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Goldman Sachs' 1MDB "Four Monkeys" Defense and CEO Solomon's Golden Opportunity



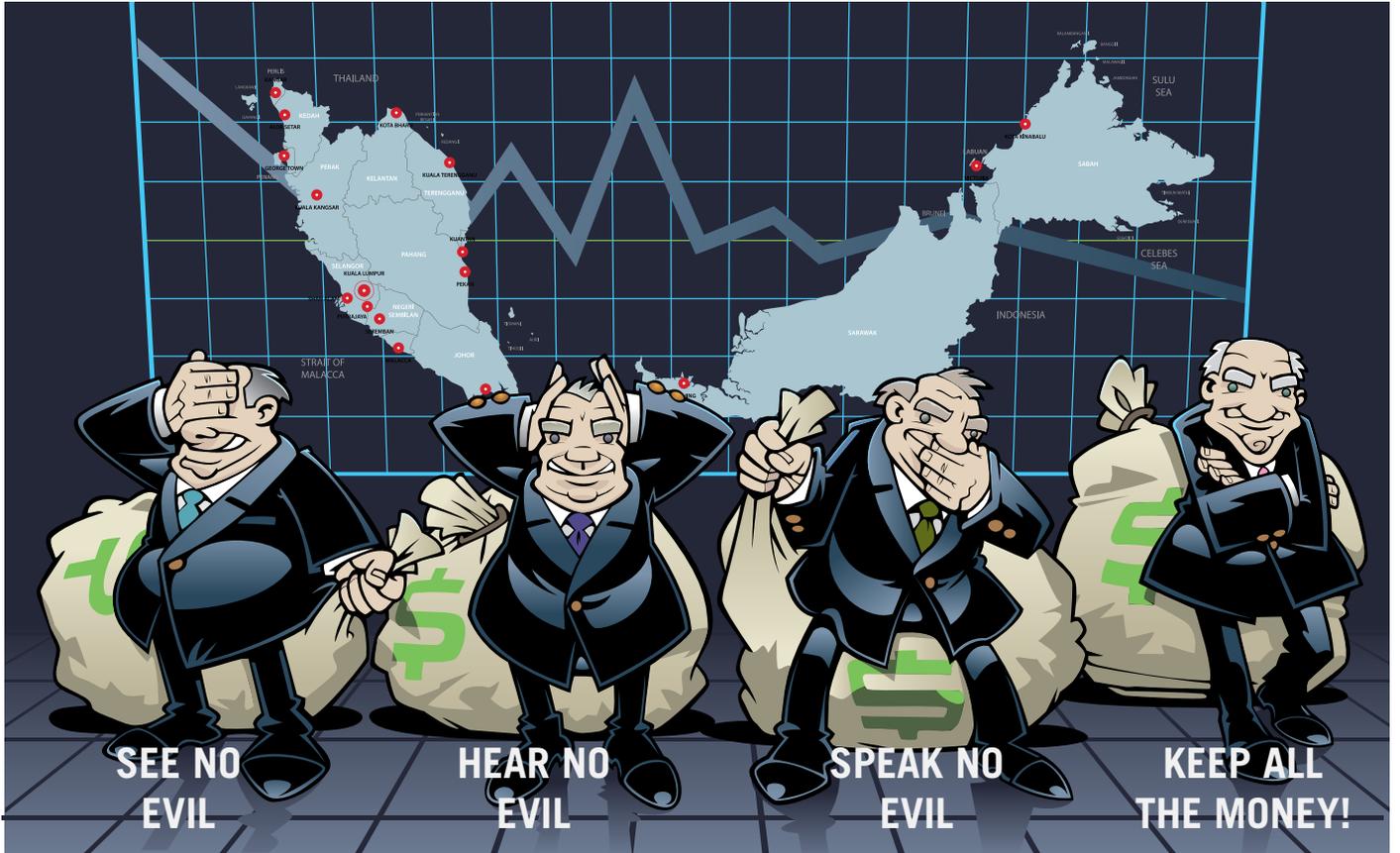
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Goldman's "Four Monkeys" Defense

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INTRODUCTION

1Malaysia Development Berhad (1MDB) was a Malaysian government owned and controlled investment fund created in 2009 by former Prime Minister Najib Razak. The professed purpose of 1MDB was to attract foreign investment and development in Malaysia to benefit all the people of Malaysia. Instead, it has been referred to as “[kleptocracy at its worst](#)” and potentially “one of the greatest financial heists in history,” with possibly more than \$10 billion looted.¹ Worst of all, hundreds of millions of those looted dollars were allegedly used to steal an election and keep the corrupt prime minister in power for five additional years, when his opponents were crushed and at least one prosecutor was brutally murdered, suffering “[a horrific death](#).”²

Goldman’s position is that a “rogue” banker lied and fooled all of the smartest, highest paid bankers in the world, all of Goldman’s risk, compliance, legal and audit systems and controls, and all of Goldman’s management.

Much of that appears to have only been made possible by 1MDB’s banker, Goldman Sachs, which was involved with 1MDB from 2009 until late 2014. In particular, in addition to advising 1MDB, Goldman managed three no-bid, privately placed bond issues from May 2012 – March 2013 that raised about \$6.5 billion from investors around the world. However, more than half of that was reportedly looted by the prime minister and his cronies. Goldman’s take for the three offerings alone was reportedly an astonishing \$600 million.

As reporter Matt Taibbi (who famously [referred](#) to Goldman as “a great vampire squid wrapped around the face of humanity, relentlessly jamming its blood funnel into anything that smells like money”)³ [observed](#), while there is nothing new about corrupt politicians plundering their country for their personal benefit, that is usually done by exploiting the tangible assets of the country. Taibbi points out that Najib was different.⁴ He allegedly stole the money raised by Goldman’s debt offerings and other borrowings.

He did not and could not do that alone. As John Pang, a former policy adviser to the prime minister’s office in Malaysia and advisor on the bond offerings reportedly [said](#), “This is something completely new. And he couldn’t have done it without a bank the size of Goldman.”⁵ In fact, Mr. Pang went so far as to [say](#)

“All [Najib] needed was a signature and a couple of Goldman bankers.”⁶

The highlights of the publicly reported story of Goldman’s critical involvement with 1MDB are presented in this report. It also presents many of the reported red flags and warning signs about 1MDB, which makes Goldman’s defense – that this was done by a rogue Goldman partner who has already pleaded guilty to criminal charges – implausible. Indeed, even many Goldman “[veterans are disturbed that the firm allegedly ignored or missed red flags](#).”⁷ Nevertheless, as the investigations and lawsuits pile up, including a Malaysia criminal complaint seeking \$7.5

A photograph of Najib Razak, Malaysia's former prime minister, sitting in the driver's seat of a car. He is wearing a dark suit, a white shirt, and a blue tie. He has short grey hair and is wearing glasses. The car's interior is visible, including the beige leather seats and the window frame. The background is slightly blurred, showing what appears to be an outdoor setting with other people in the distance.

