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S.E.C. Case Stands Out Because It Stands Alone

By LOUISE STORY and GRETCHEN MORGENSON

At the height of the housing boom, the 26th floor of [Goldman Sachs's](#) former headquarters on Broad Street in Lower Manhattan was the nerve center of Goldman's fast-growing mortgage trading business.

Hundreds of employees worked closely in teams, devising mortgage-based securities — billions of dollars' worth — that were examined by lawyers, approved by management, then sold to investors like hedge funds, commercial banks and insurance companies.

At one trading desk sat [Fabrice Tourre](#), a midlevel 28-year-old Frenchman who was little known not just outside Goldman but even inside the firm. That changed three years later, in 2010, when he achieved the dubious distinction of becoming the only individual at Goldman and across Wall Street [sued by the Securities and Exchange Commission](#) for helping to sell a mortgage-securities investment, in one of the hundreds of mortgage deals created during the bubble years.

How Mr. Tourre alone came to be the face of mortgage-securities fraud has raised questions among former prosecutors and Congressional officials about how aggressive and thorough the government's investigations have been into Wall Street's role in the mortgage crisis.

Across the industry, "it's impossible that only one person was involved with fraudulent activities in

connection to the sales of these mortgage securities,” said G. Oliver Koppell, a New York attorney general in the 1990s and now a New York City councilman.

In the fall of 2009, when Mr. Turre learned that he had become a target of investigators for helping to sell a mortgage security called Abacus, he protested that he had not acted alone.

That fall, his lawyers drafted private responses to the S.E.C., maintaining that Mr. Turre was part of a “collaborative effort” at Goldman, according to documents obtained by The New York Times. The lawyer added that the commission’s view of his role “would have Mr. Turre engaged in a grand deception of practically everyone” involved in the mortgage deal.

Indeed, numerous other colleagues also worked on that mortgage security. And that deal was just one of nearly two dozen similar deals totaling \$10.9 billion that Goldman devised from 2004 to 2007 — which in turn were similar to more than \$100 billion of [such securities deals created by other Wall Street firms](#) during that period.

While [Goldman paid \\$550 million](#) last year to settle accusations that it had misled investors who bought the Abacus mortgage security, no other individuals at the bank have been named. Now, however, as criticism has grown about [the lack of cases brought by regulators](#), the scope of the inquiries appears to be widening. The United States attorney general, Eric H. Holder Jr., has said publicly that his lawyers were reviewing possible charges against other Goldman officials in the wake of a [Senate investigation](#) that produced [reams of documents detailing other questionable decisions](#) that were made in the firm’s mortgage unit.

The Senate inquiry was one of several in the past three years. These investigations by Congressional leaders and bankruptcy trustees — into the likes of [Washington Mutual](#), [Lehman Brothers](#) and [the ratings agencies](#) — were undertaken largely to understand what had gone wrong in the crisis, rather than for law enforcement. Yet they uncovered evidence that could be a road map for federal officials as they decide whether to bring civil and criminal cases.

One person who already has come under investigation is Jonathan M. Egol. A senior trader at Goldman who worked closely with Mr. Tourre, he had a negative view on the housing market early on, and took a lead role in creating mortgage securities like Abacus that enabled Goldman and certain clients to place bets that proved profitable when the housing market collapsed.

Last year the S.E.C. examined Mr. Egol's role in the Abacus deal in its lawsuit, according to a report by the commission's inspector general. But Mr. Egol, now a managing director at the bank, was not named in the case, in part because he was more discreet in his e-mails than Mr. Tourre was, so there was less evidence against him, according to a person with knowledge of the S.E.C.'s case.

Though Mr. Tourre was a more junior member of the Goldman team, the S.E.C. case against him was bolstered by colorful e-mails he wrote, calling mortgage securities like those he created monstrosities and joking that he sold them to "widows and orphans."

The S.E.C. declined to comment about its focus on Goldman and Mr. Tourre, beyond pointing to a section in its complaint that said that Mr. Tourre had been "principally responsible" for the Abacus deal in the case.

A spokesman for Goldman, Lucas van Praag, did not dispute that Mr. Tourre had worked on the Abacus deal as part of a collaborative team. But he said that the bank had disagreed with many of the conclusions about its mortgage unit contained in the recent Senate report. Mr. Egol and his lawyer did not respond to inquiries for comment.

As the government continues to investigate the activities of Goldman and other banks, it is uncertain whether other individuals will be named. Neil M. Barofsky, who as the first inspector general of the [Troubled Asset Relief Program](#), the federal bank bailout program, investigated whether banks had properly obtained and handled the money they received, said prosecutors should look as high up as possible.

"Obviously in any investigation that results in charges against a company," he said, "you'd like to see

the highest-ranking person responsible for the conduct at the company to be held accountable.”

