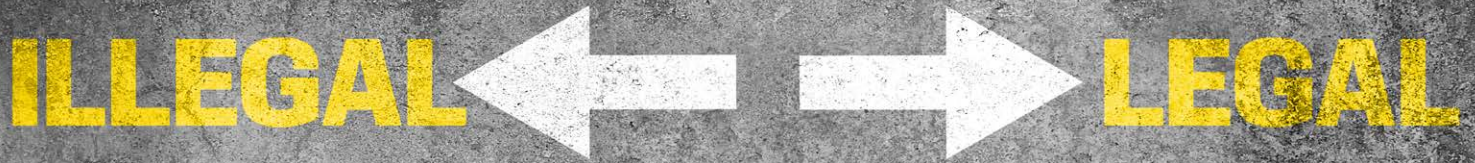


SEPTEMBER 8, 2020

DOJ Must Severely Punish Unrepentant Recidivist Goldman Sachs for 1MDB's Global Crime Spree



**Goldman Sachs' Two-Decades-Long
RAP Sheet of Repeated Illegal Conduct:
*37 Major Legal Actions, \$13.7 Billion in Fines and Settlements***



INTRODUCTION

This Report details Goldman Sachs' RAP sheet of alleged illegal behavior over more than 20 years. It is shocking in its depth and breadth. It reveals wide-ranging, predatory, recidivist and unrepentant lawbreaking from 1998 through 2019. Goldman Sachs' enabling the looting of the Malaysian fund 1MDB and the corruption of democracy in that country are so egregious that it shocks the conscience.* However, it is only the latest example of the bank's illegal, if not criminal, activity.

As the Department of Justice considers the appropriate sanctions for Goldman's criminal conduct in connection with 1MDB's crime spree, it must consider Goldman's 20-year record of lawbreaking as reflected in its RAP sheet. Goldman is, undeniably, a recidivist and aggressively unrepentant, which DOJ or any prosecutor would typically weigh very heavily when determining an appropriate punishment. Like any other business activity in the country, DOJ must hold Goldman Sachs and its executives accountable for their illegal and criminal conduct in light of that history.

The RAP sheet clearly indicates that Goldman Sachs has committed dozens of illegal acts and preyed upon and ripped off countless Main Street Americans. In fact, in the last two decades, while receiving more than \$874 billion in U.S. government bailouts, Goldman Sachs has been subject to **37 major legal actions that have resulted in the bank paying over \$13.7 billion in fines and settlements.**

Goldman's lengthy RAP sheet shows that this illegal behavior is not a one-off or an occasional outlier due to a rogue employee here or there. It also shows that this illegal behavior was not just part of the bank's activities prior to the 2008 crash, after which it cleaned up its act. The RAP sheet shows that its illegal activities actually *increased* after the 2008 crash.

* See "Goldman Sachs' 1MDB 'Four Monkeys' Defense and CEO Solomon's Golden Opportunity," Better Markets, April 25, 2019, available at <https://bettermarkets.com/sites/default/files/Better%20Markets%20-%20Goldman%20Sachs%27%201MDB%20Four%20Monkeys%20Defense%2004-25-2019.pdf>.



Importantly, these illegal actions are also not technical, routine or to be expected, even by a gigantic global bank engaged in often complex financial transactions. The allegations and violations giving rise to multiple major legal actions against Goldman Sachs were the most serious and astonishingly wide-ranging, including:

Pre-crash: Insider trading, overcharging municipalities for government securities, providing conflict-ridden stock research analysis, trading ahead of clients, misrepresentations in the sale of auction rate securities, and anticompetitive practices in the bond market;

2008 Crash-related: Fraud and abuse in the sale of mortgage-backed securities, loan servicing and foreclosure violations, betting against mortgage-backed securities that were sold to clients, and use of invalid credit ratings for mortgage-backed securities;

Post-crash: Widespread market manipulation of global benchmark rates, unlawful securities lending practices, disclosure of sensitive customer information, violation of pay-to-play rules, failure to disclose adviser conflicts of interest, misrepresentations about foreign exchange trading programs, price-fixing in the GSE bond markets, and a slew of 1MDB-related crimes.

