UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SJUNDE AP-FONDEN, individually and on behalf of all others similarly situated, Plaintiff, v. THE GOLDMAN SACHS GROUP, INC., LLOYD C. BLANKFEIN, HARVEY M. SCHWARTZ, and GARY D. COHN, Defendants.	Civil Case No.: 1:18-cv-12084-VSB

LEAD PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED CLASS ACTION COMPLAINT

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

BACKGROUND 3

ARGUMENT 8

I. PLAINTIFF ADEQUATELY PLEADS LOSS CAUSATION 8

A. Defendants' "Truth-on-the-Market" Defense to Loss Causation Fails 9

B. Loss Causation Does Not Require a "Mirror Image" Corrective Disclosure 16

II. PLAINTIFF ADEQUATELY ALLEGES FALSITY AND MATERIALITY 18

A. Statements and Omissions About Jho Low and 1MDB 18

B. Statements About Goldman's Risk Management and Controls 24

C. Statements About Goldman's Compliance, Reputation, and Integrity 28

D. Statements and Omissions About Goldman's Financial Results 29

E. Defendants' SOX Certifications 30

III. PLAINTIFF ADEQUATELY ALLEGES SCIENTER 30

A. Myriad Red Flags Surrounding the 1MDB Deals Establish Scienter 31

B. The Individual Defendants' Personal Participation in and Monitoring of Goldman's Dealings with 1MDB Establish Scienter 35

C. The Scienter of Other Senior Managers Is Imputed to Goldman 37

IV. PLAINTIFF ADEQUATELY ALLEGES SECTION 20(a) CLAIMS 40

CONCLUSION 40

TABLE OF AUTHORITIES

Page(s)

Cases

Amgen Inc. v. Conn. Ret. Plans & Tr. Funds,
568 U.S. 455 (2013).....9

Barilli v. Sky Solar Holdings, Ltd.,
389 F. Supp. 3d 232 (S.D.N.Y. 2019).....39

Barrett v. PJT Partners Inc.,
2017 WL 3995606 (S.D.N.Y. Sept. 8, 2017).....30

In re Bristol Myers Squibb Co., Sec. Litig.,
586 F. Supp. 2d 148 (S.D.N.Y. 2008).....9

Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC,
750 F.3d 227 (2d Cir. 2014).....8, 9

Chill v. Gen. Elec. Co.,
101 F.3d 263 (2d Cir. 1996).....2-3, 30

In re Citigroup Inc. Sec Litig.,
753 F. Supp. 2d 206 (S.D.N.Y. 2010).....37

City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG,
752 F.3d 173 (2d Cir. 2014).....28

In re Countrywide Fin. Corp. Deriv. Litig.,
554 F. Supp. 2d 1044 (C.D. Cal. 2008).....32, 37

Dodona I, LLC v. Goldman, Sachs & Co.,
847 F. Supp. 2d 624 (S.D.N.Y. 2012).....35

ECA & Local 134 IBEW Joint Pension Tr. of Chi. v. JP Morgan Chase Co.,
553 F.3d 187 (2d Cir. 2009).....27, 39

In re Eletrobras Sec. Litig.,
245 F. Supp. 3d 450 (S.D.N.Y. 2017).....38-39

Emergent Capital Inv. Mgmt., LLC. v. Stonepath Grp., Inc.,
343 F.3d 189 (2d Cir. 2003).....9

Emps. Ret. Sys. of the City of Providence v. Embraer S.A.,
2018 WL 1725574 (S.D.N.Y. Mar. 30, 2018).....28

In re eSpeed, Inc. Sec. Litig.,
457 F. Supp. 2d 266 (S.D.N.Y. 2006).....15

Fogel v. Vega,
759 F. App'x 18 (2d Cir. 2018) 28, 29

Fresno Cty. Emps.' Ret. Ass'n v. comScore, Inc.,
268 F. Supp. 3d 526 (S.D.N.Y. 2017).....16, 22

*Freudenberg v. E*Trade Fin. Corp.*,
712 F. Supp. 2d 171 (S.D.N.Y. 2010)..... *passim*

Ganino v. Citizens Utils. Co.,
228 F.3d 154 (2d Cir. 2000)..... *passim*

In re Goldman Sachs Grp., Inc. Sec. Litig.,
2014 WL 2815571 (S.D.N.Y. June 23, 2014) 25, 28

In re Grupo Televisa Sec. Litig.,
368 F. Supp. 3d 711 (S.D.N.Y. 2019).....30

In re Guilford Mills, Inc. Sec. Litig.,
1999 WL 33248953 (S.D.N.Y. July 21, 1999) 35

Hunt v. Enzo Biochem, Inc.,
530 F. Supp. 2d 580 (S.D.N.Y. 2008).....17

In re JPMorgan Chase & Co. Sec. Litig.,
2014 WL 1297446 (S.D.N.Y. Mar. 31, 2014) 23-24

Lapin v. Goldman Sachs Grp., Inc.,
506 F. Supp. 2d 221 (S.D.N.Y. 2006)..... 2, 15, 28-29

In re Lehman Bros. Sec. & ERISA Litig.,
799 F. Supp. 2d 258 (S.D.N.Y. 2011)..... 25-26

Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC,
797 F.3d 160 (2d Cir. 2015).....38, 39

In re MBIA, Inc., Sec. Litig.,
700 F. Supp. 2d 566 (S.D.N.Y. 2010)..... *passim*

Meyer v. Jinkosolar Holdings Co., Ltd.,
761 F.3d 245 (2d Cir. 2014)..... *passim*

In re MF Glob. Holdings Ltd. Sec. Litig.,
982 F. Supp. 2d 277 (S.D.N.Y. 2013)..... 25-26

Micholle v. Ophthotech Corp.,
2019 WL 4464802 (S.D.N.Y. Sept. 18, 2019).....18, 20, 23, 37

Miller v. Lazard, Ltd.,
473 F. Supp. 2d 571 (S.D.N.Y. 2007).....23

Monroe Cty. Emps.' Ret. Sys. v. YPF Sociedad Anonima,
15 F. Supp. 3d 336 (S.D.N.Y. 2014).....18

In re Moody's Corp. Sec. Litig.,
599 F. Supp. 2d 493 (S.D.N.Y. 2009).....37-38

Novak v. Kasaks,
216 F.3d 300 (2d Cir. 2000).....2-3, 30, 37

In re Omnicom Grp., Inc. Sec. Litig.,
597 F.3d 501 (2d Cir. 2010).....16

In re Openwave Sys. Sec. Litig.,
528 F. Supp. 2d 236 (S.D.N.Y. 2007).....14

Operating Local 646 Annuity Tr. Fund v. Smith Barney Fund Mgmt. LLC,
595 F.3d 86 (2d Cir. 2010).....18-19

Pa. Pub. Sch. Ret. Sys. v. Bank of Am. Corp.,
874 F. Supp. 2d 341 (S.D.N.Y. 2012).....30-31, 39

Patel v. L-3 Commc'ns Holdings Inc.,
2016 WL 1629325 (S.D.N.Y. April 21, 2016).....37-38

In re Petrobras Sec. Litig.,
116 F. Supp. 3d 368 (S.D.N.Y. 2015).....27-28, 29

In re PetroChina Co. Ltd. Sec. Litig.,
120 F. Supp. 3d 340 (S.D.N.Y. 2015).....39

In re Philip Servs. Corp. Sec. Litig.,
383 F. Supp. 2d 463 (S.D.N.Y. 2004).....23, 31

Pirnik v. Fiat Chrysler Automobiles,
2016 WL 5818590 (S.D.N.Y. Oct. 5, 2016).....34

In re Refco, Inc. Sec. Litig.,
503 F. Supp. 2d 611 (S.D.N.Y. 2007).....31, 32, 34, 34-35

In re Revlon, Inc. Sec. Litig.,
2001 WL 293820 (S.D.N.Y. Mar. 27, 2001).....23

Richman v. Goldman Sachs Grp., Inc.,
868 F. Supp. 2d 261 (S.D.N.Y. 2012)..... 28-29, 38

In re Silvercorp Metals, Inc. Sec. Litig.,
26 F. Supp. 3d 266 (S.D.N.Y. 2014).....37

Singh v. Cigna Corp.,
918 F.3d 57 (2d Cir. 2019).....26, 27

Steiner v. MedQuist Inc.,
2006 WL 2827740 (D.N.J. Sept. 29, 2006) 17-18

In re Take-Two Interactive Sec. Litig.,
551 F. Supp. 2d 247 (S.D.N.Y. 2008).....12, 18

Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital Inc.,
531 F.3d 190 (2d Cir. 2008).....30, 38

Tellabs, Inc. v. Makor Issues & Rights, Ltd.,
551 U.S. 308 (2007).....31, 34, 37

In re Van der Moolen Holding N.V. Sec. Litig.,
405 F. Supp. 2d 388 (S.D.N.Y. 2005)..... 29-30

In re VEON Ltd. Sec. Litig.,
2017 WL 4162342 (S.D.N.Y. Sept. 19, 2017).....39

In re Vivendi Universal, S.A. Sec. Litig.,
381 F. Supp. 2d 158 (S.D.N.Y. 2003).....10

In re Vivendi Universal, S.A. Sec. Litig.,
634 F. Supp. 2d 352 (S.D.N.Y. 2009).....17

In re Vivendi, S.A. Sec. Litig.,
838 F.3d 223 (2d Cir. 2016).....17

In re WorldCom, Inc. Sec. Litig.,
294 F. Supp. 2d 392 (S.D.N.Y. 2003).....40

Other Authorities

17 C.F.R. § 240.10b-5(b).....18

TABLE OF ABBREVIATIONS[1]

"1MDB"	1Malaysia Development Berhad
"*BDW*"	Tom Wright & Bradley Hope, *Billion Dollar Whale: The Man Who Fooled Wall Street, Hollywood, and the World* (2018)
"BSC"	Business Standards Committee
"Clarke Decl."	Declaration of Stephen H.O. Clarke, ECF No. 81
"Complaint"	Second Amended Class Action Complaint, ECF No. 63
"Defendants"	The Goldman Sachs Group, Inc. ("Goldman" or the "Company"), Lloyd C. Blankfein ("Blankfein"), Harvey M. Schwartz ("Schwartz"), and Gary D. Cohn ("Cohn")
"DOJ"	U.S. Department of Justice
"Ex. __"	Exhibits to the Clarke Decl., ECF Nos. 81-1 to -69
"FCPA"	Foreign Corrupt Practices Act of 1977
"Individual Defendants"	Blankfein, Schwartz, and Cohn
"IPIC"	International Petroleum Investment Company
"MTD"	Corrected Memorandum of Law in Support of Defendants' Motion to Dismiss the Second Amended Class Action Complaint, ECF No. 83
"*NYT*"	*The New York Times*
"Plaintiff"	Court-appointed Lead Plaintiff, Sjunde AP-Fonden
"PWM"	Private Wealth Management
"SOX"	Sarbanes-Oxley Act of 2002
"*WSJ*"	*The Wall Street Journal*
"¶ __"	Citations to paragraphs in the Complaint

[1] All other capitalized terms shall have the meanings ascribed to them in the Second Amended Class Action Complaint. Unless otherwise noted, all emphasis is added and all internal alterations, citations, and quotation marks are omitted.

PRELIMINARY STATEMENT

This securities fraud action arises from Goldman Sachs's concealment of its critical role in one of the largest financial frauds in history. Chastened by billions in penalties and widely censured for its misconduct during the financial crisis, Goldman proclaimed itself reformed with a ceremonious display of enhanced risk management and compliance measures meant to protect the bank and its shareholders from future scandal. Internally, however, its leaders devised a new strategy to "monetize the state," wringing fees from sovereign wealth funds in emerging markets where regulatory oversight was far more lax. Finding just such an opportunity in Malaysia, top Goldman bankers—including CEO Lloyd Blankfein—courted Jho Low, a shadowy figure whom the bank's own compliance staff had repeatedly rejected as a client, to secure lucrative underwriting deals from 1MDB, a newly created state investment fund that Low controlled. In personally reviewing and approving each of these deals, Blankfein, President and COO Gary Cohn, and dozens of other top executives disregarded the offerings' blatantly irregular terms and countless other red flags of corruption, reaping $600 million in fees for Goldman—***200 times the going rate***—while Low and others stole billions in cash raised by Goldman.

