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## STATEMENT OF DISCIPLINARY ACTION

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### The disciplinary action

1. The Securities and Futures Commission (**SFC**) has reprimanded and fined Goldman Sachs (Asia) L.L.C. (**Goldman Sachs Asia**)<sup>1</sup> US\$350 million (HK\$2,712.5 million) pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken in relation to Goldman Sachs Asia's management supervisory, risk, compliance and anti-money laundering (**AML**) control failures in connection with three bond offering transactions arranged and underwritten by Goldman Sachs International (**GSI**)<sup>2</sup> for 1Malaysia Development Berhad (**1MDB**)<sup>3</sup> in 2012 and 2013 (**Bond Transactions**).

### Summary of facts

#### A. Background

3. Between 2009 and 2015, as 1MDB raised money to fund its projects, billions of dollars were reportedly misappropriated and fraudulently diverted from 1MDB by high-level officials of 1MDB and their associates through a conspiracy involving money laundering and bribery. This included US\$2.6 billion of the funds raised in the Bond Transactions known internally at The Goldman Sachs Group, Inc.<sup>4</sup> and its subsidiaries and affiliates (collectively **Goldman Sachs**) as "Project Magnolia", "Project Maximus", and "Project Catalyze".
4. In August 2018, **Tim Leissner (Leissner)**, a responsible officer (**RO**) of Goldman Sachs Asia as well as a Participating Managing Director in the Investment Banking Division (**IBD**) of Goldman Sachs at the material time, pleaded guilty to criminal charges brought by the United States Department of Justice (**US DOJ**) against him for conspiring to commit money laundering and violate the Foreign Corrupt Practices Act. He admitted, among others, that:
  - (a) while acting within the scope of his employment and **with the intent to benefit Goldman Sachs and himself, he conspired with a Malaysian financier, Low Taek Jho, also known as Jho Low (Low), and others** to pay

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<sup>1</sup> Goldman Sachs Asia is licensed under the SFO to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 5 (advising on futures contracts), Type 6 (advising on corporate finance) and Type 9 (asset management) regulated activities.

<sup>2</sup> GSI is an affiliate of Goldman Sachs Asia based in the United Kingdom and is not licensed by the SFC. GSI was the entity which arranged and underwrote the bond offerings, but the actual work was conducted by deal team members in multiple jurisdictions, and revenue generated from the transactions was shared among Goldman Sachs entities in the different jurisdictions.

<sup>3</sup> 1MDB is a strategic investment and development company wholly-owned by the Malaysian government. It was formed in 2009 to pursue investment and development projects for the economic benefit of Malaysia and its people.

<sup>4</sup> The Goldman Sachs Group, Inc. is Goldman Sachs Asia's parent company and substantial shareholder and is not licensed by the SFC.

bribes and kickbacks to Malaysian and Abu Dhabi government officials to obtain and retain business from 1MDB for Goldman Sachs;

- (b) as a result of these bribes and kickbacks, Goldman Sachs received substantial business from 1MDB, including the Bond Transactions, which resulted in substantial fees and revenues for Goldman Sachs; and
  - (c) funds raised in the Bond Transactions were diverted to himself and others and laundered through financial systems<sup>5</sup>.
5. In January 2020, the Board of Governors of the Federal Reserve System of the United States (**Federal Reserve**) permanently barred Andrea Vella (**Vella**), a former RO of Goldman Sachs Asia, from the banking industry for his role in the Bond Transactions<sup>6</sup>.
6. Goldman Sachs Asia itself was also charged in Malaysia for abetting GSI in making false and misleading statements in the offering documents for the Bond Transactions. Goldman Sachs settled the criminal proceedings with the Malaysian government for US\$2.5 billion plus a US\$1.4 billion guarantee in August 2020<sup>7</sup>.