Najib Razak, Malaysia's former prime minister, sits in a car as he leaves the Kuala Lumpur Courts Complex in Kuala Lumpur, Malaysia, on Wednesday, Dec. 12, 2018. Najib and ex-1MDB President Arul Kanda were charged for their alleged roles in tampering with a state audit report into the troubled fund.

billion in reparations, ***Goldman is steadfast in its “Four Monkeys” defense: see no evil, hear no evil, speak no evil, and keep all the money.***

Put differently, Goldman (other than the Goldman partner who has pleaded guilty) and everyone else connected to 1MDB deny all wrongdoing, liability and, for the most part, knowledge (including Najib). However, even if Goldman's denials are true, doesn't it just prove that, in addition to being too-big-to-fail, Goldman is also too-big-to-manage as well as too-big-to-regulate?

Moreover, is this what taxpayers bailed out Goldman Sachs in 2008 to do? Is this really the type of bank – and are these really the types of activities – that should even be backed by U.S. taxpayers? Remember that within days of the failure of Lehman Brothers, Goldman Sachs would also have failed and fallen into bankruptcy but for government bailouts. In fact, [Goldman at the time was “panicked” and admitted it was “toast,”](#) as reflected in an email on Friday September 20, 2008 to the New York Fed.⁸

Yet, the following year after being bailed out and saved, Goldman's then-CEO Lloyd Blankfein began the relationship with Malaysia, which has resulted in these enormous crimes, victimizing an entire country. While the scale and scope might be unusual, Goldman's involvement with 1MDB is just the latest in Goldman's long history of reported [scandalous](#) and illegal behavior,⁹ including but not limited to the [Abacus](#)¹⁰ and other [subprime](#) wrongdoings,¹¹ the [“vampire squid” expose](#),¹² the [AIG CDS backdoor bailout](#),¹³ [Greek debt offering](#),¹⁴ [Libyan Investment Fund](#),¹⁵ the [firing of Fed examiner Carmen Segarra](#) (detailed in her recent [book](#)),¹⁶ the Greg Smith New York Times resignation over [Goldman's cultural bankruptcy](#),¹⁷ and [numerous whistleblower complaints](#).¹⁸ Indeed, [Goldman's RAP sheet over the last 20 years or so includes at least 33 major legal actions](#) alleging violations of dozens if not hundreds of laws and resulting in almost \$10 billion in fines and settlements.

Finally, this report looks at the road ahead for Goldman, including the issue of too-big-to-jail, and the key choices that Goldman's new CEO David Solomon faces. It asks whether Mr. Solomon will see this disaster as a golden opportunity to fix a broken culture, instill accountability, make restitution, rehabilitate a reputation and thereby usher in a new era for a storied bank. Or, will Mr. Solomon continue the broken model of the past: deny everything and fight everyone, enriching as many lawyers as possible for years until the inevitable ultimate settlement, by which time Goldman's reputation will be in tatters yet again.

Goldman's \$6.5 Billion Role in Looting 1MDB and Reelecting a Corrupt Prime Minister

With numerous red flags suggesting fraud if not criminal conduct, Goldman pocketed the exorbitant amount of \$600 million for placing \$6.5 billion in [three no-bid bond offerings over ten months in 2012-2013](#) for 1MDB.¹⁹ [Two “former top \[Goldman\] partners said the amount of money Goldman Sachs made from relatively plain bond deals \[alone\] should have been a bright warning to its highest executives.”](#)²⁰ After Goldman's take (more than “two hundred times the typical fee” according to some),²¹ the then-prime minister of Malaysia and his mostly inexperienced, youthful co-conspirators allegedly [looted “over half”](#)²² of the remaining funds virtually immediately and, with the assistance of Goldman Sachs' partners, [engaged in other crimes](#).²³

That was done under the noses of [“more than 30 Goldman Sachs executives,”](#)²⁴ including the [then-CEO](#),²⁵ the [then-COO and later President](#),²⁶ the then co-head of investment banking and now current CEO, the then-Vice Chairman and many others, and reportedly after a rigorous review by no less than five internal Goldman committees.²⁷

Most importantly, just two months after Goldman's third and largest 1MDB bond offering for \$3 billion, the then-prime minister “won re-election by clinging to power with the most slender of margins,” as detailed in the explosive book [Billion Dollar Whale](#).²⁸ That appears to have only been possible due to “hundreds of millions of dollars” from the Goldman offering being immediately diverted “to the prime minister's allies across the country” for bribes and other election-related fraud.²⁹

Goldman's 1MDB bond offerings also funded an alleged corrupt, anti-democratic kleptocratic prime minister and enabled him to hold onto power

Goldman enriching itself at the expense of a very poor country is bad enough (apparently as part of a business line set up by Goldman's then-President Gary Cohn referred to as [“monetizing the state”](#)).³⁰ However, Goldman's 1MDB bond offerings also funded an allegedly corrupt, anti-democratic kleptocratic prime minister **and** enabled him to **hold onto power for five additional years, during which time the prime minister's opponents were imprisoned and killed.**

These weren't unknowable events. “In late April [2012], as Goldman prepared 1MDB's first bond issue, some one hundred thousand anticorruption protestors poured out into the streets of Kuala Lumpur,” the capital of Malaysia. The April 2012 protest in the capital of Malaysia was “a last-ditch attempt to ensure clean elections, which were due to be held in mid-2013,” when they were hoping to oust “Prime Minister Najib's kleptocratic regime.”³¹

These April 2012 protests were the “largest democratic protest in Malaysia's history.”³² The attempts to unseat the “kleptocratic regime” continued right through Goldman's third offering in March 2013 and right up until the elections in May 2013, which the “kleptocratic regime” corruptly won with funds Goldman raised.



The April 2012 protests were the “largest democratic protest in Malaysia’s history.”

Thus, 1MDB isn’t just one of the biggest financial crimes of the century; it is a crime against an entire country and a catastrophic human, social and political tragedy. While there’s plenty of blame to go around and plenty of criminals and enablers involved, including many much worse than Goldman, it is difficult to see, based on the public record, how this tragedy would have been possible without Goldman’s instrumental role in raising \$6.5 billion for 1MDB, advising on other deals, and providing 1MDB with the credibility that comes from having Goldman Sachs as your banker.