These many illegal activities would seem to constitute a criminal enterprise. Indeed, any other non-Wall Street bank in America with that recidivist record would probably have been shut down by prosecutors long ago; executives at any other business in America with that recidivist record would likely be serving long prison sentences. But not Goldman Sachs; proving its nom de guerre “Government Sachs,” this bank repeatedly gets favorable treatment by the government and is repeatedly allowed to use shareholders’ money to pay fines and buy get-out-of-jail-free cards for its executives in sweetheart settlements.



Goldman’s Key Role in the 1MDB’s Crimes

Nothing illustrates Goldman’s breathtaking illegal conduct more than its years-long involvement with the 1MDB sovereign wealth fund in Malaysia, which has been referred to as “one of the greatest financial heists in history” and in which Goldman reportedly played a central, decisive and wide-ranging role. Not only were billions of dollars looted from funds raised by Goldman, but hundreds of millions of those dollars were allegedly diverted and used as bribes to steal an election. That enabled the allegedly corrupt prime minister to remain in power for five additional years, when his opponents were crushed and at least one prosecutor was brutally murdered, suffering “a horrific death,” as [fully detailed in this Report](#).

Much of that appears to have only been made possible by the actions, fundraising and imprimatur of 1MDB’s premier global banker, Goldman Sachs.¹ As a former policy adviser to the prime minister’s office in Malaysia and adviser on the Goldman bond offerings reportedly said, the prime minister “couldn’t have done it without a bank the size of Goldman.”

Too much of the reporting about Goldman’s involvement with 1MDB has suggested that it is just another run-of-the-mill financial crime. Most of the reports also suggest that Goldman’s three bond offerings for 1MDB amounting to \$6.5 billion, for which Goldman reportedly received a shockingly large fee of almost 10%, was really the extent of Goldman’s involvement. But all of the evidence available so far indicates that nothing could be farther from reality.

Goldman Sachs had a five-plus year relationship with 1MDB, which began in 2009 and lasted through 2014. Thus, while Goldman was still being bailed out by the U.S. government and when the financial crisis was still ravaging Main Street families across America, Goldman, as part of a program it referred to as “monetizing the state,” began courting business from 1MDB. That years’ long, wide-ranging relationship included Goldman’s past and present CEOs as well as dozens of its most senior officers and partners (again, as [fully detailed in this Report](#)).

While it is reportedly engaged in ongoing settlement discussions with the U.S. Department of Justice, Goldman did recently announce* a “\$3.9 billion” settlement with Malaysia for its activities related to 1MDB, which included a \$2.5 billion cash payment and a “guarantee” that the country would receive another \$1.4 billion in proceeds received from the sale of 1MDB assets.**

Goldman’s outlandish and unrepentant*** 1MDB conduct makes it clear that all the other many fines and settlements detailed in this Report have been grossly inadequate. They have not been nearly enough to punish Goldman for its prior illegal behavior or to deter it from engaging in future illegal conduct. In fact, it appears that these fines and settlements are no more than just a cost of doing business, a speed bump on the road to ever larger bonuses, however they are generated.²

That has enormous implications for the bank, investors, taxpayers, the financial system and the economy. This is particularly true now as Goldman Sachs seeks to expand its businesses from Wall Street-centered investment banking and trading into Main Street banking, consumer finance and more traditional lines of banking. While Goldman Sachs may remain a too-big-to-fail, too-big-to-jail, too-big-to-regulate and too-big-to-manage Wall Street bank, it and its executives cannot remain too big to be meaningfully punished for outlandish and appalling criminal conduct.

For the protection of Main Street customers, Goldman must be made to understand that crime does not pay—which will only be possible if Goldman and its leaders are forced to stop profiting from their crimes.