Later, in response to growing scrutiny of Goldman's relationship with 1MDB, Defendants made a series of false statements denying knowledge of even the most fundamental facts, including Jho Low's involvement. When investors learned that Goldman's role in the 1MDB fraud was not limited to a "rogue banker," but rather reached the bank's highest offices and exposed it to billions in reparations and penalties from regulators around the world, its share price plummeted.

Unable to dispute Plaintiff's well-pled allegations of facts that have reportedly prompted federal prosecutors to push for a guilty plea from Goldman at the corporate level, Defendants mount an improbable "truth-on-the-market" defense to loss causation. This argument fails on at least three fronts. *First*, it is premature at this stage, as this defense is "***intensely fact-specific*** and

is ***rarely*** an appropriate basis for dismissing a § 10(b) complaint." *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 167 (2d Cir. 2000). *Second*, while Defendants repeatedly distort the content of the source material on which they rely—much of which is found nowhere in the Complaint—Plaintiff's alleged disclosures contained new information signaling Goldman's top-down culpability and exposure at the entity-level and repudiating Defendants' fanciful "rogue banker" defense. *Third*, even had the earlier reports contained similar disclosures, "***such information was counteracted by contemporaneous statements by Goldman***" denying its role in the 1MDB fraud, thereby negating Defendants' truth-on-the-market defense. *Lapin v. Goldman Sachs Grp., Inc.*, 506 F. Supp. 2d 221, 238 (S.D.N.Y. 2006).

Equally futile is Defendants' claim that their statements were not materially misleading. *First*, Defendants' false denials of knowledge and wrongdoing concerning Low and 1MDB lulled investors into believing that Goldman was blameless in this colossal fraud. Having opted to speak on these matters, Defendants had a "duty to tell the ***whole truth***" in a "***complete and accurate***" manner, rather than conceal Goldman's culpability and continue to tout its risk management practices. *Meyer v. Jinkosolar Holdings Co., Ltd.*, 761 F.3d 245, 250-51 (2d Cir. 2014). *Second*, Defendants' claim that the challenged risk-management and compliance statements are immaterial ignores that such assurances "are not puffery where, as alleged here, they were misrepresentations of existing facts." *Freudenberg v. E*Trade Fin. Corp.*, 712 F. Supp. 2d 171, 189 (S.D.N.Y. 2010).

Finally, in challenging scienter, Defendants simply disregard wide swaths of the Complaint. Their effort to marginalize Plaintiff's red-flag allegations as "[g]eneralized" (MTD 34) overlooks the scores of highly particularized warning signs of corruption evident to Defendants that, taken together, show that Defendants "ignored obvious signs of fraud." *Novak v. Kasaks*, 216 F.3d 300, 308 (2d Cir. 2000); *see Chill v. Gen. Elec. Co.*, 101 F.3d 263, 269 (2d Cir. 1996) ("An

egregious refusal to see the obvious, or to investigate the doubtful, may . . . give rise to an inference of . . . recklessness."). Likewise, Defendants' contention that the red flags "are hardly ever alleged to have even been seen by the Individual Defendants" (MTD 31) ignores that Blankfein and Cohn *personally* reviewed and approved the terms of each offering, that Blankfein *personally* met with Low *three* times to discuss 1MDB business *after* Goldman's own Legal and Compliance Departments had barred Low as a severe compliance risk, and that Cohn consistently overruled Goldman's Asia President's protests of each deal's highly suspicious terms. In addition, the knowledge of Leissner, Vella, Evans, and Shawki—star bankers in senior leadership positions—may be imputed to Goldman, further establishing corporate scienter.

BACKGROUND

Goldman's recent history is marked by a prodigious array of governance failures and ethical lapses, reflecting what former bankers and federal prosecutors alike have deemed a pervasive "culture" of putting deal-making ahead of proper compliance. ¶¶ 170, 282-83. Goldman paid more than $9.5 billion in fines and settlements to redress its misconduct during the financial crisis, with CEO Blankfein publicly conceding that the bank had "participated in things that were clearly wrong." ¶¶ 5, 49-51. Seeking to repair Goldman's battered image, Blankfein began a public rehabilitation campaign and announced in May 2010 the creation of the BSC, tasked with improving Goldman's compliance functions and ethical standards. ¶ 52. The result was a series of reforms focused on strengthening the bank's system of committee oversight, pre- and ***post***-transaction monitoring, and rigorous internal reporting, emphasizing that "***[e]very employee has an equal obligation to raise issues or concerns***, no matter how small, to protect the firm's reputation." ¶¶ 53-59. In a letter to shareholders, Blankfein and Cohn assured that all of these reforms had been "fully implemented" by February 2013. ¶ 60.

Internally, however, Blankfein and Cohn worked to withdraw Goldman from the glare of

Western regulators. ¶¶ 62, 77. Cohn set up a cross-departmental unit to target sovereign wealth funds of emerging markets in a drive to "monetize the state." ¶ 63. After Goldman earned hundreds of millions of dollars in fees from Libya's state investment fund—which resulted in DOJ and SEC investigations of possible FCPA violations—the bank pivoted east, sending top talent to its Asia offices and making the lead banker in the Libyan affair, Andrea Vella, Co-Head of Investment Banking for the region. ¶¶ 65-75, 78, 104. There, Vella met Goldman's Head of Investment Banking for Southeast Asia, Tim Leissner, a powerful partner known for pushing ethical boundaries. ¶¶ 80, 106-11. Together, the pair pursued the bank's strategy to "monetize" state funds into Malaysia, a country known for prolific corruption. ¶ 81.

Goldman's relationship with 1MDB began in January 2009, when Managing Director Roger Ng introduced Leissner to Jho Low, a twenty-something Malaysian with little to commend him besides close ties to incoming Prime Minister Najib Razak. ¶¶ 87-89, 112. Najib, the scion of a political dynasty with a penchant for graft, had resolved with Low to convert a provincial oil fund into a national investment vehicle—1MDB—which Goldman coveted as a client. ¶¶ 81-86, 90. Later in 2009, Goldman advised the fund on an initial capital raise, from which Low embezzled $700 million to fund a widely reported, multiyear bacchanal. ¶¶ 91, 113-19, 211-13.

From the outset of its half-decade relationship with Low, Goldman knew that Low was Najib's chief emissary on 1MDB and the fund's *de facto* CEO, which internal emails documented from January 2009 onward. ¶¶ 90, 114-16. Goldman's internal controls also flagged that Low posed a grievous hazard—yet its top bankers continued to court Low for years. ¶¶ 120-24. In September 2009, when Leissner's team referred Low for an account at the bank's PWM arm, emphasizing that Low was "***currently our partner in a lot of transactions in [M]alaysia***," the Global Compliance Department blocked the referral based upon Low's undocumented sources of

wealth. *Id*. Yet once Low told Goldman that 1MDB planned to raise $1.5 billion, such concerns were cast aside: ***Blankfein met privately with Low, Najib, and Leissner in November 2009*** to discuss potential deals with the fund. ¶¶ 127-29.

As Goldman pushed for business with 1MDB, the warning signs multiplied. Two *additional* departments—Goldman's Legal Department and Conflicts Resolution Group—barred a separate deal with Low in 2011. ¶¶ 141-44. Weeks later, when Leissner again tried referring Low for a PWM account, Legal and Compliance flagged Low for a *third* time, warning, "***no business will be allowed [with Low] due to significant adverse information and questionable source of wealth***." ¶ 146. Nevertheless, Leissner, Vella, and Ng began working with Low to underwrite a $1.75 billion debt offering for 1MDB dubbed "Project Magnolia." ¶ 149. This time, the deal proved too lucrative to block, despite a thicket of red flags surrounding it from the start.

As Goldman's bankers readied the offering, Leissner *explicitly* informed two committees reviewing the deal and the Legal Department's Business Intelligence Group—which had repeatedly deemed Low *persona non grata* at Goldman—that Low was playing an integral role in the offering, confirming knowledge of Low's involvement throughout Goldman. ¶¶ 47, 160-63. Meanwhile, senior bankers, including Asia President and member of the firmwide Management Committee David Ryan, protested the offering's suspicious terms. ¶¶ 165-70. Goldman's Asia Pacific committee warned that the deal carried the risk of "potential media and political scrutiny," and employees were warned to keep discussion of the bonds ***off of email***. ¶¶ 180, 187. Investment bank Lazard, which Goldman had retained to provide a valuation on part of the deal, noisily withdrew, warning that it "***smacked of political corruption***." ¶ 181. Yet the deal would also yield Goldman an astronomical *$192 million* in fees when similar underwritings netted a paltry $1 million, prompting the platoon of Goldman executives and committee members reviewing the deal

at headquarters—***including Blankfein and Cohn***—to give the green light. ¶¶ 34, 171-80, 189.

Two more massive debt offerings followed in quick succession. Project Maximus, begun only ten days after Project Magnolia had closed, raised a second $1.75 billion tranche despite a lack of credible justification. ¶¶ 194-96. ***Blankfein then met personally with Low in a private one-on-one meeting*** to drum up more underwriting business with 1MDB. ¶ 214. Project Catalyze, started just weeks after the second deal closed and during Najib's heated reelection campaign, raised another $3 billion for 1MDB despite no stated purpose for the funds. ¶¶ 217-18.

Over just ten months, Goldman had underwritten $6.5 billion in debt for a corrupt regime's state-run investment fund, which had offered no plausible rationale as to why it needed so much cash so quickly, nor in such secrecy. ¶¶ 168, 175-77, 200-02, 221-22. 1MDB had awarded this work to Goldman on a no-bid basis and agreed to pay exorbitant yields on the bonds and colossal fees to Goldman that were far out of line with comparable government securities. ¶ 174. All told, *billions* were siphoned from 1MDB's accounts to pay kickbacks to Low, Najib, 1MDB officials, and their co-conspirators. ¶¶ 191, 207, 241. While this was happening, Goldman bankers had ***virtually continuous access to 1MDB's financial records*** as they performed due diligence on 1MDB as sole underwriter of the three, tightly-spaced deals. ¶¶ 322, 347. Inside the bank, top managers (including Cohn) quashed the demurrals of senior executives, while warnings from outside counsel went ignored. ¶¶ 164-70, 203-05, 231-32, 236-38. So, too, did the raft of highly suspicious terms of each offering, which at least four firmwide committees and top executives—Blankfein and Cohn included—personally reviewed and approved. ¶¶ 189, 206, 240. For its efforts, Goldman reaped nearly ***$600 million in fees*** from 1MDB in less than a year. ¶ 2.

Goldman still was not sated. After the third offering closed in 2013, Blankfein met privately with Low and Najib a ***third*** time to solicit more business. ¶¶ 251-52. The bank soon

asked to run the IPO of 1MDB's energy assets. ¶ 269. Meanwhile, Goldman's Head of Investment Banking in the Middle East, Hazem Shawki, advised Low on the acquisition of Coastal Energy, a deal in which Low invested $50 million and then, with Shawki's knowledge, received a $350 million payout a week later as a "reward" from his 1MDB co-conspirators. ¶¶ 258-66. Shawki's team had nominally switched clients midstream when Goldman's compliance personnel protested Low's involvement, with Compliance blessing the sleight of hand as one it could "***live with***" in spite of its categorical prohibition on doing business with Low. ¶¶ 261-62. Back in New York, Blankfein lauded Leissner and Vella, gushing to a gathering of Goldman bankers in 2014: "Look at what Tim and Andrea did in Malaysia. ***We have to do more of that***." ¶ 270.

This triumphant view of Goldman's feats in Malaysia persisted inside the bank until late 2014, when a series of articles in a Malaysian newspaper piqued interest in the offerings, including Goldman's "exceptionally high" fees. ¶ 272. As the scrutiny increased, Goldman issued a string of misleading statements downplaying its relationship with 1MDB and denying any knowledge of the copious red flags signaling fraud at the fund. ¶¶ 271-79. For example:

- Despite Blankfein having ***personally*** solicited 1MDB business from Low in three private meetings, Goldman told the *WSJ* that Goldman had "***found no evidence showing any involvement by Jho Low in the 1MDB bond transactions***" (¶ 348); and
- Ignoring the multitude of red flags around each deal, Goldman's unfettered access to 1MDB's financial records as 1MDB's sole underwriter, and the bank's commitment to post-transaction monitoring generally and expressly in the $3 billion Project Catalyze offering circular, Goldman repeatedly claimed it had "***no visibility into whether some of those funds may have been subsequently diverted to other purposes***." ¶¶ 276, 344-45, 354, 360, 364.

