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Goldman fine buoys claimants

Revelations that the US SEC was split in its decision to settle its landmark fraud suit against Goldman Sachs have bolstered the case of investors taking legal action.

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Revelations that the US Securities and Exchange Commission was split in its decision to settle its landmark fraud suit against Goldman Sachs with a \$US550 million (\$633 million) fine last week have bolstered the case of investors taking legal action over other toxic mortgage securities sold by Goldman, according to the man who made one of the first complaints against the bank to the SEC.

Swiss-based investment banker David Mapley, a former independent director of the failed Basis Yield Alpha Fund, also warned that while Goldman might be in the mood for settling charges over its dealings before the housing crisis, aggrieved investors were “not in the mood to forgive”.

While the SEC case revolved around a separate deal known as Abacus, Basis has its own civil fraud case against the Wall Street titan over losses its investors suffered on a similar collateralised debt obligation (CDO) known as Timberwolf as the US housing market collapsed in 2008.

According to *The Wall Street Journal*, the SEC’s commissioners were split 3-2 over whether to settle its civil securities fraud lawsuit against Goldman without the bank



The case turned on whether Goldman misled investors by not telling them that its hedge fund client, Paulson & Co, had helped select the underlying portfolio of mortgage securities and then bet against them.

Mr Mapley said the Abacus settlement did not mean there were problems with the SEC's case, as some lawyers have suggested.

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"I guess first of all \$US550 million as a fine is a lot to pay for not admitting doing anything wrong," he said. "It's not bad, is it?"

He noted the US Department of Justice was still considering criminal charges against Goldman over Abacus and also claimed the SEC would not walk away from further investigations into the Timberwolf matter.

He is continuing to work with senator Carl Levin's Senate Subcommittee on Investigations, which grilled current and former Goldman executives on various



"[Goldman] are in the mood to settle but I think investors are not in the mood to forgive," Mr Mapley told *The Australian Financial Review* from Switzerland on Saturday.

Basis's case was "five times" stronger than the SEC's because it was more thorough in detailing the omissions in Goldman's marketing materials and its misleading forecasts to investors.

Goldman said in a statement on Thursday that SEC staff had completed a review of a number of other Goldman-backed mortgage-related CDO transactions and did "not anticipate recommending any claims against Goldman Sachs or any of its employees with respect to those transactions based on the materials it has reviewed".

However, the bank said it recognised that, "as is always the case, the SEC has reserved the right to reopen those matters based on new information".

Goldman has also said it would vigorously defend the Basis matter.

Mr Mapley, who runs an investment group called Shimoda from Switzerland, played an instrumental role in the US corporate watchdog's investigations into Goldman when he called an SEC lawyer in early 2008 to complain about Timberwolf.

A rapid decline in the value of the Timberwolf securities cost the fund \$US50 million to \$US60 million in losses and helped lead to its demise. Basis is seeking \$US1 billion in damages from Goldman.



renewed calls for Goldman chief executive Lloyd Blankfein and other senior executives to step aside. However, Mr Mapley said he didn't expect that to happen.

"He's too high and ducking and weaving a lot – it's his underlings that went around unchecked. It's the culture of Goldman Sachs [that's the problem]."

While his original complaint was only to the SEC, Mr Mapley said he was surprised the Australian Securities and Investments Commission had done little, particularly given the retail investors in Australia who lost money on their Basis investments.

"I am amazed ASIC has not stepped in and done something," he said.

Goldman may have other avenues to shake off the Basis litigation. It indicated on July 8 that it might use a recent US Supreme Court case to seek a dismissal of the Basis case.

The decision, in a case coincidentally won by National Australia Bank, could limit the ability of foreign investors to sue in the United States over transnational securities fraud.

The Basis hedge fund bought its Timberwolf securities from an Australian subsidiary of Goldman.

Meanwhile investors who lost money on the Abacus deal, Royal Bank of Scotland and the German bank KfW Group said they were reviewing the SEC settlement and considering their options.



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