#### **B. Goldman Sachs Asia's involvement in the Bond Transactions**

7. Although Goldman Sachs Asia was not a contractual party to the Bond Transactions, it had significant involvement in the origination, approval, execution and sales process of all three Bond Transactions. Among all Goldman Sachs entities, Goldman Sachs Asia was allocated the largest share (37%) of Goldman Sachs's total revenue of US\$567 million generated from the Bond Transactions as a result of its role in the Bond Transactions.
8. Goldman Sachs Asia's involvement in the Bond Transactions is evident by the following:
- (a) the majority of the key IBD bankers who had a substantial role in the origination, structuring and execution of the Bond Transactions were licensed persons accredited to Goldman Sachs Asia;
  - (b) Goldman Sachs Asia's ROs and licensed representatives in the Principal Funding and Investment Desk under the Securities Division were involved in the distribution of the bonds and managing the risks associated with holding the bonds over time;

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<sup>5</sup> The SFC has banned Leissner from re-entering the industry for life. Please refer to the SFC's press release published on 3 July 2019.

<sup>6</sup> The ban was imposed pursuant to an Order of Prohibition dated 31 January 2020 upon the consent of Vella on a "no admission of liability" basis. Please see the press release published by the Federal Reserve on 4 February 2020.

<sup>7</sup> The settlement comprised a payment of US\$2.5 billion by Goldman Sachs to the Malaysian government and a guarantee by Goldman Sachs that the Malaysian government will receive at least US\$1.4 billion in proceeds from assets related to the Bond Transactions seized by government authorities around the world. As a result of the settlement, Goldman Sachs Asia, GSI and Goldman Sachs (Singapore) PTE were acquitted of all criminal charges. Charges against 17 current and former directors of these three Goldman Sachs entities (including 10 directors of Goldman Sachs Asia at the time of the Bond Transactions) were also dropped.

- (c) Goldman Sachs Asia's staff members in the Business Intelligence Group (BIG) under the Legal Department were responsible for conducting business, legal and regulatory due diligence to identify AML and corruption issues associated with the Bond Transactions, such as ascertaining whether Low or any other intermediaries had any roles in the Bond Transactions; and
- (d) senior personnel of Goldman Sachs Asia were members of Goldman Sachs's Asia Standard Committee (ASC), Asia Pacific Capital Committee (APCC) and Asia Pacific Suitability Committee (APSC), which discussed, examined and/or approved the Bond Transactions.

### C. Serious lapses in management oversight

- 9. Goldman Sachs Asia failed to detect Leissner's misconduct, notwithstanding that there were numerous red flags which raised questions as to the commercial rationale of the Bond Transactions and serious money laundering and/or bribery risks. Whilst the deal team and control functions took note of many of the red flags and appeared to have taken some steps to discuss and address them, Goldman Sachs adopted a piecemeal approach in resolving the issues and had not properly considered the wider and "bigger picture" concerns about the commercial rationale of the Bond Transactions. Goldman Sachs Asia allowed the Bond Transactions to proceed when numerous red flags surrounding the transactions had not been properly scrutinised and satisfactory answers to the red flags had not been obtained.

#### I. Misconduct of Leissner and co-conspirators not detected

- 10. One of Leissner's co-conspirators was Low, who did not hold a formal position at 1MDB but acted as a finder and intermediary in relation to 1MDB and other government officials on various financial projects, including the Bond Transactions.
- 11. Before the Bond Transactions, Goldman Sachs's control functions had twice rejected Low as a private wealth management client as his source of wealth could not be verified, resulting in a potential money laundering risk. BIG had also rejected other opportunities to advise Low as a client.
- 12. Goldman Sachs was aware that firstly, Leissner and Low were acquaintances; and secondly, Low was very close to 1MDB and government officials in Malaysia and Abu Dhabi. BIG also learnt that Low arranged and/or attended a meeting between Leissner and the Chairman of International Petroleum Investment Company P.J.S.C. (IPIC)<sup>8</sup>, which acted as the guarantor in the first two Bond Transactions, when no one in Goldman Sachs had succeeded in doing so after 4 years of trying.
- 13. Leissner did not have any reporting lines or managers specifically for the Bond Transactions and was effectively overseen only by the regional and firmwide committees that vetted the Bond Transactions. The possible involvement of Low was brought to the attention of these committees but they accepted

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<sup>8</sup> IPIC is an investment fund wholly owned by the government of Abu Dhabi in the United Arab Emirates.

