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Basis Fund Rebuts Goldman Sachs Motion to Dismiss Securities Fraud Suit

Today, Basis Yield Alpha Fund (Master) (“BYAFM”) responded to a Goldman Sachs motion to dismiss BYAFM’s security fraud suit that is pending in federal court in New York. Goldman Sachs sold BYAFM an interest in the now infamous Timberwolf CDO security, which senior Goldman officials referred to internally as “one shitty deal.” Goldman has sought to take advantage of a recent Supreme Court case, *Morrison v. National Australia Bank*, arguing that this is a foreign transaction because BYAFM signed a document in Australia and that Goldman assigned the trade to an English-incorporated subsidiary. BYAFM argues forcefully in reply that, unlike *Morrison*, where an Australian purchaser bought an Australian-traded stock in Australia, the Timberwolf trade was a New York trade from start to finish, negotiated and implemented by Goldman personnel in New York. Eric Lewis, who is Counsel for BYAFM, stated that Goldman was seeking “a free pass to concoct fraudulent securities in New York and then sell them to unsuspecting foreign investors. That is not the law. Whatever limitations the Supreme Court has placed on all-foreign transactions, the U.S. securities laws certainly do not permit Goldman to defraud foreign investors with impunity.”

Judge Barbara Jones, the judge who also heard the US\$500 million civil fraud case against Goldman, which ended with Goldman paying restitution to similarly situated foreign investors, is also the judge hearing BYAFM’s claim against Goldman.

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