No. 20-222

In the Supreme Court of the United States

GOLDMAN SACHS GROUP, INC., ET AL., PETITIONERS

v.

ARKANSAS TEACHER RETIREMENT SYSTEM, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT APPENDIX
(VOLUME 1; PAGES 1-400)

KANNON K. SHANMUGAM
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

Counsel of Record for Petitioners

THOMAS C. GOLDSTEIN
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Avenue
Suite 850
Bethesda, MD 20814
(202) 362-0636
tg@goldsteinrussell.com

Counsel of Record for Respondents

PETITION FOR A WRIT OF CERTIORARI FILED: AUGUST 21, 2020
CERTIORARI GRANTED: DECEMBER 11, 2020

TABLE OF CONTENTS

Page

VOLUME 1

Page

Page

The following opinions and orders have been omitted in printing the joint appendix because they appear as appendices to the petition for certiorari as follows:

Appendix A:	Court of appeals opinion, April 7, 2020
Appendix B:	District court opinion, August 14, 2018
Appendix C:	Court of appeals opinion, January 12, 2018
Appendix D:	District court opinion, September 24, 2015
Appendix E:	Court of appeals order denying rehearing, June 15, 2020

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 18-3667

ARKANSAS TEACHER RETIREMENT SYSTEM,

v.

GOLDMAN SACHS GROUP, INC.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
12/11/2018	1	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc. and David A. Viniar, FILED. [2453066] [18-3667] [Entered: 12/11/2018 03:28 PM]
		* * *
02/15/2019	62	BRIEF & SPECIAL APPENDIX, on behalf of Appellant Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc. and David A. Viniar, FILED. Service date 02/15/2019 by CM/ECF. [2497793] [18-3667] [Entered: 02/15/2019 11:25 AM]
		* * *

DATE	NO.	PROCEEDINGS
04/19/2019	187	BRIEF, on behalf of Appellee Arkansas Teachers Retirement System, Plumbers and Pipefitters Pension Group and West Virginia Investment Management Board, FILED. Service date 04/19/2019 by CM/ECF. [2544138] [18-3667] [Entered: 04/19/2019 02:07 PM]
		* * *
05/03/2019	222	REPLY BRIEF, on behalf of Appellant Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc. and David A. Viniar, FILED. Service date 05/03/2019 by CM/ECF. [2555456] [18-3667] [Entered: 05/03/2019 02:45 PM]
		* * *
06/26/2019	232	CASE, before RCW, DC, RJS, HEARD. [2595132] [18-3667] [Entered: 06/26/2019 12:08 PM]
04/07/2020	233	OPINION, afirming the judgment of the district court and remanding for further proceedings consistent with this opinion, by RCW, DC, RJS (dissenting), FILED.[2815158] [18-3667] [Entered: 04/07/2020 08:46 AM]
04/07/2020	235	OPINION, Dissenting, by RJS, FILED. [2815163] [18-3667] [Entered: 04/07/2020 08:49 AM]
		* * *

DATE	NO.	PROCEEDINGS
04/07/2020	241	JUDGMENT, FILED. [2815368] [18-3667] [Entered: 04/07/2020 11:42 AM]
		* * *
05/12/2020	246	PETITION FOR REHEARING/ REHEARING EN BANC, on behalf of Appellant Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc. and David A. Viniar, FILED. Service date 05/12/2020 by CM/ECF. [2838130] [18-3667] [Entered: 05/12/2020 08:55 PM]
		* * *
06/15/2020	277	ORDER, petition for panel rehearing, or, in the alternative, for rehearing en banc, denied, FILED. [2861522] [18-3667] [Entered: 06/15/2020 09:26 AM]
		* * *
08/21/2020	290	LETTER, on behalf of Appellants Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc. and David A. Viniar, pursuant to Federal Rule of Appellate Procedure 41(d)(2)(B)(ii) to provide the Court with notice that Defendants-Appellants have today filed a petition for a writ of certiorari with the U.S. Supreme Court, RECEIVED. Service date 08/21/2020 by CM/ECF. [2914115] [18-3667]—

DATE	NO.	PROCEEDINGS
		[Edited 08/21/2020 by YL] [Entered: 08/21/2020 02:39 PM]
		* * *
08/26/2020	293	U.S. SUPREME COURT NOTICE of writ of certiorari filing, dated 08/25/2020, U.S. Supreme Court docket # 20-222, RECEIVED. [2917557] [18-3667] [Entered: 08/27/2020 07:46 AM]
		* * *

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 16-250

PENSION FUNDS,

v.

ARKANSAS TEACHERS RETIREMENT SYSTEM.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
01/26/2016	1	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc. and David A. Viniar, FILED. [1691978] [16-250] [Entered: 01/26/2016 04:22 PM]
		* * *
04/27/2016	46	BRIEF & SPECIAL APPENDIX, on behalf of Appellant Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc. and David A. Viniar, FILED. Service date 04/27/2016 by CM/ECF. [1759194] [16-250] [Entered: 04/27/2016 09:39 AM]
		* * *

DATE	NO.	PROCEEDINGS
08/19/2016	129	BRIEF, on behalf of Appellee Arkansas Teachers Retirement System, Plumbers and Pipefitters Pension Group and West Virginia Investment Management Board, FILED. Service date 08/19/2016 by CM/ECF. [1845267] [16-250] [Entered: 08/19/2016 02:37 PM]
		* * *
09/19/2016	172	REPLY BRIEF, on behalf of Appellant Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc. and David A. Viniar, FILED. Service date 09/19/2016 by CM/ECF. [1865992] [16-250] [Entered: 09/19/2016 04:10 PM]
		* * *
03/15/2017	215	CASE, before JAC, RCW, C.JJ., SESSIONS, D.J., HEARD. [1989015] [16-250] [Entered: 03/15/2017 11:20 AM]
		* * *
01/12/2018	224	OPINION, the district court's order is vacated and remanded for further proceedings, by JAC, RCW, W. SESSIONS, FILED.[2212524] [16-250] [Entered: 01/12/2018 09:42 AM]
		* * *

DATE	NO.	PROCEEDINGS
01/12/2018	230	JUDGMENT, FILED.[2213065] [16-250] [Entered: 01/12/2018 02:19 PM]

* * *

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

———

No. 1:10-cv-03461-PAC

———

PENSION FUNDS,

v.

ARKANSAS TEACHERS RETIREMENT SYSTEM.

———

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
04/26/2010	1	COMPLAINT against Goldman Sachs Group, Inc., Lloyd C. Blankfein, David A. Viniar, Gary D. Cohn. (Filing Fee $ 350.00, Receipt Number 901612) Document filed by Ilene Richman. (ama) (Entered: 04/27/2010)
		* * *
07/25/2011	68	CONSOLIDATED CLASS ACTION AMENDED COMPLAINT amending 1 Complaint against Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar with JURY DEMAND.Document filed by Plumbers and Pipefitters Pension Group, West Virginia Investment Management Board, Arkansas Teachers Retirement

DATE	NO.	PROCEEDINGS
		System. Related document: 1 Complaint filed by Ilene Richman. ***This document relates to all actions.(mro) (sdi). (Entered: 07/26/2011)
		* * *
10/06/2011	74	FIRST MOTION to Dismiss the Consolidated Complaint. Document filed by Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar.(Klapper, Richard) (Entered: 10/06/2011)
10/06/2011	75	MEMORANDUM OF LAW in Support re: 74 FIRST MOTION to Dismiss the Consolidated Complaint.. Document filed by Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar. (Klapper, Richard) (Entered: 10/06/2011)
		* * *
11/14/2011	77	MEMORANDUM OF LAW in Opposition re: 74 FIRST MOTION to Dismiss the Consolidated Complaint.. Document filed by Arkansas Teachers Retirement System, Plumbers and Pipefitters Pension Group, West Virginia Investment Management Board. (Dubbs, Thomas) (Entered: 11/14/2011)
		* * *

DATE	NO.	PROCEEDINGS
12/14/2011	81	REPLY MEMORANDUM OF LAW in Support re: 74 FIRST MOTION to Dismiss the Consolidated Complaint.. Document filed by Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar. (Klapper, Richard) (Entered: 12/14/2011)
		* * *
05/21/2012		Minute Entry for proceedings held before Judge Paul A. Crotty: Oral Argument held on 5/21/2012 re: 74 FIRST MOTION to Dismiss the Consolidated Complaint. filed by Gary D. Cohn, David A. Viniar, Lloyd C. Blankfein, Goldman Sachs Group, Inc.. (Court Reporter Alena Lynch) (mov) (Entered:05/22/2012)
		* * *
06/21/2012	85	OPINION & ORDER: #101981 In conclusion, Defendants' motion to dismiss is GRANTED with respect to Plaintiffs claim relating to Defendants failure to disclose their receipt of Wells Notices, and DENIED in all other respects. The Clerk of Court is directed to terminate this motion. SO ORDERED. (Signed by Judge Paul A. Crotty on June 21, 2012) (mov) Modified on 7/2/2012 (jab). (Entered: 06/21/2012)

DATE	NO.	PROCEEDINGS
		* * *
08/20/2012	87	ANSWER to 68 Amended Complaint,. Document filed by Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar.(Klapper, Richard) (Entered: 08/20/2012)
		* * *
05/30/2014	116	MOTION for Reconsideration of the Court's June 21, 2012 Ruling on Defendants' Motion to Dismiss. Document filed by Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar.(Klapper, Richard) (Entered: 05/30/2014)
		* * *
06/06/2014	119	MEMORANDUM OF LAW in Opposition re: 116 MOTION for Reconsideration of the Court's June 21, 2012 Ruling on Defendants' Motion to Dismiss. . Document filed by Arkansas Teachers Retirement System, Plumbers and Pipefitters Pension Group, West Virginia Investment Management Board. (Dubbs, Thomas) (Entered: 06/06/2014)
06/13/2014	120	REPLY MEMORANDUM OF LAW in Support re: 116 MOTION for Reconsideration of the Court's June 21, 2012 Ruling on Defendants'

DATE	NO.	PROCEEDINGS
		Motion to Dismiss. . Document filed by Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar. (Klapper, Richard) (Entered: 06/13/2014)
		* * *
06/23/2014	122	ORDER denying 116 Motion for Reconsideration (Signed by Judge Paul A. Crotty on 06/23/2014) (mov) (Entered: 06/23/2014)
		* * *
01/30/2015	135	MOTION to Certify Class . Document filed by Arkansas Teachers Retirement System, Plumbers and Pipefitters Pension Group, West Virginia Investment Management Board. (Burkholz, Spencer) (Entered: 01/30/2015)
01/30/2015	136	MEMORANDUM OF LAW in Support re: 135 MOTION to Certify Class . . Document filed by Arkansas Teachers Retirement System, Plumbers andPipefitters Pension Group, West Virginia Investment Management Board. (Attachments: # 1 Exhibit A - Robbins Geller Firm Resume, # 2 Exhibit B - Labaton Sucharow Firm Resume)(Burkholz, Spencer) (Entered: 01/30/2015)
		* * *

DATE	NO.	PROCEEDINGS
04/06/2015	142	MEMORANDUM OF LAW in Opposition re: 135 MOTION to Certify Class . . Document filed by Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar. (Attachments: # 1 Appendix A)(Klapper, Richard) (Entered: 04/06/2015)
		* * *
05/15/2015	153	REPLY MEMORANDUM OF LAW in Support re: 135 MOTION to Certify Class . . Document filed by Arkansas Teachers Retirement System, Plumbers and Pipefitters Pension Group, West Virginia Investment Management Board. (Burkholz, Spencer) (Entered: 05/15/2015)
		* * *
05/28/2015	156	LETTER addressed to Judge Paul A. Crotty from Richard H. Klapper dated May 28, 2015 re: Request for Evidentiary Hearing or Pre-Motion Conference. Document filed by Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar.(Klapper, Richard) (Entered: 05/28/2015)
06/02/2015	157	LETTER addressed to Judge Paul A. Crotty from Thomas A, Dubbs dated 6/2/2015 re: Response and in opposition to Defendants' letter of

DATE	NO.	PROCEEDINGS
		5/28/2015 requesting oral argument and two-day evidentiary hearing on Plaintiffs' motion for class certification. Document filed by Arkansas Teachers Retirement System, Plumbers and Pipefitters Pension Group, West Virginia Investment Management Board.(Dubbs, Thomas) (Entered: 06/02/2015)
06/08/2015	158	ORDER: The Court is in receipt of the parties' letters of May 28, 2015 and June 2, 2015. Defendants have requested oral argument and a two-day evidentiary hearing on Plaintiffs' motion for class certification. Defendants have also requested leave to submit a 10-page surreply brief, responsive expert declarations, and "relevant portions of their experts' testimony that Plaintiffs elected not to submit." Plaintiffs oppose the request for an evidentiary hearing and the request to submit supplemental papers. Defendants' requests for an evidentiary hearing and oral argument are denied. Defendants' request for leave to file surreply papers in granted in part. Defendants may submit a 5-page responsive brief, a 10-page responsive expert declaration, and any testimony necessary to ensure that the record is complete. (Signed by Judge Paul A.

DATE	NO.	PROCEEDINGS
		Crotty on 6/8/2015) (lmb) (Entered: 06/08/2015)
		* * *
06/23/2015	160	REPLY MEMORANDUM OF LAW in Opposition re: 135 MOTION to Certify Class . . Document filed by Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar. (Klapper, Richard) (Entered: 06/23/2015)
		* * *
09/24/2015	163	OPINION & ORDER re: 135 MOTION to Certify Class . filed by Arkansas Teachers Retirement System, West Virginia Investment Management Board, Plumbers and Pipefitters Pension Group. For the foregoing reasons, the Court grants Plaintiffs' motion for class certification. The Court certifies a class of: "All persons or entities who, between February 5, 2007 and June 10, 2010, purchased or otherwise acquired the common stock of The Goldman Sachs Group, Inc . . . . and were damaged thereby." Labaton Sucharow LLP and Robbins Geller Rudman & Dowd LLP are approved as Class Counsel, and Lead Plaintiffs Arkansas Teacher Retirement System, Plumbers and Pipefitters National Pension Fund, and

DATE	NO.	PROCEEDINGS
		West Virginia Investment Management Board are appointed Class Representatives. The Clerk of the Court is directed to close out the pending motion at Docket 135. (As further set forth in this Order) (Signed by Judge Paul A. Crotty on 9/24/2015) (lmb) (Entered: 09/24/2015)
		* * *
01/28/2016	175	TRUE COPY ORDER of USCA USCA Case Number 15-3179. Petitioners move, pursuant to Federal Rule of Civil Procedure 23(f), for leave to appeal the district court's order granting Respondents motion for class certification. Petitioners also move for leave to file a reply in support of their motion. Further, non-parties the Securities Industry and Financial Markets Association ("SIFMA"), the Chamber of Commerce of the United States ("the Chamber"), and a group of former Securities and Exchange Commission ("SEC") officials and law professors move to file briefs as amicus curiae in support of Petitioners' motion. Upon due consideration, it is hereby ORDERED that: (1) Petitioners' motion to file a reply is GRANTED; (2) the motions of the Chamber, SIFMA, and the

DATE	NO.	PROCEEDINGS
		group of former SEC officials and law professors to file amicus briefs are GRANTED; and (3) the petition for leave to appeal is GRANTED. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 01/28/2016. [New Appeal Case No. 16-250]. (nd) (Entered: 01/28/2016)
		* * *
02/02/2018	183	MANDATE of USCA (Certified Copy) USCA Case Number 16-0250. The appeal in the above captioned case from an order of the United States District Court for the Southern District of New York was argued on the district court's record and the parties briefs. Upon consideration thereof, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the order of the district court is VACATED and the case is REMANDED for further proceedings consistent with this Court's opinion. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 02/02/2018. (Attachments: # 1 Opinion) (nd) (Entered: 02/02/2018)
		* * *
03/15/2018	189	ORDER, The Court orders the following schedule: Opening Brief:

DATE	NO.	PROCEEDINGS
		April 13, 2018, Reply Brief: April 27, 2018, Oral Argument: May 22, 2018 at 10:00 AM. Parties are ordered to simultaneously file the opening briefs and the reply briefs by the respective deadlines. The opening briefs shall be limited to 25 pages; the reply briefs shall be limited to 15 pages. The oral argument shall be limited to 3 hours, 1.5 hours per side. The Court reserves the right to hold an evidentiary hearing should the parties' briefs and oral argument demonstrate its necessity or desirability. The Court hereby lifts the previously imposed stay of this action. So Ordered. (Brief due by 4/13/2018., Replies due by 4/27/2018., Oral Argument set for 5/22/2018 at 10:00 AM before Judge Paul A. Crotty.) (Signed by Judge Paul A. Crotty on 3/15/18) (yv) Modified on 3/15/2018 (yv). (Main Document 189 replaced on 3/15/2018) (yv). (Entered: 03/15/2018)
		* * *
04/13/2018	192	SUPPLEMENTAL MEMORANDUM OF LAW in Opposition re: 135 MOTION to Certify Class . . Document filed by Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar.