Goldman's public evasions continued on November 1, 2018, when a criminal information announcing Leissner's guilty plea to FCPA and money-laundering violations was unsealed. ¶ 281. Speaking at a conference that day, Blankfein put forward a "rogue banker" defense that would become Goldman's public refrain for months, declaring, "one of our people lied to us and evaded our systems and our controls," while assuring, "***when we see bad behavior we act, we jump on it***

and act on it." ¶ 367. These steadfast denials of Goldman's wrongdoing kept investors at bay, convincing the market that the *bank's* exposure to the scandal, if any, was limited.

The perception of Goldman's blamelessness met its end in late 2018, when a series of press reports gradually laid bare the extent of top executives' involvement in the fraud. Over six-weeks beginning November 9, 2018, investors learned that Blankfein had met with Low in 2013, "after [Goldman's] compliance department had raised multiple concerns about [Low's] background and said that the bank shouldn't do business with him" (¶ 397); that regulators in the U.S. and elsewhere were "ramping up" their investigations (¶¶ 403, 411); and that Malaysia had filed criminal charges against Goldman and would seek as much as $7.5 billion in reparations. ¶¶ 406, 410. With each new revelation, investors learned that Goldman's statements minimizing the bank's exposure had been misleading. A report from Arbat Capital summed up the market's view, explaining why Goldman's stock price did not react immediately to the Leissner information:

> Despite the news about [the] DOJ investigation [that] appeared on November 1, ***[Goldman]'s quotes didn't react then as it was perceived as an investigation just against former [Goldman] bankers***. ***Later, it became evident that [Goldman] wouldn't be able to avoid fines***. Also, Malaysia began to turn the heat on [Goldman] to fully refund all fees which were paid for the deal. . . . Given the fact that ***some other GS employees, not involved in the illegal scheme, knew about it and this activity was not stopped by the bank then***, it means that GS's internal control procedures are not good enough and that regulators will undoubtedly impose fines on GS.

¶ 405. Following each disclosure, Goldman's share price tumbled further, with observers linking the declines to the adverse news that had just emerged. ¶¶ 399, 402, 405, 408-09.

ARGUMENT

I. PLAINTIFF ADEQUATELY PLEADS LOSS CAUSATION

To plead loss causation, a plaintiff must allege that "the subject of the fraudulent statement or omission was the cause of the actual loss suffered." *Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC*, 750 F.3d 227, 232 (2d Cir. 2014). Loss causation may be shown by a "corrective

disclosure" that reveals the fraud or by the "materialization of [the] risk" that had been obscured by the fraud. *Id*. at 233. Such disclosure "need not take the form of a single announcement, but rather, can occur through a series of disclosing events." *In re Bristol Myers Squibb Co., Sec. Litig*., 586 F. Supp. 2d 148, 165 (S.D.N.Y. 2008).

"[T]he pleading rules for loss causation [a]re 'not meant to impose a great burden upon a plaintiff,' [who] need only plead a short and plain statement pursuant to [Rule] 8(a)[] that provides . . .'some indication of the loss and causal connection that the plaintiff has in mind.'" *Freudenberg*, 712 F. Supp. 2d at 202 (quoting *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336 (2005)). Loss causation "is a matter of proof at trial and not to be decided on a Rule 12(b)(6) motion to dismiss." *Emergent Capital Inv. Mgmt., LLC. v. Stonepath Grp., Inc.*, 343 F.3d 189, 197 (2d Cir. 2003).

The Complaint identifies six specific media reports appearing over six weeks in late 2018 that progressively revealed the extent of Goldman's role in the 1MDB fraud and the bank's massive exposure to criminal and regulatory actions around the world. ¶¶ 397-412. In response to each new disclosure, Goldman's share price fell, with analysts linking the decline to the new information. *Id*. At this stage, such allegations of loss causation suffice.

A. Defendants' "Truth-on-the-Market" Defense to Loss Causation Fails

Defendants' primary response to Plaintiff's loss causation allegations is to contend, erroneously, that none of the alleged corrective disclosures contained new information. To begin, this argument is nothing more than a "truth-on-the-market" defense that is improper at the pleading stage. *See Ganino*, 228 F.3d at 167 ("The truth-on-the-market defense is ***intensely fact-specific*** and is ***rarely an appropriate basis for dismissing*** a § 10(b) complaint."). As the Supreme Court admonished in *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, whether or when "news of the truth had entered the market and dissipated the effects of prior misstatements[] is a ***matter for trial***." 568 U.S. 455, 482 n.11 (2013).

Even were this argument not premature, Defendants fail to establish that prior to the alleged disclosures, "the corrective information . . . [was] conveyed to the public with a degree of intensity and credibility sufficient to counter-balance effectively any misleading information created by the alleged misstatements." *Ganino*, 228 F.3d at 167. As detailed below, each of the six alleged disclosures provided new information about Goldman's role and exposure in the 1MDB fraud, confirmed by the significant decline in Goldman's stock price that followed—a telltale indicator of "new news." ¶¶ 397-412; *see In re Vivendi Universal, S.A. Sec. Litig.*, 381 F. Supp. 2d 158, 182 (S.D.N.Y. 2003) ("Defendants' claim that the market knew or should have known of Vivendi's liquidity crisis is belied by the precipitous [stock] drop" after each alleged corrective disclosure). Further, while accusing Plaintiff of simply "cherry-pick[ing]" dates on which Goldman's stock price just "happened to decline" (MTD 2), Defendants ignore that analysts expressly linked the declines to this new information—further establishing loss causation. ¶¶ 399, 402, 405, 408-09; *see In re MBIA, Inc., Sec. Litig.*, 700 F. Supp. 2d 566, 582 (S.D.N.Y. 2010) (analysts' reactions defeated truth-on-the-market defense). Tellingly, Defendants provide *no alternative explanation* for these stock drops.

A critical look at the sources on which Defendants rely establishes that they say something different from what Defendants claim and what was revealed on the alleged disclosure dates.

First Disclosure: The November 9, 2018 *WSJ* article entitled "Goldman Sachs's Ex-CEO Lloyd Blankfein Met Malaysian at Center of 1MDB Scandal" reported *for the first time* that Blankfein had met with Jho Low (just indicted by the DOJ) not only in 2009, but *also in 2013*—"***after*** . . . [Goldman's] compliance department had raised multiple concerns about the financier's background and said the bank shouldn't do business with him." ¶¶ 397-99; Ex. 35. The article quoted from Leissner's plea hearing transcript, *unsealed the same day*, and reported that Leissner

had said that he "***conspired with other employees and agents of Goldman Sachs very much in line of its culture***" to effectuate the business with Low. ¶ 282; Ex. 35. The *WSJ* also named Vella as one of Leissner's unidentified co-conspirators. *Id.* With investors and analysts now realizing how far the bank's culpability in the scandal went beyond Leissner alone, Goldman's stock price fell $9.04 per share (3.9%) on November 9, 2018. ¶ 398.

Defendants' claim that Blankfein's 2013 meeting with Low had already been reported is demonstrably wrong. MTD 15 & n.7. While *BDW* described Blankfein's meeting with *Najib* in 2013, it says nothing about a 2013 Blankfein meeting with Low, who is mentioned only in the context of jewelry shopping with Najib's wife. Ex. 9 (*BDW* at 237-39). Moreover, the Leissner complaint unsealed on November 1, 2018 and the November 2, 2018 *Bloomberg* article refer only to an *unnamed* "high-ranking [Goldman] executive" meeting with Low. Exs. 11, 29. It is absurd to suggest that investors had reason to conclude that this "executive" was in fact Goldman's CEO, as even the title of the *Bloomberg* article makes clear. *See* Ex. 29 ("***Mystery Goldman Exec*** at 1MDB Meeting Signals ***New*** Woes for Bank"). Finally, while the November 8, 2018 *Bloomberg* article names Blankfein as "the unidentified . . . executive referenced in U.S. court documents who attended a ***2009*** meeting" with Low, it states as to the meeting between a "high-ranking [Goldman] executive . . . and Low in ***2013***" that "[t]here's ***no indication that the executive from the later [2013] meeting is the same as the one from 2009***." Ex. 30. Investors thus had no idea until November 9, 2018, that Blankfein had met with Low again in 2013—*after* the three 1MDB bond offerings, *after* Goldman banned doing business with Low as a major compliance risk, and *after* the myriad other red flags surrounding 1MDB had appeared.

Second Disclosure: On November 12, 2018, *Bloomberg* published an article entitled "Malaysia Seeking '***Full*** Refund' From Goldman for 1MDB Deals," reporting on the Malaysian

Finance Minister's comments *that same day* in which he stated for the first time that Malaysia would seek to recover *all* of the $600 million in fees that Goldman had received on the 1MDB deals, plus losses from the interest-rate differential between the market rate and the "much higher" rate that 1MDB paid on the bonds. ¶¶ 400-02; Ex. 36. In response, Goldman stock plunged $16.60 per share (7.46%). ¶ 401. *CNBC* confirmed the same day that "[s]hares of Goldman fell by the most since November 2011 after Malaysia's financial minister said that he was seeking a ***full*** refund on [the] fees." ¶ 402; *see also id*. (*Reuters* confirming same).

Defendants assert that this "***exact same*** information had been reported five months earlier by *Reuters*, [*NYT*], and [*WSJ*]," MTD 2 (emphasis in original), which, Defendants claim, made clear that "such action was ***imminent***." *Id.* at 16. In fact, these reports said nothing of the sort. The *Reuters* article, titled "Malaysia ***considering*** seeking return of Goldman Sachs' 1MDB fees," reported only that the idea of seeking to recover fees was being discussed but that "[t]here ha[d] been ***no official requests***"; it did not discuss either the amount the government might seek or the interest-rate differential. Ex. 3. The *NYT* article, "Goldman Sachs Made Millions in Malaysia. Now Malaysia Wants ***Some*** Money Back," quoted the finance minister as saying merely, "[w]e intend to seek ***some*** claims from them," noting that "[t]he finance minister did not give any details about what kind of claims his government would seek" and stated that "the process 'will take time.'" Ex. 4. Finally, the *WSJ* article revealed only that "Malaysia is also ***looking into whether it can*** recover money from Goldman Sachs." Ex. 5. These articles did not indicate that such action was certain, let alone "imminent," nor did they quantify the sum Malaysia would seek. *See In re Take-Two Interactive Sec. Litig.*, 551 F. Supp. 2d 247, 290 (S.D.N.Y. 2008) (mere speculation in the public domain "does not necessarily constitute complete disclosure of the relevant truth").

Third Disclosure: On November 29, 2018, *Bloomberg* published an article entitled

"Goldman Takes Another 1MDB Blow as Fed ***Steps Up*** Probe," reporting that the Federal Reserve was "***ramping up***" its investigation of Goldman's role in 1MDB, which "has been ***gaining momentum*** in recent weeks." *Id.* In response, Goldman shares fell $4.16 per share (2.13%). ¶ 404. Again, the reports on which Defendants rely in arguing that this information was known say something different. The April 6, 2016 *WSJ* article reported only that "[r]egulators at the Fed[] have ***raised concerns*** with [Goldman]" that the 1MDB deals "could have put the firm's reputation at risk." Ex. 38. Similarly, the June 10, 2016 *Bloomberg* article mentions only that the Federal Reserve was "examining" the 1MDB deals. Ex. 14. Meanwhile, the other two articles that Defendants cite say *nothing* about the Federal Reserve investigation at all. Exs. 28, 39.