Leissner's assertion that Low had no roles in the Bond Transactions without making further inquiries.

14. The SFC is concerned that Goldman Sachs Asia did not have adequate controls in place to monitor staff and detect misconduct on a day-to-day level, essentially giving Leissner free rein in the execution of the Bond Transactions, enabling him to provide misleading information to and/or conceal information from Goldman Sachs without being adequately challenged.

## II. Inadequate inquiries into numerous red flags

15. Apart from the involvement of Low, there were a number of red flags present in the Bond Transactions which should have called for a closer examination of the corruption and money laundering risks involved. Despite the scrutiny of the Bond Transactions by various regional and firmwide committees, including the ASC, APCC and APSC (collectively the **GS Committees**), these issues had not been looked into in-depth and properly addressed before the deals were approved.

### (a) Fees earned by Goldman Sachs in the Bond Transactions

16. Goldman Sachs received a total of US\$581.5 million in fees from 1MDB in the Bond Transactions. This represented about 9% of the aggregate amount of funds raised in the Bond Transactions. Specifically:

- (a) in Project Magnolia, Goldman Sachs received a fee of US\$192.5 million, representing 11% of the principal amount of the bonds issued;
- (b) in Project Maximus, Goldman Sachs received a fee of US\$110 million, representing 6.3% of the principal amount of the bonds issued; and
- (c) in Project Catalyze, Goldman Sachs received a fee of US\$279 million, representing 9.3% of the principal amount of the bonds issued.

17. The revenue Goldman Sachs earned from the Bond Transactions alone was more than double the total revenue it generated from acting as an arranger and/or underwriter in 213 other Asia ex-Japan bond offerings in the five years between 2011 and 2015.

18. Further, 1MDB awarded the mandates for Project Magnolia and Project Catalyze to GSI without any competitive process (or so-called "beauty parade") at all. For Project Maximus, although it appears that there was some sort of a competitive process, such process was not initiated by 1MDB itself but only done at the request of Goldman Sachs.

19. The fees, together with the fact that 1MDB awarded the sole mandates to Goldman Sachs three times in a row without going through a competitive process, should have caused Goldman Sachs to question how the business was obtained from 1MDB, the reasonableness of the mandates, and whether the circumstances leading to such business raised any suspicions of bribery or other illicit conduct. Nonetheless, Goldman Sachs's control functions, which were responsible for anti-corruption issues, did not raise any question or

conduct any investigation about the fees and the award of the mandates<sup>9</sup>. The GS Committees approved the Bond Transactions without discussing this important issue or ascertaining why 1MDB, being a state-owned entity, was willing to pay such high fees.

20. The SFC is of the view that Goldman Sachs Asia had not exercised due care and diligence in examining and approving the Bond Transactions by failing to make the appropriate inquiries in relation to the mandates and fees.