DATE	NO.	PROCEEDINGS
		(Giuffra, Robert) (Entered: 04/13/2018)
		* * *
04/13/2018	196	MEMORANDUM OF LAW in Support re: 135 MOTION to Certify Class . (Lead Plaintiffs' Memorandum of Law in Further Support of Class Certification). Document filed by Arkansas Teachers Retirement System, Plumbers and Pipefitters Pension Group, West Virginia Investment Management Board. (Dubbs, Thomas) (Entered: 04/13/2018)
		* * *
04/27/2018	198	SUPPLEMENTAL REPLY MEMORANDUM OF LAW in Opposition re: 135 MOTION to Certify Class . . Document filed by Lloyd C. Blankfein, Gary D. Cohn, Goldman Sachs Group, Inc., David A. Viniar. (Giuffra, Robert) (Entered: 04/27/2018)
04/27/2018	199	SUPPLEMENTAL REPLY MEMORANDUM OF LAW in Support re: 135 MOTION to Certify Class . (Lead Plaintiffs' Supplemental Reply Memorandum of Law in Further Support of Class Certification). Document filed by Arkansas Teachers Retirement System, Plumbers and Pipefitters Pension

DATE	NO.	PROCEEDINGS
		Group, West Virginia Investment Management Board. (Dubbs, Thomas) (Entered: 04/27/2018)
		* * *
07/25/2018		Minute Entry for proceedings held before Judge Paul A. Crotty: Evidentiary Hearing held on 7/25/2018. Lawrence Sucharow, Thomas Dubbs, Spencer Burkholz, Jonah Goldstein, James Johnson, and Robert Henssler, Jr. appeared for the Lead Plaintiff. Robert Giuffra, Jr., Richard Klapper, David Rein, Benjamin Walker, Jacob Cohen, and Julia Malkina appeared for the Defendants. Argument was heard from both sides. Oral Argument will go forward tomorrow, July 26, 2018 at 9:30 AM. See transcript for details. (Court Reporter Pamela Utter, Sam Mauro, Kristen Carannante) (dgo) (Entered: 07/25/2018)
		* * *
08/14/2018	217	OPINION AND ORDER re: (135 in 1:10-cv-03461-PAC) MOTION to Certify Class . filed by Arkansas Teachers Retirement System, West Virginia Investment Management Board, Plumbers and Pipefitters Pension Group. For the reasons set forth above, the Court concludes

DATE	NO.	PROCEEDINGS
		that Defendants have failed to meet their burden of proof: the Basic presumption is not rebutted and the motion for class certification is granted. The Clerk of Court is directed to terminate the pending motion at ECF 135. (Signed by Judge Paul A. Crotty on 8/14/2018) Filed In Associated Cases: 1:10-cv-03461-PAC et al.(rro) (Entered: 08/14/2018)
		* * *
12/11/2018	232	ORDER of USCA (Certified Copy) USCA Case Number 18-2557. Petitioners request, pursuant to Federal Rule of Civil Procedure 23(f), leave to appeal the district court's order granting Respondents' motion for class certification. Petitioners also move for permission to file a reply brief. And three amici curiae move for leave to file amicus briefs. Upon due consideration, it is hereby ORDERED that the petition for leave to appeal is GRANTED. The motion for leave to file a reply brief is DENIED. The motions of amici curiae for permission to file amicus briefs are GRANTED. The Petitioners are directed to file a scheduling notification within 14 days of the date of entry of this order pursuant to Second Circuit Local Rule 31.2.

DATE	NO.	PROCEEDINGS
		Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 12/11/2018. (nd) (Entered: 12/11/2018)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended November 30, 2007

Commission File Number: 001-14965

The Goldman Sachs Group, Inc.

(Exact name of registrant as specified in its charter)

Delaware **(State or other jurisdiction of incorporation or organization)**	**13-4019460** **(I.R.S. Employer Identification No.)**
85 Broad Street **New York, N.Y.** **(Address of principal executive offices)**	**10004** **(Zip Code)**

(212) 902-1000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class:	Name of each exchange on which registered:
Common stock, par value $.01 per share, and attached Shareholder Protection Rights	**New York Stock Exchange**
Depositary Shares, Each Representing 1/1,000th Interest in a Share of Floating Rate Non-Cumulative Preferred Stock, Series A	**New York Stock Exchange**
Depositary Shares, Each Representing 1/1,000th Interest in a Share of 6.20% Non-Cumulative Preferred Stock, Series B	**New York Stock Exchange**
Depositary Shares, Each Representing 1/1,000th Interest in a Share of Floating Rate Non-Cumulative Preferred Stock, Series C	**New York Stock Exchange**
Depositary Shares, Each Representing 1/1,000th Interest in a Share of Floating Rate Non-	**New York Stock Exchange**

Cumulative Preferred Stock, Series D	
5.793% Fixed-to-Floating Rate Normal Automatic Preferred Enhanced Capital Securities of Goldman Sachs Capital II (and Registrant's guarantee with respect thereto)	**New York Stock Exchange**
Floating Rate Normal Automatic Preferred Enhanced Capital Securities of Goldman Sachs Capital III (and Registrant's guarantee with respect thereto)	**New York Stock Exchange**
Medium-Term Notes, Series B, Index-Linked Notes due February 2013; Index-Linked Notes due April 2013; Index-Linked Notes due May 2013; Index-Linked Notes due 2010; and Index-Linked Notes due 2011	**American Stock Exchange**
Medium-Term Notes, Series B, 7.35% Notes due 2009; 7.80% Notes due 2010; Floating Rate Notes due 2008; and Floating Rate Notes due 2011	**New York Stock Exchange**

Medium-Term Notes, Series A, Index-Linked Notes due 2037 of GS Finance Corp. (and Registrant's guarantee with respect thereto)	**NYSE Arca**
Medium-Term Notes, Series B, Index-Linked Notes due 2037	**NYSE Arca**

Securities registered pursuant to Section 12(g) of the Act: None

---

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of the Annual Report on Form 10-K or any amendment to the Annual Report on Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒
Accelerated filer ☐
Non-accelerated filer ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

As of May 25, 2007, the aggregate market value of the common stock of the registrant held by non-affiliates of the registrant was approximately $89.1 billion.

As of January 18, 2008, there were 395,907,302 shares of the registrant's common stock outstanding.

Documents incorporated by reference: Portions of The Goldman Sachs Group, Inc.'s Proxy Statement for its 2008 Annual Meeting of Shareholders to be held on April 10, 2008 are incorporated by reference in the Annual Report on Form 10-K in response to Part III, Items 10, 11, 12, 13 and 14.

* * *

Conflicts of interest are increasing and a failure to appropriately identify and deal with conflicts of interest could adversely affect our businesses.

Our reputation is one of our most important assets. As we have expanded the scope of our businesses and our client base, we increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interests of another client, as well as situations where one or more of our businesses have access to material non-public information that may not be shared with other businesses within the firm.

The SEC, the NYSE, FINRA, other federal and state regulators and regulators outside the United States, including in the United Kingdom and Japan, have announced their intention to increase their scrutiny of potential conflicts of interest, including through detailed examinations of specific transactions. There have been complaints filed against financial institutions, including Goldman Sachs, alleging the violation of antitrust laws arising from their joint participation in certain leveraged buyouts, referred to as "club deals," as discussed under "Legal Proceedings — Private Equity-Sponsored Acquisitions Litigation" in Part I, Item 3 of the Annual Report on Form 10-K. In addition, a number of class action complaints have also been filed in connection with certain specific "club deal" transactions which name the relevant "club deal" participants among the defendants, including Goldman Sachs affiliates in several cases, and generally allege that the transactions constitute a breach of fiduciary duty by the target company and that the "club" participants aided and abetted such breach. We cannot predict the outcome of the litigation to which we are a party, and we may become subject to further litigation or regulatory scrutiny in the future in this regard.

We have extensive procedures and controls that are designed to identify and address conflicts of interest, including those designed to prevent the improper sharing of information among our businesses. However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and our reputation could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to identify and deal appropriately with conflicts of interest. In addition, potential or perceived conflicts could give rise to litigation or enforcement actions.

The Goldman Sachs Business Principles

1

Our clients' interests always come first. Our experience shows that if we serve our clients well, our own success will follow.

2

Our assets are our people, capital and reputation. If any of these is ever diminished, the last is the most difficult to restore. We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard.

3

Our goal is to provide superior returns to our shareholders. Profitability is critical to achieving superior returns, building our capital, and attracting and keeping our best people. Significant employee stock ownership aligns the interests of our employees and our shareholders.

4

We take great pride in the professional quality of our work. We have an uncompromising determination to achieve excellence in everything we undertake. Though we may be involved in a wide variety and heavy volume of activity, we would, if it came to a choice, rather be best than biggest.

5

We stress creativity and imagination in everything we do. While recognizing that the old way may still be the best way, we constantly strive to find a better solution to a client's problems. We pride ourselves on having pioneered many of the practices and techniques that have become standard in the industry.

6

We make an unusual effort to identify and recruit the very best person for every job. Although our activities are measured in billions of dollars, we select our people one by one. In a service business, we know that without the best people, we cannot be the best firm.

7

We offer our people the opportunity to move ahead more rapidly than is possible at most other places. Advancement depends on merit and we have yet to find the limits to the responsibility our best people are able to assume. For us to be successful, our men and women must reflect the diversity of the communities and cultures in which we operate. That means we must attract, retain and motivate people from many backgrounds and perspectives. Being diverse is not optional; it is what we must be.

8

We stress teamwork in everything we do. While individual creativity is always encouraged, we have found that team effort often produces the best results. We have no room for those who put their personal interests ahead of the interests of the firm and its clients.

9

The dedication of our people to the firm and the intense effort they give their jobs are greater than one finds in most other organizations. We think that this is an important part of our success.

10

We consider our size an asset that we try hard to preserve. We want to be big enough to undertake the largest project that any of our clients could contemplate, yet small enough to maintain the loyalty, the intimacy and the esprit de corps that we all treasure and that contribute greatly to our success.

11

We constantly strive to anticipate the rapidly changing needs of our clients and to develop new services to meet those needs. We know that the world of finance will not stand still and that complacency can lead to extinction.

12

We regularly receive confidential information as part of our normal client relationships. To breach a confidence or to use confidential information improperly or carelessly would be unthinkable.

13

Our business is highly competitive, and we aggressively seek to expand our client relationships. However, we must always be fair competitors and must never denigrate other firms.

14

Integrity and honesty are at the heart of our business. We expect our people to maintain high ethical standards in everything they do, both in their work for the firm and in their personal lives.

FINANCIAL TIMES

Markets & Investing

Wednesday December 5, 2007

John Plender Insight

Goldman's risk control offers right example of governance

Financial institutions are notorious for responding to market shocks in a herd. They are driven to this behaviour by complex but flawed risk-management models that assume little interaction between the individual institution and other players in the market. Yet in spite of this impulse to conformity, the risk-management performance of banks in this credit market turmoil is anything but herd-like. What is striking is the sheer variability of outcomes.

At one end of the spectrum Goldman Sachs sails sublimely on, churning out ever-improving earnings figures while offsetting losses on its exposure to the subprime market with vast profits on short positions in mortgages. At the other end, Merrill Lynch and Citigroup write off billions and shed their chief executive officers. How is this disparity to be explained?

Much of it is down to culture. Until recently, Goldman was a partnership, which is one of the best risk-control mechanisms invented. The culture of partnership, which entails a high degree of mutual surveillance in the common interest, still survives in spite of Goldman's status as a listed company. That is clear from remarks made at a Wharton finance conference in New York last month by Lloyd Blankfein, Goldman's chairman and chief executive.

Apart from the discipline of marking to market, he explained, the firm put great emphasis on ensuring that risk concerns were constantly communicated to higher levels of management, "getting more fingerprints" on potential problem risks and challenging the notion that a business group leader ought to make independent decisions on risks that affected the entire firm. There was intense accountability through a host of management committees that evaluated all aspects of risk.

Most importantly, Goldman ascribes as much status, prestige and pay to people engaged in control functions as to those running businesses. It constantly rotates human capital back and forth between risk control and business operations.

Compare and contrast with any large bank, where risk management too often degenerates into mere compliance. In such a culture, traders will always find ways around the rules. And if those in charge of the bank are rewarded with bonuses and other incentives where the award is not deferred for long enough, you have a roller-coaster cycle of escalating returns invariably followed by heavy losses.

The structure of boards is also relevant. In the US governance model, the chairman and CEO roles tend not to be split, while the boards are dominated by non-executives who too often lack expertise in risk. Over the recent credit cycle, these non-executive directors permitted a huge escalation of risk across the banking system. They also sanctioned pay deals for CEOs, complete with rewards for failure, that encouraged risk escalation.

Pete Hahn, a former Citigroup executive who is now a fellow at the Cass Business School in London, argues bank boards too often resemble retirement clubs. And he has a point. Apart from CEO Stan O'Neal, only three of the 12 directors of Merrill at the end of last year were under 60. Distinguished though Merrill's board was, it was hardly chock-a-block with expertise on banking and risk.

In contrast, Mr Blankfein is accompanied on the board by two other executive directors, together with Stephen Friedman, a former senior partner of the firm. So there is a core group on the board steeped in the disciplines of risk. And Goldman's managing directors include Gerald Corrigan, a former head of the Federal Reserve Bank of New York, who is regarded as the pre-eminent expert on financial plumbing.

It would be foolish to assume the firm will be necessarily immune from upsets in a deepening credit squeeze. It has had problems with its in-house hedge funds. But it does offer a marked contrast to the "big bank" model now under attack from shareholder activists such as Knight Vinke. Within a predominantly wholesale operation its activities are diverse. Yet they offer genuine synergies, albeit with potential conflicts of interest.

It is clear that bank governance badly needs a rethink. With its distinctive model, Goldman offers interesting food for thought.

John Plender is an FT columnist and chairman of Quintain

DOW JONES

BUSINESS NEWS

December 11, 2007

13 Reasons Bush's Bailout Won't Stop A Recession

By Paul B. Farrell

ARROYO GRANDE, Calif. (Dow Jones) – "What do you call an economist with a prediction? Wrong."

That was the headline of a Business Week column in late 1999, just months before the 2000 dot-com crash.

Yes, wrong: Conservative supply-siders, balanced-budget centrists and liberal Keynesian stimulators, too. All wrong! And the 2000 to 2002 recession proved it.

Unfortunately, everybody thinks they're an economist today, even politicians. But they're bad at it, too. So we need to update the headline to fit the mortgage bailout and other quick-fix solutions to America's problems.

First, the context: Fortune magazine recently put CEOs such as Citi's Prince and Merrill's O'Neill under the microscope: "What Were They Smoking?" The best-and-brightest lost $165 billion, but exited rich, with hundreds of millions.

Now we need to ask guys like Paulson, Bernanke and their Beltway buddies: "What are you guys still smoking?" Bailout? Freeze? Voluntary? They must be smoking hundred dollar bills from lobbyists because this government intervention scheme smells bad.

Why? Because all these solutions are being dreamed up by the same political and financial geniuses who got us into the problems in the first place. The same guys who failed to act before the economy spun out of control. Trusting those same guys makes absolutely no sense! They were clueless going in. They're clueless about the solutions. So, a new rule: "What do you call a politician with a prediction? Wrong!"

Though you may disagree with Dick Cheney, this time he's the only guy inside the Beltway who's got it right. Fortune says "the staunchly free-market Vice President can be expected to resist any impulse to soften the blow with government action." His position: "The markets work, and they are working."

But unfortunately, Bush, Paulson, Bernanke and the Democrats are out-voting Cheney. They're all pushing government programs predicted to slow the record number of home foreclosures and "ease the damage from the housing recession," as USAToday described the short-term goals.

What are they still smoking? Reminds me of Viking King Canute sitting on his throne at the shore commanding the tide to stop. Folks, tides and recessions come and go. And wishful-thinking, fairy-tale solutions won't stop the inevitable, any more than proclaiming this plan will "ease the damage of the recession," but it's "not a bailout, nor a silver bullet."

So let's step back and look at the facts objectively and rationally. Let's look at the 13 reasons why all the bailout fixes are just cosmetic PR that politicians and lobbyists spin for the masses, to gloss over Wall Street's greed and stupidity during the latest bull run-up, while pandering to voter naiveté, undermining America's long-term needs, and proving once again that our leaders cannot manage our nation effectively.

Here are 13 reasons:

1. No bailout for sock puppets. . . and not for junk mortgages

Remember all the shareholders who invested in Wall Street's last fiasco, those bizarre, no-earnings, dot-com schemes like Pets.com and its cute sock puppet? Nobody bailed them out after the 2000 crash that triggered a 30-month recession and wiped out $8 trillion in market-cap. This time Washington's just trying to salvage an out-of-control Wall Street.

2. U.S. dollar loses more credibility

Can it get worse? Yes, the dollar will sink lower. Martin Feldman, former chairman of Reagan's Council of Economic Advisers, recommends doing nothing in a Wall Street Journal OpEd piece: "Arbitrarily changing the terms of mortgages held by investors around the world would destroy the credibility of American private debt." But they're doing it anyway. They got greedy, sold junk. Now people don't trust us anymore.

3. Supply-side hypocrisy

It's almost funny. Supply-siders pretend to trust the free market to work out problems. Yet the elite of the conservative free-market supply-siders on Wall Street, at the Federal Reserve and (except for the Veep) in the White House, pushed for and got government intervention to minimize mortgage credit losses created by Wall Street's excessive greed.

4. PR stunt and photo-op

Washington knows this is just a PR photo-op pandering to Middle America's fears. But "it's too little, too late and too voluntary" says a New York Times editorial. "Only an estimated 250,000 borrowers, at best, will benefit" from the mortgage-rate freeze. "From mid-2007 to now, some 800,000 have entered foreclosure. From 2008 through mid-2010 . . . there will be an estimated 3.5 million loan defaults." Free market politicians know it won't work.

5. Undermines responsible mortgagees

Many worry the biggest losers may profit most, like speculators. Even junk mortgagees who are able to pay excessive reset rates may get no breaks. Moreover, the damage will spill-over to the tens of millions of responsible homeowners who are current on their mortgages. Plus, they will be indirectly penalized; for example, if they have to sell, they'll compete against mortgagees getting bailout benefits and tax breaks in a down market.

6. Taxpayer revolution coming

Wall Street got too greedy, made mega-billions. The average managing director made $2.52 million repackaging mortgages. Bubble pops. Housing collapses. Defaults. Foreclosures. Local revenues dropping. Federal, too. A Wall Street Journal editorial put it bluntly: "More than 95% of homeowners are making payments on time, and they believe it is unfair to pay more taxes to assist those who've been less responsible." Still, it's happening and they're angry. Expect a rebellion. This is Wall Street's problem, not the taxpayers.

7. Déjà vu Spitzer and Enron

New York Attorney General Andrew Cuomo has already subpoenaed Wall Street. Next: Congress, the SEC and other state regulators will demand answers, such as why was Goldman shorting the SIVs they were selling, many of which quickly went into default? What did they fail to disclose? Sounds like a massive conflict of interest with major liabilities. These hearings could drag on a long time, further undermining the international credibility of the dollar.

8. Washington was hiding the truth

As recently as August, U.S. Treasury Secretary Henry Paulson and Federal Reserve Chairman Ben Bernanke both proclaimed that our subprime/credit problems were "contained." Then, suddenly, they were a "contagion" enflaming recession fears. The truth: Both had the data long before August, and mislead us. One is a former chief of a leading Wall Street bank packaging the SIVs. The other is our Fed boss with a staff of thousands of economists and data-crunchers. They knew the truth many months ago, and did nothing.