Goldman’s Partners Are Criminally Charged for Looting \$4+ Billion from 1MDB

The seriousness of the crimes alleged and committed here cannot be overstated. Two former Goldman executives, who were the primary bankers on the 1MDB deals, have been [criminally charged](#) by the Department of Justice³³ and a third even more senior executive has been placed on leave after being identified as an [unindicted co-conspirator](#).³⁴

[All three people were or are Goldman partners](#).³⁵ One of the two charged, Goldman’s former Chairman of Southeast Asia, Tim Leissner, [pleaded guilty](#) to bribery, conspiracy and money laundering³⁶ and [faces many years in prison, maybe as long as life, as well as deportation, forfeiture of more than \\$40 million and other penalties](#).³⁷ DOJ and other investigations in several countries are ongoing and additional criminal charges are likely, including possibly [against Goldman Sachs itself](#).³⁸

It is not a surprise that the involvement of these three partners, however, is only the tip of the iceberg of [Goldman staff, executives, officers and partners involved](#) in Goldman’s relationship with Malaysia and the 1MDB deals.³⁹ Indeed, then-CEO Lloyd Blankfein “personally helped forge ties with the country and 1MDB years before Goldman ever arranged the bond deals at the heart of the probes. Blankfein attended a 2009 meeting with the former Malaysian prime minister that laid the groundwork for the relationship between the two entities,” Bloomberg [reported](#).⁴⁰

Moreover, any relationship that generated an apparent record of \$600 or so million over a mere ten months would be expected to get the very close attention of Goldman's most senior officers, including the then-co-head of investment banking and now CEO, [David Solomon](#), as well as the CEO at that time.⁴¹ In fact, as noted above, [Mr. Blankfein personally met with the now-imprisoned former Malaysia Prime Minister and his now-fugitive chief alleged co-conspirator](#), Jho Low,⁴² apparently at least [twice](#) and maybe more times.⁴³ They reportedly discussed the 1MDB bond deals, seemingly an obvious topic of conversation.

While there is some dispute about who knew what when about Mr. Low's involvement in 1MDB, Goldman's compliance department "said the bank should not do business with him" in 2010 and again in 2013

Importantly, these meetings with Goldman's then-CEO Blankfein were [after](#) Goldman's "compliance department had raised multiple concerns about" the prime minister's primary co-conspirator, the inexperienced Jho Low, who was only in his late 20s or early 30s, but nonetheless de facto ran the 1MDB fund.⁴⁴ Maybe someone in Goldman's compliance department did a quick Google search and discovered Jho Low's own directly contradictory public accounts of his upbringing, background and sources of claimed wealth.⁴⁵ There were also newspaper accounts as early as December 2009 that raised serious questions about Jho Low.⁴⁶

Additionally, a simple review of 1MDB's financials should have quickly revealed inexplicable layering and innumerable huge financial transactions all over the world, including prominently in locations well-known for money laundering.⁴⁷

While there is some dispute about who knew what when about Mr. Low's involvement in 1MDB, Goldman's compliance department was adamant that "the bank should not do business with him" in 2010 and again later in 2013.⁴⁸ That was reportedly because Goldman's compliance group [couldn't determine how he obtained his wealth](#), one of innumerable glaring red flags about him and often a sure sign of criminal activity.⁴⁹

Nevertheless, Jho Low appears to have been in at least two meetings with Goldman's then-CEO. In addition to what it says about the CEO's regard for Goldman's compliance department, that would undoubtedly have sent a message throughout the firm and elsewhere as to Jho Low's credibility, reliability and reputation.

In addition, proving how extensive and important the relationship was, Goldman's then-CEO reportedly arranged a special private meeting of some of Goldman's top clients for the Prime Minister (and Jho Low?) to pitch: "he gave a pitch about Malaysia to a high-powered client meeting put together by Blankfein. Malaysia was so important for Goldman that Blankfein had roped in some of the biggest names in U.S. finance to attend," including John Paulson and David Bonderman.⁵⁰

Goldman's "Four Monkeys" and Rogue Defenses

As the extent and details of the outlandish, multi-billion-dollar alleged crimes have come to light, including Goldman's far-reaching involvement with 1MDB, what has been Goldman's response? It's what we call **Goldman's "Four Monkeys" defense: see no evil, hear no evil, speak no evil and keep all the money.**

The firm thus far is using the standard Wall Street playbook to deny all wrongdoing and proclaim total innocence, if not shamelessly suggesting that **they** are victims themselves. This approach was reflected in the [dismissive comments](#) by former CEO Blankfein:

"These are guys who evaded our safeguards, and lie, stuff like that's going to happen.... Somebody's going to use phones away from us, and personal this and personal that."⁵¹

David Solomon, the new CEO and former co-head of Investment Banking, which was the division that handled the 1MDB deals, was so outraged when the criminal charges involving no less than three Goldman executive partners were announced that he left a firmwide [voicemail](#) saying that he was, well, outraged: "I am personally outraged that any employee of the firm would undertake the actions spelled out in the" criminal indictments.⁵² Nothing communicates genuine outrage like a voicemail!

However, as more and more reporting revealed how extensive Goldman's involvement in the crimes was, and as additional lawsuits were filed against it, including by Abu Dhabi's [state energy investment company](#) and [criminal charges by Malaysia](#),⁵³ Goldman's CEO Solomon decided to double down on Blankfein's "those guys" defense by seeming to apologize. However, this non-apology was just the latest step in the bank's strategy to try to pin the blame on just one Goldman guy:

"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]⁵⁴ in that fraud, **we apologize** to the Malaysian people."

While [some](#) in the media reported this non-apology from CEO Solomon as an actual apology ("[Goldman Sachs chief apologises to Malaysians for 1MDB scandal](#)"),⁵⁵ most immediately saw it for the blame-shifting, non-apology that it was: "[Goldman Sachs' Tactic in Malaysian Fraud Case: Smear an Ex-Partner](#)."⁵⁶ Needless to say, this empty non-apology wasn't well received in Malaysia: "[Malaysia's Finance Minister Wants Goldman's \\$7.5 Billion, Not an Apology](#)."⁵⁷

For reasons apparently obvious to almost everyone but Goldman, this non-apology wasn't all that effective and was doomed to fail from the start. It was quickly seen as part of [Goldman's](#)

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[“scorched-earth tactics”](#) and [“a well-orchestrated campaign](#) by Goldman Sachs to discredit one of its former partners and to minimize the Wall Street bank’s role in the looting of [1MDB].”⁵⁸

The “we was wronged by a rogue employee” is a common defense. However, most rogue employee cases involve one or at most two usually low-to-mid level employees. That’s why “rogue” is singular: it’s a one-off individual who engages in an outsized financial crime, like [Nick Leeson at Barings](#),⁵⁹ [Jerome Kerviel at Societe Generale](#),⁶⁰ or [Kweku Adoboli at UBS](#).⁶¹

Here, however, Goldman is trying to force-fit multiple, longtime, senior officers who were or are partners (plus whoever else might be behind all the [redactions](#) in the transcript of the hearing for Leissner’s plea agreement)⁶² into the “rogue” category. In addition, [there were dozens of Goldman Sachs top bankers, partners and executives](#), including the then-CEO (Blankfein), the then-COO/later President (Gary Cohn), and the then-co-head of investment banking/now-CEO (Solomon), presumably flyspecking the 1MDB relationship, the bond offerings and the other deals.⁶³ (And, don’t forget that all these senior executives undoubtedly personally pocketed substantial bonuses from the \$600 million or so Goldman made from the 1MDB offerings.)