*(b) Use of proceeds and deal structure*

21. 1MDB engaged Goldman Sachs to raise US\$6.5 billion debt capital through the Bond Transactions within a short period of 10 months. The funds raised in each Bond Transaction far exceeded the actual needs of 1MDB.
22. The gross proceeds from Project Magnolia (closed in May 2012) was US\$1.75 billion, when 1MDB only required US\$810.4 million (i.e. 46.3% of the proceeds) to partially fund the acquisition of an independent power producer. The balance of the net proceeds were purportedly to be used for general corporate purposes, including future acquisitions.
23. Less than 5 months later, 1MDB raised another US\$1.75 billion through Project Maximus (closed in October 2012), when it only needed US\$692.4 million (i.e. 39.6% of the proceeds) from the Project Maximus bonds to partially fund the acquisition of another independent power producer and some related land. Again, the balance of the net proceeds were purportedly to be used for general corporate purposes, including future acquisitions.
24. But for the embezzlement of funds raised in Project Magnolia by Leissner and his co-conspirators, the residue proceeds from the previous issue would almost have been sufficient to meet 1MDB's immediate need to fund the acquisition. As Goldman Sachs was not aware of the embezzlement, it should have been apparent to it that Project Maximus was almost redundant.
25. Within 5 months after the closing of Project Maximus, 1MDB raised another US\$3 billion through Project Catalyze (closed in March 2013), when the residue of the proceeds from the previous two issues (around US\$1.6 billion) was still unutilized (but for the embezzlement by Leissner and his co-conspirators). This time, the whole of the net proceeds would purportedly be used for funding a joint venture between 1MDB and a subsidiary of IPIC, although the joint venture had not yet identified specific projects in which it would invest. As Goldman Sachs was aware, the structure of the deal would result in negative carry<sup>10</sup> for 1MDB as the deal was being placed on an expedited timeline with no immediate need for the funds.
26. Goldman Sachs was aware that 1MDB was in a weak financial position with questionable ability to service existing debts even before Project Magnolia. However, in each of the Bond Transactions, 1MDB chose to do a private placement instead of a public issue purportedly to meet its objectives of

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<sup>9</sup> Save that BIG requested a review of the emails of the deal team members after Project Magnolia had closed. The review did not identify any issues of concern.

<sup>10</sup> The cost of borrowing the money for 1MDB would exceed its immediate return on the proceeds.

preserving confidentiality of the transaction and speed of execution, even though a public issue implied significant saving in interest payments.

27. 1MDB also requested that Goldman Sachs provide principal funding (i.e. a hard underwriting) for each of the issuances, despite 1MDB having no urgent need for most of the funds raised and the fact that a hard underwriting would result in higher fees for the underwriter, leading to lower net proceeds to the issuer. This raised a red flag as to whether the proposed structure was in 1MDB's best interest.
28. The above matters raised questions as to the commercial rationale of the Bond Transactions and should have given rise to suspicion on the part of Goldman Sachs. 1MDB's repeated emphasis on confidentiality and speed of execution in the circumstances was also a red flag. However, the GS Committees only superficially queried 1MDB's rationales and the use of proceeds, without adequately investigating the more fundamental question about the risks of fraud and money laundering associated with the Bond Transactions.
29. The SFC is of the view that Goldman Sachs Asia had failed to make adequate inquiries and obtain satisfactory responses in relation to money laundering red flags before proceeding with the Bond Transactions.

*(c) Banks used by 1MDB to receive the bond proceeds*

30. 1MDB used foreign private banks rather than Malaysian commercial banks to receive the net proceeds of the Bond Transactions.
31. In both Project Magnolia and Project Maximus, 1MDB instructed GSI to pay the net proceeds to a bank in New York for the account of Falcon Private Bank Ltd (**Falcon**)<sup>11</sup>, to be further credited to an account at Falcon's Hong Kong branch. Although Falcon was owned by a subsidiary of IPIC, Goldman Sachs should have made further inquiries in light of the unusual payment instruction and account structure.
32. In Project Catalyze, 1MDB instructed GSI to pay the net proceeds via another bank in New York to an account at BSI SA (**BSI**), a private bank based in Switzerland. Although there was evidence linking BSI to Low, Goldman Sachs's compliance functions considered that there were no AML issues. Goldman Sachs did not make any inquiry to verify the purported reasons proffered by 1MDB for depositing nearly US\$3 billion bond proceeds into BSI despite the substantial credit risk.

*(d) Negative media*

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<sup>11</sup> Falcon is a private bank based in Switzerland and owned by a subsidiary of IPIC. In October 2016, the Swiss Financial Market Supervisory Authority (**FINMA**) sanctioned Falcon for breaching Swiss money laundering regulations in relation to its transactions and business relationships associated with 1MDB between 2012 and 2015. FINMA fined Falcon CHF 2.5 million and banned it from entering into business relationships with foreign politically exposed persons for a period of 3 years. The Monetary Authority of Singapore (**MAS**) also withdrew the merchant bank status of Falcon's Singapore branch in October 2016 for serious failures in AML controls, after examining 1MDB-related fund flows that took place through the branch between 2013 and 2015. Please refer to the press releases of FINMA and MAS dated 11 October 2016.