9. Washington's priority? Wall Street

Remember, Paulson's first response in August was not to help the two million subprime mortgage holders. No, Paulson's first response was to create a $100 billion bailout fund to help his old Wall Street cronies keep all those junk mortgage credits off their balance sheets. More conflicts? You bet. Enough to make Chris Dodd, chairman of the Senate Banking Committee, threaten a formal investigation of Paulson.

* * *

THE WALL STREET JOURNAL

Friday, December 14, 2007 – VOL. CCL NO. 140

How Goldman Won Big On Mortgage Meltdown

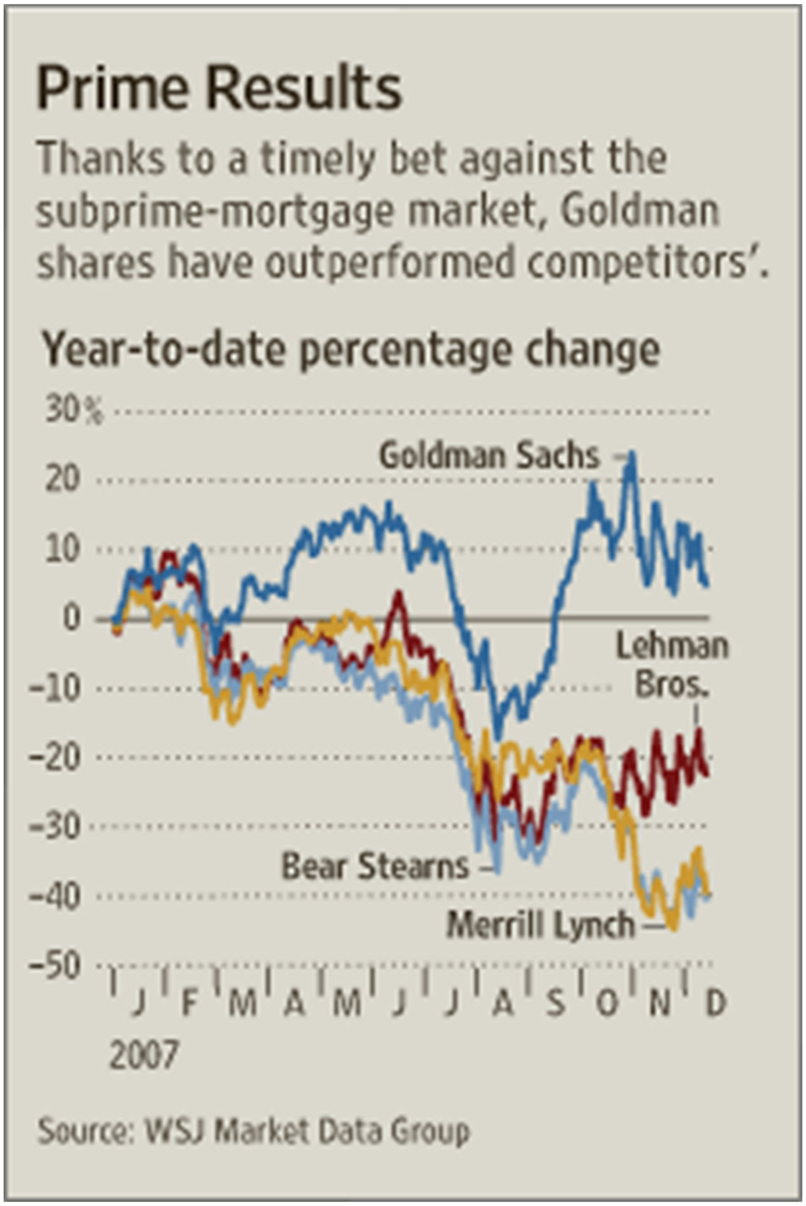
A Team's Bearish Bets Netted Firm Billions; A Nudge From the CFO

By Kate Kelly

The subprime-mortgage crisis has been a financial catastrophe for much of Wall Street. At Goldman Sachs Group Inc., thanks to a tiny group of traders, it has generated one of the biggest windfalls the securities industry has seen in years.

The group's big bet that securities backed by risky home loans would fall in value generated nearly $4 billion of profits during the year ended Nov. 30, according to people familiar with the firm's finances. Those gains erased $1.5 billion to $2 billion of mortgage-related losses elsewhere in the firm. On Tuesday, despite a terrible November and some of the worst market conditions in decades, analysts expect Goldman to report record net annual income of more than $11 billion.

Goldman's trading home run was blasted from an obscure corner of the firm's mortgage department -- the structured-products trading group, which now numbers about 16 traders. Two of them, Michael Swenson, 40 years old, and Josh Birnbaum, 35, pushed Goldman to wager that the subprime market was heading for trouble. Their boss, mortgage-department head Dan Sparks, 40, backed them up during heated debates about how much money the firm should risk. This year, the three men are expected to be paid between $5 million and $15 million apiece, people familiar with the matter say.



Under Chief Executive Lloyd Blankfein, Goldman has stood out on Wall Street for its penchant for rolling the dice with its own money. The upside of that approach was obvious in the third quarter: Despite credit-market turmoil, Goldman earned $2.9 billion, its second-best three-month period ever. Mr. Blankfein is set to be paid close to $70 million this year, according to one person familiar with the matter.

Goldman's success at wringing profits out of the subprime fiasco, however, raises questions about how the firm balances its responsibilities to its shareholders and to its clients. Goldman's mortgage department underwrote collateralized debt obligations, or CDOs, complex securities created from pools of subprime mortgages and other debt. When those securities plunged in value this year, Goldman's customers suffered major losses, as did units within Goldman itself, thanks to their CDO holdings. The question now being raised: Why did Goldman continue to peddle CDOs to customers early this year while its own traders were betting that CDO values would fall? A spokesman for Goldman Sachs declined to comment on the issue.

The structured-products trading group that executed the winning trades isn't involved in selling CDOs minted by Goldman, a task handled by others. Its principal job is to "make a market" for Goldman clients trading various financial instruments tied to mortgage-backed securities. That is, the group handles clients' buy and sell orders, often stepping in on the other side of trades if no other buyer or seller is available.

Winning Wager

This sub-index of the ABX 06-2, a benchmark index reflecting subprime-mortgage-backed securities, tracks the riskiest slices. For much of the year, Goldman had a big bet that it would fall.

Note: Synthetic ABX.HE.BBB- 06-2 Index

Sources: Markit

The group also has another mission: If it spots opportunity, it can trade Goldman's own capital to make a profit. And when it does, it doesn't necessarily have to share such information with clients, who may be making opposite bets. This year, Goldman's traders did a brisk business handling trades for clients who were bullish on the subprime-mortgage-securities market. At the same time, they used Goldman's money to bet that that market would fall.

Tight Leash

Financial firms have good reason to keep a tight leash on proprietary traders. In 1995, bad bets by Nicholas Leeson, a young trader, led to $1.4 billion in losses and the collapse of Barings PLC. Last year, the hedge fund Amaranth Advisors shut down after a young Canadian trader lost more than $6 billion on natural-gas trades. But big trading wins such as George Soros's 1992 bet against the British pound, which netted more than $1 billion for his hedge fund, tend to be talked about for years.

The subprime trading gains notched by Messrs. Birnbaum and Swenson and their Goldman associates are large by recent Wall Street standards. Traders at Deutsche Bank AG and Morgan Stanley also bet against the subprime-mortgage market this year, but in each case, their gains were essentially wiped out because their firms underestimated how far the markets would fall. New York hedge-fund company Paulson & Co. also turned a considerable profit on the subprime meltdown this year, as did Hayman Capital Partners, a Dallas-based hedge-fund firm, say people familiar with the matter.

As recently as a year ago, few on Wall Street thought that the market for home loans made to risky borrowers, known as subprime mortgages, was heading for disaster. At that point, Goldman was bullish on bonds backed by such loans.

Hashing Out Risk

Last December, Mr. Sparks, a longtime trader of bond-related products, was named head of Goldman's 400-person mortgage department. That gave him a seat on the firm's risk committee, which numbers about 30 and meets weekly to hash out the firm's risk profile. It also gave him authority over the structured-products trading group, which then had just eight traders and was run jointly by Mr. Swenson and David Lehman, 30, a former Deutsche Bank trader.

Mr. Swenson, known as Swenny on the trading desk, is a former Williams College hockey player with four children and an acid wit. A veteran trader of asset-backed securities, he joined Goldman in 2000. In late 2005, he helped persuade Mr. Birnbaum, a Goldman veteran, to join the group. Mr. Birnbaum had developed and traded a new security tied to mortgage rates.

Mr. Swenson and Mr. Sparks, then No. 2 in the mortgage department, wanted Mr. Birnbaum to try his hand at trading related to the first ABX index, which was scheduled to launch in January 2006. Because securities backed by subprime mortgages trade privately and infrequently, their values are hard to determine. The ABX family of indexes was designed to reflect their values based on instruments called credit-default swaps. These swaps, in essence, are insurance contracts that pay out if the securities backed by subprime mortgages decline in value. Such swaps trade more actively, with their values rising and falling based on market sentiments about subprime default risk.

Messrs. Swenson and Sparks told Mr. Birnbaum the ABX was going to be a hot product, according to people with knowledge of their pitch.

They were right. On the first day of trading, Goldman netted $1 million in trading profits, people familiar with the matter say. But the index was tough to trade. In comparison to huge markets like Treasury bonds, there wasn't much buying and selling. That meant that Mr. Swenson's team nearly always had to use Goldman's capital to complete trades for clients looking to buy or sell.

Signs of Weakness

Last December, David Viniar, Goldman's chief financial officer, gave the group a big push, suggesting that it adopt a more-bearish posture on the subprime market, according to people familiar with his instructions. During a discussion with Mr. Sparks and others, Mr. Viniar noted that Goldman had big exposure to the subprime mortgage market because of CDOs and other complex securities it was holding, these people say. Emerging signs of weakness in the market, meant that Goldman needed to hedge its bets, the group concluded, these people say.

Mr. Swenson and his traders began shorting certain slices of the ABX, or betting against them, by buying credit-default swaps. At that time, new subprime mortgages still were being pumped out at a rapid clip, and gloom hadn't yet descended on the market. As a result, the swaps were relatively cheap.

Still, trading volume was thin, so it took months for the group to accumulate enough swaps to fully hedge Goldman's exposure to the subprime market. By February, Goldman had built up a sizable short position, and was poised to profit from the subprime meltdown.

The timing was nearly perfect. Goldman's bets were focused on an ABX index that reflects the value of a basket of securities that came to market in early 2006, known as the 06-2 index. Goldman bet that the riskiest portion of that index – a sub-index that reflects the value of the slices of the securities with the lowest credit ratings – would plunge in value. This January, as concerns about subprime mortgages grew, that sub-index dropped from about 95 to below 90. The traders handling the ABX trades were sitting on big profits.

Like other Wall Street firms, Goldman weighs its financial risk by calculating its average daily "value at risk," or VaR. It's meant to be a measure of how much money the firm could lose under adverse market conditions. Because the ABX had become so volatile, the VaR connected to the trades was soaring.

Goldman's co-president, Gary Cohn, who oversees the firm's trading business, became a frequent visitor, as did the firm's risk managers. More than once, Mr. Sparks was summoned to Mr. Blankfein's office to discuss the market. Goldman's top executives understood the group's strategy, say people with knowledge of the matter, but were uncompromising about the VaR. They demanded that risk be cut by as much as 50%, these people say.

Messrs. Swenson and Birnbaum, however, argued that the mortgage market was heading down, and Goldman should take full advantage by maintaining large short positions, people familiar with the matter say.

One day in late February, with the riskiest portion of the 06-2 index heading toward 60, the discussion about what to do grew heated, these people say. Mr. Birnbaum argued that Goldman would be leaving money on the table by unwinding some of the trades his group had used to bet on the mortgage market's decline.

"This is the wrong price" to close out the positions, Mr. Birnbaum snapped at a colleague assigned to help reduce risk, slamming down his phone receiver, these people say. He was overruled.

In March and April, the risky portion of the 06-2 index, which had taken a beating in February, bounced back from near 60 into the mid-70s. By then, the CDO underwriting business, which had been lucrative for Goldman, Merrill Lynch & Co. and other Wall Street firms, was slowing dramatically. Potential buyers had grown worried about the market.

Thanks to the wager that the ABX index would fall, Goldman's mortgage department earned several hundred million dollars during the first quarter, say people familiar with the matter. But the traders had unwound that bet in the weeks that followed. That left Goldman unhedged against further carnage, a worrisome situation for the second quarter.

In late April, Mr. Sparks, the mortgage-department chief, met with Mr. Cohn, the trading head, Mr. Viniar, the chief financial officer, and a couple of other senior executives. "We've got a big problem," Mr. Sparks told them as they paged through a handout listing the declining values of Goldman's CDO portfolio, according to people with knowledge of the meeting. Prices were heading straight down, he told them. He suggested that Goldman cancel a number of pending CDO deals, these people say, and sell whatever it could of the firm's roughly $10 billion in CDOs and related securities – probably at a loss.

Into the Red

Led by Mr. Lehman, the co-head of the structured-products trading group, Goldman began selling off the majority of its CDO holdings. The losses pushed the mortgage group into the red for the second quarter.

By then, the subprime-mortgage market was cratering. Dozens of lenders had filed for bankruptcy protection, and legions of subprime borrowers were losing their homes. At Bear Stearns Cos., two internal hedge funds that had invested in risky portions of CDOs and other securities were struggling. Merrill and Citigroup Inc., among others, were sitting on billions of dollars in depreciating mortgage holdings.

Although it had become more expensive to wager against the ABX index, Messrs. Swenson and Birnbaum got a green light to once again ratchet up the firm's bet that securities backed by subprime mortgages would fall further. In July, the riskiest portion of the index plunged.

No Time for Breaks

The structured-products traders were working long hours. Mr. Swenson would leave his home in Northern New Jersey in time to hit the gym and be at his desk by 7:30 a.m. When Mr. Birnbaum arrived from his Manhattan loft, they'd begin executing large trades on behalf of clients. There was no time for breaks. They took breakfast and lunch at their desks – for Mr. Swenson, the same chicken-and-vegetable salad every day from a nearby deli; for Mr. Birnbaum, an egg-white sandwich for breakfast, a chicken or turkey sandwich for lunch.

Mr. Sparks, the mortgage chief, climbed into his car at 5:30 each morning for the drive in from New Canaan, Conn. To calm his nerves, he'd stop by the gym in Goldman's downtown building to briefly jump rope and lift weights. Sometimes he worked past midnight, arriving home exhausted. He canceled a family ski trip to Wyoming. Although he loved to attend Texas A&M football games and owned a second home near the university, he decided not to join his wife and two children on more than one trip. (Mr. Sparks is a major donor to the university's athletic program.)

By late July, the Bear Stearns funds had collapsed and rumors were circulating of multibillion-dollar CDO losses at Merrill. Goldman was raking in profits.

But once again, concern was growing about VaR, the all-important measure of risk. At one point in July, senior executives called another meeting to demand the mortgage traders pull back, according to people familiar with the matter. The traders agreed.

Ratcheting Back

Around Labor Day, Mr. Birnbaum was asked to ratchet back one of his short positions by $250 million, according to Hayman Capital managing partner Kyle Bass, a client who had similar positions at the time. Mr. Bass says he made $100 million by relieving Goldman of that particular short bet. "It appeared to me that [the traders] constantly fought a VaR battle with the firm once the market started to break," says Mr. Bass.

In the first three quarters of its fiscal year, Goldman's VaR rose 38%, ending that period at $139 million per day, an all-time high, regulatory filings indicate.

During the third quarter ended Aug. 30, the structured-products trading group made more than $1 billion, say people knowledgeable about its performance. That helped the mortgage department notch record quarterly earnings of $800 million, these people say.

The subprime market continued to deteriorate through the fall. Both Merrill and Citigroup announced massive write-downs connected to the subprime mess, and their chief executive officers resigned.

Goldman pressed forward with its bearish bets on the ABX index, people familiar with its strategy say. In October, Goldman's mortgage unit moved from one downtown Manhattan office building to another. Despite their stellar year, traders were crowded into a low-ceiling floor where 150 employees shared one small men's room.

In late November, Mr. Sparks summoned Messrs. Birnbaum and Swenson to his office for separate visits. He thanked each trader for what he had done for the firm.

But there has been no time to relax. Two weeks into Goldman's new fiscal year, credit markets are looking bleaker than ever. Already, analysts are trimming their estimates of how much Goldman and other Wall Street firms will make in the coming year.

THE NEW YORK TIMES

Sunday, December 6, 2009

OFF THE SHELF

Devin Leonard

Economy's Loss Was One Man's Gain

There has been no shortage of books about Wall Street leaders who made billions of dollars disappear in the financial crisis. But as the Wall Street Journal reporter Gregory Zuckerman writes in "The Greatest Trade Ever," (Broadway Books, 295 pages) the financial crisis was a goldmine for a small group of investors. One of them, John Paulson, founder of Paulson & Company, a New York hedge fund, made $15 billion in 2007 by shorting the housing bubble.

How did he do it? His fund purchased insurance contracts – called credit default swaps – on securitized mortgage debt at the peak of the real estate boom. Their value soared when the subprime crisis arrived. Mr. Paulson personally took home $4 billion of his fund's take.

Mr. Zuckerman argues that Mr. Paulson's lucrative bets – it wasn't a single trade – put him in the pantheon of legendary investors like Warren E. Buffett, George Soros and Bernard Baruch.

"They also made him one of the richest people in the world, wealthier than Steven Spielberg, Mark Zuckerberg and David Rockefeller Sr.," he writes.

Mr. Zuckerman is a first-rate reporter who is also able to explain the complexities of real estate finance in layman's terms. At times, "The Greatest Trade Ever" (the subtitle is "The Behind-the-Scenes Story of

How John Paulson Defied Wall Street and Made Financial History") reads like a thriller.

But as you might have already discerned from the overly exuberant title, his book lacks perspective. Mr. Zuckerman depicts Mr. Paulson as a hero for seeing through "the hubris and failure of Wall Street and the financial sector."