* The timing here is very curious: on July 15, 2020, Goldman announced its second quarter results, with CNBC [reporting](#) “Goldman Sachs shares rise as earnings blow past the Street on the best trading results in years”; 9 days later, on July 24, 2020, the “\$3.9 billion” settlement was [announced](#); and on August 7th, “Goldman Sachs Restates Earnings After \$3.9 Billion Malaysia Settlement,” as [reported](#) by the Wall Street Journal. Given that Goldman “[crushed](#)” the Street’s earnings per share estimate (\$6.26 actual v. \$3.78 estimate), revenue was \$3.5 billion higher than estimates, bond trading up 150% and equity trading up 46%, its share price rising was foreseeable and predictable. However, is it believable that Goldman did not know when it announced the “[bank’s biggest earnings out-performance in nearly a decade](#)” 9 days before the settlement was announced that it was going to have to then immediately restate its earnings just days later?

** Ironically, if not predictably, this announced settlement of a massive alleged fraud was itself a fraud on the public: it was structured for PR purposes to appear like it was worth much more than it actually was. In fact, the settlement was really no more than \$2.5 billion not the “3.9 billion” trumpeted because Goldman immediately announced that it had no exposure on the so-called “\$1.4 billion guarantee.” See, Brooke Masters, *Goldman Has Done It Again With Its Malaysia Deal*, THE FINANCIAL TIMES (July 27, 2020,) available at <https://www.ft.com/content/03d5f3c8-3d0c-4afb-b3c5-3c5ed1c7cfe6?shareType=nongift>.

*** Goldman’s CEO David M. Solomon issued a very carefully crafted non-apology apology, continuing the bank’s strategy to try to pin the blame on just one Goldman executive and partner. He said, “It is very clear that the people of Malaysia were defrauded by many individuals, including the highest members of the Malaysian government. For Leissner’s role [the Goldman partner who has pleaded guilty to multiple crimes] in that fraud, we apologize to the Malaysian people.” While some in the media reported this non-apology from Solomon as an actual apology (“Goldman Sachs chief apologises to Malaysians for 1MDB scandal”), most immediately saw it for the blame-shifting, non-apology that it was, as this is the tactic that Goldman has used throughout this unfolding scandal. See Matthew Goldstein, Emily Flitter & Kate Kelly, *Goldman Sachs’s Tactic in Malaysian Fraud Case: Smear an Ex-Partner*, N.Y. TIMES (Jan. 16, 2019), <https://www.nytimes.com/2019/01/16/business/goldman-malaysia-1mdb-leissner.html>. See also [Better Markets’ 1MDB Report](#), notes 53-57 and accompanying text.

That will require the Department of Justice to impose unmistakably severe terms on the bank and its executives personally. This is warranted given Goldman's recidivist history and the singularly shocking conduct in enabling and participating in 1MDB's crime spree, which included the involvement of [more than 30 Goldman executives, including its past and present CEOs](#).

Given the facts, circumstances and consequences here, any settlement with Goldman must include:

1. a guilty plea to criminal charges by the bank holding company,
2. a non-tax-deductible fine of more than \$5 billion,
3. the imposition of a truly independent monitor who is required to file public reports,
4. limitations on the bank's collateral activities,
5. personal monetary penalties and industry bars on the materially involved executives and officers—not just the three fall guys already identified, and
6. a full and complete public disclosure of the identity and conduct of all Goldman staff, partners and executives who were aware of or involved in any way with 1MDB.

Anything less will send the message that “crime pays” by de facto rewarding past illegal activity and incentivizing future illegal activity. Given the high profile of this case and how carefully it is being followed throughout the industry, that will be true not just at Goldman, but all across Wall Street and the financial industry more broadly.

If the DOJ does less, it will once again show that Wall Street's biggest, wealthiest, most politically connected banks like “Government Sachs” are too-big-to-punish, much less too-big-to-jail, no matter how many crimes they commit, how many laws they break, how many victims there are, or how much damage they inflict. Given that the Attorney General and other senior DOJ officials making the decisions regarding 1MDB had to get waivers from conflicts of interest and that Goldman has hired a prominent former DOJ prosecutor to negotiate a deal for it, the Department of Justice must be particularly careful not to appear to be giving a connected Wall Street bank special favorable treatment.

All eyes are watching to see if justice is in fact blind and that there is equal treatment under the law. The credibility of the Department of Justice and the integrity of the rule of law is at stake in this case.