Nevertheless, Goldman wants the world to believe that no one at Goldman was smart enough to get a *hint* of one of the biggest frauds in the world happening right under their noses in a multi-year, multi-deal relationship that stretched from junior bankers to the most senior executives at the bank.

—
For example, it was Vice Chairman Michael Evans who had “a casual conversation” at the billionaires gathering in Davos, Switzerland in 2012 with the former prime minister that landed the third no bid offering for \$3 billion.⁶⁴ Just over a year after that offering, which provided “hundreds of millions of dollars” in bribes to re-elect the prime minister, Vice Chairman Evans reportedly was on the \$500 million superyacht “Topaz” off the French Riviera with the former prime minister and the crown prince of Abu Dhabi discussing future exclusive and lucrative deals for Goldman.⁶⁵ Not only had money stolen from 1MDB paid in part for the Topaz to be built, it also paid for renting it for that very trip and meeting.⁶⁶ (This is in addition to the \$250 million superyacht Jho Low had built for himself with stolen 1MDB money.)

Yet, Goldman’s position is that a “rogue” banker lied and fooled **all** of the smartest, highest paid bankers in the world, **all** of Goldman’s risk, compliance, legal and audit systems and



Gary Cohn, former President/COO at Goldman

Goldman wants the world to believe that no one at Goldman was smart enough to get a hint of the biggest fraud in the world happening right under their noses...



According to the WSJ, investigators are looking for connections between 1MDB and Khadem Al Qubaisi, the former chairman of Hakkasan nightclub, and whether he used 1MDB funds to purchase the fifth-largest superyacht, the Topaz.

controls, and **all** of Goldman’s management. That is exactly what Goldman is peddling and wants everyone to believe, as the New York Times [reported](#):

“Goldman executives and their lawyers have depicted Tim Leissner, a former top investment banker, as a master con man, someone so sneaky that even the retired military intelligence officers who work for the bank couldn’t sniff him out.”⁶⁷

Doesn’t Goldman brag about having the worlds’ state-of-the-art, high-tech, comprehensive systems and multiple, robust layers of compliance, risk, legal, audit and management designed to ensure that something like this could never happen, even at fractions of the size of this fraud and these fraudulent activities? Aren’t they supposed to be experts at due diligence?

Given that Leissner was only one of [many](#) Goldman partners involved with 1MDB and not even the only one criminally charged so far, the bank’s defense appears absurd.⁶⁸ Moreover, neither Leissner nor his co-conspirators were “master con m[e]n.” As [detailed in Billion Dollar Whale](#) and other impressive reporting, this was a brazen, crude and massive fraud orchestrated by a bunch of youthful, inexperienced amateurs who were sloppy, careless and obvious in many ways.⁶⁹ None of this required Sherlock Holmes or even a business degree to uncover; scratch almost any surface with the most basic questions and the fraud seemingly would have been visible for anyone to see and quickly unravel.



Jho Low met with Lloyd Blankfein (left) in December 2012 in the Goldman Sachs headquarters (right) in New York City.

The Rogue is Goldman

For those reasons and more, Goldman’s [rogue defense](#) will likely fail.⁷⁰

First, 1MDB itself was a huge red flag. Just a few examples (detailed in [Billion Dollar Whale](#) and elsewhere): there was significant staff and executive turnover; those working there had little or no experience; the Chairman of the Board of Directors resigned abruptly as did another director just weeks later; its first auditors, Ernst & Young, resigned as did its second auditors KPMG⁷¹ and its third auditors, Deloitte, was just [fined by Malaysian authorities](#) (although Deloitte is contesting that).⁷²

Second, the primary conspirator, Jho Low, ***was actually caught by Goldman’s compliance system (known as the “business intelligence group”) not once, but at least twice.***⁷³ He was rejected as a client of the private bank because the origin of his wealth couldn’t be determined (a huge red flag, as stated above) and “a few years later” was rejected as a direct client on a deal involving the Abu Dhabi state energy investment company IPIC in 2013.⁷⁴ Nevertheless, a Goldman executive’s email to others at Goldman on March 27, 2012 (just two months before the first 1MDB bond offering in May 2012) “acknowledged that Low was a ‘1MDB Operator or intermediary in Malaysia.’”⁷⁵

After Low “had been deepening his connections to Goldman and had gotten to know [Goldman’s] Dubai-Based head of investment banking,” he was being “informally advised by Goldman” on a proposed deal.⁷⁶ However, “Goldman’s compliance department told its bankers to stop working with Low or his entity in the deal, ***again*** citing concerns over his wealth.”⁷⁷ However, Goldman just “switched to advising” the IPIC unit in the deal, “even though its bankers were aware that Low was still involved.”⁷⁸ Consistent with a familiar pattern, one week after the deal closed \$350 million was reportedly transferred into a shell company owned by Low, providing him with a “600% return in a matter of days.”⁷⁹

Third, ***after*** Goldman’s compliance department “[repeatedly](#)” flagged Jho Low as so much of a risk that they refused to let him become a client of the bank’s private client group, he nonetheless had [a personal private audience with then-CEO Blankfein](#):

“One day in December 2012, a young Malaysian V.I.P. entered the gleaming headquarters of Goldman Sachs in Lower Manhattan. The man, Jho Low, a financier with close ties to the Malaysian prime minister at the time, was there for a private meeting with one of the most power people on Wall Street: Goldman’s longtime chairman and chief executive, Lloyd C. Blankfein.”⁸⁰



'The Wolf of Wall Street' – PARIS, FRANCE - DECEMBER 09, 2013 – Actor Leonardo DiCaprio with Jho Low (right) attend the photocall before the 'The Wolf of Wall Street' World movie Premiere at Cinema Gaumont Opera on December 9, 2013 in Paris, France. The movie was financed with money stolen from the 1MDB bond offerings.