Mr. Paulson did indeed see through Wall Street hubris. But if you read this book closely, you realize he's no hero.

The author clearly considers Mr. Paulson morally superior to the leaders of investment banks like Bear Stearns and Lehman Brothers and subprime mortgage lenders like Countrywide Financial and New Century, all of whom are vilified.

But is he really? It's true that the bearish Mr. Paulson enriched his investors while his bullish counterparts helped bring about a global economic crisis that impoverished countless people. But he wouldn't have made his billions if those players had acted more prudently.

According to Mr. Zuckerman, Mr. Paulson persuaded Goldman Sachs and Deutsche Bank to put together securitized collateralized debt obligations (known as C.D.O.'s), which were filled with nasty mortgages that he could then short.

Of course, nobody told the suckers – er, investors – who bought those C.D.O.'s that they were designed to help a man who wanted the most toxic mortgages imaginable so he could profit when they went sour. But Mr. Zuckerman doesn't make much of this scandal – and it is a scandal – perhaps because he doesn't want to taint his supposedly heroic central character.

This isn't the only instance in which Mr. Zuckerman bends over backward to present Mr. Paulson in a favorable light. He goes to great lengths to depict him as a self-effacing regular guy who takes the bus and dresses unfashionably. In short, the author would like us to think that this hedge fund manager is very un-Wall Street.

Perhaps. But Mr. Zuckerman also explains that Mr. Paulson, who grew up in Queens, marched off to Wall Street for the same reason everybody else does: to make piles of money.

We learn in "The Greatest Trade Ever" that, in his 30s, Mr. Paulson had a loft in SoHo where he mingled with models, celebrities and other bankers. After turning 40, Mr. Zuckerman writes, Mr. Paulson married his attractive assistant. They settled down to raise their daughters in a $15 million, six-story mansion, complete with indoor pool, on the Upper East Side.

The former sybarite then became something of a prig, by Mr. Zuckerman's account, scolding his friends for using foul language and his employees for eating pizza, which he considered unhealthy. That may not be typical Wall Street behavior. The rest of it sounds familiar, though.

Luckily for Mr. Zuckerman – and his readers – Mr. Paulson is not the only character in the book. There is also Paolo Pelligrini, a 50-year-old Italian analyst who is living in a one-bedroom rental in Westchester after washing out at the investment bank Lazard Frêres and breaking up with his second wife, a wealthy New York socialite.

Mr. Paulson, an old Wall Street acquaintance, throws him a lifeline in the form of a job offer. Mr.

Pelligrini reciprocates by throwing himself into his work and helps his boss create his winning strategy.

There is Mr. Paulson's friend, Jeffery Green, a Los Angeles real estate investor who pals around with Mike Tyson and Paris Hilton. He falls out with Mr. Paulson after learning of his friend's investment strategy and making his own bets again[st] the boom.

Jeffery Libert, another old acquaintance, also decides to buy credit default swaps. But he is racked with guilt, Mr. Zuckerman writes, when he finds himself wishing for homeowners to default so he can make his money. It's a rare moment of introspection in "The Greatest Trade Ever." For the most part, the people in Mr. Zuckerman's book couldn't be happier when the housing market collapses.

At the end of the book, Mr. Paulson has more money than he will ever be able to spend. He gives $15 million to the Center for Responsible Lending, a non-profit that helps families facing foreclosure. That's not much for a guy who made $4 billion in a single year.

Mr. Buffett and Mr. Soros have been more generous with their earnings. If Mr. Paulson wants to be remembered as a hero, he might want to do more for the people who are on the wrong side of his trades.

GOLDMAN SACHS

MEDIA RELATIONS - IN THE NEWS

Goldman Sachs Responds to *The New York Times* on Synthetic Collateralized Debt Obligations

Background: *The New York Times* published a story on December 24th primarily focused on the synthetic collateralized debt obligation business of Goldman Sachs. In response to questions from the paper prior to publication, Goldman Sachs made the following points.

As reporters and commentators examine some of the aspects of the financial crisis, interest has gravitated toward a variety of products associated with the mortgage market. One of these products is synthetic collateralized debt obligations (CDOs), which are referred to as synthetic because the underlying credit exposure is taken via credit default swaps rather than by physically owning assets or securities. The following points provide a summary of how these products worked and why they were created.

Any discussion of Goldman Sachs' association with this product must begin with our overall activities in the mortgage market. Goldman Sachs, like other financial institutions, suffered significant losses in its residential mortgage portfolio due to the deterioration of the housing market (we disclosed $1.7 billion in residential mortgage exposure write-downs in 2008). These losses would have been substantially higher had we not hedged. We consider hedging the cornerstone of prudent risk management.

Synthetic CDOs were an established product for corporate credit risk as early as 2002. With the introduction of credit default swaps referencing mortgage products in 2004-2005, it is not surprising that market participants would consider synthetic CDOs in the context of mortgages. Although precise tallies of synthetic CDO issuance are not readily available, many observers would agree the market size was in the hundreds of billions of dollars.

Many of the synthetic CDOs arranged were the result of demand from investing clients seeking long exposure.

Synthetic CDOs were popular with many investors prior to the financial crisis because they gave investors the ability to work with banks to design tailored securities which met their particular criteria, whether it be ratings, leverage or other aspects of the transaction.

The buyers of synthetic mortgage CDOs were large, sophisticated investors. These investors had significant in-house research staff to analyze portfolios and structures and to suggest modifications. They did not rely upon the issuing banks in making their investment decisions.

For static synthetic CDOs, reference portfolios were fully disclosed. Therefore, potential buyers could simply decide not to participate if they did not like some or all the securities referenced in a particular portfolio.

Synthetic CDOs require one party to be long the risk and the other to be short so without the short position, a transaction could not take place.

It is fully disclosed and well known to investors that banks that arranged synthetic CDOs took the initial short position and that these positions could either have been applied as hedges against other risk positions or covered via trades with other investors.

Most major banks had similar businesses in synthetic mortgage CDOs.

As housing price growth slowed and then turned negative, the disruption in the mortgage market resulted in synthetic CDO losses for many investors and financial institutions, including Goldman Sachs, effectively putting an end to this market.

THE NEW YORK TIMES

New York, Thursday, December 24, 2009

VOL. CLIX No. 54,899

Banks Bundled Debt, Bet Against It and Won

By GRETCHEN MORGENSON and LOUISE STORY

In late October 2007, as the financial markets were starting to come unglued, a Goldman Sachs trader, Jonathan M. Egol, received very good news. At 37, he was named a managing director at the firm.

Mr. Egol, a Princeton graduate, had risen to prominence inside the bank by creating mortgage-related securities, named Abacus, that were at first intended to protect Goldman from investment losses if the housing market collapsed. As the market soured, Goldman created even more of these securities, enabling it to pocket huge profits.

Goldman's own clients who bought them, however, were less fortunate.

Pension funds and insurance companies lost billions of dollars on securities that they believed were solid investments, according to former Goldman employees with direct knowledge of the deals who asked not to be identified because they have confidentiality agreements with the firm.

Goldman was not the only firm that peddled these complex securities — known as synthetic collateralized debt obligations, or C.D.O.'s — and then made financial bets against them, called selling short in Wall Street parlance. Others that created similar securities and then bet they would fail, according to Wall Street traders, include Deutsche Bank and Morgan Stanley, as well as smaller firms like Tricadia

Inc., an investment company whose parent firm was overseen by Lewis A. Sachs, who this year became a special counselor to Treasury Secretary Timothy F. Geithner.

How these disastrously performing securities were devised is now the subject of scrutiny by investigators in Congress, at the Securities and Exchange Commission and at the Financial Industry Regulatory Authority, Wall Street's self-regulatory organization, according to people briefed on the investigations. Those involved with the inquiries declined to comment.

While the investigations are in the early phases, authorities appear to be looking at whether securities laws or rules of fair dealing were violated by firms that created and sold these mortgage-linked debt instruments and then bet against the clients who purchased them, people briefed on the matter say.

One focus of the inquiry is whether the firms creating the securities purposely helped to select especially risky mortgage-linked assets that would be most likely to crater, setting their clients up to lose billions of dollars if the housing market imploded.

Some securities packaged by Goldman and Tricadia ended up being so vulnerable that they soured within months of being created.

Goldman and other Wall Street firms maintain there is nothing improper about synthetic C.D.O.'s, saying that they typically employ many trading techniques to hedge investments and protect against losses. They add that many prudent investors often do the same. Goldman used these securities initially to offset any potential losses stemming from its positive bets on mortgage securities.

But Goldman and other firms eventually used the C.D.O.'s to place unusually large negative bets that were not mainly for hedging purposes, and investors and industry experts say that put the firms at odds with their own clients' interests.

"The simultaneous selling of securities to customers and shorting them because they believed they were going to default is the most cynical use of credit information that I have ever seen," said Sylvain R. Raynes, an expert in structured finance at R & R Consulting in New York. "When you buy protection against an event that you have a hand in causing, you are buying fire insurance on someone else's house and then committing arson."

Investment banks were not alone in reaping rich rewards by placing trades against synthetic C.D.O.'s. Some hedge funds also benefited, including Paulson & Company, according to former Goldman workers and people at other banks familiar with that firm's trading.

Michael DuVally, a Goldman Sachs spokesman, declined to make Mr. Egol available for comment. But Mr. DuVally said many of the C.D.O.'s created by Wall Street were made to satisfy client demand for such products, which the clients thought would produce profits because they had an optimistic view of the housing market. In addition, he said that clients knew Goldman might be betting against mortgages linked to the securities, and that the buyers of synthetic mortgage C.D.O.'s were large, sophisticated investors, he said.

The creation and sale of synthetic C.D.O.'s helped make the financial crisis worse than it might otherwise have been, effectively multiplying losses by providing more securities to bet against. Some $8 billion in these securities remain on the books at American International Group, the giant insurer rescued by the government in September 2008.

From 2005 through 2007, at least $108 billion in these securities was issued, according to Dealogic, a financial data firm. And the actual volume was much higher because synthetic C.D.O.'s and other customized trades are unregulated and often not reported to any financial exchange or market.

Goldman Saw It Coming

Before the financial crisis, many investors — large American and European banks, pension funds, insurance companies and even some hedge funds — failed to recognize that overextended borrowers would default on their mortgages, and they kept increasing their investments in mortgage-related securities. As the mortgage market collapsed, they suffered steep losses.

* * *

One former Goldman salesman wrote a novel about the crisis. A Deutsche Bank trader passed out T-shirts for investors hoping to profit on a housing bust.

A handful of investors and Wall Street traders, however, anticipated the crisis. In 2006, Wall Street had introduced a new index, called the ABX, that became a way to invest in the direction of mortgage securities. The index allowed traders to bet on or against pools of mortgages with different risk characteristics, just as stock indexes enable traders to bet on whether the overall stock market, or technology stocks or bank stocks, will go up or down.

Goldman, among others on Wall Street, has said since the collapse that it made big money by using the ABX to bet against the housing market. Worried about a housing bubble, top Goldman executives decided in December 2006 to change the firm's overall stance on the mortgage market, from positive to negative, though it did not disclose that publicly.

Even before then, however, pockets of the investment bank had also started using C.D.O.'s to place bets against mortgage securities, in some cases to hedge the firm's mortgage investments, as protection against a fall in housing prices and an increase in defaults.

Mr. Egol was a prime mover behind these securities. Beginning in 2004, with housing prices soaring and the mortgage mania in full swing, Mr. Egol began creating the deals known as Abacus. From 2004 to 2008, Goldman issued 25 Abacus deals, according to Bloomberg, with a total value of $10.9 billion.

Abacus allowed investors to bet for or against the mortgage securities that were linked to the deal. The C.D.O.'s didn't contain actual mortgages. Instead, they consisted of credit-default swaps, a type of insurance that pays out when a borrower defaults. These swaps made it much easier to place large bets on mortgage failures.

Rather than persuading his customers to make negative bets on Abacus, Mr. Egol kept most of these wagers for his firm, said five former Goldman employees who spoke on the condition of anonymity. On occasion, he allowed some hedge funds to take some of the short trades.

Mr. Egol and Fabrice Tourre, a French trader at Goldman, were aggressive from the start in trying to make the assets in Abacus deals look better than they were, according to notes taken by a Wall Street investor during a phone call with Mr. Tourre and another Goldman employee in May 2005.

On the call, the two traders noted that they were trying to persuade analysts at Moody's Investors Service, a credit rating agency, to assign a higher rating to one part of an Abacus C.D.O. but were having trouble, according to the investor's notes, which were provided by a colleague who asked for anonymity because he was not authorized to release them. Goldman declined to discuss the selection of the assets in the C.D.O.'s, but a spokesman said investors could have rejected the C.D.O. if they did not like the assets.

Goldman's bets against the performances of the Abacus C.D.O.'s were not worth much in 2005 and 2006, but they soared in value in 2007 and 2008 when the mortgage market collapsed. The trades gave Mr. Egol a higher profile at the bank, and he was among a group promoted to managing director on Oct. 24, 2007.

"Egol and Fabrice were way ahead of their time," said one of the former Goldman workers. "They saw the writing on the wall in this market as early as 2005." By creating the Abacus C.D.O.'s, they helped protect Goldman against losses that others would suffer.

As early as the summer of 2006, Goldman's sales desk began marketing short bets using the ABX index to hedge funds like Paulson & Company, Magnetar and Soros Fund Management, which invests for the billionaire George Soros. John Paulson, the founder of Paulson & Company, also would later take some of the shorts from the Abacus deals, helping him profit when mortgage bonds collapsed. He declined to comment.

A Deal Gone Bad, for Some

The woeful performance of some C.D.O.'s issued by Goldman made them ideal for betting against. As of September 2007, for example, just five months after Goldman had sold a new Abacus C.D.O., the ratings on 84 percent of the mortgages underlying it had been downgraded, indicating growing concerns about borrowers' ability to repay the loans, according to research from UBS, the big Swiss bank. Of more than 500 C.D.O.'s analyzed by UBS, only two were worse than the Abacus deal.

Goldman created other mortgage-linked C.D.O.'s that performed poorly, too. One, in October 2006, was a $800 million C.D.O. known as Hudson Mezzanine. It included credit insurance on mortgage and subprime mortgage bonds that were in the ABX index; Hudson buyers would make money if the housing market stayed healthy — but lose money if it collapsed. Goldman kept a significant amount of the financial bets against securities in Hudson, so it would profit if they failed, according to three of the former Goldman employees.

A Goldman salesman involved in Hudson said the deal was one of the earliest in which outside investors raised questions about Goldman's incentives. "Here we are selling this, but we think the market is going the other way," he said.

A hedge fund investor in Hudson, who spoke on the condition of anonymity, said that because Goldman was betting against the deal, he wondered whether the bank built Hudson with "bonds they really think are going to get into trouble."

Indeed, Hudson investors suffered large losses. In March 2008, just 18 months after Goldman created that C.D.O., so many borrowers had defaulted that holders of the security paid out about $310 million to Goldman and others who had bet against it, according to correspondence sent to Hudson investors.

The Goldman salesman said that C.D.O. buyers were not misled because they were advised that Goldman was placing large bets against the securities. "We were very open with all the risks that we thought we sold. When you're facing a tidal wave of people who want to invest, it's hard to stop them," he said. The salesman added that investors could have placed bets against Abacus and similar C.D.O.'s if they had wanted to.

A Goldman spokesman said the firm's negative bets didn't keep it from suffering losses on its mortgage assets, taking $1.7 billion in write-downs on them in 2008; but he would not say how much the bank had since earned on its short positions, which former Goldman workers say will be far more lucrative over time. For instance, Goldman profited to the tune of $1.5 billion from one series of mortgage-related trades by Mr. Egol with Wall Street rival Morgan Stanley, which had to book a steep loss, according to people at both firms.

Credit...Left, Treasury Department; Kevin Wolf/ Associated Press

Lewis Sachs, left, who oversaw C.D.O.'s before becoming a Treasury adviser, and John Paulson, whose company profited as the housing market collapsed.

Tetsuya Ishikawa, a salesman on several Abacus and Hudson deals, left Goldman and later published a novel, "How I Caused the Credit Crunch." In it, he wrote that bankers deserted their clients who had bought mortgage bonds when that market collapsed: "We had moved on to hurting others in our quest for self-preservation." Mr. Ishikawa, who now works for another financial firm in London, declined to comment on his work at Goldman.

Profits From a Collapse

Just as synthetic C.D.O.'s began growing rapidly, some Wall Street banks pushed for technical modifications governing how they worked in ways that made it possible for C.D.O.'s to expand even faster, and also tilted the playing field in favor of banks and hedge funds that bet against C.D.O.'s, according to investors.

In early 2005, a group of prominent traders met at Deutsche Bank's office in New York and drew up a new system, called Pay as You Go. This meant the insurance for those betting against mortgages would pay out more quickly. The traders then went to the International Swaps and Derivatives Association, the group that governs trading in derivatives like C.D.O.'s. The new system was presented as a fait accompli, and adopted.

Other changes also increased the likelihood that investors would suffer losses if the mortgage market tanked. Previously, investors took losses only in certain dire "credit events," as when the mortgages associated with the C.D.O. defaulted or their issuers went bankrupt.

But the new rules meant that C.D.O. holders would have to make payments to short sellers under less onerous outcomes, or "triggers," like a ratings downgrade on a bond. This meant that anyone who bet against a C.D.O. could collect on the bet more easily.

"In the early deals you see none of these triggers," said one investor who asked for anonymity to preserve relationships. "These things were built in to provide the dealers with a big payoff when something bad happened."

Banks also set up ever more complex deals that favored those betting against C.D.O.'s. Morgan Stanley established a series of C.D.O.'s named after United States presidents (Buchanan and Jackson) with an unusual feature: short-sellers could lock in very cheap bets against mortgages, even beyond the life of the mortgage bonds. It was akin to allowing someone paying a low insurance premium for coverage on one automobile to pay the same on another one even if premiums over all had increased because of high accident rates.

At Goldman, Mr. Egol structured some Abacus deals in a way that enabled those betting on a mortgage-market collapse to multiply the value of their bets, to as much as six or seven times the face value of those C.D.O.'s. When the mortgage market tumbled, this meant bigger profits for Goldman and other short sellers — and bigger losses for other investors.

Selling Bad Debt

Other Wall Street firms also created risky mortgage-related securities that they bet against.