Goldman Sachs Chairman & Chief Executive Officer David M. Solomon testifies before the House Financial Services Committee on accountability for mega banks in the Rayburn House Office Building on Capitol Hill in Washington, DC on April 10, 2019. Photo by MANDEL NGAN/AFP via Getty Images.

Illegal Activity at Goldman Sachs Has Continued Since the 2008 Crash and Bailouts

Goldman Sachs has amassed a RAP sheet showing that the financial crash of 2008 did little, if anything, to slow the pace of alleged illegal activity that was well underway in the years leading up to the crash. As indicated by the many major legal actions, Goldman Sachs was allegedly heavily engaged in illegal activity before the crash, then reached new heights of lawlessness in connection with the crash, and finally, continued to violate the law in the post-crash era. In fact, the actions, allegations, settlements and other legal proceedings strongly suggest that Goldman Sachs' behavior has only gotten worse.

Below is a list of the major actions taken against Goldman Sachs since 2000, which captured violations of law spanning roughly the last 20 years, from 1998 to 2019. The cases have been grouped into three categories: Pre-Crash Actions, Crash-Related Actions, and Post-Crash Actions. Here is what the RAP sheet shows:

- ✓ **The NUMBER OF CASES against Goldman Sachs HAS INCREASED** relative to the pre-crash years.
- ✓ **The NATURE AND VARIETY OF THE VIOLATIONS throughout the period is ASTOUNDING**, spanning virtually every conceivable type of white-collar crime, fraud or breach of contract that a bank could commit. They encompass everything from fraud, money laundering and market manipulation to foreclosure abuses, antitrust violations, conflicts of interest and kickback schemes.

In short, Goldman Sachs has allegedly continued to commit serious violations of law, spanning an extraordinary variety of civil and criminal misconduct and resulting in tens of billions of dollars in penalties, civil judgments, and other monetary sanctions. Goldman has not skipped a beat when it comes to committing fraud, market manipulation, and other abuses against their clients, investors, and the financial markets themselves. They continue to violate the law and to generate massive profits

and huge compensation packages for their executives, without facing any meaningful punishment, deterrence or accountability.

The cases were grouped into three categories:

- **Pre-Crash:** Representing misconduct that occurred primarily before 2008 and was not related to the mortgage underwriting practices, residential mortgage-backed securities (“RMBS”) offerings, or foreclosure abuses directly tied to the financial crash;
- **Crash-Related:** Representing the core violations in the areas of mortgage underwriting practices, fraudulent RMBS offerings and foreclosure abuses that helped trigger and fuel the financial crash; and
- **Post-Crash:** Representing misconduct that occurred primarily after 2008 and was not related to the financial crash.

Types of Actions. Included in the review were civil enforcement actions, administrative enforcement actions, and criminal actions at the federal level; state actions; and private litigation. These cases were brought by federal regulators and prosecutors; self-regulatory organizations (FINRA); state regulators; state attorneys general; private claimants; and others.

Sanctions. The monetary sanctions reflected in the review include civil penalties, criminal penalties, disgorgement of ill-gotten gains, civil damages, re-purchase obligations, and other amounts such as consumer relief and mandated payments to public interest groups or causes.

A conservative approach. The list of actions taken against Goldman Sachs is undoubtedly conservative in that it does not include every governmental action taken against the bank in response to its alleged illegal activities. In addition, it includes relatively few private lawsuits against the bank alleging financial fraud and other abuses because those suits were difficult to identify. Hence, this survey actually understates the magnitude of the unlawful actions by Goldman Sachs.

The following chart sets forth the RAP sheet for Goldman Sachs, along with a more detailed summary, including prime examples of the violations committed. Additional details about the actions and sanctions against Goldman Sachs are available on Better Markets’ website, at www.bettermarkets.com.