Fourth Disclosure: On December 17, 2018, the *NYT* published an article entitled "Malaysia Files Criminal Charges Against Goldman Sachs Over 1MDB Scandal," revealing that the Malaysian government was seeking criminal fines in excess of ***$2.7 billion***. ¶ 406. The *NYT* observed that the charges against the bank itself "***could complicate any argument by Goldman that its dealings with 1MDB were the fault of rogue bankers***." ¶ 407. On the revelation that Goldman *itself* had been *criminally* charged, its stock slid $4.16 per share (2.75%). *Id*. Wells Fargo attributed the decline to the charges: "[T]he ***new news*** is that Malaysia has filed criminal charges, seeks fines worth more than the $2.7b misappropriated." ¶ 408.

Defendants claim that the news of the criminal charges against Goldman was "glaringly obvious to any observer" based on the criminal charges against Leissner, unspecified statements made during Leissner's allocution, and Goldman's generic disclosures about 1MDB-related investigations. MTD 16. Yet they do not point to a single disclosure before December 17, 2018 that revealed criminal charges against Goldman *the company* (not just Leissner) and a potential *$2.7 billion* fine—nor could they, as those charges were announced the *same day* that the *NYT*

reported them. ¶ 406. The two articles Defendants cite (Exs. 32, 33) did not reveal the actual charges and penalty sought.

Fifth and Sixth Disclosures: On December 20, 2018, the *Financial Times* reported, in an article entitled "Malaysia finance minister wants ***$7.5bn*** from Goldman," that Malaysia would seek a staggering ***$7.5 billion*** in reparations. ¶ 410. The next morning, *Bloomberg* reported that Singapore had added Goldman to its investigation into 1MDB, noting that "Singapore's widened probe opens a potential ***new battle front*** for Goldman less than a week after Malaysia filed the first criminal charges against the firm." ¶ 411. On the news that Goldman faced up to $7.5 billion in liability and exposure in *another* jurisdiction, Goldman shares fell $8.36 per share (4.96%). ¶ 412.

Here again, Defendants seek to spin source material that falls short of what they claim. First, they claim the risk of a $7.5 billion demand "should have been readily apparent." MTD 16. Yet they cite not a single article *before* December 20, 2018, describing such a monumental penalty. *Id.* at 16 n.11. As for the December 21, 2018 disclosure, Defendants ignore both the article's title—"Singapore to ***Expand*** 1MDB Criminal Probe to ***Include*** Goldman"—and its reporting that "***until recently*** . . . [Goldman's] local unit itself wasn't a focus of any investigation." ¶ 411.

Defendants fail to establish that these six disclosures, each of which incrementally revealed the falsity of Defendants' prior statements and culpability in the 1MDB fraud, merely repeated previously known facts. *See In re Openwave Sys. Sec. Litig.*, 528 F. Supp. 2d 236, 253 (S.D.N.Y. 2007) (rejecting argument that "the contents of th[e] disclosure had already been revealed" because such determination "is ***one for the jury to make***"). Indeed, that Defendants must rely so heavily on their own editorializing only proves that the earlier news was not "conveyed to the public with a degree of intensity and credibility sufficient to counter-balance effectively any misleading information created by the alleged misstatements." *Ganino*, 228 F.3d at 167; *see, e.g.*, MTD 16 &

n.10 (claiming earlier reports made clear that "[Malaysian government's] action was imminent"; criminal charges against the bank were "glaringly obvious to any observer"; $7.5 billion demand by Malaysia "should have been readily apparent"; and Malaysian PM "foreshadow[ed] charges").

Moreover, even had the previous reports said what Defendants now claim, Defendants' contemporaneous *denials* of Goldman's role in the 1MDB fraud negate their truth-on-the-market defense. ¶¶ 271-94; *see In re eSpeed, Inc. Sec. Litig.*, 457 F. Supp. 2d 266, 288 (S.D.N.Y. 2006) (negative publicity predating alleged corrective disclosures were "***counteracted by authoritative statements from defendants***"). In fact, Goldman has tried this gambit before, contending in a prior case that earlier disclosures precluded liability because investors already knew about the bank's misconduct. *Lapin*, 506 F. Supp. 2d at 238. The court in that case rejected Goldman's bid, holding:

> [E]ven if the news articles, the *Stefansky* complaint, and the disclaimers in Goldman research reports raised some concern in the market about Goldman's alleged conflicts, such information was ***counteracted by contemporaneous statements by Goldman***, informing the market that its research was . . . independent, and objective. . . . [T]here are sufficient facts pled to question whether the alleged "truth-on-the-market" was said with the degree of intensity and credibility sufficient to counter-balance any allegedly misleading statements made by Defendants.

Id. (citing *Ganino*, 228 F.3d at 167); *see also MBIA*, 700 F. Supp. 2d at 582.

The same principle applies here. From the first day of the Class Period, Defendants repeatedly denied any wrongdoing in connection with 1MDB. For example:

- In an October 29, 2014 article raising concerns about the "exceptionally high" fees that Goldman had received on the 1MDB deals, Goldman denied that any payments were made by 1MDB or Goldman Sachs to external third parties besides legal and accounting fees. ¶ 272.
- Following reports in July 2016 that Leissner's role in the 1MDB deals was being probed, Goldman's spokesperson stated, "We had no visibility into whether some of those funds may have been subsequently diverted to other purposes." ¶ 276.
- After a *WSJ* report on Goldman's ties to 1MDB in 2016, Goldman stated: "We have found no evidence showing any involvement by Jho Low in the 1MDB bond transactions." ¶ 277.
- On the heels of a June 2017 report that Low had funneled stolen 1MDB money through the Goldman-backed Coastal Energy deal, the bank claimed, "[n]either Jho Low, Jynwel or SRG were a client of Goldman Sachs in connection with the Coastal Energy acquisition." ¶ 278.

- Additional denials appeared in the very articles that Defendants now claim revealed the full truth to investors before the alleged disclosures. *E.g.*, Ex. 30 (11/8/18 article in which Blankfein claims that "the matter was an issue of a few employees dodging bank controls"); Ex. 32 (11/12/18 article reporting that "the bank ***denie[s] any wrongdoing***").

These denials vitiate Defendants' truth-on-the-market defense. *See Fresno Cty. Emps.' Ret. Ass'n v. comScore, Inc.*, 268 F. Supp. 3d 526, 562 (S.D.N.Y. 2017) (truth-on-the-market defense failed where defendants denied credibility of media reports).

Moreover, even as Goldman began to insert *pro forma* disclosures of regulatory inquiries in its SEC filings (MTD 19), the bank assured investors *in those same filings* that it "maintain[ed] a comprehensive control framework" (¶ 371), "reinforce[s] a culture of effective risk management" (¶¶ 375-76), and "regularly reinforce[s] . . . a strong culture of escalation and accountability across all divisions and functions." ¶ 377. Matched against Defendants' ongoing misrepresentations of specific facts bearing on Goldman's role in the 1MDB fraud, denials of culpability, and strident assurances of rigorous controls, Goldman's boilerplate warnings are insufficient to defeat loss causation at the pleading stage. *See MBIA*, 700 F. Supp. 2d at 582 ("even if . . . [MBIA's disclosures] suggested that all MBIA CDOs contained RMBS, Lead Plaintiff adequately alleges that ***such information was counteracted by MBIA's contemporaneous statements***").[2]

B. Loss Causation Does Not Require a "Mirror Image" Corrective Disclosure

Defendants' final loss causation challenge rests on the misconception that to plead loss causation, Defendants must have specifically denied *the very fact* later revealed by the disclosure.[3]

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[2] *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501 (2d Cir. 2010) (cited at MTD 17), a summary judgment decision, is plainly distinguishable. Unlike here, a full discovery record, including expert reports and testimony, established that the alleged disclosure reflected only previously known facts. *Id.* at 513.

[3] *See* MTD 18 (arguing that because "Plaintiff does not allege that Defendants ever denied such a meeting [between Blankfein and Low] occurred," the November 9, 2018 revelation of the 2013 Blankfein-Low meeting does not establish loss causation); *id.* at 18-19 (arguing that because "Plaintiff fails to allege that Goldman Sachs ever said it could avoid criminal or regulatory scrutiny about 1MDB," the remaining five disclosures cannot establish loss causation).

"[N]either the Supreme Court in *Dura*, nor any other court addressing the loss causation pleading standard, require a corrective disclosure be a 'mirror image' tantamount to a confession of fraud." *Freudenberg*, 712 F. Supp. 2d at 202. Indeed, a plaintiff need not allege a corrective disclosure at all. *See In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 262 (2d Cir. 2016) ("Whether the truth comes out by way of a corrective disclosure describing the precise fraud inherent in the alleged misstatements, ***or through events constructively disclosing the fraud***, does not alter the basic loss-causation calculus."). Loss causation is satisfied under a "materialization of the risk" theory where an "alleged misstatement conceals a condition or event which then occurs and causes the plaintiff's loss." *Hunt v. Enzo Biochem, Inc*., 530 F. Supp. 2d 580, 594 (S.D.N.Y. 2008).

Defendants falsely minimized Goldman's exposure to the 1MDB fraud (¶¶ 271-96), going so far as to deny any knowledge of Low's involvement in the deals (¶ 277), and continued to misrepresent the robustness of Goldman's risk controls. ¶¶ 370-81. Thereafter, the true magnitude of Goldman's exposure came to light as reports of Blankfein's meeting with Low and governmental action against the bank mounted in quick succession. *See Vivendi*, 838 F.3d at 262 ("Vivendi's alleged misstatements concealed its liquidity risk, and a series of events in the first half of 2002 made the truth about that liquidity crisis come to light."). Because these disclosures revealed "that defendants [had] concealed a broad risk . . . by misleading the public on particular facts and denying the risk," Plaintiff has sufficiently pled loss causation. *In re Vivendi Universal, S.A. Sec. Litig.*, 634 F. Supp. 2d 352, 369 (S.D.N.Y. 2009). Defendants' tepid notice that Goldman was "subject to 'investigations and reviews' related to 1MDB" (MTD 19) does not absolve them as they "continued to withhold from the market the seriousness and the extent of th[e] alleged fraud." *Steiner v. MedQuist Inc.*, 2006 WL 2827740, at *6, *20 (D.N.J. Sept. 29, 2006) (June 15 announcement of delisting from NASDAQ due to company's practices had "direct linkage" to

alleged fraud, despite company's prior disclosures that company was "***subject to*** delisting" and under investigation because "the June 15 announcement gave investors greater insight into the magnitude of the [fraud] . . . . as reflected in the immediate negative market reaction").[4]

II. PLAINTIFF ADEQUATELY ALLEGES FALSITY AND MATERIALITY

Rule 10b-5 makes it unlawful to "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." 17 C.F.R. § 240.10b-5(b). "Materiality is a fact-specific inquiry" into what "a reasonable shareholder would consider . . . important." *Micholle v. Ophthotech Corp.*, 2019 WL 4464802, at *13 (S.D.N.Y. Sept. 18, 2019) (Broderick, J.) (finding that the Court "c[ould] [not] make a materiality determination as a matter of law"). "[A] complaint may not properly be dismissed . . . on the ground that the alleged misstatements or omissions are not material unless they are so obviously unimportant to a reasonable investor that reasonable minds could not differ on the question of their importance." *Ganino*, 228 F.3d at 162.

A. Statements and Omissions About Jho Low and 1MDB

While Defendants argue that their alleged misstatements about Jho Low and 1MDB are immunized because each "was a limited statement and true statement" (MTD 23), "[t]he veracity

[4] *Monroe Cty. Emps.' Ret. Sys. v. YPF Sociedad Anonima*, 15 F. Supp. 3d 336 (S.D.N.Y. 2014) (cited at MTD 19) is inapposite. In *YPF*, the two earlier disclosures found to preclude loss causation were followed by 10% and 14% stock price declines. *Id*. at 351-52. Here, by contrast, the earlier reports to which Defendants point did not cause "***any meaningful change***" in Goldman's stock price (MTD 12), strongly indicating that these earlier reports did not dissipate any fraud. *Cf. Take-Two*, 551 F. Supp. 2d at 290 ("If the truth concerning Take-Two's fraudulent options backdating had been disclosed completely prior to the July 10 Disclosure, that truth presumably would have been reflected in Take-Two's share price prior to the July 10 Disclosure, and share-price movement in response to the July 10 Disclosure would not be attributable to the revelation of the Options Backdating Fraud.").

of a statement or omission is measured not by its literal truth, but by its ability to accurately inform rather than mislead prospective buyers." *Operating Local 646 Annuity Tr. Fund v. Smith Barney Fund Mgmt. LLC*, 595 F.3d 86, 92 (2d Cir. 2010). "Even when there is no existing independent duty to disclose information, once a company speaks on an issue or topic, there is a duty to tell the ***whole*** truth." *Meyer*, 761 F.3d at 250. Having opted to speak, Defendants were obliged to ensure that their representations were "complete and accurate." *Id.* at 251. Instead, Defendants issued false statements and "half-truths" to quell concern over Goldman's role in the fraud.