A Booming Market

A math whiz who got his undergraduate degree at the École Centrale in Paris, Fabrice Tourre joined Goldman in 2001 after getting a master’s degree at Stanford. As the housing market and the demand for mortgages boomed over the next few years, Goldman went from creating just \$3 billion of mortgage securities called **collateralized debt obligations** in 2002 to at least \$22 billion in 2006, according to Dealogic, a financial data firm.

The C.D.O.’s were linked to the performance of underlying mortgages that were bundled into securities; as long as homeowners stayed current on payments, investors who bet that the housing market would stay healthy made money. Only if many borrowers defaulted would the investors lose money.

Goldman’s mortgage desk worked as a tight team. Dan Sparks was the head of all mortgage operations, including the Abacus team, which Mr. Egol led.

The team worked so closely that its members shared a group e-mail address, “Ficc-mtgcorr-desk.” Nearly all of the e-mails about the Abacus deal in the S.E.C.’s case, as well as those about other, similar deals, were sent by Mr. Tourre or his colleagues using the shared e-mail address.

The 2007 memo that proposed the Abacus deal to higher managers at Goldman was signed by all seven members of the group. The marketing materials for Abacus, and other complex mortgage securities, often listed around 15 people in addition to Mr. Tourre, with their contact numbers.

Abacus and related mortgage securities deals were a huge success for Goldman, allowing the firm to earn tens of millions of dollars in fees by selling securities to investors and to place bets on the securities that helped Goldman perform better than most other banks during the crisis.

But Mr. Tourre’s world would soon be turned upside down. In fall 2009, the S.E.C. issued him a Wells

notice, a formal warning that he was likely to be named in a civil fraud suit for his role in the mortgage deals. Mr. Egol also received such a notice in 2010.

In their Oct. 10 response to the S.E.C., Mr. Tourre's lawyers, including Pamela Chepiga of Allen & Overy, made an argument that they have not emphasized publicly. They contended that "singling Mr. Tourre out for criticism regarding the content of this clearly collaborative effort is unreasonable."

These legal replies, which are not public, were provided to The New York Times by Nancy Cohen, an artist and filmmaker in New York also known as Nancy Koan, who says she found the materials in a laptop she had been given by a friend in 2006.

The friend told her he had happened upon the laptop discarded in a garbage area in a downtown apartment building. E-mail messages for Mr. Tourre continued streaming into the device, but Ms. Cohen said she had ignored them until she heard Mr. Tourre's name in news reports about the S.E.C. case. She then provided the material to The Times. Mr. Tourre's lawyer did not respond to an inquiry for comment.

In the drafted replies, lawyers for Mr. Tourre named the other Goldman employees who they say worked closely on the Abacus deal with him: In addition to Mr. Egol, they included David Gerst, a securities lawyer in the Abacus group and Darren Littlejohn, another lawyer at Goldman who worked on the deal; Cactus Raazi and Gail Kreitman, sales representatives; Shin Yukawa, a credit ratings specialist; and others.

The S.E.C. focused in the complaint on disclosures in the marketing of Abacus, saying that the sales documents had failed to tell investors that the deal was devised with the help of John A. Paulson, the billionaire hedge fund manager, who was not named in the case. Mr. Paulson's firm suggested that the deal be linked to mortgages for which he expected a high rate of default, the S.E.C. said; when that came to pass, the bets he placed against the securities proved very profitable for him. But investors on the other side lost more than \$1 billion, according to the S.E.C.

Mr. Tourre's lawyers wrote that their client was "simply one member of a large team that worked on the 2007-AC1 transaction" — referring to the Abacus deal — "and was entitled to rely on Goldman Sachs's institutional processes to ensure that disclosures were properly drafted." He was not a lawyer, they argued. Legal counsel on a deal, in this case Mr. Littlejohn and Mr. Gerst, typically review documents and decide what must be disclosed to investors.

The S.E.C. has not said why it focused on just one Abacus deal, even though other mortgage securities created by Goldman and other banks had similar designs and disclosures. In many of the securities, for example, there was an investor like Mr. Paulson or Goldman itself betting against the housing market, and often that party helped devise the deal, according to four former Goldman employees familiar with the securities.

Indeed, there was at least one other security that had involved Mr. Paulson, according to the 2007 memo written by Mr. Tourre's desk.

It was Mr. Egol's name that came up most prominently in Mr. Tourre's legal response to the S.E.C., as well as in interviews with traders knowledgeable about the Abacus deals.

A former colleague on Goldman's mortgage desk who now works for another financial firm said he did not understand why Mr. Tourre had been singled out. "That has baffled me from the very beginning. I just can't even begin to tell you how junior and insignificant his role was," said this person, who asked not to be named because it could damage his career.

Mr. Tourre's lawyers also pointed to an e-mail that February from Mr. Egol, which said "the cdo biz is dead we don't have a lot of time left." The S.E.C. pointed to that line as evidence that Mr. Tourre had known of the trouble in the market. Mr. Tourre's lawyers responded that those views were Mr. Egol's and "not necessarily" Mr. Tourre's.