Goldman Sachs' RAP Sheet³

Total Actions: 37

Total Sanctions: \$13,760,174,000

TIME PERIOD:	Pre-Crash	Crash-Related	Post-Crash
ACTIONS:	13	7	17
SANCTIONS:	\$253,275,000	\$9,198,825,000	\$4,308,074,000

PRIME EXAMPLES:	<p>\$110 million as Goldman's share of a settlement between the SEC, state securities regulators, and ten of the nation's top investment firms for undue influence by investment banking interests on securities research at brokerage firms.⁴</p>	<p>\$5.06 billion settlement for Goldman's role in the packaging, securitization, marketing, sale, and issuance of residential mortgage-backed securities leading up to the crash.⁵</p>	<p>\$120 million for manipulating and making false reports concerning the U.S. Dollar International Swaps and Derivatives Association Fix (USD ISDAFIX), a global benchmark for interest rate products.⁶</p>
	<p>\$45.2 million to resolve claims by the NYSE and the SEC that the bank's subsidiary violated federal securities laws and Exchange rules by executing orders for their dealer accounts ahead of executable public customer or "agency" orders.⁷</p>	<p>\$3.15 billion for securities law violations in connection with private-label mortgage-backed securities purchased by Fannie Mae⁸ and Freddie Mac.⁹</p>	<p>\$54.75 million civil money penalty for the firm's unsafe and unsound practices in its foreign exchange (FX) trading business, including failure to detect and address its traders' use of electronic chatrooms to communicate with competitors about trading positions.¹⁰</p>
	<p>\$22.5 million for making misrepresentations in the marketing and sales of auction rate securities, portraying them as safe, cash-equivalent products, when in fact they faced increasing liquidity risk.¹¹</p>	<p>\$550 million for securities fraud when it misled investors in the ABACUS 2007-AC1 CDO offering just as the U.S. housing market was starting to collapse.¹²</p>	<p>\$15 million to settle charges that its securities lending practices violated federal regulations and that it provided incomplete and unclear responses to SEC staff that adversely affected and prolonged the examination.¹³</p>



Examples of Goldman Sachs' Illegal Activities

Massive Frauds that Fueled the Financial Crash

Some of the most reckless and illegal activity conducted by Goldman Sachs triggered and fueled the 2008 crash. Here is a just a brief overview, centered around rampant fraud in the offer and sale of countless residential mortgage-backed securities.

In April of 2016, the DOJ, along with other federal and state regulators, announced a \$5 billion settlement with Goldman Sachs for its part in packaging, securitizing, marketing, and selling RMBS in the years leading up to the crash. The settlement makes clear that the bank falsely assured investors that its RMBS were backed by sound mortgages, when it knew that they were in fact full of mortgages likely to fail. Similarly, in 2012 Goldman paid \$26.6 million to settle a suit that it defrauded the Public Employee's Retirement System of Mississippi in the offer and sale of RMBS.

Earlier, in July 2010, Goldman Sachs agreed to pay \$550 million to settle SEC charges that the firm misled investors in the sale of a mortgage-backed security called Abacus 2007-AC1. The SEC charged "that Goldman misled investors in a subprime mortgage product just as the US housing market was about to collapse." In agreeing to pay the penalty, Goldman "acknowledged that its marketing materials for the subprime product contained incomplete information." It was later reported that, contrary to public statements at the time, the SEC and Goldman secretly agreed that this one settlement would in fact settle all of Goldman's many CDO offerings, making the settlement even more insignificant than it initially appeared to be.¹⁴

The Beat Goes On: Major Violations of Law Continue

Even after this series of historically large settlements and sanctions resulting from Goldman Sachs' pervasive frauds, which, along with the actions of other megabanks like Goldman were largely responsible for the worst financial crash since the Great Depression, the bank has apparently learned

little. Since the crash, Goldman Sachs continued to engage in a wide range of illegal activities, including the following.

- **Manipulation of the “U.S. Dollar ISDA Fix.”**

In December of 2016, the CFTC issued a consent order against Goldman Sachs for its attempts to manipulate a leading global benchmark used to price a range of interest rate derivatives, all for the benefit of Goldman’s trading positions. The violations extended from 2007 into 2012, and involved multiple traders, including the head of the bank’s interest rate products trading group in the U.S. The sanctions included a \$120 million civil penalty.

- **Pay-to-Play**

In 2012, the SEC issued a consent order against Goldman, with a \$12 million fine, for violating pay-to-play rules, when a Goldman VP made extensive cash and in-kind contributions to the gubernatorial campaign of the Treasurer of Massachusetts, who then steered securities underwriting work to Goldman; Goldman earned more than \$7.5 million in underwriting fees as a result of this illegal activity.

