

March 23, 2021

RE: Critical Investor Rights at Stake in Supreme Court

It has come to our attention that the United States Supreme Court has agreed to hear a securities fraud case that has potentially far-reaching and devastating implications for investor protection and market integrity. At stake is investors' ability to hold corporations accountable in court for securities fraud. We, the undersigned groups and individuals, represent a broad coalition of consumer, investor, and labor organizations that are committed to protecting investors and holding bad corporate actors accountable.

The case, *Arkansas Teacher Retirement System v. Goldman Sachs Group Inc.* ("Goldman"), was originally filed over ten years ago by shareholders of Goldman Sachs who bought stock in the early days of the 2008 financial crisis at a price artificially inflated by Goldman's false statements regarding its high standards of conduct and strong protections against conflicts of interest. Unknown to the customers and investors of Goldman Sachs, Goldman was reaping rich rewards from the creation of a complex type of mortgage-backed security, known as a "collateralized debt obligation" (CDO), backed by mortgages that it knew were problematic and likely to fail.<sup>i</sup> In one particularly egregious case, Goldman worked with one favored hedge fund customer, who was planning to short (or bet against) a particular CDO, to maximize its chances of failure. Goldman then turned around and sold that CDO to other unsuspecting customers without warning them it had been designed to fail.<sup>ii</sup> Even worse, Goldman's internal proprietary trading desk followed those funds with large bets against those mortgages to generate \$4 billion in profits for itself.<sup>iii</sup>

During this time when Goldman was profiting from playing one set of customers off against another, it continued to issue solemn public assurances that it had "extensive procedures and controls that are designed to identify and address conflicts of interest" and that "[o]ur clients' interests always come first." Goldman's executives knew there was a problem and began selling off their shares in the company at a fast pace in 2007 before the news broke.<sup>iv</sup> When the news of Goldman's practices finally surfaced, the price of the company's stock plummeted, and those investors who had placed their trust in Goldman's assurances about its high standards suffered heavy financial losses. Some of those investors, led by the Arkansas Teachers Retirement System, sought to file a class action lawsuit to recoup their losses. Ten years later, as Goldman continues to try and evade accountability by fighting against the class action moving forward, the issue before the Supreme Court is not whether the investors should ultimately prevail, but simply whether the investors will even be allowed the opportunity to have their arguments heard.

We believe that no company should be able to hide behind procedural issues to avoid accountability for clear misconduct. For over ten years, Goldman Sachs has done just that; fighting to prevent the case from moving forward to a discussion on the merits. Second, no company should be able to claim that the public statements they make about their high standards of conduct are meaningless. Indeed, the statements Goldman Sachs made about managing conflicts and acting in customers' best interest carry specific regulatory meaning and thus cannot be dismissed as mere "puffery." Lastly, we believe that investors' right to hold corporations accountable in court for securities fraud is critical to both deterring fraud and recouping investor

losses. Together with strong government enforcement, private securities litigation helps to deter fraud and ensure the integrity and stability of the US capital markets.

Millions of Americans today are deeply disillusioned about the integrity of our markets, convinced that the markets are rigged against them. With this critical case, the Supreme Court has the opportunity to help restore their faith by showing that no company is too big or too powerful to be held accountable. Our hope is that, by allowing defrauded investors the right to seek accountability, the Court will make it clear that words do matter and companies have a responsibility to speak truthfully.

American Association for Justice  
American Federation of State, County and Municipal Employees (AFSCME)  
Alaska PIRG  
American Family Voices  
Americans for Financial Reform Education Fund  
California Reinvestment Coalition and  
Center for Economic Integrity  
Center for Economic Justice  
Center for Justice & Democracy  
Chicago Consumer Coalition  
Columbia Consumer Education Council  
The Committee for the Fiduciary Standard  
Consumer Action  
The Consumer Assistance Council, Inc.  
Consumer Federation of America  
Consumer Federation of California  
Consumers for Auto Reliability and Safety  
Delaware Community Reinvestment Action Council, Inc.  
Demand Progress Education Fund  
Florida Silver Haired Legislature Inc.  
Fund Democracy  
Institute for Agriculture and Trade Policy  
International Brotherhood of Teamsters  
Mid-Pinellas (Florida) Coalition of Neighborhood Associations  
New Jersey Citizen Action  
People's Parity Project  
Public Justice  
Revolving Door Project  
Service Employees International Union (SEIU)  
Strategic Organizing Center  
Texas Watch  
U.S. PIRG  
Virginia Citizens Consumer Council

Lev Bagramian, Former U.S. Senate Banking Committee Staff\*

Phyllis Borzi, Former Assistant Secretary, U.S. Department of Labor\*

James D. Cox, Professor of Law, Duke University School of Law\*

Erik F. Gerding, Professor of Law, University of Colorado Law School\*

Michael Greenberger, Law School Professor, University of Maryland Carey School of Law\*

\* Affiliation provided for identification purposes only

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<sup>i</sup> Department of Justice Press Release, Goldman Sachs Agrees to Pay More than \$5 Billion in Connection with Its Sale of Residential Mortgage Backed Securities (Apr. 11, 2016), <https://www.justice.gov/opa/pr/goldman-sachs-agrees-pay-more-5-billion-connection-its-sale-residential-mortgage-backed>. (“The settlement includes a statement of facts to which Goldman has agreed. That statement of facts describes how Goldman made false and misleading representations to prospective investors about the characteristics of the loans it securitized and the ways in which Goldman would protect investors in its RMBS from harm.”)

<sup>ii</sup> Securities and Exchange Commission Press Release, Goldman Sachs to Pay Record \$550 Million to Settle SEC Charges Related to Subprime Mortgage CDO, Firm Acknowledges CDO Marketing Materials Were Incomplete and Should Have Revealed Paulson's Role (Jul. 15, 2010) <https://www.sec.gov/news/press/2010/2010-123.htm>. (“In its [April 16 complaint](#), the SEC alleged that Goldman misstated and omitted key facts regarding a synthetic collateralized debt obligation (CDO) it marketed that hinged on the performance of subprime residential mortgage-backed securities. Goldman failed to disclose to investors vital information about the CDO, known as ABACUS 2007-AC1, particularly the role that hedge fund Paulson & Co. Inc. played in the portfolio selection process and the fact that Paulson had taken a short position against the CDO.”)

<sup>iii</sup> Kate Kelly, How Goldman Won Big on Mortgage Meltdown, *The Wall Street Journal* (Dec. 14, 2007), <https://www.wsj.com/articles/SB119759714037228585>.

<sup>iv</sup> U.S. Senate, Permanent Subcommittee on Investigations, Wall Street and the Financial Crisis: Anatomy of a Financial Collapse, Majority and Minority Staff Report, Section VI. C. Failing to Manage Conflicts of Interest: Case Study of Goldman Sachs (Apr. 13, 2011), [https://www.hsgac.senate.gov/imo/media/doc/PSI%20REPORT%20-%20Wall%20Street%20&%20the%20Financial%20Crisis-Anatomy%20of%20a%20Financial%20Collapse%20\(FINAL%205-10-11\).pdf](https://www.hsgac.senate.gov/imo/media/doc/PSI%20REPORT%20-%20Wall%20Street%20&%20the%20Financial%20Crisis-Anatomy%20of%20a%20Financial%20Collapse%20(FINAL%205-10-11).pdf). *See, also*, Insider Monitor, Insider Trading activities at Goldman Sachs Group Inc (GS), <https://www.insider-monitor.com/trading/cik886982.html>.