This was reportedly a [“one-on-one sit-down”](#) with Goldman’s CEO, a rare and extremely difficult audience to get and presumably only after the person is subject to the most rigorous background checks and due diligence.⁸¹ Even if all the other red flags were somehow missed, it’s inconceivable that the information in Goldman’s own compliance system would not have been known. (This is true even if, as Goldman reportedly [claims](#), this was a two-on-one meeting.)⁸²

Fourth, Leissner and the other criminals just weren’t that smart and there were red flags waving all over the Malaysia relationship and Goldman’s 1MDB offerings, which [caught the attention of senior Goldman officers](#).⁸³ For example, “David Ryan, President of Goldman in Asia [and Mr. Leissner’s superior in Asia], was among those urging caution. He had visited 1MDB’s staff in Malaysia and came away with concerns over its plans to take on so much debt, and the inexperience of its management, none of whom seemed to have overseen multi-billion-dollar investments before.”⁸⁴ He also [“voiced concerns”](#) about the unusual and incredibly lucrative no-bid contracts, which “struck” him “and other Goldman executives as [possibly too good to be true](#).”⁸⁵

He went so far as to argue that “Goldman should reassess, and potentially end, its relationship with 1MDB.”⁸⁶ Those concerns were rejected by the very senior people and committees that reviewed and approved the 1MDB offerings (including reportedly some of Goldman’s most senior officers).⁸⁷ Mr. Ryan, a Goldman partner, was first “effectively sidelined” when another Goldman executive (a “proponent of the 1MDB business”)⁸⁸ was installed senior to him and then he left in 2014 “partly because he was frustrated that his concerns about the 1MDB deals were not heeded.”⁸⁹

Mr. Ryan was reportedly not the only Goldman executive with concerns. Alex Turnbull, a Hong Kong based Goldman banker, “also raised concerns internally.” As detailed in [Billion](#)

[Dollar Whale](#), he “wasn’t involved in the deal but he knew how bond markets worked and he sent an email to colleagues expressing disbelief about Goldman’s profits. **The email led to a reprimand from Goldman’s compliance department, while Turnbull’s boss told him to keep his mouth shut if he ever wanted to get promoted.**”⁹⁰

Fifth, another red flag was the structure of the very first 1MDB offering. Goldman had suggested that it be guaranteed by the \$70 billion Abu Dhabi state energy investment fund, International Petroleum Investment Company (IPIC):

“Leissner’s colleagues at Goldman’s Middle Eastern headquarters in Dubai, who did regular business with IPIC, found the idea preposterous and declined to get involved.”⁹¹

This is significant because “Goldman Sachs, Morgan Stanley, and others made huge profits arranging derivatives financing for IPIC,” but refused to participate in the 1MDB bond offerings.⁹² Could that be because of the involvement of Khadem al Qubaisi, an aide to Sheikh Mansour bin Zayed, who reportedly “had a reputation for taking kickbacks on deals”?⁹³ [Mr. al Qubaisi is now in prison in Abu Dhabi](#),⁹⁴ although he claims to be a “[scapegoat for Emiratis](#).”⁹⁵

Sixth, Goldman asked the investment banking firm Lazard to value the power plants that 1MDB was supposed to purchase with the proceeds from one of the offerings but it refused because it “believed the whole deal smelled of political corruption.”⁹⁶ Apparently lacking

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the same sense of smell, Goldman then assumed the additional role as an advisor to 1MDB and reportedly valued the power plants at a sufficiently high price to justify the purchase price.⁹⁷ (Presumably because the prices paid for the power plants were grossly overvalued, the purchaser was one of the buyers of the bonds that Goldman had pre-sold prior to the offering.) In a prior 1MDB deal, Goldman’s Leissner tried to get Lazard to also value certain assets, but “it couldn’t come up with a valuation anywhere near high enough to make [the] plan work.”⁹⁸

Seventh, 1MDB used a “struggling Swiss bank called BSI,” which Low picked because it “was a small bank, one that would be dependent on his business and took compliance even less seriously than Wall Street behemoths.”⁹⁹ As reported in [Billion Dollar Whale](#), “BSI had thrived for generations in a similar fashion to all Swiss banks: aiding wealthy Europeans and Americans who wanted to hide their cash in private accounts and evade the payment of taxes at home.”¹⁰⁰ Low (really 1MDB) quickly became “by far the biggest client that BSI had anywhere in the world.” Notwithstanding all that, at times, even BSI’s own compliance department got suspicious of 1MDB activities and had to be mollified.¹⁰¹



“During the course of the conspiracy, I conspired with other employees and agents of Goldman Sachs very much in line with the culture of Goldman Sachs to conceal facts from certain compliance and legal employees...”

Tim Leissner
Goldman's former Chairman of Southeast Asia

Yet, for the largest of the three bond offerings (for \$3 billion in March 2013 just before Malaysia's elections), 1MDB wanted Goldman to deposit the entire amount into its Swiss bank account at BSI.¹⁰² Seeing the red flags waving, even Goldman's lawyers in Singapore “pointed out in an email that it was unusual to use such a small private bank for a \$3 billion deposit.”¹⁰³ However, “Goldman shrugged off” those concerns: “Only days later Goldman deposited the proceeds from the \$3 billion bond with BSI, and \$1.2 billion immediately was purloined,” with \$681 million reportedly moving into the prime minister's account. It would seem that much of this would have been discoverable with even minimal diligence.¹⁰⁴

This is the money that enabled the then-prime minister to reportedly steal the election and remain in power for five more years: “Armed with the dirty 1MDB cash, the prime minister had a powerful weapon to win the 2013 election. As the vote approached, Low managed the account, diverting hundreds of millions of dollars to the prime minister's allies across the country,” which enabled him to win by the “slenderest of margins.”¹⁰⁵ However, as reporting started to reveal the extent of the prime minister's alleged corruption and the activities of 1MDB, Malaysians protested and the prime minister moved to crush the opposition. At the same time, the deputy public prosecutor in the attorney general's office leading the investigation of 1MDB and the prime minister's corruption was murdered.¹⁰⁶

Eighth, Leissner, Goldman's former Chairman of Southeast Asia, [stated](#) when pleading guilty:

“During the course of the conspiracy, I conspired with other employees and agents of Goldman Sachs very much in line with the culture of Goldman Sachs to conceal facts from certain compliance and legal employees...”¹⁰⁷

The criminal allegations [include](#) that Goldman's “system of internal accounting controls could be easily circumvented” and that the “business culture, particularly in southeast Asia, was highly focused on consummating deals, at times prioritized this goal ahead of the proper operation of its compliance functions.”¹⁰⁸ DOJ's entire criminal [Information](#) is worth reading.¹⁰⁹

This statement and allegation bear an eerie echo to statements attributed to Goldman's new CEO, David Solomon, quoted by former New York Federal Reserve Bank regulator Carmen

Segarra in [her recent book](#) “[Noncompliant: A Lone Whistleblower Exposes the Giants of Wall Street](#).”¹¹⁰ In her book she quotes from hours of tape recordings, including Mr. Solomon reportedly saying

“A conflict is a perception, OK, of something that could affect the advice you’re giving, the judgment, et cetera,... Our job ... is to discuss those things and to work collectively with [clients] to decide whether or not those perceptions inhibit us.”