- **Price fixing in GSE bond market**

In 2019, Goldman Sachs paid \$20 million to settle a lawsuit alleging that it engaged in a widespread conspiracy to fix the prices of bonds issued by Fannie Mae and Freddie Mac. As a result of the price-fixing, Goldman’s victims, including several pension funds, paid severely inflated prices, bilking the savings of millions of hard-working Americans.

- **Violation of Client Trust**

In 2018, Goldman Sachs paid a total of \$110 million to the Federal Reserve and the New York Department of Financial Services to settle allegations of widespread misconduct by its FX traders. This misconduct included disclosure of customer trading information to other institutions, allowing Goldman Sachs to profit at their customers’ expense.

CONCLUSION

As Goldman finally begins to face consequences for its brazen, illegal, and corrupt conduct in connection with looting Malaysia and undermining its democracy, the bank and its leadership simply must be held accountable by the Department of Justice. In doing so, the Department must consider the nature and degree of Goldman’s recidivist history as reflected in its RAP sheet. If it does, then it will impose severe and meaningful punishments on the bank and its executives, sending a clear and strong message that, finally, crime on Wall Street does not pay.

CITATIONS

- ¹ See, Andrew Cockburn, *The Malaysian Job*, HARPER'S MAGAZINE (May 2020), available at <https://harpers.org/archive/2020/05/the-malaysian-job-wolf-of-wall-street-1malaysia-development-berhad/>
- ² For example, then-CEO Lloyd Blankfein (who personally met at least twice with the mastermind of the 1MDB crimes, even after Goldman's private client group refused to do business with him because they were unable to determine the source of his wealth, a red flag for criminal activity and money laundering) [reportedly](#) received more than \$70 million in compensation for 2007, the year before the 2008 crash, and then [reportedly](#) pocketed more than \$40 million in compensation for 2008. His net worth was recently [reported](#) to be \$1.3 billion. There have been no reports that Blankfein or any other senior executive has ever been required to give up a dime in connection with any of the illegal activities detailed in this Report.
- ³ This is a modified and updated version of a Better Markets' Report issued on April 9, 2019: "Wall Street's Six Biggest Bailed-Out Banks: Their RAP Sheets & Their Ongoing Crime Spree," available at <https://bettermarkets.com/sites/default/files/Better%20Markets%20-%20Wall%20Street%27s%20Six%20Biggest%20Bailed-Out%20Banks%20FINAL.pdf>.
- ⁴ <https://www.sec.gov/news/press/2003-54.htm>.
- ⁵ <https://www.justice.gov/opa/pr/goldman-sachs-agrees-pay-more-5-billion-connection-its-sale-residential-mortgage-backed>.
- ⁶ <https://www.cftc.gov/sites/default/files/idc/groups/public/@Irenforcementactions/documents/legalpleading/enfgoldmansachsorder122116.pdf>.
- ⁷ <https://www.sec.gov/news/press/2004-42.htm>.
- ⁸ https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/2014%208%2022%20%20FHFA-Goldman%20Sachs%20Settlement%20Agreement_Fannie%20Mae.pdf.
- ⁹ <https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/2014%208%2022%20%20FHFA-Goldman%20Sachs%20Settlement%20Agreement-Freddie%20Mac.pdf>.
- ¹⁰ <https://www.federalreserve.gov/newsevents/pressreleases/enforcement20180501b.htm>.
- ¹¹ <https://ag.ny.gov/press-release/attorney-general-cuomo-announces-settlements-merrill-lynch-goldman-sachs-and-deutsche>.
- ¹² <https://www.sec.gov/news/press/2010/2010-123.htm>.
- ¹³ <https://www.sec.gov/litigation/admin/2016/34-76899.pdf>.
- ¹⁴ See "The SEC's Internal Battles Over Goldman Sachs Probe," Susan Beck (April 7, 2014), *The American Lawyer*, available at <https://www.law.com/americanlawyer/almID/1202650075059/?slreturn=20200027152040>.

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