At the Supreme Court, a stress test of ‘best interest’ promises

By Editorial Staff *Thu, Mar 25, 2021*

'To protect its sterling image, and its share price, Goldman [Sachs] made false statements that it always acted in its clients' best interest and carefully managed its conflicts,' said a consumer advocate, with regard to the bank's dispute with a pension fund.

If a company promises shareholders that it will always act in their best interest and then compromises its reputation and hurts its stock price by behaving badly, is the company guilty of fraud and are those investors entitled to compensation for their investment losses?

Or can an investment company call itself a “best interest” actor and then not be liable for the conflicted actions of one of its many departments? And are we talking about “best interest” as established by the Trump SEC or the Obama DOL?

Those hefty questions will be taken up by the US Supreme Court next Monday when it hears oral arguments in the case of **Arkansas Teacher Retirement System versus Goldman Sachs Group**.

The case took a decade to reach the high court. A complaint was first filed in 2010, after Goldman shareholders learned that the firm created and sold complex but flawed collateralized debt obligations (CDOs) and then knowingly betting against them with its own money. In a case related to that incident, Goldman paid the Securities and Exchange Commission a record $550 million **fine**.

Investors who bought Goldman stock in the early days of the financial crisis said they paid an inflated price for the stock based on Goldman’s “false statements about its high standard of conduct and strong protections against conflicts of interest,” according to a release this week by the Consumer Federation of America, a Washington watchdog group.

“To protect its sterling image, and its share price, Goldman made false statements that it always acted in its clients’ best interest and carefully managed its conflicts, even as it was selling mortgage-backed securities to its clients without warning them that the investments were destined to fail,” said Barbara Roper, director of investor protection, Consumer Federation of America.

“Goldman is asking the Supreme Court to conclude that its disclosures, which led directly to investor losses, were too generic to permit those investors to recover their losses in court,” Roper said. “But such a maneuver, if allowed to go unchallenged by the Court, would let companies off the leash, ushering in a wide range of misleading behavior that could materially harm U.S. investors.”

Goldman had made 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,” the CFA release said. The release did not include a response from Goldman Sachs group.

On March 3rd, former SEC Chairs William H. Donaldson and Arthur Levitt, Jr., were among six former SEC officials cautioning the Supreme Court about the peril of allowing Goldman Sachs to avoid facing an investor lawsuit related to false and misleading claims that the investment firm admits that it made. Amicus briefs in opposition to Goldman Sachs also were filed by state securities regulators, investor advocates, pension funds, and others.

Andrew Park, senior policy analyst, Americans for Financial Reform Education Fund, said in the release: “There remains overwhelming evidence, courtesy of the 2011 Senate Permanent Subcommittee on Investigations report, showing how Goldman’s employees were not only aware of the poor quality of mortgage-backed securities and collateralized debt obligations they were selling, but also that they knowingly failed to disclose to their clients key details on how the bank or hedge funds were on the other side betting against them.

“If shareholders faced with losses have no recourse against companies who concealed their behavior and knowingly skirted a number of laws, a terrible precedent will be set for investor protection going forward.”