Jho Low's Involvement. In a December 2016 *WSJ* article reporting on Goldman's close relationship with Low and 1MDB, Goldman denied all wrongdoing and stated, "[w]e have found ***no*** evidence showing ***any*** involvement by Jho Low in the 1MDB bond transactions." ¶ 348. In truth, evidence of Low's involvement inside the bank was rampant. ¶ 349. For example:

- Blankfein personally met with Low at least ***three times*** to discuss Goldman's work with 1MDB before, during, and after the three bond offerings (¶¶ 127-28, 214, 252-53);
- Emails to and from the deal team showed Low's role from the outset, including a January 15, 2009 email from a 1MDB executive stating, "***I think it best to get [Jho Low] involve[d] at every stage***." ¶¶ 114-15. Others confirmed Low's status, including a Managing Director's March 2012 email calling Low "***the*** 1MDB Operator or intermediary in Malaysia" (¶ 161);
- On April 4, 2012, Leissner explicitly informed the firmwide Capital and Suitability Committees and the global Co-Head of the Legal Department's Business Intelligence Group that Low was playing a critical role in Project Magnolia by helping to arrange the guarantee from Abu Dhabi-based IPIC, which Goldman had required (¶¶ 150, 162);
- Low's involvement was "***widely discussed***" at the bank's Asia offices during Project Magnolia (¶ 160), and the deal team openly traveled and conducted business with Low in front of third parties throughout the period of the 1MDB bond deals (¶¶ 159, 235-36); and
- The Compliance, Legal, Conflicts, and PWM Departments also knew of Low's involvement with the 1MDB deal team. ¶¶ 121-22, 140-44, 147, 162, 261.

Given these detailed allegations of the extensive knowledge inside Goldman of Low's involvement in the bond transactions, Defendants' statement was false—i.e., it was not even literally true. Even if it had been, in the context of an article addressing Goldman's extensive ties to the 1MDB fraud, the omission of widespread knowledge of Low's involvement within the

bank's highest echelon was misleading, which Defendants' *post hoc* interpolation-by-italics cannot cure. *See* MTD 27. "The purpose of the disclosure requirements is to inform, not to challenge the reader's critical wits." *Freudenberg*, 712 F. Supp. 2d at 180.

Payments to Third Parties. Goldman's October 27, 2014 statement that "[o]ther than legal and accounting firms providing professional services, no fees or commissions were paid by 1MDB or Goldman Sachs to external third parties in connection with [the 1MDB bond deals]" (¶ 337) was also false. As no one now disputes, billions of dollars in bond proceeds *were* paid to Low, 1MDB officials, Najib and his family, and other third parties almost immediately after each deal funded. ¶¶ 191-92, 207-08, 219, 241, 264-65, 339. Defendants' argument that "the spokesperson's statement was accurate and not misleading" because the statement was "addressing the question of whether any third parties were paid from . . . Goldman Sachs' fees and commissions . . . , not 1MDB's proceeds" (MTD 24) ignores the actual text of the statement which plainly reads "***paid by 1MDB*** or Goldman Sachs." ¶ 339. Moreover, the October 27, 2014 article on which Defendants rely for "context" (MTD 24) makes clear that the "fees or commissions" in question were those "deducted" from bond proceeds, not Goldman's take.[5] Ex. 48 at 3. Defendants may not now refashion the plain language of this statement to win dismissal as a matter of law.

"[V]isibility" Into Use of Bond Proceeds. Goldman's repeated claim that it "had no visibility into whether some of those funds may have been subsequently diverted to other purposes" (¶¶ 344-45, 354, 360, 364) was misleading because Goldman in fact had a variety of ways to observe that funds were being diverted. ¶¶ 347, 357, 361, 365. For example:

- Senior bankers, including Leissner, Vella, and Ng, were aware that funds were being used to

[5] The Complaint does not reference this article or 15 other of the 44 articles submitted by Defendants in support of the MTD. *See Micholle*, 2019 WL 4464802, at *6 ("If a motion to dismiss introduces additional materials outside the pleadings, . . . a court may . . . exclude those materials."); *see also* Clarke Decl. 2-9 (identifying which exhibits were cited in the Complaint).

pay bribes to foreign officials and other intermediaries (¶¶ 154, 208, 219, 280-81);

- Because the three offerings were issued in quick succession over just ten months, Goldman's due diligence duties as sole underwriter for each deal afforded Goldman continuous access to 1MDB's financial records throughout the relevant period (¶¶ 194, 198, 230);
- Low's unexplained wealth, which the bank's Compliance staff had repeatedly flagged (¶¶ 91, 123-24, 146, 211-13) and concerns expressed by auditors, outside counsel, and other banks (¶¶ 97, 181, 237) further indicated that bond proceeds were being diverted;
- Goldman could not assure that "no fees or commissions were paid by 1MDB . . . to external third parties" without "visibility" into how the bond proceeds were used (¶ 339); and
- Goldman expressly covenanted in the bond offering documents that it and 1MDB would "ensure" that proceeds were not diverted. ¶ 239. Thus, by Defendants' own representations, they had visibility into the use of funds from the deals.[6]

Defendants ignore these allegations altogether. Moreover, Goldman's concomitant statement that 1MDB was a "sovereign wealth fund that was ***designed*** to invest in Malaysia" was misleading because it omitted that the bank had access to ample evidence that 1MDB was *operating* as a vehicle for money laundering and graft on a massive scale, not a legitimate investment fund. ¶¶ 344-46, 354-56; *Freudenberg*, 712 F. Supp. 2d at 180 ("A statement is misleading if a reasonable investor would have received a false impression from the statement.").

1MDB Deal Terms. Responding to scrutiny about Goldman's outsized fees, Goldman stated in 2014 that its fees and commissions "[w]ere standard terms used to describe in part Goldman Sachs' compensation for the risks assumed in underwriting the bonds" (¶ 337) and, in 2015, that "[t]hese transactions were individually tailored financing solutions, the fee and commissions for which ***reflected the underwriting risks*** assumed by Goldman Sachs." ¶ 340. In truth, Goldman's fees were anything but "standard" and did not reflect "prevailing" market conditions (¶¶ 337, 340), as the bank received roughly ***200 times*** the standard rate for comparable securities. ¶¶ 178, 305-06. Moreover, Goldman had taken on virtually *no risk* in underwriting the

[6] Defendants' claim that the offering circular provided that only 1MDB, not Goldman, guaranteed against the diversion of funds (MTD 37) defies a natural reading of this provision and improperly asks the Court to deem Defendants' dubious construction controlling as a matter of law.

bonds, having presold at least the Project Magnolia offering to existing clients before the deal closed and easily offloaded *all* of the offerings due to their abnormally high yields and backstopping by both Malaysia and IPIC. ¶¶ 172, 174, 180, 190, 196, 200, 240. That some of Goldman's *own executives* objected to the outlandish terms reflected not a "diversity of opinion" (MTD 26), but rather further confirmation that the terms were in fact highly suspicious. ¶¶ 165-70, 203-05, 231-32.

In response, Defendants again strain to add meaning where there was none before, claiming that the first statement meant that "the ***terms*** were standard," not the "***amount***" of fees and commissions (MTD 24 (emphasis in original))—ignoring that the statement itself made clear that "terms" refers specifically to "Goldman Sachs' ***compensation***" as underwriter. ¶ 338. Defendants then argue that the "reflected the underwriting risks" statement was not misleading because Goldman's fees and no-bid award of the deals were "public knowledge." MTD 24-25. Beyond constituting a truth-on-the-market defense that is improper at this stage, *Ganino*, 228 F.3d at 167, this argument is unavailable where Goldman effectively denied the inference of corruption that investors might have otherwise drawn from that information. *comScore*, 268 F. Supp. 3d at 562.

Coastal Energy. Defendants argue that the statement that "[n]either Jho Low, Jynwel or SRG were a client of Goldman Sachs in connection with the Coastal Energy acquisition" (¶ 351) was literally true and that "[t]he supposedly concealed information that Goldman Sachs had advised Low on the ***prior*** failed bid" in 2012 had been reported in a *WSJ* article the day before. MTD 29. Leaving aside Defendants' attempt to raise yet another premature truth-on-the-market defense, they ignore the crux of Plaintiff's claim, which concerns *not* the "prior failed bid" in 2012, but rather Low's successful effort to purchase Coastal alongside IPIC's CEPSA subsidiary in 2013 and 2014. ¶¶ 260-63. On that transaction, Goldman's Dubai office *had* directly advised Low and

SRG (controlled by Low's Jynwel Capital), rendering Defendants' denial false. *Id.* Further, Goldman's failure to disclose that it had nominally swapped clients midstream to conceal Low's involvement (*id.*) violated the "duty to tell the whole truth" and to make additional disclosures necessary to avoid rendering the statement misleading. *Meyer*, 761 F.3d at 250.

Also misleading was Goldman's claim that it "***was not aware of***, and had no involvement in, any transaction in which SRG sold its stake in a joint venture back to CEPSA" (¶ 351), given that Shawki had remarked to IPIC executives that the $350 million payment to Low was a "reward" for scouting out the acquisition. ¶¶ 264-65. Defendants' argument that *BDW* does not attach a specific date to Shawki's statement (MTD 29) ignores that it immediately follows *BDW*'s discussion of Low's payment made one week after the deal closed (Ex. 9 (*BDW* at 245-46)), supporting the inference that the statement occurred at the time of the payment. *See Micholle*, 2019 WL 4464802, at *5 ("[A] court must . . . draw all reasonable inferences in the plaintiff's favor."); *see also In re Revlon, Inc. Sec. Litig.*, 2001 WL 293820, at *8 (S.D.N.Y. Mar. 27, 2001) ("[A] plaintiff need not plead dates, times and places with absolute precision"). Similarly, that *BDW*'s authors—both reporters for the *WSJ*—do not name their sources does not undermine their reliability at the pleading stage. *See In re Philip Servs. Corp. Sec. Litig.*, 383 F. Supp. 2d 463, 478 (S.D.N.Y. 2004) (rejecting claim that plaintiffs must identify documentary or personal sources, noting that "[h]ad the Second Circuit chosen to interpret the PSLRA [in *Novak*] as importing an evidentiary requirement into securities fraud complaints, it would have done so more explicitly"); *cf. Miller v. Lazard, Ltd.*, 473 F. Supp. 2d 571, 586 (S.D.N.Y. 2007) (permitting reliance on newspaper articles to support particularized allegations).

Blankfein's November 1, 2018 Statements. Addressing the 1MDB scandal, Blankfein stated, "when we see bad behavior we act, we jump on it." ¶ 367. Far from being "too general to

be actionable" (MTD 28), Blankfein's assurance was offered in *direct response* to a reporter's question about the effect of 1MDB on Goldman's reputation. *See In re JPMorgan Chase & Co. Sec. Litig.*, 2014 WL 1297446, at *8 (S.D.N.Y. Mar. 31, 2014). It was also materially misleading. In truth, when senior bankers raised concerns about the 1MDB deals, top management, including Cohn, silenced them. ¶¶ 205, 232. Meanwhile, Leissner and Vella were promoted, lavishly compensated, and applauded in front of other Goldman bankers, who were urged to emulate the pair. ¶¶ 104, 107-10, 193, 270. As Leissner later attested in open court, Goldman maintained a culture in which bankers regularly skirted compliance staff in pursuit of new business, a conclusion also reflected in a DOJ filing observing that Goldman had a culture that prized deal-making at the expense of compliance. ¶¶ 280-83.