The newly released Senate report also cites e-mails that it has made public, where Mr. Egol seems to have the stronger views. On Jan. 29, 2007, for instance, Mr. Egol wrote to Mr. Tourre that "the mkt is

dead.” Mr. Tourre replied, “ouahhh, what do you mean by that? Do you have any insight I don’t?”

In April 2010, when the S.E.C. filed its case against the bank and Mr. Tourre, the young banker told friends that he believed Goldman had been chosen to be the commission’s “case study,” according to several who spoke on the condition that they not be identified. The friends also said they were concerned that Mr. Tourre’s dependence on Goldman for advice and legal counsel was not in his best interest.

In September 2009, for instance, Mr. Tourre told friends he thought he had to use a lawyer from a list of lawyers at three firms that Goldman gave him.

Robert Follie, a lawyer in Paris, said Mr. Tourre told him he was not authorized to use lawyers other than those Goldman selected. Mr. Follie said he cautioned Mr. Tourre that his interests might diverge from Goldman’s, so he should consider hiring his own counsel.

“As a practitioner, I mentioned to him that I felt the risk in the long run was that the lawyer who was acting for him might end up in a near conflict-of-interest situation,” Mr. Follie, whose daughter is friends with Mr. Tourre, said in an interview last December.

After the S.E.C. case was filed in summer 2010, Mr. Follie wondered how Mr. Tourre had wound up as the only defendant. “I felt that somewhere down the line, he must have done or not done the proper things to get out of this. I was personally wondering if he had sufficient representation disassociated from Goldman,” he said.

Mr. van Praag, the Goldman spokesman, said the bank did not impose lawyers on its workers and had not done so on Mr. Tourre. He said that “ultimately the decision is for the individual and counsel to determine whether they are right for each other.”

For the last year, Mr. Tourre has been on paid leave from Goldman’s London office, where he was transferred after the United States mortgage trading business dried up.

Mr. van Praag also pointed to [testimony released this year](#) to the Financial Crisis Inquiry Commission, created by Congress to identify the cause of the economic crisis, as evidence that might help Mr. Tourre's case because it included statements supporting his claim that the deal had been created properly and independently of Mr. Paulson.

No Criminal Case

Even as Mr. Tourre awaits trial in the civil fraud case, it seems that he will not face criminal charges. When the S.E.C. referred the case to the Justice Department, the commission's top enforcement lawyer, Robert S. Khuzami, told his counterparts there that he did not believe it was a criminal case, according to two people briefed on the discussions.

Since Mr. Tourre was named in the case, other inquiries into the causes of the financial crisis have put the spotlight on activities of a number of Wall Street firms. This year, the Financial Crisis Inquiry Commission released a [633-page report](#), and the Senate's Permanent Subcommittee on Investigations issued its own [650-page report](#). While the S.E.C. focused solely on the single Abacus deal, the Senate's report raised questions about a handful of other Goldman mortgage securities.

The report also detailed Goldman's aggressive valuation of its customers' mortgage holdings. Goldman's "senior management knew its sales force was selling C.D.O. securities at inflated prices" and knew that those prices were dropping, the report said. It quoted from a Goldman sales representative's e-mail saying: "Real bad feeling across European sales about some of the trades we did with clients."

In addition, the Senate said that two Goldman employees, Deeb Salem and David Swenson, tried to manipulate prices of securities used to bet against mortgages. Both tried to help Goldman pile on larger bets against the mortgage market, and they wanted to be able to buy such negative bets more cheaply, the report said. Goldman, as a broker, was able to affect prices in the market through the bids and offers it gave out.

Mr. Swenson wrote in May 2007 that the bank should try to “start killing” prices on certain positions so that Goldman would be able to “pick some high quality stuff,” according to the Senate report. The strategy, Mr. Swenson wrote, would “have people totally demoralized.” The pair were unsuccessful in their attempt, and both denied making it to the Senate committee. Mr. van Praag said last week that the report had no evidence of manipulation.

Still, the Senate report said that “trading with the intent to manipulate market prices, even if unsuccessful, is a violation of the federal securities laws.”

Goldman is not the only firm to have been scrutinized in public reports. Washington Mutual and Deutsche Bank, for instance, were also cited in the recent Senate report. And last year, a trustee examining the Lehman Brothers bankruptcy uncovered questionable accounting maneuvers at that firm. Companies like Bank of America, the American International Group and Moody’s Investors Service have been featured in other hearings and reports.

Former United States prosecutors said there were limits to how these materials could be used in court. Still, they said, the reports should have given the government a head start on cases.

“They are good starting points,” said Juliet Sorenson, a professor at Northwestern University School of Law. “They are indicators of witnesses who would be subjects for additional interrogations; the reports may introduce documents which lead federal criminal investigators to do additional digging.”

Tom Torok contributed reporting.



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