33. In the course of reviewing the Bond Transactions, BIG had found plenty of negative media reports which indicated high corruption risks associated with 1MDB and which raised questions about the integrity of 1MDB and the transactions it had entered into. However, BIG regarded the allegations in the media against 1MDB as politically motivated without taking adequate steps to assess the veracity of those allegations.

**D. Goldman Sachs Asia's regulatory breaches**

34. In light of the above, the SFC considers that Goldman Sachs Asia has failed to:
- (a) supervise diligently its senior personnel who were involved in the execution of the Bond Transactions and to ensure that they maintained appropriate standards of conduct;
  - (b) identify and/or adequately address money laundering and bribery concerns when there were numerous red flags in the Bond Transactions;
  - (c) exercise due skill, care and diligence, and act in the best interest of its client and the integrity of the market when vetting and approving the Bond Transactions; and
  - (d) put in place adequate and effective internal control procedures to protect its clients from financial loss arising from fraud and other dishonest acts or professional misconduct.
35. Goldman Sachs Asia's failures suggest that:
- (a) it has failed to comply with the following regulatory requirements:
    - (i) General Principle 2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**), which requires a licensed corporation to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market in conducting business activities;
    - (ii) paragraph 4.2 of the Code of Conduct, which provides that a licensed corporation should have adequate resources to supervise diligently and does supervise diligently persons employed by it to conduct business on its behalf;
    - (iii) paragraph 4.3 of the Code of Conduct, which requires a licensed corporation to have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients and other licensed or registered persons from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions; and
    - (iv) section 23(b) of Schedule 2 of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance and paragraph 2.1 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing, which require financial institutions to take all reasonable measures to mitigate money laundering risks; and

- (b) its senior management has failed to comply with General Principle 9 and paragraph 14.1 of the Code of Conduct, which require them to bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm and properly manage the risks associated with the business of the firm.

## **Conclusion**

- 36. Having considered all relevant circumstances, the SFC is of the opinion that Goldman Sachs Asia's fitness and properness to remain a licensed corporation has been called into question.
- 37. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has had regard to its Disciplinary Fining Guidelines and has taken into account all relevant circumstances, including:
  - (a) Goldman Sachs Asia is Goldman Sachs's compliance and control hub in Asia and had extensive involvement in all three Bond Transactions, as a result of which it received more than one third of the total revenue Goldman Sachs generated from the Bond Transactions;
  - (b) there were serious lapses and deficiencies in Goldman Sachs Asia's risk, compliance and anti-money laundering controls and management oversight which allowed Leissner's bribery of foreign government officials to completely escape scrutiny;
  - (c) Goldman Sachs Asia allowed the Bond Transactions to proceed when numerous red flags suggesting money laundering and/or bribery had not been properly addressed;
  - (d) Goldman Sachs has settled the criminal proceedings with the Malaysian government for US\$2.5 billion plus a US\$1.4 billion guarantee;
  - (e) since the securities industry is of fundamental importance to Hong Kong's role as an international financial centre, it is essential to maintain among members of the investing public a well-founded confidence in the securities industry as well as in the integrity and professional competence of those who are employed in the industry;
  - (f) a strong message needs to be sent to the market to deter other market participants from allowing similar failures to occur;
  - (g) Goldman Sachs Asia's acceptance of the SFC's findings and disciplinary action facilitated an early resolution of the matter; and
  - (h) Goldman Sachs Asia undertook to provide the SFC with annual reports prepared by its internal audit function for three consecutive years confirming, among others, that effective remedial measures have been implemented to address the regulatory concerns identified by the SFC in this matter.