At Deutsche Bank, the point man on betting against the mortgage market was Greg Lippmann, a trader. Mr. Lippmann made his pitch to select hedge fund clients, arguing they should short the mortgage market. He sometimes distributed a T-shirt that read "I'm Short Your House!!!" in black and red letters.

Deutsche, which declined to comment, at the same time was selling synthetic C.D.O.'s to its clients, and those deals created more short-selling opportunities for traders like Mr. Lippmann.

Among the most aggressive C.D.O. creators was Tricadia, a management company that was a unit of

Mariner Investment Group. Until he became a senior adviser to the Treasury secretary early this year, Lewis Sachs was Mariner's vice chairman. Mr. Sachs oversaw about 20 portfolios there, including Tricadia, and its documents also show that Mr. Sachs sat atop the firm's C.D.O. management committee.

From 2003 to 2007, Tricadia issued 14 mortgage-linked C.D.O.'s, which it called TABS. Even when the market was starting to implode, Tricadia continued to create TABS deals in early 2007 to sell to investors. The deal documents referring to conflicts of interest stated that affiliates and clients of Tricadia might place bets against the types of securities in the TABS deal.

Even so, the sales material also boasted that the mortgages linked to C.D.O.'s had historically low default rates, citing a "recently completed" study by Standard & Poor's ratings agency — though fine print indicated that the date of the study was September 2002, almost five years earlier.

At a financial symposium in New York in September 2006, Michael Barnes, the co-head of Tricadia, described how a hedge fund could put on a negative mortgage bet by shorting assets to C.D.O. investors, according to his presentation, which was reviewed by The New York Times.

Mr. Barnes declined to comment. James E. McKee, general counsel at Tricadia, said, "Tricadia has never shorted assets into the TABS deals, and Tricadia has always acted in the best interests of its clients and investors."

Mr. Sachs, through a spokesman at the Treasury Department, declined to comment.

Like investors in some of Goldman's Abacus deals, buyers of some TABS experienced heavy losses. By the end of 2007, UBS research showed that two TABS deals were the eighth- and ninth-worst performing C.D.O.'s. Both had been downgraded on at least 75 percent of their associated assets within a year of being issued.

Tricadia's hedge fund did far better, earning roughly a 50 percent return in 2007 and similar profits in 2008, in part from the short bets.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

10-CV-____________ ( )

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GOLDMAN SACHS & CO. and
FABRICE TOURRE,

Defendants.

ECF CASE

Jury Trial Demanded

COMPLAINT
[Securities Fraud]

Plaintiff, the United States Securities and Exchange Commission ("Commission"), alleges as follows against the defendants named above.

OVERVIEW

1. The Commission brings this securities fraud action against Goldman, Sachs & Co. ("GS&Co") and a GS&Co employee, Fabrice Tourre ("Tourre"), for making materially misleading statements and omissions in connection with a synthetic collateralized debt obligation ("CDO") GS&Co structured and marketed to investors. This synthetic CDO, ABACUS 2007-AC1, was tied to the performance of subprime residential mortgage-backed securities ("RMBS") and

was structured and marketed by GS&Co in early 2007 when the United States housing market and related securities were beginning to show signs of distress. Synthetic CDOs like ABACUS 2007-AC1 contributed to the recent financial crisis by magnifying losses associated with the downturn in the United States housing market.

2. GS&Co marketing materials for ABACUS 2007-AC1 — including the term sheet, flip book and offering memorandum for the CDO — all represented that the reference portfolio of RMBS underlying the CDO was selected by ACA Management LLC (“ACA”), a third-party with experience analyzing credit risk in RMBS. Undisclosed in the marketing materials and unbeknownst to investors, a large hedge fund, Paulson & Co. Inc. (“Paulson”), with economic interests directly adverse to investors in the ABACUS 2007-AC1 CDO, played a significant role in the portfolio selection process. After participating in the selection of the reference portfolio, Paulson effectively shorted the RMBS portfolio it helped select by entering into credit default swaps (“CDS”) with GS&Co to buy protection on specific layers of the ABACUS 2007-AC1 capital structure. Given its financial short interest, Paulson had an economic incentive to choose RMBS that it expected to experience credit events in the near future. GS&Co did not disclose Paulson’s adverse economic interests or its role in the portfolio selection process in the term sheet, flip book, offering memorandum or other marketing materials provided to investors.

3. In sum, GS&Co arranged a transaction at Paulson’s request in which Paulson heavily influenced the selection of the portfolio to suit its economic interests, but failed to disclose to investors, as part of the description of the portfolio selection process

contained in the marketing materials used to promote the transaction, Paulson's role in the portfolio selection process or its adverse economic interests.

4. Tourre was principally responsible for ABACUS 2007-AC1. Tourre devised the transaction, prepared the marketing materials and communicated directly with investors. Tourre knew of Paulson's undisclosed short interest and its role in the collateral selection process. Tourre also misled ACA into believing that Paulson invested approximately $200 million in the equity of ABACUS 2007-AC1 (a long position) and, accordingly, that Paulson's interests in the collateral selection process were aligned with ACA's when in reality Paulson's interests were sharply conflicting.

5. The deal closed on April 26, 2007. Paulson paid GS&Co approximately $15 million for structuring and marketing ABACUS 2007-AC1. By October 24, 2007, 83% of the RMBS in the ABACUS 2007-AC1 portfolio had been downgraded and 17% were on negative watch. By January 29, 2008, 99% of the portfolio had been downgraded. As a result, investors in the ABACUS 2007-AC1 CDO lost over $1 billion. Paulson's opposite CDS positions yielded a profit of approximately $1 billion for Paulson.

6. By engaging in the misconduct described herein, GS&Co and Tourre directly or indirectly engaged in transactions, acts, practices and a course of business that violated Section 17(a) of the Securities Act of 1933, 15 U.S.C. §77q(a) ("the Securities Act"), Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) ("the Exchange Act") and Exchange Act Rule 10b-5, 17 C.F.R. §240.10b-5. The Commission seeks injunctive relief, disgorgement of profits, prejudgment interest, civil penalties and other appropriate and necessary equitable relief from both defendants.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. Each defendant, directly or indirectly, made use of the means or instruments of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged herein. Certain of the acts, practices, and courses of conduct constituting the violations of law alleged herein occurred within this judicial district.

DEFENDANTS

8. **Goldman, Sachs & Co.** is the principal United States broker-dealer of The Goldman Sachs Group, Inc., a global investment banking, securities and investment management firm headquartered in New York City. GS&Co structured and marketed ABACUS 2007-AC1.

9. **Fabrice Tourre**, age 31, is a registered representative with GS&Co. Tourre was the GS&Co employee principally responsible for the structuring and marketing of ABACUS 2007-AC1. Tourre worked as a Vice President on the structured product correlation trading desk at GS&Co headquarters in New York City during the relevant period. Tourre presently works in London as an Executive Director of Goldman Sachs International.

FACTS

A. GS&CO'S CORRELATION TRADING DESK

10. GS&Co's structured product correlation trading desk was created in and around late 2004/early 2005. Among the services it provided was the structuring and marketing of a series of synthetic CDOs called "ABACUS" whose performance was tied to RMBS. GS&Co sought to protect and expand this profitable franchise in a competitive market throughout the relevant period. According to an internal GS&Co memorandum to the Goldman Sachs Mortgage Capital Committee ("MCC") dated March 12, 2007, the "ability to structure and execute complicated transactions to meet multiple client's needs and objectives is key for our franchise," and "[e]xecuting this transaction [ABACUS 2007-AC1] and others like it helps position Goldman to compete more aggressively in the growing market for synthetics written on structured products."

B. PAULSON'S INVESTMENT STRATEGY

11. Paulson & Co. Inc. ("Paulson") is a hedge fund founded in 1994. Beginning in 2006, Paulson created two funds, known as the Paulson Credit Opportunity Funds, which took a bearish view on subprime mortgage loans by buying protection through CDS on various debt securities. A CDS is an over-the-counter derivative contract under which a protection buyer makes periodic premium payments and the protection seller makes a contingent payment if a reference obligation experiences a credit event.

12. RMBS are securities backed by residential mortgages. Investors receive payments out of the interest and principal on the underlying mortgages.

Paulson developed an investment strategy based upon the belief that, for a variety of reasons, certain mid-and-subprime RMBS rated "Triple B," meaning bonds rated "BBB" by S&P or "Baa2" by Moody's, would experience credit events. The Triple B tranche is the lowest investment grade RMBS and, after equity, the first part of the capital structure to experience losses associated with a deterioration of the underlying mortgage loan portfolio.

13. CDOs are debt securities collateralized by debt obligations including RMBS. These securities are packaged and generally held by a special purpose vehicle ("SPV") that issues notes entitling their holders to payments derived from the underlying assets. In a synthetic CDO, the SPV does not actually own a portfolio of fixed income assets, but rather enters into CDSs that reference the performance of a portfolio (the SPV does hold some collateral securities separate from the reference portfolio that it uses to make payment obligations).

14. Paulson came to believe that synthetic CDOs whose reference assets consisted of certain Triple B-rated mid-and-subprime RMBS would experience significant losses and, under certain circumstances, even the more senior AAA-rated tranches of these so-called "mezzanine" CDOs would become worthless.

C. GS&CO AND PAULSON DISCUSS A PROPOSED TRANSACTION

15. Paulson performed an analysis of recent-vintage Triple B-rated RMBS and identified various bonds it expected to experience credit events. Paulson then asked GS&Co to help it buy protection, through the use of CDS, on the RMBS it had adversely

selected, meaning chosen in the belief that the bonds would experience credit events.

16. Paulson discussed with GS&Co possible transactions in which counterparties to its short positions might be found. Among the transactions considered were synthetic CDOs whose performance was tied to Triple B-rated RMBS. Paulson discussed with GS&Co the creation of a CDO that would allow Paulson to participate in selecting a portfolio of reference obligations and then effectively short the RMBS portfolio it helped select by entering into CDS with GS&Co to buy protection on specific layers of the synthetic CDO's capital structure.

17. A Paulson employee explained the investment opportunity as of January 2007 as follows:

> "It is true that the market is not pricing the subprime RMBS wipeout scenario. In my opinion this situation is due to the fact that rating agencies, CDO managers and underwriters have all the incentives to keep the game going, while 'real money' investors have neither the analytical tools nor the institutional framework to take action before the losses that one could anticipate based [on] the 'news' available everywhere are actually realized."

18. At the same time, GS&Co recognized that market conditions were presenting challenges to the successful marketing of CDO transactions backed by mortgage-related securities. For example, portions of an email in French and English sent by Tourre to a friend on January 23, 2007 stated, in English translation where applicable: "More and more leverage in the system, The whole building is about to

collapse anytime now . . . Only potential survivor, the fabulous Fab[rice Tourre] . . . standing in the middle of all these complex, highly leveraged, exotic trades he created without necessarily understanding all of the implications of those monstruosities!!!" Similarly, an email on February 11, 2007 to Tourre from the head of the GS&Co structured product correlation trading desk stated in part, "the cdo biz is dead we don't have a lot of time left."

D. INTRODUCTION OF ACA TO THE PROPOSED TRANSACTION

19. GS&Co and Tourre knew that it would be difficult, if not impossible, to place the liabilities of a synthetic CDO if they disclosed to investors that a short investor, such as Paulson, played a significant role in the collateral selection process. By contrast, they knew that the identification of an experienced and independent third-party collateral manager as having selected the portfolio would facilitate the placement of the CDO liabilities in a market that was beginning to show signs of distress.

20. GS&Co also knew that at least one significant potential investor, IKB Deutsche Industriebank AG ("IKB"), was unlikely to invest in the liabilities of a CDO that did not utilize a collateral manager to analyze and select the reference portfolio.

21. GS&Co therefore sought a collateral manager to play a role in the transaction proposed by Paulson. Contemporaneous internal correspondence reflects that GS&Co recognized that not every collateral manager would "agree to the type of names [of RMBS] Paulson want[s] to use" and put its "name at risk...on a weak quality portfolio."

22. In or about January 2007, GS&Co approached ACA and proposed that it serve as the "Portfolio Selection Agent" for a CDO transaction sponsored by Paulson. ACA previously had constructed and managed numerous CDOs for a fee. As of December 31, 2006, ACA had closed on 22 CDO transactions with underlying portfolios consisting of $15.7 billion of assets.

23. Internal GS&Co communications emphasized the advantages from a marketing perspective of having ACA associated with the transaction. For example, an internal email from Tourre dated February 7, 2007, stated:

> "One thing that we need to make sure ACA understands is that we want their name on this transaction. This is a transaction for which they are acting as portfolio selection agent, this will be important that we can use ACA's branding to help distribute the bonds."

24. Likewise, an internal GS&Co memorandum to the Goldman Sachs MCC dated March 12, 2007 described the marketing advantages of ACA's "brand-name" and "credibility":

> "We expect the strong brand-name of ACA as well as our market-leading position in synthetic CDOs of structured products to result in a successful offering."
>
> "We expect that the role of ACA as Portfolio Selection Agent will broaden the investor base for this and future ABACUS offerings."
>
> "We intend to target suitable structured product investors who have previously participated in ACA-managed cashflow CDO

> transactions or who have previously participated in prior ABACUS transactions."
>
> "We expect to leverage ACA's credibility and franchise to help distribute this Transaction."

E. PAULSON'S PARTICIPATION IN THE COLLATERAL SELECTION PROCESS

25. In late 2006 and early 2007, Paulson performed an analysis of recent-vintage Triple B RMBS and identified over 100 bonds it expected to experience credit events in the near future. Paulson's selection criteria favored RMBS that included a high percentage of adjustable rate mortgages, relatively low borrower FICO scores, and a high concentration of mortgages in states like Arizona, California, Florida and Nevada that had recently experienced high rates of home price appreciation. Paulson informed GS&Co that it wanted the reference portfolio for the contemplated transaction to include the RMBS it identified or bonds with similar characteristics.

26. On January 8, 2007, Tourre attended a meeting with representatives from Paulson and ACA at Paulson's offices in New York City to discuss the proposed transaction.

27. On January 9, 2007, GS&Co sent an email to ACA with the subject line, "Paulson Portfolio." Attached to the email was a list of 123 2006 RMBS rated Baa2. On January 9, 2007, ACA performed an "overlap analysis" and determined that it previously had purchased 62 of the 123 RMBS on Paulson's list at the same or lower ratings.

28. On January 9, 2007, GS&Co informed ACA that Tourre was "very excited by the initial portfolio feedback."

29. On January 10, 2007, Tourre sent an email to ACA with the subject line, "Transaction Summary." The text of Tourre's email began, "we wanted to summarize ACA's proposed role as 'Portfolio Selection Agent' for the transaction that would be sponsored by Paulson (the 'Transaction Sponsor')." The email continued in relevant part, "[s]tarting portfolio would be ideally what the Transaction Sponsor shared, but there is flexibility around the names."

30. On January 22, 2007, ACA sent an email to Tourre and others at GS&Co with the subject line, "Paulson Portfolio 1-22-10.xls." The text of the email began, "Attached please find a worksheet with 86 sub-prime mortgage positions that we would recommend taking exposure to synthetically. Of the 123 names that were originally submitted to us for review, we have included only 55."

31. On January 27, 2007, ACA met with a Paulson representative in Jackson Hole, Wyoming, and they discussed the proposed transaction and reference portfolio. The next day, on January 28, 2007, ACA summarized the meeting in an email to Tourre. Tourre responded via email later that day, "this is confirming my initial impression that [Paulson] wanted to proceed with you subject to agreement on portfolio and compensation structure."

32. On February 2, 2007, Paulson, Tourre and ACA met at ACA's offices in New York City to discuss the reference portfolio. Unbeknownst to ACA at the time, Paulson intended to effectively short the RMBS portfolio it helped select by entering into CDS with GS&Co to buy protection on specific layers of the synthetic CDO's capital structure. Tourre and GS&Co, of course, were fully aware that Paulson's economic interests with respect to the quality of the reference

portfolio were directly adverse to CDO investors. During the meeting, Tourre sent an email to another GS&Co employee stating, "I am at this aca paulson meeting, this is surreal." Later the same day, ACA emailed Paulson, Tourre, and others at GS&Co a list of 82 RMBS on which Paulson and ACA concurred, plus a list of 21 "replacement" RMBS. ACA sought Paulson's approval of the revised list, asking, "Let me know if these work for you at the Baa2 level."

33. On February 5, 2007, Paulson sent an email to ACA, with a copy to Tourre, deleting eight RMBS recommended by ACA, leaving the rest, and stating that Tourre agreed that 92 bonds were a sufficient portfolio.

34. On February 5, 2007, an internal ACA email asked, "Attached is the revised portfolio that Paulson would like us to commit to — all names are at the Baa2 level. The final portfolio will have between 80 and these 92 names. Are 'we' ok to say yes on this portfolio?" The response was, "Looks good to me. Did [Paulson] give a reason why they kicked out all the Wells [Fargo] deals?" Wells Fargo was generally perceived as one of the higher-quality subprime loan originators.

35. On or about February 26, 2007, after further discussion, Paulson and ACA came to an agreement on a reference portfolio of 90 RMBS for ABACUS 2007-AC1.

F. <u>GS&CO MISLED INVESTORS BY REPRESENTING THAT ACA SELECTED THE PORTFOLIO WITHOUT DISCLOSING PAULSON'S SIGNIFICANT ROLE IN DETERMINING THE PORTFOLIO AND ITS ADVERSE ECONOMIC INTERESTS</u>

36. GS&Co's marketing materials for ABACUS 2007-AC1 were false and misleading because they represented that ACA selected the reference portfolio while omitting any mention that Paulson, a party with economic interests adverse to CDO investors, played a significant role in the selection of the reference portfolio.

37. For example, a 9-page term sheet for ABACUS 2007-AC1 finalized by GS&Co on or about February 26, 2007, described ACA as the "Portfolio Selection Agent" and stated in bold print at the top of the first page that the reference portfolio of RMBS had been "selected by ACA." This document contained no mention of Paulson, its economic interests in the transaction, or its role in selecting the reference portfolio.