Also misleading was Blankfein's statement, "I'm not aware of [red flags]." ¶ 367. Defendants' cavil that these words were taken "out of context" (MTD 28) is baseless, as the remark was Blankfein's first sentence in response to the unambiguous query, "[t]here were reports though that . . . senior management, there were red flags on this beforehand. Fair?" ¶ 367. That Blankfein also claimed, "I'm not in a position to refute facts that I don't have a complete picture of and haven't been presented," makes his statement *more* misleading—not less—as it, too, was false. *See* MTD 28. As alleged, Blankfein was privy to numerous red flags, having reviewed the bond deals and having personally courted the biggest red flag of all—Jho Low—*after* the bank's Global Compliance Department had repeatedly identified Low as just that. ¶¶ 189, 206, 240, 323-24.

B. Statements About Goldman's Risk Management and Controls

Despite the flagrant and deliberate breach of Goldman's risk management framework in order to effectuate the 1MDB and Coastal Energy deals, Defendants repeatedly described—and touted—Goldman's risk controls to investors. *See* ¶¶ 371-73 (Goldman "maintains a comprehensive control framework . . . to minimize operational risks" and "a comprehensive data

collection process, including firmwide policies and procedures, for operational risk events"; has "established policies that require managers in our revenue-producing units and our independent control and support functions to escalate operational risk events"; and maintains "firmwide systems [that] capture internal operational risk event data . . . . us[ing] an internally[-]developed operational risk management application to aggregate and organize this information. . . . [which is] analyze[d] . . . to evaluate operational risk exposures and identify businesses, activities or products with heightened levels of operational risk"); ¶¶ 376-77 (Goldman "reinforce[s] a culture of effective risk management . . . [in] the way we evaluate performance, and recognize and reward our people" and a "culture of escalation and accountability across all divisions and functions").

"[M]isstatements regarding risk management . . . are not 'puffery' where, as alleged here, they were 'misrepresentations of existing facts.'" *Freudenberg*, 712 F. Supp. 2d at 189 (quoting *Novak*, 216 F.3d at 315). When viewed against the profuse allegations of routinely circumvented controls, the silencing and reprimanding of executives who expressed suspicion of the 1MDB deals, explicit warnings from other bankers and outside counsel, the elevation of Leissner and Vella for consummating the relationship with 1MDB, and Compliance's *approval* of Shawki's workaround to conceal Low's role in the Coastal Energy deal after Low had been repeatedly banned from doing business with the bank, Goldman's statements are actionable. ¶¶ 261-62, 374, 379, 381; *see In re Goldman Sachs Grp., Inc. Sec. Litig.*, 2014 WL 2815571, at *1, *5 (S.D.N.Y. June 23, 2014) (holding actionable statements that "[w]e have extensive procedures and controls that are designed to . . . address conflicts of interest" because Goldman's "representations about its purported controls for avoiding conflicts were directly at odds with its alleged conduct"); *Freudenberg*, 712 F. Supp. 2d at 190 (holding actionable "statements touting risk management [that] were . . . juxtaposed against detailed factual descriptions of the Company's woefully

inadequate or non-existent credit risk procedures"); *In re MF Glob. Holdings Ltd. Sec. Litig.*, 982 F. Supp. 2d 277, 317 (S.D.N.Y. 2013) (holding "actionable misstatements [describing] MF Global's risk controls" as "'robust,' 'effective,' 'adequate,' and 'comprehensive' and 'designed to monitor, evaluate, and manage the risks" because complaint "pleads contrary information . . . undermin[ing] the accuracy of those disclosures"); *In re Lehman Bros. Sec. & ERISA Litig.*, 799 F. Supp. 2d 258, 285 (S.D.N.Y. 2011) ("[A]llegations of frequent, significant departures from Lehman's internally stated policies . . . permit the inference that its senior officers' statements to the effect that Lehman had 'strong' and 'conservative' risk management were false.").

While Defendants rely on *Singh v. Cigna Corp*. for the principle that "general declarations about the importance of acting lawfully" are typically inactionable (MTD 20 (quoting 918 F.3d 57, 63 (2d Cir. 2019)), the *Singh* court—citing *Meyer v. Jinkosolar*—also stated that when a "company describe[s] its compliance mechanisms in confident detail," such statements may "amount[] to actionable assurances of actual compliance." *Singh*, 918 F.3d at 63 (citing *Meyer*, 761 F.3d at 251). In fact, the *Singh* court expressly distinguished *Meyer*, noting that Jinkosolar's "detailed descriptions stand in sharp contrast to Cigna's simple and generic assertions about having 'policies and procedures' and allocating 'significant resources.'" *Id.* at 65.

In reasoning applicable here, the Second Circuit in *Meyer* vacated the district court's dismissal of a complaint alleging false statements regarding the company's "efforts at compliance," including statements that the company had "installed pollution abatement equipment at [its] facilities to process, reduce, treat, and . . . recycle . . . waste materials before disposal" and "maintain[ed] environmental teams at . . . [its] facilities to monitor waste treatment and ensure that [these] waste emissions comply with . . . environmental standards." 761 F.3d at 247-48. The Second Circuit held that once defendants chose to speak on the issue of the company's risk

management efforts, they had a "duty to tell the whole truth." *Id*. at 250. The court explained:

> The description of pollution-preventing equipment and 24–hour monitoring teams gave comfort to investors that reasonably effective steps were being taken to comply with applicable environmental regulations. To be sure, these descriptions did not guarantee 100% compliance 100% of the time. Such compliance may often be unobtainable, and reasonable investors may be deemed to know that. ***However, investors would be misled by a statement such as . . . [those alleged] if in fact the equipment and 24–hour team were then failing to prevent substantial violations of the Chinese regulations***.

Id. at 251. The Second Circuit concluded that "[t]he failure to disclose these problems . . . could be found by a trier of fact to be an omission that renders misleading the comforting statements . . . about compliance measures." *Id*.

"Taken together and in [the] context" of Goldman's repeated compliance transgressions committed in connection with the 1MDB and Coastal Energy deals, Defendants' statements describing Goldman's comprehensive risk management processes are indistinguishable from those upheld in *Meyer*. *Id.* at 250. These are *not* the type of "general declarations" found to be immaterial in *Singh*. 918 F.3d at 63. Indeed, far from being "mere[] generalizations regarding [Goldman's] business practices," *ECA & Local 134 IBEW Joint Pension Tr. of Chi. v. JP Morgan Chase Co.*, 553 F.3d 187 (2d Cir. 2009) (cited at MTD 20), Defendants' statements were specific and detailed descriptions of Goldman's risk controls made while Defendants were "failing to prevent substantial violations." *Meyer*, 761 F.3d at 251. Furthermore, Defendants made these statements against the backdrop of Cohn and Blankfein's 2013 letter to shareholders—issued as part of Goldman's public image revamp following its missteps during the financial crisis—and touting the fact that all 39 risk management recommendations of the BSC had been implemented. ¶¶ 51-60. These included the policy that "strategic transactions" like the 1MDB offerings would "be subject to heightened review and approval" that included "new due diligence procedures" involving multiple layers of review. ¶ 58; *see In re Petrobras Sec. Litig*., 116 F. Supp. 3d 368,

381 (S.D.N.Y. 2015) ("While some of the alleged statements, viewed in isolation, may be mere puffery, nonetheless, when (as here alleged) the statements were made repeatedly in an effort to reassure the investing public about the Company's integrity, a reasonable investor could rely on them as reflective of the true state of affairs at the Company.").[7]

Defendants' argument that Goldman's risk-management statements postdate its misconduct fails. MTD 21. Goldman's relationship with 1MDB was ongoing beginning with the first offering in May 2012 (¶ 194); the third (and largest) offering closed in March 2013 (¶ 240); the Coastal Energy deal closed in early 2014 (¶ 263); and Goldman continued lobbying 1MDB for business, including an IPO, through 2014 while Blankfein lauded Leissner's and Vella's work with the fund to other Goldman bankers the same year. ¶¶ 269-70. The challenged statements began *just months later* on November 5, 2014, with Goldman's 3Q 2014 Form 10-Q, and were repeated throughout the Class Period. ¶¶ 371-73, 375-77, 380, 383, 385, 388. Defendants' authorities are thus inapposite. *See Fogel v. Vega*, 759 F. App'x 18, 24 (2d Cir. 2018) (bribery scheme occurred seven-to-nine years earlier); *Emps. Ret. Sys. of the City of Providence v. Embraer S.A.*, 2018 WL 1725574, at *11 (S.D.N.Y. Mar. 30, 2018) (bribery scheme "occurred five years prior to the Class Period"). Particularly given Goldman's commitment to post-transaction monitoring, and expressly as to Project Catalyze, these statements are actionable. ¶¶ 58-59, 239.

C. Statements About Goldman's Compliance, Reputation, and Integrity

Defendants' statements regarding Goldman's compliance with applicable laws are also

[7] *City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, 752 F.3d 173 (2d Cir. 2014) (MTD 20 n.13) is also inapposite. Namely, "[t]he statements at issue in *UBS* . . . were too open-ended, indefinite, or subjective to be actionable under the circumstances. . . . In contrast, Goldman's representations about its purported controls for avoiding conflicts were *directly at odds with its alleged conduct*." *Goldman Sachs*, 2014 WL 2815571, at *5. Further, unlike here, the challenged statements in *UBS* were "explicitly aspirational, with qualifiers such as 'aims to,' 'wants to,' and 'should.'" 752 F.3d at 183.

actionable. ¶¶ 383, 385, 388. In fact, the ***exact same statements*** by Goldman were held actionable by two courts in the Southern District. *See Richman v. Goldman Sachs Grp., Inc.*, 868 F. Supp. 2d 261, 277, 279-80 (S.D.N.Y. 2012) ("Goldman must not be allowed to pass off its repeated assertions that it complies with the letter and spirit of the law . . . as mere puffery . . . . the Court cannot say that Goldman's statements . . . would be so obviously unimportant to a reasonable investor."); *Lapin*, 506 F. Supp. 2d at 239-40 ("[I]t defies logic to suggest that . . . an investor would not reasonably rely on a statement . . . that recognized Goldman's dedication to complying with the letter and spirit of the laws and that Goldman's success depended on such adherence.").

Defendants' claim that *Richman* and *Lapin* "have been effectively overruled" (MTD 20 n.13) is wrong. As clarified by the Second Circuit in *Fogel*, although "[w]e have specifically held that 'general statements about reputation, integrity, and compliance with ethical norms are inactionable "puffery"'. . . . ***This is not to say*** that statements about a company's reputation for integrity or ethical conduct can never give rise to a securities violation. . . . [F]or example, a company's specific statements that emphasize its reputation for integrity or ethical conduct as central to its financial condition . . . may suffice." 759 F. App'x at 23; *see also Petrobras*, 116 F. Supp. 3d at 381. Goldman's misstatements fall squarely within this category. ¶ 383.

D. Statements and Omissions About Goldman's Financial Results

In Goldman's 2014 Form 10-K, Defendants touted the 2013 results of Goldman's Investment Banking segment and identified debt underwriting as a primary driver of performance. ¶ 390. But Goldman failed to disclose that $600 million of these results—the fees from the 1MDB offerings—were derived from illicit conduct and the dismantling of Goldman's internal controls. ¶ 391. "If a company," like Goldman here, "puts the topic of the cause of its financial success at issue, then it is obligated to disclose information concerning the source of its success, since reasonable investors would find that such information would significantly alter the mix of available

information." *Freudenberg*, 712 F. Supp. 2d at 180; *see In re Van der Moolen Holding N.V. Sec. Litig.*, 405 F. Supp. 2d 388, 400-01 (S.D.N.Y. 2005). That Goldman's revenues were accurately reported (MTD 22) is beside the point: Plaintiff is challenging Goldman's misleading statement that its increased revenues were due to "leveraged finance activity" without disclosing that a sizable part of those revenues stemmed from the illicit conduct underlying the 1MDB deals. ¶ 390.

E. Defendants' SOX Certifications

Defendants' SOX certifications were false because, in truth, Goldman's controls were disregarded. ¶¶ 392-93; *In re Grupo Televisa Sec. Litig.*, 368 F. Supp. 3d 711, 717, 720 (S.D.N.Y. 2019). *Barrett v. PJT Partners Inc.* is inapposite, as the certifications there "d[id] not relate to . . . whether PJT's controls were effective." 2017 WL 3995606, at *6 (S.D.N.Y. Sept. 8, 2017).

