reported to the Department under Part 300 of the Superintendent's Regulations; and
- d. Any prior remedial actions already taken by Goldman Sachs since the IMDB transactions to address the above.

Full and Complete Cooperation of Goldman Sachs

36. Consistent with applicable law, GS Group commits and agrees that it will fully cooperate with the Department regarding all terms of this Consent Order.

Breach of Consent Order

37. In the event that the Department believes any party to this Consent Order to be in material breach of the Consent Order, the Department will provide written notice to the party, and the party must, within ten (10) business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

38. The parties understand and agree that the party's failure to make the required showing within the designated time period shall be presumptive evidence of the party's breach. Upon a finding that a breach of this Consent Order has occurred, the Department has all the

remedies available to it under New York Banking and Financial Services Law and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

Waiver of Rights

39. The parties understand and agree that no provision of this Consent Order is subject to review in any court, tribunal, or agency outside the Department.

Parties Bound by the Consent Order

40. This Consent Order is binding on the Department and GS Group, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

41. No further action will be taken by the Department against Goldman Sachs for the conduct set forth in the Consent Order, provided that GS Group fully complies with the terms of this Consent Order.

42. Notwithstanding any other provision in this Consent Order, the Department may undertake action against Goldman Sachs for transactions or conduct that Goldman Sachs did not disclose to the Department in the materials Goldman Sachs produced to the Department in connection with this matter.

Notices

43. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

Cynthia M. Reed
Senior Assistant Deputy Superintendent
New York State Department of Financial Services
One State Street
New York, NY 10004

Michael R. Treves
Excelsior Fellow
New York State Department of Financial Services
One State Street
New York, NY 10004

For GS Group:

David Markowitz
The Goldman Sachs Group, Inc.
200 West Street
New York, NY 10282

Miscellaneous

44. Each provision of this Consent Order shall remain effective and enforceable against GS Group, its successors and assigns, until stayed, modified, suspended, or terminated by the Department.

45. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provision of the Consent Order.

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 21st day of October, 2020.

NEW YORK STATE
DEPARTMENT OF FINANCIAL
SERVICES

THE GOLDMAN SACHS GROUP, INC.

By: *Terri Anne Caplan*
TERRI-ANNE S. CAPLAN
Senior Assistant Deputy
Superintendent
Consumer Protection & Financial
Enforcement Division

By: *Karen P. Seymour*
KAREN P. SEYMOUR
Executive Vice President and
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LINDA A. LACEWELL
Superintendent of Financial Services