38. Similarly, a 65-page flip book for ABACUS 2007-AC1 finalized by GS&Co on or about February 26, 2007 represented on its cover page that the reference portfolio of RMBS had been "Selected by ACA Management, LLC." The flip book included a 28-page overview of ACA describing its business strategy, senior management team, investment philosophy, expertise, track record and credit selection process, together with a 7-page section of biographical information on ACA officers and employees. Investors were assured that the party selecting the portfolio had an "alignment of economic interest" with investors. This document contained no mention of Paulson, its economic interests in the transaction, or its role in selecting the reference portfolio.

39. Tourre had primary responsibility for preparing the term sheet and flip book.

40. The Goldman Sachs MCC, which included senior-level management of GS&Co, approved the ABACUS 2007-AC1 on or about March 12, 2007. GS&Co expected to earn between $15-and-$20 million for structuring and marketing ABACUS 2007-AC1.

41. On or about April 26, 2007, GS&Co finalized a 178-page offering memorandum for ABACUS 2007-AC1. The cover page of the offering memorandum included a description of ACA as "Portfolio Selection Agent." The Transaction Overview, Summary and Portfolio Selection Agent sections of the memorandum all represented that the reference portfolio of RMBS had been selected by ACA. This document contained no mention of Paulson, its economic interests in the transaction, or its role in selecting the reference portfolio.

42. Tourre reviewed at least the Summary section of the offering memorandum before it was sent to potential investors.

43. Although the marketing materials for ABACUS 2007-AC1 made no mention of Paulson or its role in the transaction, internal GS&Co communications clearly identified Paulson, its economic interests, and its role in the transaction. For example, the March 12, 2007 MCC memorandum describing the transaction stated, "Goldman is effectively working an order for Paulson to buy protection on specific layers of the [ABACUS 2007-]AC1 capital structure."

G. GS&CO MISLED ACA INTO BELIEVING PAULSON WAS LONG EQUITY

44. GS&Co also misled ACA into believing that Paulson was investing in the equity of ABACUS 2007-AC1 and therefore shared a long interest with

CDO investors. The equity tranche is at the bottom of the capital structure and the first to experience losses associated with deterioration in the performance of the underlying RMBS. Equity investors therefore have an economic interest in the successful performance of a reference RMBS portfolio. As of early 2007, ACA had participated in a number of CDO transactions involving hedge funds that invested in the equity tranche.

45. Had ACA been aware that Paulson was taking a short position against the CDO, ACA would have been reluctant to allow Paulson to occupy an influential role in the selection of the reference portfolio because it would present serious reputational risk to ACA, which was in effect endorsing the reference portfolio. In fact, it is unlikely that ACA would have served as portfolio selection agent had it known that Paulson was taking a significant short position instead of a long equity stake in ABACUS 2007-AC1. Tourre and GS&Co were responsible for ACA's misimpression that Paulson had a long position, rather than a short position, with respect to the CDO.

46. On January 8, 2007, Tourre attended a meeting with representatives from Paulson and ACA at Paulson's offices in New York City to discuss the proposed transaction. Paulson's economic interest was unclear to ACA, which sought further clarification from GS&Co. Later that day, ACA sent a GS&Co sales representative an email with the subject line "Paulson meeting" that read:

> "I have no idea how it went — I wouldn't say it went poorly, not at all, but I think it didn't help that we didn't know exactly how they

> [Paulson] want to participate in the space. Can you get us some feedback?"

47. On January 10, 2007, Tourre emailed ACA a "Transaction Summary" that included a description of Paulson as the "Transaction Sponsor" and referenced a "Contemplated Capital Structure" with a "[0]% - [9]%: pre-committed first loss" as part of the Paulson deal structure. The description of this [0]% - [9]% tranche at the bottom of the capital structure was consistent with the description of an equity tranche and ACA reasonably believed it to be a reference to the equity tranche. In fact, GS&Co never intended to market to anyone a "[0]%-[9]%" first loss equity tranche in this transaction.

48. On January 12, 2007, Tourre spoke by telephone with ACA about the proposed transaction. Following that conversation, on January 14, 2007, ACA sent an email to the GS&Co sales representative raising questions about the proposed transaction and referring to Paulson's equity interest. The email, which had the subject line "Call with Fabrice [Tourre] on Friday," read in pertinent part:

> "I certainly hope I didn't come across too antagonistic on the call with Fabrice [Tourre] last week but the structure looks difficult from a debt investor perspective. I can understand Paulson's equity perspective but for us to put our name on something, we have to be sure it enhances our reputation."

49. On January 16, 2007, the GS&Co sales representative forwarded that email to Tourre. As of that date, Tourre knew, or was reckless in not knowing, that ACA had been misled into believing

Paulson intended to invest in the equity of ABACUS 2007-AC1.

50. Based upon the January 10, 2007, "Transaction Summary" sent by Tourre, the January 12, 2007 telephone call with Tourre and continuing communications with Tourre and others at GS&Co, ACA continued to believe through the course of the transaction that Paulson would be an equity investor in ABACUS 2007-AC1.

51. On February 12, 2007, ACA's Commitments Committee approved the firm's participation in ABACUS as portfolio selection agent. The written approval memorandum described Paulson's role as follows: "the hedge fund equity investor wanted to invest in the 0-9% tranche of a static mezzanine ABS CDO backed 100% by subprime residential mortgage securities." Handwritten notes from the meeting reflect discussion of "portfolio selection work with the equity investor."

H. ABACUS 2007-AC1 INVESTORS

1. IKB

52. IKB is a commercial bank headquartered in Dusseldorf, Germany. Historically, IKB specialized in lending to small and medium-sized companies. Beginning in and around 2002, IKB, for itself and as an advisor, was involved in the purchase of securitized assets referencing, or consisting of, consumer credit risk including RMBS CDOs backed by U.S. mid-and-subprime mortgages. IKB's former subsidiary, IKB Credit Asset Management GmbH, provided investment advisory services to various purchasing entities participating in a commercial

paper conduit known as the "Rhineland programme conduit."

53. The identity and experience of those involved in the selection of CDO portfolios was an important investment factor for IKB. In late 2006 IKB informed a GS&Co sales representative and Tourre that it was no longer comfortable investing in the liabilities of CDOs that did not utilize a collateral manager, meaning an independent third-party with knowledge of the U.S. housing market and expertise in analyzing RMBS. Tourre and GS&Co knew that ACA was a collateral manager likely to be acceptable to IKB.

54. In February, March and April 2007, GS&Co sent IKB copies of the ABACUS 2007-AC1 term sheet, flip book and offering memorandum, all of which represented that the RMBS portfolio had been selected by ACA and omitted any reference to Paulson, its role in selecting the reference portfolio and its adverse economic interests. Those representations and omissions were materially false and misleading because, unbeknownst to IKB, Paulson played a significant role in the collateral selection process and had financial interests in the transaction directly adverse to IKB. Neither GS&Co nor Tourre informed IKB of Paulson's participation in the collateral selection process and its adverse economic interests.

55. The first written marketing materials for ABACUS 2007-AC1 were distributed on February 15, 2007, when GS&Co emailed a preliminary term sheet and reference portfolio to the GS&Co sales representative covering IKB. Tourre was aware these materials would be delivered to IKB.

56. On February 19, 2007, the GS&Co sales representative forwarded the marketing materials to

IKB, explaining via email: "Attached are details of the ACA trade we spoke about with Fabrice [Tourre] in which you thought the AAAs would be interesting."

57. Tourre maintained direct and indirect contact with IKB in an effort to close the deal. This included a March 6, 2007 email to the GS&Co sales representative for IKB representing that, "This is a portfolio selected by ACA . . ." Tourre subsequently described the portfolio in an internal GS&Co email as having been "selected by ACA/Paulson."

58. ABACUS 2007-AC1 closed on or about April 26, 2007. IKB bought $50 million worth of Class A-1 notes at face value. The Class A-1 Notes paid a variable interest rate equal to LIBOR plus 85 basis points and were rated Aaa by Moody's Investors Services, Inc. ("Moody's") and AAA by Standard & Poor's Ratings & Services ("S&P"). IKB bought $100 million worth of Class A-2 Notes at face value. The Class A-2 Notes paid a variable interest rate equal to LIBOR plus 110 basis points and were rated Aaa by Moody's and AAA by S&P.

59. The fact that the portfolio had been selected by an independent third-party with experience and economic interests aligned with CDO investors was important to IKB. IKB would not have invested in the transaction had it known that Paulson played a significant role in the collateral selection process while intending to take a short position in ABACUS 2007-AC1. Among other things, knowledge of Paulson's role would have seriously undermined IKB's confidence in the portfolio selection process and led senior IKB personnel to oppose the transaction.

60. Within months of closing, ABACUS 2007-AC1's Class A-1 and A-2 Notes were nearly

worthless. IKB lost almost all of its $150 million investment. Most of this money was ultimately paid to Paulson in a series of transactions between GS&Co and Paulson.

2. ACA/ABN AMRO

61. ACA's parent company, ACA Capital Holdings, Inc. ("ACA Capital"), provided financial guaranty insurance on a variety of structured finance products including RMBS CDOs, through its wholly-owned subsidiary, ACA Financial Guaranty Corporation. On or about May 31, 2007, ACA Capital sold protection or "wrapped" the $909 million super senior tranche of ABACUS 2007-AC1, meaning that it assumed the credit risk associated with that portion of the capital structure via a CDS in exchange for premium payments of approximately 50 basis points per year.

62. ACA Capital was unaware of Paulson's short position in the transaction. It is unlikely that ACA Capital would have written protection on the super senior tranche if it had known that Paulson, which played an influential role in selecting the reference portfolio, had taken a significant short position instead of a long equity stake in ABACUS 2007-AC1.

63. The super senior transaction with ACA Capital was intermediated by ABN AMRO Bank N.V. ("ABN"), which was one of the largest banks in Europe during the relevant period. This meant that, through a series of CDS between ABN and Goldman and between ABN and ACA that netted ABN premium payments of approximately 17 basis points per year, ABN assumed the credit risk associated with the super senior portion of ABACUS 2007-AC1's capital structure in the event. ACA Capital was unable to pay.

64. GS&Co sent ABN copies of the ABACUS 2007-AC1 term sheet, flip book and offering memorandum, all of which represented that the RMBS portfolio had been selected by ACA and omitted any reference to Paulson's role in the collateral selection process and its adverse economic interest. Tourre also told ABN in emails that ACA had selected the portfolio. These representations and omissions were materially false and misleading because, unbeknownst to ABN, Paulson played a significant role in the collateral selection process and had a financial interest in the transaction that was adverse to ACA Capital and ABN.

65. At the end of 2007, ACA Capital was experiencing severe financial difficulties. In early 2008, ACA Capital entered into a global settlement agreement with its counterparties to effectively unwind approximately $69 billion worth of CDSs, approximately $26 billion of which were related to 2005-06 vintage subprime RMBS. ACA Capital is currently operating as a run-off financial guaranty insurance company.

66. In late 2007, ABN was acquired by a consortium of banks that included the Royal Bank of Scotland ("RBS"). On or about August 7, 2008, RBS unwound ABN's super senior position in ABACUS 2007-AC1 by paying GS&Co $840,909,090. Most of this money was subsequently paid by GS&Co to Paulson.

CLAIMS FOR RELIEF

FIRST CLAIM

Section 17(a) of the Securities Act

67. Paragraphs 1-66 are realleged and incorporated herein by reference.

68. GS&Co and Tourre each violated Section 17(a)(1), (2) and (3) of the Exchange Act [15 U.S.C. § 77q(a)(1), (2) & (3)].

69. As set forth above, Goldman and Tourre, in the offer or sale of securities or securities-based swap agreements, by the use of means or instruments of interstate commerce or by the mails, directly or indirectly (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

70. GS&Co and Tourre knowingly, recklessly or negligently misrepresented in the term sheet, flip book and offering memorandum for ABACUS 2007-AC1 that the reference portfolio was selected by ACA without disclosing the significant role in the portfolio selection process played by Paulson, a hedge fund with financial interests in the transaction directly adverse to IKB, ACA Capital and ABN. GS&Co and Tourre also knowingly, recklessly or negligently misled ACA into believing that Paulson invested in the equity of ABACUS 2007-AC1 and, accordingly, that Paulson's interests in the collateral selection process were

closely aligned with ACA's when in reality their interests were sharply conflicting.

SECOND CLAIM

Section 10(b) and Rule 10-b(5) of the Exchange Act

71. Paragraphs 1-70 are realleged and incorporated herein by reference.

72. GS&Co and Tourre each violated Section 10(b) of the Exchange Act [15 U.S.C § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

73. As set forth above, GS&Co and Tourre, in connection with the purchase or sale of securities or securities-based swap agreements, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon persons.

74. GS&Co and Tourre knowingly or recklessly misrepresented in the term sheet, flip book and offering memorandum for ABACUS 2007-AC1 that the reference portfolio was selected by ACA without disclosing the significant role in the portfolio selection process played by Paulson, a hedge fund with financial interests in the transaction adverse to UIKB, ACA Capital and ABN. GS&Co and Tourre also knowingly or recklessly misled ACA into believing that Paulson invested in the equity of ABACUS 2007-AC1 and,

accordingly, that Paulson's interests in the collateral selection process were closely aligned with ACA's when in reality their interests were sharply conflicting.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

A. Finding that GS&Co and Tourre each violated the federal securities laws and the Commission rule alleged in this Complaint;

B. Permanently restraining and enjoining GS&Co and Tourre from violating Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5];

C. Ordering GS&Co and Tourre to disgorge all illegal profits that they obtained as a result of their fraudulent misconduct, acts or courses of conduct described in this Complaint, and to pay prejudgment interest thereon;

D. Imposing civil monetary penalties on GS&Co and Tourre pursuant to Section 20(d)(2) of the Securities Act [15 U.S.C. § 77t (d)(2)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

E. Granting such equitable relief as may be appropriate or necessary for the benefit of investors pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)] .

Dated: Washington, D.C.
April 16, 2010

Respectfully submitted,

/s/ ______________________________

Andrew M. Calamari (AC-4864)
Richard E. Simpson (RS 5859)
Reid A. Muoio (RM 2274)

Kenneth Lench
Cheryl J. Scarboro
James A. Kidney
Jeffrey Tao
Jason Anthony
Nicole C. Kelly
Jeff Leasure

Securities and Exchange Commission
100 F St., NE
Washington, D.C. 20549-4010
(202) 551-4492 (Simpson)
simpsonr@sec.gov

From:	Popov, Snejina
Sent:	Friday, April 16, 2010 1:09 PM
To:	Blankfein, Loyd; Cohn, Gary; Viniar, David; Rogers, John F.W.; van Praag. Lucas; Solomon, David (IB, 200W/41); Sherwood; Michael S; Evans, J. Michael; Forst, Ed
Cc:	gs-ir-30-cc
Subject:	GS and Peers: (After the Bell)
Attachments:	Picture (Device Independent Bitmap)

- GS down 13.1% to $160.70 and a P/B of 1.37x
- The peer set down 5.9%, pulling broader markets down 1.1%. Financials led markets sharply lower after federal regulators filed civil fraud charges against Goldman Sachs regarding alleged conflicts of interest in connection with CDO marketing. The news sent shock-waves into the market and introduced new layers of uncertainty in the potential direction of financial regulation. Market participants appear to be questioning whether the charges are an isolated event or the first in a series of many amid greater scrutiny of the credibility of the SEC. Incidentally, the allegations come as the Obama administration seeks greater regulation of the nation's banks, with many believing the announcement will likely hinder potential road blocks.
- Adding to the negativity, a report showed consumer sentiment fell from 73.6 in March to 69.5 in April, the lowest level in five months. The date is largely inconsistent with recent signs that Americans are beginning to spend more liberally

and a broader sense that a consumer-led recovery is gaining steam.

- MS down 6.4% to a P/B of 1.07x
- C down 7.5% to a P/B of 0.85x
- JPM down 4.6% to a P/B of 1.16x
- BAC down 5.1% to a P/B of 0.87x despite a return to profitability and better-than-expected 1Q10 results.

Ticker	Stock Price	Daily Δ ($)	Daily Δ (%)	P/B	GS P/B Premium	P/TB	GS P/TB premium/ (discount)
GS	$160.70	($24.22)	(13.1%)	1.37 x	NA	1.48 x	NA
MS	$29.16	($1.93)	(6.4%)	1.07 x	28%	1.35 x	10%
C	$4.56	($0.37)	(7.5%)	0.85 x	60%	1.10 x	35%
JPM	$45.55	($2.18)	(4.6%)	1.16 x	18%	1.70 x	-13%
BAC	$18.41	($0.99)	(5.1%)	0.87 x	57%	1.57 x	-6%
Peer Average (Banks/Brokers)			(5.9%)	0.99 x	39%	1.43 x	4%

Goldman, Sachs & Co.
200 West Street, New York, NY 10282
Tel: 212-357-0187 | Fax: 212-426-4778
email: snejina.popov@gs.com

Snejina Popov
Investor Relations

Goldman
Sachs

Goldman, Sachs & Co. and Fabrice Tourre

Home > Litigation > Litigation Releases > 2010

SECURITIES AND EXCHANGE COMMISSION

Litigation Release No. 21489 / April 16, 2010

Securities and Exchange Commission v. Goldman, Sachs & Co. and Fabrice Tourre, 10 Civ, 3229 (B3). (S.D.N.Y. filed April 16, 2010)

The SEC Charges Goldman Sachs With Fraud In Connection With The Structuring And Marketing of A Synthetic CDO

The Securities and Exchange Commission today filed securities fraud charges against Goldman, Sachs & Co. ("GS&Co") and a GS&Co employee, Fabrice Tourre ("Tourre"), for making material misstatements and omissions in connection with a synthetic collateralized debt obligation ("CDO") GS&Co structured and marketed to investors. This synthetic CDO, ABACUS 2007-AC1, was tied to the performance of subprime residential mortgage-backed securities ("RMBS") and was structured and marketed in early 2007 when the United States housing market and the securities referencing it were beginning to show signs of distress. Synthetic CDOs like ABACUS 2007-AC1 contributed to the recent financial crisis by magnifying losses associated with the downturn in the United States housing market.

According to the Commission's complaint, the marketing materials for ABACUS 2007-AC1 — including the term sheet, flip book and offering memorandum for the CDO — all represented that the reference portfolio of RMB5 underlying the CDO was selected by ACA Management LLC ("ACA"), a third party with expertise in analyzing credit risk in RMBS.