III. PLAINTIFF ADEQUATELY ALLEGES SCIENTER

Scienter is adequately pled where the defendants are alleged to have "[1] kn[own] facts or had access to information suggesting that their public statements were not accurate[;] [2] failed to check information they had a duty to monitor[;]" or "[3] ignored obvious signs of fraud." *Novak*, 216 F.3d at 308, 311. "An egregious refusal to see the obvious, or to investigate the doubtful, may . . . give rise to an inference of . . . recklessness." *Chill*, 101 F.3d at 269. The scienter of a corporation is established where the pleaded facts "create a strong inference that someone whose intent could be imputed to the corporation acted with the requisite scienter." *Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital Inc.*, 531 F.3d 190, 195 (2d Cir. 2008). While "the most straightforward way to raise such an inference for a corporate defendant will be to plead it for an individual defendant," "it is possible to raise the required inference with regard to a corporate defendant without doing so with regard to a specific individual defendant." *Id.*; *see, e.g.*, *MBIA*, 700 F. Supp. 2d at 590. Further, "an individual whose knowledge is imputed to the corporation . . . [need not] also 'make' the material misstatement." *Pa. Pub. Sch. Emps.' Ret. Sys.*

v. Bank of Am. Corp., 874 F. Supp. 2d 341, 372 (S.D.N.Y. 2012).

"The inquiry is whether *all* of the facts alleged, taken collectively, give rise to a strong inference of scienter, not whether any individual allegation, scrutinized in isolation, meets that standard." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 323 (2007) (emphasis in original). The inference "need not be irrefutable, *i.e.*, of the smoking gun genre, or even the most plausible of competing inferences," so long as it is "cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Id.* at 324.

A. Myriad Red Flags Surrounding the 1MDB Deals Establish Scienter

"[S]cienter may be found where there are specific allegations of various reasonably available facts, or 'red flags,' that should have put the officers on notice that the public statements were false." *In re Refco, Inc. Sec. Litig.*, 503 F. Supp. 2d 611, 649 (S.D.N.Y. 2007). These warning signs, like the scienter analysis generally, must be considered holistically. *See Philip*, 383 F. Supp. 2d at 475 ("multiple allegations of red flags, considered in the aggregate, support [scienter]"). Here, the red flags were legion.

First, numerous Goldman executives, including Blankfein and Cohn, personally reviewed and approved the 1MDB issuances despite a bevy of highly suspicious terms. ¶¶ 189, 206, 240, 319. No fewer than ***five Goldman committees***, including four powerful firmwide committees charged with reviewing major transactions—the Client and Business Standards Committee (chaired by ***Cohn***), the Risk Committee, the Capital Committee, and the Suitability Committee—approved each of the three deals, along with ***Blankfein***, then-Head of Investment Banking and current CEO David Solomon, and then-Global Head of Financing, now CFO Stephen Scherr. *Id.*; ¶ 313. The Asia Pacific Committee, chaired by Eugene Leouzon, Goldman's Global Chief Underwriting Officer, also reviewed the deals. ¶ 187. These executives knew the following:

- 1MDB agreed to pay $600 million in fees—***200 times the typical fee*** for comparable debt

offerings—which former Goldman partners said was "***a bright warning to its highest executives***" (¶¶ 243, 179, 305);

- 1MDB awarded all three of the issuances on a ***no-bid*** basis, foregoing the typical underwriter competition that would have cost the fund far less in fees (¶¶ 156, 165, 194);
- 1MDB emphasized the importance of speed and extreme secrecy—to the extent that Goldman employees were told to keep communications about the deals ***off email***—while offering no business justification for these conditions (¶¶ 175, 180, 200, 221-23);
- The deals were structured as private placements, rather than open market offerings, which was highly unusual for large sovereign offerings and cost 1MDB significantly more (¶¶ 174, 247);
- There was ***no stated purpose*** for nearly 50% of the first offering's funds, 58% of the second offering's funds, and 100% of the third offering's funds (¶¶ 177, 201, 222);
- 1MDB sought the second deal for $1.75 billion ***immediately*** after the first $1.75 billion issuance had funded, supposedly to make a $692 million acquisition that $744 million left over from the first offering should have been available to cover (¶¶ 177, 194, 202);
- Najib solicited Goldman for a third, ***$3 billion*** issuance within weeks of the second deal, despite 1MDB having raised $3.5 billion over the prior seven months. ¶ 217. The third offering came in the midst of Najib's reelection campaign, the subject of extensive corruption allegations, during which Low was seen organizing massive campaign events (¶¶ 224-25); and
- The Malaysian bonds were, bizarrely, guaranteed by Abu Dhabi-based IPIC, which received ***no fee*** but whose director had been publicly accused of demanding kickbacks. ¶¶ 151, 172.

The highly suspicious and irregular nature of these deals would have been immediately apparent to the many Goldman executives (including Blankfein and Cohn) who, possessing decades of experience at one of Wall Street's preeminent firms, personally reviewed and approved the deals. *See Refco*, 503 F. Supp. 2d at 648 ("The transactions were certainly large, and ***their timing, recurrent nature, and obvious lack of business purpose would certainly have been suspicious*** to anyone who became aware of them."). Defendants "proceeded, at the very least, with deliberate recklessness in the face of [these] red flags." *In re Countrywide Fin. Corp. Deriv. Litig.*, 554 F. Supp. 2d 1044, 1062-64 (C.D. Cal. 2008) (scienter alleged for the "members of [the] Committees charged with oversight of Countrywide's risk exposures" because they "were in a position to recognize the significance of these red flags, and, accordingly, investigate").

Second, the surrounding circumstances put Defendants on notice of potential fraud.

¶¶ 315-17. Malaysia was a hotbed of corruption, and Najib was renowned for graft. ¶¶ 81, 84-87.[8] From its inception, 1MDB was plagued by board resignations, outside auditor firings and resignations, skeptical media reports, and board minutes alleging corruption. ¶¶ 94-97. And unlike legitimate funds that relied on large institutional banks with rigorous compliance infrastructure, 1MDB insisted on using tiny BSI as its primary custodian bank. ¶ 98. Moreover, Low had been rejected by Goldman's own Compliance Department multiple times before the first bond deal even closed (¶¶ 120-24, 140-48), but the bank continued to work with him anyway. Knowledge of Low's involvement with 1MDB was widespread inside Goldman:

- CEO Blankfein was introduced to Low as 1MDB's key facilitator in 2009 (¶¶ 127-29), which Blankfein confirmed in additional meetings in the ensuing four years (¶¶ 214, 252-54);
- The key members of Goldman's 1MDB deal team, including Leissner, Vella, and Ng, were introduced to Low as 1MDB's central facilitator in 2009 (¶¶ 112-15, 119), and Low's role as 1MDB's representative was repeatedly confirmed over the next several years (¶¶ 131, 147-48);
- On April 4, 2012, Leissner informed the firmwide Capital Committee, firmwide Suitability Committee, and the Co-Head of Business Intelligence that Low was playing the critical role of arranging the first issuance to be guaranteed by IPIC, as Goldman had required (¶¶ 150, 162);[9]
- From 2014 to 2019, bankers in Hong Kong, Singapore, and Dubai repeatedly confirmed Low's involvement to the Compliance and Legal Departments (¶¶ 120-24, 140-45, 162, 261, 349); and
- Internal emails, the deal team's travel schedule, and meetings with Low reflected that Goldman was working with Low as 1MDB's representative (¶¶ 159, 234-35), and one managing director described Low in a March 2012 email as "***the*** 1MDB Operator or intermediary." ¶¶ 160-61.

Third, Goldman's own lead bankers on the deals—Vella and Leissner—were themselves red flags, with a known history of skirting compliance. Vella had overseen the account team

[8] Defendants' claim that Malaysia was not regarded as corrupt at the time (MTD 34) ignores that the *WSJ* and Ernst & Young reports appeared in 2012 and 2013, respectively. ¶ 81.

[9] Defendants' contention that "Leissner lied by stating Low had no *other* involvement in the 1MDB deals" besides arranging the IPIC guarantee (MTD 35) is immaterial. Leissner's admission that Low—whom Goldman itself had identified as a red flag—was in fact performing a key role belied Goldman's public statement and put the bank on notice that Low's involvement may be deeper than Leissner claimed, particularly in light of his own checkered history. ¶¶ 107-11.

accused of bribing Libyan officials with gifts and prostitutes that prompted FCPA investigations (¶¶ 67-74); and Leissner, well before 1MDB, had a reputation for ethical lapses and "never operat[ing] within boundaries," a trait that "was tolerated because he brought in business." ¶¶ 107-10. In 2010, Vella and Leissner advised the Malaysian state of Sarawak on an $800 million debt issuance that brought in a highly suspect fee ***50 times*** the typical amount and earning a public rebuke by an international watchdog organization for facilitating corruption. ¶¶ 136-38, 318.

Fourth, third parties involved in the offerings provided warnings about 1MDB, which Defendants ignored. For instance, rival investment bank Lazard refused to provide a valuation for 1MDB's acquisition target in Project Magnolia because the deal "***smacked of political corruption***," prompting Goldman to step in and complete the valuation to push the first offering through. ¶ 181. 1MDB's own custodian bank, BSI, objected to the transfer of the $3 billion in proceeds from the third offering to BSI instead of a global bank, prompting Goldman to intercede. ¶¶ 233-35. Goldman's *own outside counsel* also questioned the use of BSI. ¶¶ 236-38.

Against this mosaic of glaring red flags, many of which were actually seen by Blankfein and Cohn, Plaintiff's scienter allegations are "cogent and at least as compelling" as Defendants' suggestion that they were in the dark. *Tellabs*, 551 U.S. at 324. Regardless, "Plaintiffs do not need to show that the individual Defendants were ***personally involved*** with each . . . violation or even aware of any ***particular*** violation" to survive a motion to dismiss. *Pirnik v. Fiat Chrysler Automobiles*, 2016 WL 5818590, at *7 (S.D.N.Y. Oct. 5, 2016) (emphasis in original). Further, "a red flag need not reveal to a defendant ***all*** aspects of a given fraud." *Refco*, 503 F. Supp. 2d at 649. Rather, "it is enough at this stage for Plaintiffs to allege that Defendants were aware of nonpublic facts contradicting their public representations." *Pirnik*, 2016 WL 5818590, at *7. Plaintiff's precise allegations of "reasonably available facts," taken together, "should have put

[Defendants] on notice that the[ir] public statements were false." *Refco*, 503 F. Supp. 2d at 649.[10]

B. The Individual Defendants' Personal Participation in and Monitoring of Goldman's Dealings with 1MDB Establish Scienter

Plaintiff alleges in detail how the Individual Defendants, having publicly committed Goldman to rigorous compliance reforms, post-transaction monitoring, and internal reporting mechanisms, overlooked the red flags above, ignored explicit warnings from the bank's compliance staff and senior executives, and retaliated against those who voiced concerns in Goldman's quest to wring underwriting fees from 1MDB. "At this preliminary stage of the proceedings, [plaintiff] has pled with sufficient particularity that Defendants had knowledge of facts or access to information contradicting their public statements . . . and thus were reckless." *Dodona I, LLC v. Goldman, Sachs & Co.*, 847 F. Supp. 2d 624, 641-42 (S.D.N.Y. 2012).

Blankfein. Blankfein was integral to Goldman's lucrative 1MDB business, having chosen to personally involve himself in the relationship from its outset and possessing critical knowledge of the red flags surrounding it—including the central role of Low and the bond offerings' highly irregular terms. Indeed, before, during, and after the three offerings, Blankfein met with Low to discuss how Goldman could serve as 1MDB's investment bank. All of these meetings occurred *after* Goldman's own Global Compliance Department had repeatedly flagged Low as someone with whom the bank should not do business or have a relationship. ¶¶ 316-17. Specifically:

- On November 22, 2009, Blankfein met with Low, Leissner, and Najib, where the four discussed Goldman serving as 1MDB's underwriter (¶¶ 127-29);
- Between the second and third 1MDB bond offerings, amid the red flags discussed above, *Blankfein met one-on-one with Low* in late 2012 (¶ 214); and
- On September 25, 2013, Blankfein *again* met with Low, Leissner, and Najib in New York to

[10] Defendants' claim that Goldman's scienter is "[n]egated" by its share repurchases (MTD 39) fails, as "[b]uying back stock . . . does not in and of itself refute the strong inference of scienter raised by plaintiffs' other allegations." *In re Guilford Mills, Inc. Sec. Litig.*, 1999 WL 33248953, at *5 (S.D.N.Y. July 21, 1999) ("A company buys back its stock for any number of reasons.").

discuss how Goldman could do more business with 1MDB. ¶¶ 252-53.