Ironically, the real “Wolf of Wall Street,” Jordan Belfort, quickly saw in 2011 before a single bond offering that “these guys are f—king criminals....It was so obvious.”

This also seems to echo the cultural bankruptcy and disreputable practices outlined in Greg Smith’s New York Times [resignation](#) as Goldman Sachs’ executive director and head of the firm’s U.S. equity derivatives business in Europe, the Middle East and Africa.¹¹²

Interestingly, the Financial Times exclusively reported that the New York Fed secretly required Goldman to “correct” deficiencies in its internal controls in 2013: “[Goldman told to improve risk](#)

[reporting shortly after 1MDB deal; Notorious 1MDB deal was approved after meeting where recused bankers stayed in the room](#).”¹¹³ It remains an open question whether these controls were evadable by design so that the bank could point to the appearance of compliance as a defense in the circumstances presented by the 1MDB case, even if in reality they lacked substance.

Finally, an advisor on the 1MDB offerings who worked for the former prime minister was quoted as saying there were red flags for anyone looking:

“This fund was dodgy from the beginning. There is no excuse for not knowing this fund had to do with [the former Prime Minister’s] political patronage and his election plans. This was an open secret.”¹¹⁴

In fact, Lazard apparently quickly discovered this when it refused Goldman’s requests for it to participate in 1MDB deals, not once, but twice. Additionally, the real-life criminal portrayed in the movie “Wolf of Wall Street” (about brazen Wall Street fraud that itself was allegedly financed with money stolen from the 1MDB bond offerings), Jordan Belfort, quickly saw in 2011 before a single bond offering that that “these guys are f—king criminals... It was so obvious.”¹¹⁵

But, Goldman Sachs, the leading global bank that sells itself to clients, customers and governments worldwide as having unparalleled intelligence and due diligence capabilities, either didn’t know this “open secret” or chose to ignore it, along with the many other red flags.



Is the DOJ just going to prove that Wall Street's biggest, most politically connected banks still get special treatment and are still too-big-to-jail?

The Road Ahead for Goldman: Criminal and Financial Liability

It should be clear that Goldman's attempted "rogue" defense is not likely to be successful, no matter how many fancy, [glossy power points it gives to DOJ](#) or how many inflammatory unsubstantiated allegations it makes against its former partner Leissner.¹¹⁶ However, Goldman's new CEO, David Solomon – who was co-head of the investment banking division from July 2006 to December 2016 while that division handled the \$6.5 billion 1MDB offerings and pocketed the \$600 million – regrettably appears to be sticking to this ill-advised script.

He might get a better reception if this was Goldman's first brush with the law, but, as is well known, its alleged involvement with 1MDB is just the latest in Goldman's long history of reported [scandalous](#) and illegal behavior,¹¹⁷ including but not limited to the [Abacus](#)¹¹⁸ and other [subprime](#) wrongdoings,¹¹⁹ the "[vampire squid](#)" [expose](#),¹²⁰ the [AIG CDS backdoor bailout](#),¹²¹ [Greek debt offering](#),¹²² [Libyan Investment Fund](#),¹²³ the [firing of Fed examiner Carmen Segarra](#) detailed in her recent [book](#),¹²⁴ the Greg Smith New York Times resignation over [Goldman's cultural bankruptcy](#),¹²⁵ and [numerous whistleblower complaints](#).¹²⁶

Goldman's RAP sheet over the last 18 years includes at least 33 legal actions alleging violations of dozens of laws and resulting in almost \$10 billion in fines and other costs.

While it remains unclear exactly how much money 1MDB still has and how much money 1MDB will ultimately cost the people of Malaysia (60% of whom live on "[less than \\$1,600 a month](#)"), it reportedly amassed around [\\$13 billion in debt](#) as of April of 2016 from the Goldman bond offerings and other borrowings.¹²⁷ Thus, [Malaysia's criminal and civil proceedings seeking \\$7.5](#)



[billion](#) from Goldman seems potentially reasonable (particularly because it appears to also overlap with the [Abu Dhabi lawsuit](#) regarding its guarantee for some of the 1MDB bonds).¹²⁸

The key [question](#) remains: “How could so much money—originally meant to lift up a nation and improve the lives of its people—have been laundered and embezzled under everyone’s noses?”¹²⁹ After all, what else is Goldman’s compliance division for? According to Goldman’s [website](#), “the global compliance division is dedicated to protecting the reputation of the firm and managing risk across all business areas.”¹³⁰ The compliance division is supposed to “ensure compliance with regulatory requirements and determine how the firm can appropriately pursue global market opportunities.”¹³¹

This report is, of course, based solely on what is in the public record, including in particular from court filings, some fantastic investigative reporting and the terrific book [Billion Dollar Whale](#).¹³² Presumably, with FBI agents, subpoena power and a grand jury to investigate, the DOJ can more thoroughly test the “four monkeys” rogue defense.

Nevertheless, this public reporting raises a key question: if it wasn’t just a rogue employee, but at least partly the fault of the bank itself, should the bank itself be held liable for any of the crimes committed by its executives and others as well as the systemic breakdown of what it claims was a compliance system? Isn’t this particularly so given [Goldman’s RAP sheet over the last 20 or so years includes at least 33 major legal actions](#) alleging violations of dozens if not hundreds of laws and resulting in almost \$10 billion in fines and settlements?

Put differently, is DOJ just going to prove again that Wall Street’s biggest, most politically connected banks still get special treatment and are still [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?¹³³

CEO Solomon's Golden Opportunity: The Choice of True Leadership or More of the Same

Interestingly, the 1MDB crisis also provides CEO Solomon with a unique opportunity to create his own brand and chart his own course as he leads Goldman Sachs into the 21st Century. Will he follow the path of the past in a take-no-prisoners, defend and deny at all costs approach? Or, will he usher in a new era of responsibility and accountability for a bank that claims it wants to be trusted as a retail consumer bank and that wants to build genuine long-term customer relationships in wealth and corporate cash management (referred to as "[Solomon's plan](#)").¹³⁴

This would be a return to the partnership business model of "long term greedy," rather than [IBG-YBG \("I be gone; you be gone"\)](#) immediate profit and bonus maximization, clients, customers and counterparties be damned.¹³⁵ That model was epitomized by the Abacus built-to-blow-up CDO as highlighted by the Senate Permanent Subcommittee on Investigations hearings and the \$550 million fine Goldman had to pay in its settlement with the SEC.