Undisclosed in the marketing materials and unbeknownst to investors, a large hedge fund, Paulson & Co. Inc. ("Paulson"), with economic interests directly adverse to investors in the ABACUS 2007-AC1 CDO played a significant role in the portfolio selection process. After participating in the selection of the reference portfolio, Paulson effectively shorted the NABS portfolio it helped select by entering into credit default swaps ("CDS") with GS&Co to buy protection on specific layers of the ABACUS 2007-AC1 capital structure. Given its financial short interest, Paulson had an economic incentive to choose RMBS that it expected to experience credit events in the near future. GS&Co did not disclose Paulson's adverse economic interest or its role in the portfolio selection process in the term sheet, flip book, offering memorandum or other marketing materials.

The Commission alleges that Tourre was principally responsible for ABACUS 2007-AC1. According to the Commission's complaint, Tourre devised the transaction, prepared the marketing materials and communicated directly with investors. Tourre is alleged to have known of Paulson's undisclosed short interest and its role in the collateral selection process. He is also alleged to have misled ACA into believing that Paulson invested approximately $200 million in the equity of ABACUS 2007-AC1 (a long position) and, accordingly, that Paulson's interests in the collateral section process were aligned with ACA's when in reality Paulson's interests were sharply conflicting. The deal closed on April 26, 2007. Paulson paid GS&Co approximately $15 million for structuring and marketing ABACUS 2007-AC1. By October 24, 2007, 83% of the RMBS in the ABACUS 2007-AC1 portfolio had been downgraded and 17% was on negative watch.

By January 29, 2008, 99% of the portfolio had allegedly been downgraded, Investors in the liabilities of ABACUS 2007-AC.1 are alleged to have lost over $1 billion. Paulson's opposite CDS positions yielded a profit of approximately $1 billion.

The Commission's complaint, which was filed in the United States District Court for the Southern District of New York, charges GS&Co and Tourre with violations of Section 17 (a) of the Securities Act of 1933, 15 U.S.C. §77q(a), Section 10(b) of the Securities Exchange Act of 1914, 15 U.S.C. §78j(b) and Exchange Act Rule 10b-5, §240.10b-5. The Commission seeks injunctive relief, disgorgement of profits, prejudgment interest and civil penalties from both defendants.

The Commission's investigation is continuing into the practices of investment banks and others that purchased and securitized pools of subprime mortgages and the resecuritized CDO market with a focus on products structured and marketed in late 2006 and early 2007 as the U.S. housing market was beginning to show signs of distress.

See Also: SEC Complaint

http://www.sec.gov/litigation/litreleases/2010/ir21489.htm

Last modified: 4/16/2010

CONFIDENTIAL

REUTERS

BUSINESS NEWS

April 16, 2010 / 10:57 AM / 8 years ago
Goldman Sachs charged with fraud by SEC

Jonathan Stempel, Steve Eder

NEW YORK (Reuters) - Goldman Sachs Group Inc was charged with fraud by the U.S. Securities and Exchange Commission over its marketing of a subprime mortgage product, igniting a battle between Wall Street's most powerful bank and the nation's top securities regulator.

The civil lawsuit is the biggest crisis in years for a company that faced criticism over its pay and business practices after emerging from the global financial meltdown as Wall Street's most influential bank.

It may also make it more difficult for the industry to beat back calls for reform as lawmakers in Washington debate an overhaul of financial regulations.

Goldman called the lawsuit "completely unfounded," adding, "We did not structure a portfolio that was designed to lose money."

The lawsuit puts Goldman Chief Executive Lloyd Blankfein further on the defensive after he told the federal Financial Crisis Inquiry Commission in January that the bank packaged complex debt, while also betting against the debt, because clients had the appetite.

"We are not a fiduciary," he said.

The case also involves John Paulson, a hedge fund investor whose firm Paulson & Co made billions of dollars by betting the nation's housing market would crash. This included an estimated $1 billion from the transaction detailed in the lawsuit, which the SEC said cost other investors more than $1 billion. Paulson was not charged.

Fabrice Tourre, a Goldman vice president whom the SEC said was mainly responsible for creating the questionable mortgage product, known as ABACUS, was charged with fraud.

Goldman shares slid 12.8 percent on Friday, closing down $23.57 at $160.70 on the New York Stock Exchange. The decline wiped out more than $12 billion of market value, and trading volume topped 100 million shares, Reuters data show.

The news dragged down broad U.S. equity indexes, which fell more than 1 percent. The perceived risk of owning Goldman debt, as measured by credit default swaps, increased. Treasury prices rose as investors sought safe-haven government debt.

MORE SEVERE THAN EXPECTED

"These charges are far more severe than anyone had imagined," and suggest Goldman teamed with "the leading short-seller in the industry to design a portfolio of securities that would crash," said John Coffee, a securities law professor at Columbia Law School in New York.

"The greatest penalty for Goldman is not the financial damages – Goldman is enormously wealthy – but the reputational damage," he said, adding that "it's not impossible" to contemplate that the case could lead to criminal charges. Coffee spoke on Reuters Insider.

Goldman vowed to defend itself.

"The SEC's charges are completely unfounded in law and fact," it said. "We will vigorously contest them and defend the firm and its reputation."

E-mails from former Washington Mutual Inc CEO Kerry Killinger read aloud during a congressional hearing this week illustrated clients' concerns about working with Goldman.

In 2007, Killinger discussed hiring Goldman or another investment bank to help Washington Mutual find ways to reduce its credit risk or raise new capital, according to one of the e-mails, which Michigan Democratic Sen Carl Levin read during the hearing.

"I don't trust Goldie on this," Levin quoted one of Killinger's e-mails as saying. "They are smart, but this is swimming with the sharks. They were shorting mortgages big-time while they were giving (Countrywide Financial Corp) advice."

The SEC lawsuit announced on Friday concerns ABACUS, a synthetic collateralized debt obligation that hinged on the performance of subprime residential mortgage-backed securities, and which the regulator said Goldman structured and marketed.

According to the SEC, Goldman did not tell investors "vital information" about ABACUS, including that Paulson & Co was involved in choosing which securities would be part of the portfolio.

The SEC also alleged that Paulson took a short position against the CDO in a bet that its value would fall.

In a statement, Paulson & Co said it did buy credit protection from Goldman on securities issued in the ABACUS program, but did not market the product.

Tourre was not immediately available for comment.

Goldman had not disclosed that the SEC was considering a lawsuit but had known charges were possible and had urged the SEC not to file them, people familiar with the situation said on Friday. The sources requested anonymity because the probe was not public.

To better understand CDOs, the SEC in 2008 approached some hedge funds, including Paulson & Co, whose investment Paulo Pellegrini was among those to talk with the regulator.

By betting against subprime mortgage-related debt, Pellegrini helped Paulson's firm earn an estimated $15 billion in 2007. Pellegrini last year left to start his own firm.

COMING OUT SWINGING

The lawsuit is a regulatory and public relations nightmare for Blankfein, who has spent 18 months fending off complaints that Goldman has been an unfair beneficiary of taxpayer bailouts of Wall Street.

Blankfein became chief executive less than a year before the product challenged by the SEC was created.

"This could be the beginning of a period where you have a regulatory cloud over Goldman Sachs, and perhaps even the entire investment banking industry," said Hank Smith, chief investment officer at Haverford Trust Co in Philadelphia.

John Paulson is not related to Henry "Hank" Paulson, who was Blankfein's predecessor as Goldman chief executive and later become U.S. Treasury secretary.

The SEC lawsuit represents an aggressive expansion of regulatory efforts to hold people and companies responsible for the nation's financial crises.

It could help the regulator rehabilitate its reputation after missing other high-profile cases, including Bernard Madoff's Ponzi scheme.

"The SEC has come out swinging," said Cary Leahey, senior managing director of Decision Economics in New York.

Robert Khuzami, head of the SEC's enforcement division, said John Paulson was not charged because it was Goldman that made misrepresentations to investors, not Paulson.

Still, Khuzami called Paulson's firm "a hedge fund that had a particular interest in the securities performing poorly."

MORE LAWSUITS TO COME?

It is unlikely that criminal charges will be brought, a person close to the matter said. Representatives for the Justice Department declined to comment.

Yet the lawsuit is widely expected to spur other lawsuits, and is "probably the first of several," according to Doug Kass, president of hedge fund Seabreeze Partners Management.

"Regulators and plaintiffs' lawyers are going to be looking at other deals, to what kind of conflicts Goldman has," said Jacob Zamansky, a lawyer who represents investors in securities fraud lawsuits.

"I've been contacted by Goldman customers to bring lawsuits to recover their losses," he added. "With the SEC bringing fraud charges it's going to expose what's behind the curtain."

E-MAIL TRAIL

According to the SEC, Goldman marketing materials showed that a third party, ACA Management LLC, chose the securities underlying ABACUS, without revealing Paulson's involvement.

The SEC complaint quotes extensively from internal e-mails and memos, noting that in early 2007 it had become difficult to market CDOs tied to mortgage-backed securities.

It quoted a January 23, 2007, e-mail from Tourre to a friend as saying: "The whole building is about to collapse anytime now . . . Only potential survivor, the fabulous Fab . . . standing in the middle of all these complex, highly leveraged, exotic trades he created without necessarily understanding all of the implications of those monstrosities!!!"

Another e-mail, to Tourre from the head of Goldman's structured product correlation trading desk, complained: "The CDO biz is dead we don't have a lot of time left."

INDEPENDENCE MATTERS TO CLIENTS

Other communications detail the importance of hiring ACA.

The SEC said Goldman reached out to German bank IKB to buy securities that Paulson was selling, knowing it would buy only securities selected by an independent asset manager.

"We expect the strong brand-name of ACA as well as our market-leading position in synthetic CDOs of structured products to result in a successful offering," a March 12, 2007, Goldman e-mail said.

IKB ultimately took on exposure to ABACUS, as did the Dutch bank ABN Amro Holding NV.

The German government ultimately bailed out IKB in the summer of 2007, in part because of the bank's investments, while lenders that eventually bought much of ABN Amro were also subjected to their own government bailouts.

In a statement after U.S. markets closed, Goldman said it lost more than $90 million on the transaction, six times the $15 million fee it received, and provided "extensive disclosure" on the securities involved.

It also said it never represented to ACA Capital Management, which invested $951 million in the transaction, that Paulson was going to be a "long" investor, meaning that Paulson was betting the securities would gain in value.

Paulson & Co paid Goldman $15 million to structure and market the ABACUS CDO, which closed on April 26, 2007, the SEC said. Little more than nine months later, 99 percent of the portfolio had been downgraded, the SEC said.

Janet Tavakoli, president of Tavakoli Structured Finance Inc in Chicago and author of a book on synthetic CDOs, said it may have been common on Wall Street for hedge funds to play big roles in picking mortgage-backed securities for use in CDOs.

"Many investors were not aware of how disadvantaged they were by these CDO structures," she said.

WASHINGTON IMPACT

The charges are expected to fuel anti-Wall Street sentiment on Capitol Hill where sweeping financial industry reforms are expected to soon arrive on the Senate floor for a vote.

A Democratic bill, strongly supported by President Barack Obama, would slap new restraints on major banks, likely curtailing their opportunities for profit and revenue growth.

Similar legislation was approved in the House of Representatives in December. Analysts believe a bill could be signed into law by Obama by mid-year.

"Banks were getting their mojo back, successfully fighting the regulatory reform bill," said James Ellman, president of Seacliff Capital in San Francisco. "Clearly, such malfeasance could help get the bill to go through."

Goldman in 2008 won a $5 billion investment from Warren Buffett's Berkshire Hathaway Inc.

Last month, Buffett praised Goldman as a "very, very strong, well-run business," and said of Blankfein, "You cannot find a better manager."

Buffett had no immediate comment, his assistant Carrie Kizer said.

The SEC lawsuit was assigned to U.S. District Judge Barbara Jones, who was appointed to the bench in 1995 by President Bill Clinton. She presided over the 2005 criminal trial of former WorldCom Inc Chief Executive Bernard Ebbers over an $11 billion accounting fraud at the phone company.

The case is SEC v. Goldman Sachs & Co et al, U.S. District Court, Southern District of New York, No. 10-03229. (Reporting by Jennifer Ablan, Maria Aspan, Clare Baldwin, Karen Brettell, Jeffrey Cane, Elinor Comlay, Kevin Drawbaugh, Steve Eder, Ellen Freilich, Burton Frierson, David Gaffen, Joseph A. Giannone, Matthew Goldstein, Svea Herbst-Bayliss, Ed Krudy, Herb Lash, Grant McCool, Jeremy Pelofsky, Christian Plumb, Aaron Pressman, Leah Schnurr, Jonathan

Spicer, Jonathan Stempel, Caroline Valetkevitch, Phil Wahba, Dan Wilchins, Rolfe Winkler, Karey Wutkowski and Rachelle Younglai; Editing by Robert MacMillan and John Wallace)

CHICAGO TRIBUNE

April 17, 2010 Saturday
Chicagoland Final Edition

SECTION: NEWS; ZONE C; Pg. 8

LENGTH: 418 words

HEADLINE: SEC lawsuit alleges Goldman Sachs fraud

BYLINE: By Nathaniel Popper, TRIBUNE NEWSPAPERS Tribune Newspapers reporter Tom Petruno contributed to this report.

DATELINE: NEW YORK

BODY:

In one of the most dramatic cases emanating from the global financial crisis, federal regulators accused investment banking powerhouse Goldman Sachs Group Inc. of fraud for its role in issuing securities that were at the heart of the financial crisis.

The civil lawsuit, filed Friday by the Securities and Exchange Commission, sent a shudder through Wall Street as investors girded for possible suits against other institutions. Stocks fell sharply after the announcement, led by financial shares, with Goldman stock down nearly 13 percent.

The charges relate to so-called collateralized debt obligations, complex securities tied to the performance of subprime mortgages, that Goldman created in 2007 near the end of the housing boom.

The value of the securities plunged in the mortgage meltdown that began later that year, helping to set off the global financial crisis.

At the heart of the case is the SEC's claim that Goldman duped investors by failing to give them the entire story about the deal, and who really stood to benefit.

The lawsuit alleges Goldman did not tell investors that the products were based on a portfolio of mortgage bonds selected by a hedge fund. Goldman subsequently helped the hedge fund, Paulson & Co., place bets against the same bond portfolio, the suit said.

"The product was new and complex, but the deception and conflicts are old and simple," Robert Khuzami, the SEC's enforcement chief, said in a statement. "Goldman wrongly permitted a client that was betting against the mortgage market to heavily influence which mortgage securities to include in an investment portfolio, while telling other investors that the securities were selected by an independent, objective third party."

Paulson, which made a number of such bets, made billions of dollars as the subprime home-loan market collapsed in a wave of borrower defaults. It is not part of the SEC's case.

Goldman, meanwhile, denied any wrongdoing.

"The SEC's charges are completely unfounded in law and fact, and we will vigorously contest them and defend the firm and its reputation," Goldman said in a statement

In the wake of the lawsuit, President Barack Obama said he would veto any bill to overhaul financial regulations that doesn't include new rules on derivatives.

Obama, facing stiffening Republican and industry opposition to his proposal, said the government must act to prevent another financial crisis, and new rules should include regulating the $605 trillion over-the-counter derivatives market.

npopper@tribune.com

THE ASSOCIATED PRESS

April 18, 2010 Sunday 09:28 PM GMT

SECTION: BUSINESS NEWS

LENGTH: 1214 words

HEADLINE: Fraud charge deals big blow to Goldman's image

BYLINE: By STEVENSON JACOBS, AP Business Writer

DATELINE: NEW YORK

BODY:

While Goldman Sachs contends with the government's civil fraud charges, an equally serious problem looms: a damaged reputation that may cost it clients.

The Securities and Exchange Commission's bombshell civil fraud charge against Goldman has tarnished the Wall Street bank's already bruised image, analysts say. It could also hurt its ability to do business in an industry based largely on trust.

Damage from the case could hit other big banks as well. The SEC charges are expected to help the Obama administration as it seeks to more tightly police lucrative investment banking activities.

Goldman has denied the SEC's allegation that it sold risky mortgage investments without telling buyers that the securities were crafted in part by a billionaire hedge fund manager who was betting on them to fail. A 31-year-old Goldman employee is also accused in the civil suit that was announced Friday.

The charges could result in fines and restitution of more than $700 million, predicted Brad Hintz, an analyst at Sanford Bernstein. Yet, even if Goldman beats the charge, the hit to its reputation could carry a greater cost.

The company, founded in 1869, grew from a one-man outfit trading promissory notes in New York to the world's most powerful, most profitable and arguably most envied securities and investment firm. From its 43-story glass-and-steel headquarters in Lower Manhattan, Goldman oversees a financial empire that spans more than 30 countries and includes more than 30,000 employees.

It has long attracted some of the world's best and brightest. Some have gone on to lofty careers in public life, enhancing the firm's aura of mystique and influence. Goldman alumni include former Treasury Secretaries Henry Paulson and Robert Rubin and former New Jersey Gov. Jon Corzine.

In its corporate profile, the company says its culture distinguishes it from other firms and "helps to make us a magnet for talent." That culture is summed up in the firm's "14 Business Principles," which preach an almost militant philosophy of putting the client before the firm.

Now, it's that very philosophy that has been questioned by the government.

So far, no Goldman clients have publicly condemned the bank's alleged actions. But the negative publicity and regulatory scrutiny could cause some to distance themselves, said Mark T. Williams, a professor of finance and economics at Boston University.

Goldman earned a record $4.79 billion during the fourth quarter of last year and is expected to report blowout first-quarter results on Tuesday. A big chunk of its profits are from fee-based client businesses, such as investment advising, underwriting securities and brokering billion-dollar mergers.

"Goldman can really only truly be effective in the marketplace if it maintains a strong reputation," Williams said.

Morgan Stanley, the No. 2 U.S. investment bank after Goldman, could be in a position to poach some Goldman clients, which include hedge funds, pension funds and other big institutional investors. Overseas, European rivals such as Deutsche Bank AG and UBS could benefit.

Investors are already betting the legal troubles will hurt Goldman's finances. The company's shares plunged 13 percent after the charges were announced Friday, erasing a staggering $12.5 billion in market value.