As the *Harvard Law School Forum on Corporate Governance and Financial Regulation* observed, a meeting with Blankfein, one of the world's most powerful bankers, would come only after "the most rigorous background checks and due diligence." ¶ 215. Blankfein also reviewed each of the deals and thus was exposed to all of the red flags discussed above. ¶¶ 189, 206, 240. That Blankfein met with Low—not once, but at least ***three*** times—reflects that Blankfein was willing to overlook those red flags and Goldman's own internal compliance warnings to pursue lucrative fees. Tellingly, after the Federal Reserve had explicitly warned Goldman of "reputational risk" from the 1MDB deals (¶ 255), Blankfein urged his bankers to emulate Leissner and Vella, declaring: "***Look at what Tim and Andrea did in Malaysia***. ***We have to do more of that***." ¶ 270.

Cohn. Cohn was instrumental to Goldman's 1MDB business both in devising the strategy to "monetize the state" that led Goldman to the fund in the first place (¶ 63) and in giving personal support to the deals that "afforded significant cover to those involved in the 1MDB business and drowned out the voices who were uncomfortable." ¶ 155 (quoting *BDW* at 182-83). Cohn repeatedly stifled concerns raised by David Ryan, President of Goldman Asia, about each of the bond deal's terms, including the lack of rigorous due diligence and negotiation, the absence of a competitive bidding process, and Goldman's astronomical fees despite the bank's lack of any real risk. ¶¶ 205, 232. Overruling Ryan, Cohn short-circuited the additional investigation by Legal and Compliance and, after the second deal, installed Mark Schwartz, a proponent of the 1MDB relationship, as Chair of Goldman Asia, a post above Ryan. *Id*. Ryan resigned in June 2013, just months after he cautioned Goldman about the third offering. *Id*. Meanwhile, in his capacity as Chair of the Client and Business Standards Committee, Cohn personally reviewed and approved each of the deals and was directly exposed to the red flags discussed above, later boasting to journalists about the $600 million Goldman received in the deals. ¶¶ 57, 155, 243, 326-28.

That Cohn scorned the red flags about the deals' terms and Ryan's warnings about those terms *three times* demonstrates scienter. *Countrywide*, 554 F. Supp. 2d at 1060 (scienter alleged where "there is evidence that at least some of the high-ranking witnesses conveyed their concerns to even higher levels of the Company"). So, too, does his decision to marginalize the highly regarded Ryan by installing Mark Schwartz above him.[11] *In re Silvercorp Metals, Inc. Sec. Litig.*, 26 F. Supp. 3d 266, 275-76 (S.D.N.Y. 2014) (retaliatory actions against whistleblower constitute evidence of scienter). Cohn's disregard for Ryan's admonitions—in violation of the BSC reforms that Cohn and Blankfein had publicly touted (¶¶ 53, 60)—reflects an "incongruity between word and deed [that further] establishes a strong inference of scienter." *In re Citigroup Inc. Sec Litig.*, 753 F. Supp. 2d 206, 238 (S.D.N.Y. 2010). And while Defendants dismiss Cohn's treatment of Ryan as a "difference[] of opinion" (MTD 32), the inference that Cohn—intent on reaping massive underwriting fees by "monetizing" the 1MDB relationship—recklessly ignored the many red flags and silenced Ryan is "at least as compelling as any opposing inference." *Tellabs*, 551 U.S. at 324; *see Micholle*, 2019 WL 4464802, at *15 ("a tie on scienter goes to the plaintiff").

Schwartz. By attesting to the accuracy of Goldman's SEC filings, including his avowals of effective risk controls, Schwartz "failed to check information [he] had a duty to monitor" as the attesting CFO, despite his "access to [contrary] information." *Novak*, 216 F.3d at 311; *see* ¶ 392.

C. The Scienter of Other Senior Managers Is Imputed to Goldman

"There is no formulaic method or seniority prerequisite for employee scienter to be imputed to the corporation, but scienter by ***management-level employees*** is generally sufficient to attribute

[11] This principle also applies to the treatment of Executive Director Alex Turnbull, who voiced disbelief about Project Magnolia's terms and was then reprimanded by Goldman's Compliance Department, told to keep his mouth shut, and demoted to the so-called "b-track." ¶¶ 167-69. Such retaliation further supports Goldman's scienter. *See Silvercorp Metals*, 26 F. Supp. 3d at 275.

scienter to corporate defendants." *In re Moody's Corp. Sec. Litig.*, 599 F. Supp. 2d 493, 515-16 (S.D.N.Y. 2009); *accord Patel v. L-3 Commc'ns Holdings Inc.*, 2016 WL 1629325, at *14 (S.D.N.Y. April 21, 2016). In addition to the knowledge of Blankfein, Cohn, and the multiple committees that reviewed the 1MDB deals, Plaintiff alleges scienter as to Leissner, Vella, Evans, and Shawki which may also be imputed to Goldman. *Dynex*, 531 F.3d at 195.

Leissner and Vella. Courts routinely attribute the scienter of more junior executives to the corporate defendant where they had direct involvement in the underlying fraud. *See, e.g.*, *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d 160, 177-78 (2d Cir. 2015) (imputing corporate scienter from knowledge of managing director involved in underlying scheme); *Richman*, 868 F. Supp. 2d at 281 n.10 (imputing knowledge of Goldman's Mortgage Department head to Goldman). Leissner and Vella, each of whom approved the payment of bribes to state officials to secure 1MDB's business (¶¶ 153-54), were sufficiently senior to bind Goldman. Leissner began the 1MDB relationship as Goldman's Chair of Investment Banking for Southeast Asia and was later promoted to Chair of Southeast Asia after helping to generate the $600 million in fees through the 1MDB deals, while Vella was promoted to Co-Head of Investment Banking for Asia. ¶¶ 331-32. *See Patel*, 2016 WL 1629325, at *14 ("Although . . . these managers were all below the corporate level, there is no simple formula for how senior an employee must be in order to serve as a proxy for corporate scienter.").[12] And while Leissner may have "enrich[ed] himself" (MTD 38), Goldman profited many times more from the fraud: the $600 million in fees

[12] Defendants' cases are inapposite. *See* MTD 38 (citing *Schiro v. Cemex, S.A.B. de C.V.*, 396 F. Supp. 3d 283, 304 (S.D.N.Y. 2019) (refusing to impute scienter of an officer of the company's Colombian subsidiary because the subsidiary "was not sufficiently central to Cemex's overall business"); *Thomas v. Shiloh Indus., Inc.*, 2018 WL 4500867, at *4 (S.D.N.Y. Sept. 19, 2018) ("Far from being in charge of an entire division or region, Halterman supervised accounting at just one of Shiloh's twenty-one plants.")). Leissner and Vella headed large divisions of Goldman (¶¶ 331-33), and the deals were celebrated firm-wide as major drivers of Goldman's revenue. ¶ 193.

that Goldman received from 1MDB in about 12 months was nearly equal to the $694 million in revenue from its *entire* bond underwriting business in the *first quarter of 2013*. ¶ 243; *see In re Eletrobras Sec. Litig.*, 245 F. Supp. 3d 450, 471-72 (S.D.N.Y. 2017) (when "there is a benefit to both the insider and the corporation," insider's intent imputed to company).[13]

Moreover, Goldman's argument that because Leissner and Vella duped the victims of the 1MDB offerings, it is exonerated from defrauding its own investors, is baseless. MTD 38. Leissner and Vella each knew that the challenged statements were misleading—for example, that Low *was* involved and that payments to third parties *were* made from bond proceeds—and their knowledge is imputed to Goldman even though neither made the statements.[14] *Bank of Am.*, 874 F. Supp. 2d at 372. Meanwhile, Goldman had every reason to mislead its shareholders about its role in the 1MDB scandal, which, when revealed, caused its shareholders substantial losses. *Cf. In re PetroChina Co. Ltd. Sec. Litig.*, 120 F. Supp. 3d 340, 362 (S.D.N.Y. 2015) (observing in evaluating corporate scienter that "it was in PetroChina's interest for any corruption occurring within the Company to remain undisclosed in order to preserve its shareholders' confidence").[15]

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[13] The claim that Goldman "self-report[ed]" is groundless. MTD 36 n.24. While the bank may have disclosed Leissner's letter to authorities, *it had received a subpoena from the DOJ*. Ex. 60. More importantly, Goldman then made a series of false statements denying all wrongdoing and even knowledge of Low's involvement in the bond deals. ¶¶ 271-94. Far from exonerating Goldman, prosecutors have recommended a guilty plea *at the parent company level*. ¶ 298.

[14] *Barilli v. Sky Solar Holdings, Ltd.* does not control. 389 F. Supp. 3d 232, 268 (S.D.N.Y. 2019) (cited at MTD 37-38). Courts in this circuit regularly impute to a corporate defendant the scienter of individuals that did not oversee the alleged misstatements. *See, e.g.*, *Loreley Fin.*, 797 F.3d at 177-78; *In re VEON Ltd. Sec. Litig.*, 2017 WL 4162342, at *10 (S.D.N.Y. Sept. 19, 2017) (scienter of managers alleged to have "orchestrated a bribery scheme" imputed to company despite managers not having "had any role in financial reporting" alleged to have been misleading).

[15] *ECA* does not apply. MTD 38. In *ECA*, which involved allegations that JP Morgan created disguised loans to help Enron conceal its debt, the court found that even if JP Morgan "was actively engaged in duping" Enron's shareholders, "it would not constitute a motive . . . to defraud its own investors." 553 F.3d at 203. Here, by contrast, having touted its risk management framework, Goldman had every motivation to preserve its shareholders' confidence in such risk controls and then deny its culpability once implicated in the 1MDB scandal.

Evans. Michael Evans, Global Head of Growth Markets and Chairman of Goldman Asia, told Najib in January 2013 that Goldman would issue a third, $3 billion debt offering amidst Najib's reelection campaign, despite the absence of any legitimate rationale, later meeting with Najib on a yacht chartered by Low to deepen the connection. ¶¶ 216-21, 251. Evans has been criminally charged in Malaysia. ¶ 298. His knowledge and participation is imputed to Goldman.

Shawki. In the Coastal Energy deal, Shawki knew that, contrary to Goldman's statement (¶ 351), Goldman *was* advising Low and SRG and that Compliance viewed Low as a grave risk, forcing Shawki's team to nominally switch clients to hide Low's role—a move *blessed by Compliance itself*. ¶¶ 260-62. Shawki also knew of the dubious $350 million payout back to Low a week after the deal closed. ¶¶ 264-65. As Head of Investment Banking for the Middle East—managing a region thousands of miles away from Leissner and Vella—Shawki's misconduct belies the "rogue banker" defense pinning blame on Leissner and confirms the DOJ's indictment of a "business culture" at Goldman that prioritized deal-making ahead of proper compliance. ¶ 283.[16]

IV. PLAINTIFF ADEQUATELY ALLEGES SECTION 20(a) CLAIMS

Plaintiff alleges primary violations and that each Individual Defendant had actual control over Goldman's statements. ¶¶ 442-44. While courts disagree whether "culpable participation" need be pled at all, *e.g.*, *In re WorldCom, Inc. Sec. Litig.*, 294 F. Supp. 2d 392, 416 (S.D.N.Y. 2003), Plaintiff's scienter allegations as to each Individual Defendant suffice.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' motion in its entirety.[17]

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[16] Defendants' one-sentence argument regarding Shawki (MTD 39) fails because the article which Defendants claim disclosed the concealed facts contained ***denials*** of those very facts, negating any curative effect of the disclosure. ¶¶ 350-52; *see MBIA*, 700 F. Supp. 2d at 582.

[17] Should the Court grant Defendants' motion, Plaintiff respectfully requests leave to amend.

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Respectfully submitted,

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