While it may not seem like a choice to Mr. Solomon, he is making a choice right now, every day. He can make an alternate choice, but it would require courage, boldness and enlightened self-interest. He wouldn't minimize, deflect, deny and blame others. He would clearly and genuinely take responsibility. He would admit wrongdoing and take clear, forceful action to hold deficient people accountable and make injured people whole.

There appears little room for doubt that certain Goldman officers and partners committed crimes – Leissner at a minimum; allegedly Ng; and potentially the unindicted co-conspirator – and whoever or how many others there may be should suffer the full weight of the criminal law. There's also little room for doubt that, however many criminals there are, they lied to and misled lots of people, including at Goldman.

People from senior executives on down need to suffer meaningful consequences for those failures, including terminations, demotions and compensation claw backs

That may have made it somewhat more difficult to uncover their criminal conduct, but despite [Goldman's current posture](#),¹³⁶ that didn't make it impossible. Any fair-minded review of the publicly known facts suggests that it shouldn't even have been *that* difficult. More importantly, it simply cannot be an excuse for *every* level of Goldman's management and *every* one of Goldman's systems of checks and balances to fail. At a minimum, "Goldman's internal committees, set up to catch fraud, had failed at their jobs."¹³⁷

Mr. Solomon would also send a loud, clear message that such conduct and failures won't be tolerated, not just among those who committed criminal acts, but also to those who were responsible for the breakdown in management, compliance and risk systems and controls.

They all – to varying degrees – egregiously failed, harming not just clients, but damaging Goldman Sachs itself.

People from senior executives on down need to suffer meaningful consequences for those failures, including terminations, demotions and compensation claw backs. That should start with Mr. Solomon himself and his entire management team. Leadership starts at the top and they should all have their bonuses cut **and** repay whatever amounts they previously received directly or indirectly attributable to 1MDB. (Disgorgement alone is insufficient: it only puts you back to even, with no penalty or pain.)

1MDB was ostensibly set up to “improve Malaysians daily lives.” Not only didn’t that happen, but those very same Malaysians are now on the hook to repay more than \$6.5 billion in bonds and apparently billions more in other 1MDB borrowings, even though more than half of that was reportedly looted and will never benefit anyone in Malaysia. Thus, the Malaysian people have been doubly victimized and will continue to be so for many years, if not decades, to come.

That is wrong. Mr. Solomon should recognize that and say so, plainly, directly and unqualified. Then, rather than just [adding to reserves](#) and [preparing to claw back compensation](#) as a result of future costs,¹³⁸ Goldman should publicly release a full accounting of whatever Goldman received in fees and commissions from 1MDB and immediately repay that to Malaysia, whether it’s \$600 million or more. Voluntary full disgorgement of all gains associated with 1MDB simply must be the first step. Goldman must realize that, in doing this, it will gain more in credibility than it will ever pay in dollars, which will be the foundation for Goldman resolving all the many other aspects of the scandal.

...given what has happened and the damage done not just to clients, but to the bank itself, there were massive, systemic failures of Goldman’s systems and, unless taken seriously and fixed, this will happen again.

Yes, the partners, lawyers, PR experts and others will scream, but this is going to happen sooner or later anyway so why not do it now in recognition of the horrible wrongs inflicted on the Malaysian people and build up a reservoir of good will? Mr. Solomon should then in good faith offer to mediate with Malaysia to determine an appropriate amount to settle all claims. It presumably has, after all, joint and several liability and will almost certainly be the deepest pocket in every litigation and other proceeding. Mediation will be the quickest and least costly way out of this hydra-headed legal morass.

Goldman should even consider offering its services for free to Malaysia in managing the unwinding of 1MDB, including dealing with the outstanding bonds it issued. Part of the settlement with Malaysia could even be contingent on maximizing the returns from the unwinding.

In the meantime, Goldman should enter a tolling agreement with the DOJ (which extends the time prosecutors can file charges), and, once it settles with Malaysia (and Abu Dhabi and



David Solomon, Goldman Sachs' Chairman & CEO

anyone else) and after all the appropriate internal personnel and systems actions have been taken, go to DOJ with a reasonable offer, strike the best deal and live with it.

Those choices will put this crisis behind the bank in the quickest, least expensive way and with a repaired, if not enhanced, reputation. That's being a true leader and will set the tone and direction not just for Mr. Solomon's time as CEO, but for the bank's future.

That won't be successful, however, if Goldman maintains its [current position](#) that it did nothing wrong and that there are no "[deficiencies or weaknesses in its internal compliance mechanisms](#)."¹³⁹ That attempt to prioritize minimizing legal liability above all else is **blinding Mr. Solomon and Goldman to a more fundamental reality**: given what has happened and the damage done not just to clients, but to the bank itself, there were massive, systemic failures of Goldman's systems and, unless taken seriously and fixed, **this will happen again**. The contemplated [window dressing](#) is a bad legal strategy and an even worse business strategy.¹⁴⁰

Nevertheless, this is the choice currently being pursued: years of trench warfare litigation around the globe that enriches hundreds of lawyers, destroys the bank's reputation, tarnishes Mr. Solomon's ascent to CEO while distracting and consuming him, his leadership team and profits for years to come.

Most will conclude that it is naive and laughable to think that someone like Mr. Solomon, who has come up through the Goldman ranks, would ever do anything other than fight to the death rather than admit even the most minimal wrongdoing, failure or deficiency. However, sometimes an existential crisis like a pending criminal indictment helps clarify not only choices, but that there is in fact a choice to be made.

What's it going to be Mr. Solomon?

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Photographic Acknowledgments

On the Cover: Copies of the Financial Daily newspaper featuring a front page report on Goldman Sachs Group Inc. are displayed for sale at a stand in Kuala Lumpur, Malaysia, on Tuesday, Dec. 18, 2018. (Photographer: Nadirah Zakariya/Bloomberg via Getty Images).

On the Cover, Bottom (left to right): David Solomon, president and chief operating officer of Goldman Sachs & Co., listens during a Bloomberg Television interview at the Milken Institute Global Conference in Beverly Hills, California, U.S., on Monday, April 30, 2018. (Photographer: Patrick T. Fallon/Bloomberg via Getty Images).

Lloyd C. Blankfein, chairman and chief executive officer of Goldman Sachs Group Inc., testifies at a Senate Homeland Security and Governmental Affairs subcommittee hearing on Wall Street and the financial crisis, in Washington, D.C., U.S., on Tuesday, April 27, 2010. (Photographer: Chris Kleponis/Getty Images)

Gary Cohn, director of the U.S. National Economic Council, arrives to a swearing in ceremony of White House senior staff in the East Room of the White House in Washington, D.C., U.S., on Sunday, Jan. 22, 2017. (Photographer: Andrew Harrer/Bloomberg via Getty Images)

Page 4 - Najib Razak, Malaysia's former prime minister, sits in a car as he leaves the Kuala Lumpur Courts Complex in Kuala Lumpur, Malaysia, on Wednesday, Dec. 12, 2018. (Photographer: Joshua Paul/Bloomberg via Getty Images)

Page 6 - The Angry Participant - Stock Image. Kuala Lumpur, Malaysia – December 19, 2016: Participant of Bersih 5 Malaysia showing frustration at PM Malaysia on 1MDB financial scandal. www.istockphoto.com

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Page 11 - Lloyd C. Blankfein, chairman and chief executive officer of Goldman Sachs Group Inc., testifies at a Senate Homeland Security and Governmental Affairs subcommittee hearing on Wall Street and the financial crisis, in Washington, D.C., U.S., on Tuesday, April 27, 2010. (Photographer: Chris Kleponis/Getty Images)

Goldman Sachs Tower in Exchange Place Jersey City NJ - Stock image. www.istockphoto.com

Page 12 - Actor Leonardo DiCaprio with Jho Low (right) of the movie attend the photocall before the 'The Wolf of Wall Street' World movie Premiere at Cinema Gaumont Opera on December 9, 2013 in Paris, France. (Photographer: Bertrand Rindoff Petroff/Getty Images)

Page 14 - Family portrait of Tim Leissner and Kimora Lee Simmons Leissner with their son Wolfe attend the Kimora Lee Simmons Presentation Spring 2016 New York Fashion Week: The Shows at on September 10, 2015 in New York City. (Photographer: Randy Brooke/WireImage)

Page 16 - FBI, Federal Bureau of Investigation Headquarters, on Pennsylvania avenue - Stock image. Washington Dc, United States - December 29, 2016: FBI, Federal Bureau of Investigation Headquarters, on Pennsylvania avenue sign with traffic reflections at night. www.istockphoto.com

Page 17 - The Goldman Sachs Group Inc. logo is displayed in the reception area of the One Raffles Link building, which houses one of the Goldman Sachs (Singapore) Pte offices, in Singapore, on Saturday, Dec. 22, 2018. (Photographer: Nicky Loh/Bloomberg via Getty Images)

Page 20 - David Solomon, president and chief operating officer of Goldman Sachs & Co., listens during a Bloomberg Television interview at the Milken Institute Global Conference in Beverly Hills, California, U.S., on Monday, April 30, 2018. (Photographer: Patrick T. Fallon/Bloomberg via Getty Images)

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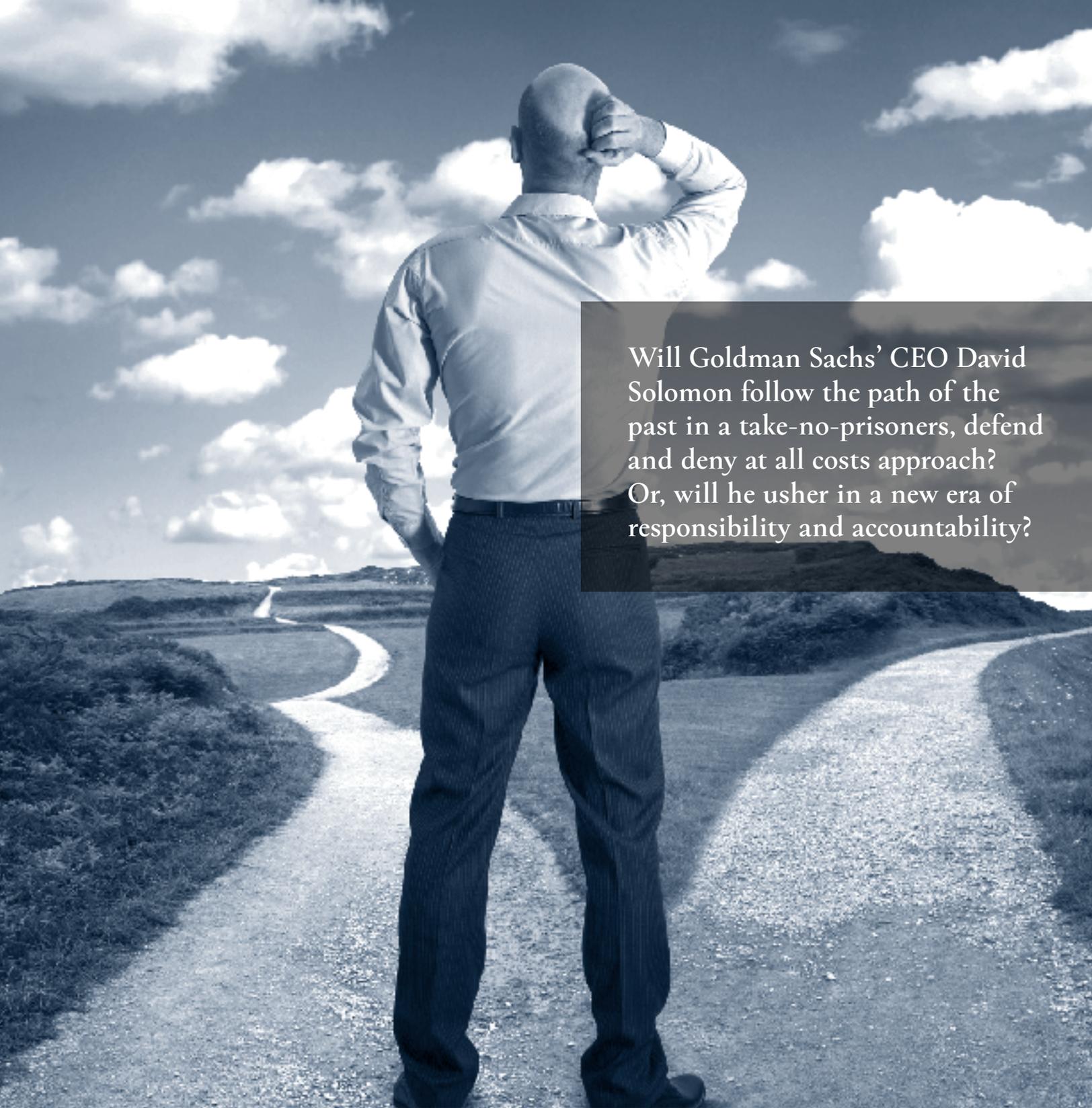
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Will Goldman Sachs' CEO David Solomon follow the path of the past in a take-no-prisoners, defend and deny at all costs approach? Or, will he usher in a new era of responsibility and accountability?