"Reputation risk is the biggest issue in our view," Citigroup analyst Keith Horowitz wrote in a note to clients. He predicted the fraud case won't be a "life-threatening issue" but that it "clearly seems like a black eye for Goldman."

It's not the first. The company came under criticism for receiving billions in bailout money that the government funneled into crippled insurer American International Group Inc. at the height of the financial crisis in 2008. Goldman was owed the money, but critics argued it should've been treated like other creditors and be forced to accept less.

Goldman CEO Lloyd Blankfein angered the bank's critics last year after The Times of London quoted him as saying he was "doing God's work" running the firm and handing out big employee bonuses. Blankfein himself got a $9 million stock bonus for 2009.

Mishaps like those have been surprising given how much attention Goldman pays to its image. "Our clients' interests always come first," the company says on its website under the heading, "Goldman Sachs Business Principle No. 1."

It's a sales pitch that few Wall Street firms always live up to. Some analysts blame that on a shift in the industry's business model from traditional investment banking to one that focuses on making big bets for itself or clients.

That shift culminated in the rise of Blankfein, a former commodities trader, to the position of CEO in 2003. Today, trading accounts for nearly 70 percent of Goldman's revenue. Most of that trading is done on behalf of clients, though Goldman generates about 10 percent of its revenue by trading for itself.

The heavy reliance on trading and Goldman's peerless performance have left the firm open to criticism that it uses its market knowledge to game the system to benefit itself and a select group of clients.

The SEC charges seemingly support that assertion. Fabrice Tourre, the 31-year-old Goldman executive accused of shepherding the deal in question, boasted about the "exotic trades" he created "without necessarily understanding all of the implications of those monstrosities!!!," according to the SEC complaint.

In another e-mail, he describes as "surreal" a meeting between his hedge fund client and another firm that allegedly wasn't told that the bundle of securities it was buying were chosen with input from a third party who was betting they would fail.

"Once upon a time, Wall Street firm protected clients," said Christopher Whalen, managing director of financial research firm Institutional Risk Analytics. "This litigation exposes the cynical, savage culture of Wall Street that allows a dealer to commit fraud on one customer to benefit another."

In a lengthy rebuttal to the SEC charges Friday, Goldman insisted it was a middleman in the transaction and did nothing wrong by not disclosing bearish bets against the pool by Paulson & Co., a major hedge fund led by billionaire investor John Paulson. Goldman said it lost $90 million on the deal.

The SEC said Goldman had a duty to inform buyers of the mortgage investments that Paulson had played a major role in choosing the securities that went into the derivatives product and then bet that they would go bust.

Derivatives are complex financial products whose value is based on an underlying asset like mortgages or other types of debt. They're not traded on a public exchange, allowing firms like Goldman to generate fees by brokering deals between buyers and sellers.

The charges strengthen the government's case for increased regulation of derivatives like those Goldman is accused of using, analysts said.

Regardless, Goldman's ability to weather the storm should not be discounted, said Janet Tavakoli, president of Tavakoli Structured Finance, a Chicago consulting firm.

"The benefits of the crisis have so far swamped the reputation risks for Goldman," she said.

"If anything," she added, "they may wind up getting more customers if people can't avoid doing business with them."

AP Business Writer Chip Cutter contributed to this report from New York.

THE WALL STREET JOURNAL

Wednesday, April 21, 2010

Where's the Goldman Sachs That I Used to Know

By James B. Stewart

"Surreal" was the word Goldman Sachs Group's Fabrice Tourre used to describe a meeting in which the firm of hedge-fund billionaire John Paulson discussed with an investor a portfolio of mortgage-backed securities it eventually planned to short. That Goldman Sachs, a name once synonymous with professionalism and integrity, now stands accused by the Securities and Exchange Commission of fraud also might be deemed surreal.

It's hard to imagine the damage that these developments have done already to Goldman Sach's reputation. The company has always maintained a public position that business of investment backing depends on trust, integrity and putting clients' interests first.

Whether those clients remain loyal to Goldman, and whether the firm can attract new ones, remains to be seen. Investors' reaction to the news was swift and negative: Goldman shares dropped down 13% Friday after the SEC filed its suit. Goldman says it is innocent and will fight the accusations. The bank deserves its day in court, and legal experts have said the SEC faces a tough task in proving the company misled investors about how its complex investment vehicles were constructed. Given the public anger at Wall Street, and the criticism of the SEC's failure to regulate more effectively before the financial crisis struck, it's worth considering that Goldman makes an enticing political target, regardless of the suit's merits.

Goldman hasn't disputed the basic facts in the SEC's narrative: (1) that the company allowed its client Mr. Paulson, who famously made billions betting that subprime mortgages would default, to play a role in the selection of a portfolio of the worst imaginable subprime mortgages that would be packaged into a collateralized debt obligation, and (2) that the bank failed to disclose to clients to whom it sold those CDOs that it had, in effect, let the fox into the henhouse. Goldman claims its sophisticated clients wouldn't have cared about such information or considered it important, but if that's the case, why did Goldman conceal it? Goldman collected millions of dollars in fees from Mr. Paulson, who bet against the doomed securities, and from the clients who invested in them.

For many years, I was a Goldman Sachs shareholder. I bought shares soon after they first went public in 1999 and held them until I sold them last year, as I reported in this column. I owned them and recommended them on several occasions because I believed in Goldman's integrity and the culture that fostered it. I have had friends who work at Goldman or who have worked there. To me, they embody the best of Wall Street. They're smart, well-educated, thoughtful, professional and hard-working. This is the Goldman I invested in, not the Goldman alleged to have collaborated with someone like Mr. Paulson to hoodwink investors. I'm not even that concerned about whether the Paulson deal passes legal muster. To me, it fails the higher standards of honesty and professionalism that Goldman once embodied and urgently needs to restore. Then, and only then, would I want to own Goldman shares again.

In its first-quarter earnings conference call Tuesday morning, the company continued to deny wrongdoing and cited its net losses on the deal. Greg Palm, the firm's general counsel, said Goldman "would never intentionally mislead anyone," and that the company "would never condone inappropriate behavior."

To regain investor trust, Goldman must abandon conventional public relations and legal strategies that call for an all-out defense. It should stop saying it will fight the charges aggressively and that the SEC's suit is "completely unfounded." No matter how wronged Goldman officials now feel, they must put those feelings aside and view this matter from the perspective of clients, investors, politicians and the public. Goldman's mantra should be cooperation, not defiance.

When an institution depends on trust and is accused of wrongdoing, it needs to get ahead of the investigators. It needs to learn the facts, share them with the public, impose accountability on its employees, and take any steps necessary to remedy the problem and restore trust. I say this as someone who has written about wrongdoing on Wall Street for years and watched once venerable firms like Kidder Peabody and Drexel Burnham Lambert ignore such advice and pass into oblivion.

This needn't be Goldman's fate. It's already unfortunate that we've learned about the Paulson deals from the SEC and the press rather than from Goldman itself, especially because the firm says it's been on notice since July that it might be sued. But it isn't too late for the firm to move boldly to restore trust. Goldman needs to explain:

■ Why was a firm like Mr. Paulson's allowed to choose the securities in the CDO it was planning to bet against? Although Mr. Paulson's firm may have been smart to bet against subprime mortgages, this deal was like shooting fish in a barrel. Who else gets this kind of access, what does Goldman receive in return, and are their roles disclosed? (Though Mr. Paulson hasn't been accused of any wrongdoing it would be interesting to know how much money from the Troubled Asset Relief Program paid to American International Group, Goldman and others ended up going to him.)

▪ Who at Goldman was responsible for giving Mr. Paulson such extraordinary access and then failing to disclose it? Surely it wasn't Mr. Tourre, the 31-year-old Stanford graduate named as a defendant in the SEC suit. Who did he report to? What was the hierarchy of oversight? In other words, where does the buck stop?

▪ Legal issues aside, does Goldman really believe this deal needs its own standards of integrity, fairness and professionalism? The notion that purchasers of the securities wouldn't care about Mr. Paulson's role already fails the common-sense test. Such an argument would be far more persuasive if it came from the clients who bought them rather than Goldman. And it's no excuse that other firms were carrying out similar deals with comparable disclosure.

▪ If Goldman concludes such a deal didn't meet its standards, it needs to acknowledge that and take whatever steps are necessary to prevent it from happening again. Someone has to be responsible and held accountable, perhaps even a highly valued and revered high-level official. Goldman needs to do this before it is forced to do so by a court, regulators, or Congress. This will be painful. It takes courage, objectivity, vision, and perhaps most of all, humility.

▪ How will Goldman prevent such conflicts in the future? What is it doing internally to restore a culture of integrity? If Mr. Tourre or any other employee thought he was caught in a "surreal" situation, to whom could he take such concerns and get a fair hearing?

▪ The SEC suit isn't Goldman's only potential scandal. The Wall Street Journal reported last week that Goldman director Rajat Gupta is being investigated as part of the sprawling Galleon insider-trading investigation. In the article, Goldman declined to comment on whether Mr. Gupta informed the company about having received a notice from prosecutors. What does Goldman know about possible leaks of inside information? Why, when Mr. Gupta told Goldman in March he wouldn't be standing for re-election, did Goldman Chief executive Lloyd Blankfein issue a public statement lavishing praise for his service? And why, for that matter, wasn't Mr. Gupta asked to resign immediately? Mr. Gupta hasn't been accused of wrongdoing, and Goldman is right not to prejudge him. But that doesn't mean Goldman should ignore the evidence or that someone under investigation is entitled to a board seat.

▪ Are there other investigations we should know about?

These may well be isolated incidents, confined to a few individuals, their timing an unfortunate coincidence. If so, Goldman has all the more reason to get ahead of the scandal, get the facts and disclose them. It may require swallowing some pride and suffering some criticism. It's also the right thing to do.

THE WALL STREET JOURNAL

Friday, April 30, 2010 – Vol CCLV No. 100

Criminal Probe Looks Into Goldman Trading

By Susan Pulliam And Evan Perez

Federal prosecutors are conducting a criminal investigation into whether Goldman Sachs Group Inc. or its employees committed securities fraud in connection with its mortgage trading, people familiar with the probe say.

The investigation from the Manhattan U.S. Attorney's Office, which is at a preliminary stage, stemmed from a referral from the Securities and Exchange Commission, these people say. The SEC recently filed civil securities-fraud charges against the big Wall Street firm and a trader in its mortgage group. Goldman and the trader say they have done nothing wrong and are fighting the civil charges.

Prosecutors haven't determined whether they will bring charges in the case, say the people familiar with the matter. Many criminal investigations are launched that never result in any charges.

The criminal probe raises the stakes for Goldman, Wall Street's most powerful firm. The investigation is centered on different evidence than the SEC's civil case, the people say. It couldn't be determined which Goldman deals are being scrutinized in the criminal investigation.

A spokesperson for the Manhattan U.S. Attorney's office declined to comment. Goldman declined to comment.

Goldman shares fell 2.6% in after-hours trading to $156.08 after The Wall Street Journal reported the news of the investigation. At the 4 p.m. market close, Goldman shares rose 2.1%.

The development comes amid public calls for more Wall Street accountability for the industry's role in the financial crisis. Though there are multiple ongoing criminal and civil investigations, no Wall Street executives connected with the meltdown have been convicted of criminal charges. During congressional hearings this week into Goldman's role in the crisis, legislators grilled Goldman executives for nearly 11 hours.

The SEC and Justice Department often coordinate their actions on investigations. The probe underscores heightened efforts by the Manhattan U.S. Attorney's office in prosecuting white collar and Wall Street crime. It is in the midst of pursuing the largest insider-trading case in a generation, charging 21 individuals and negotiating 12 guilty pleas in that matter.

But the Goldman probe presents a significant challenge for the government. Prosecutors in the Brooklyn office of the U.S. Attorney last year lost a high-profile fraud case against two former Bear Stearns Cos. executives, in the first major criminal case linked to the financial meltdown.

Prosecutors had accused the Bear Stearns employees of lying to investors in 2007 about the health of two funds that eventually collapsed. The case centered on what the government viewed as incriminating emails indicating the traders knew the mortgage marked would fall but didn't disclose that view to investors.

To bring any criminal charges in the Goldman matter, prosecutors would need to believe they had gathered evidence that showed that the film or its employees knowingly committed fraud in their mortgage business. Proving such intent to break the law typically is the toughest hurdle for prosecutors to clear.

Another stumbling block: Such financial cases can be highly complex. Few outside of Wall Street understand arcane products such as collateralized debt obligations, the pools of mortgage-related holdings at the heart of the SEC civil case against Goldman.

On April 16, the SEC charged Goldman and an employee, Fabrice Tourre, with securities fraud in a civil suit relating to mortgage transaction known as Abacus 2007-ACI, the deal the government said was designed to fail. The SEC alleged that Goldman duped its clients by failing to disclose that hedge fund Paulson & Co. not only helped select the mortgages included in the deal but also bet against the transaction. Both Goldman and Mr. Tourre have denied wrongdoing.

Even the SEC's case, which is subject to a lesser standard of proof than a criminal case, is viewed as a challenge for regulators. The SEC's commissioners were split 3-2 along party lines on whether the agency should bring a case.

In battling the SEC charges, Goldman says its investors were sophisticated and knew the underlying securities they were buying. Goldman says it wasn't required to disclose who provided input into the deal or the views of its clients in the transaction.

The congressional hearing involved numerous other mortgage deals Goldman arranged in 2006 and 2007. Lawmakers criticized Goldman and its executives for allegedly stacking the deck against clients during the market meltdown in 2007. Some of the emails released by regulators, lawmakers and Goldman suggest a callous attitude at Goldman toward the risks involved in some of the mortgage deals, including one in which an employee referred to a mortgage transaction the firm sold to investors as a "sh---y" deal.

Over the years, the government has been reluctant to criminally charge financial firms with wrongdoing because the charge itself can cause a business to implode. Some investing clients can't or won't trade with a firm facing such a taint. Indeed, in the more than two-century history of the U.S. financial markets, no major financial firm has survived criminal charges. Securities firms E.F. Hutton & Co. and Drexel Burnham Lambert Inc. crumbled after being indicted in the 1980s. In 2002 Arthur Andersen LLP went bankrupt after it was convicted of obstruction of justice for its role in covering up an investigation into Enron Corp. The conviction was later overturned by the Supreme Court.

In recent years, some financial firms have agreed to "deferred prosecutions," in which they agree to a probationary period for which they won't commit any future wrongdoing.

That's what Prudential Securities Inc. did in 1994 when that securities firm faced criminal charges that it misled investors about the risks and rewards of limited-partnership investments.

–Susanne Craig contributed to this article.

From: Libstag, Gwen (FIN 200W41)

Sent: Friday, May 21, 2010 2:47 PM

To: Cohn. Gary [EO] Viniar, David;Stecher, Esta [GSBankUSA]; Rogers, John F.W. [EO]; Solomon, David [IBD]; Dyal, Gordon [IBD]; Scherr, Stephen [IBD]; Schwartz, Harvey [Fin]; Heller, David B [Sec Div]; Eisler, Ed [Sec Div]; Sherwood, Michael S; Cohen, Alan (AM-NY) [Compl]; Weinberg, John S. [IBD]

Subject: In case you somehow missed this one

- May 21, 2010, 11:53 AM GMT

How Goldman Gets Its Premium Back

Top of Form 1

Search The Source

- By Robert Armstrong and Gregory J. Milman

For the first time since 2003, Goldman Sachs trades at a price/tangible book discount to both JP Morgan Chase and Morgan Stanley. When the SEC is suing you and Congress is grilling you, investors simply steer clear of your stock. That's the common explanation. [Read our GS coverage here.]

But there is another possibility: that the premium has dissolved because the market is worried, not about lawsuits or politics, but about Goldman's core business.

The Abacus affair has highlighted the conflicts intrinsic to the investment banking business. But historically Goldman has managed those conflicts well. Moreover, the conflicts in the Abacus deal at the center or the SEC's case have nothing to do with trading priorities versus I-banking responsibilities — the tension usually cited in discussions of Goldman. The conflicts in the creation of the now-notorious synthetic CDOs were all on the trading side of the business.

The issue is more subtle than that. To see that, let's play a quick game of Can You Spot the Conflict?

Which of the following conflicts is nothing to worry about, in a gray area, or beyond the pale?

1. Bank makes a market in a company's securities while its prop desk is net short those securities.

2. Bank uses information about its clients' overall trading activities to make prop trading decisions.

3. Bank makes a market in mortgage securities issued by financial institution while its prop desk is net short that institution's shares.

4. Bank acts as adviser to mortgage company while its prop desk is net short mortgages.

5. Bank does advisory work for a client while its prop desk is short that client's shares.

6. Bank sells and supports an IPO or other equity or debt issue recognized to be very low quality.

7. Bank designs and sells structured mortgage security product while it is net short against the mortgage market and/or against buyers of the structured product.

8. Bank designs and sells hyper-leveraged synthetic CDO product while:

    a. believing at the management level that the mortgage market is ready to crack;

b. knowing the short party is more sophisticated than the long; and/or

c. there is more money to be made in the long run from the relationship with short party than from the long.

9. Bank's prop desk is net short a security while an analyst has a buy recommendation on it.

10. Bank uses inside information gained though client relationships to take short/long positions on that client's shares.

A good argument can be made that 1 and 2 are not problematic while 9 and 10 are out of bounds.

If you believe it is difficult, if not impossible, to separate flow and prop trading and that major banks cannot compete in advisory services without a sales and trading operation, the conflicts in scenarios 3 through 7 are inherent to the business and simply have to be managed.

As a group, 6 through 8 are particularly important. More than the other cases, a bank is benefiting from its own role as a financial counselor to trade for its own account or earn a fee. These three cases carry the greatest risk of serious conflicts, tainted advice and reputational harm. Banks that push the boundaries in these kinds of cases are giving all their advisory customers reason to worry.

Of course, scenario 8 is based on <u>Abacus</u>. Whatever the true facts are in Goldman's case, the business of constructing a synthetic CDO in a volatile market, shuttling between the counterparties to create the customized product, is riddled with potential conflicts.

This territory is especially dangerous for Goldman because of the perception that it is an elite adviser and an elite trader that can do both simultaneously while managing the conflicts to the satisfaction of its clients. That's why its stock carries a premium to its peers in bull markets.

Conversely, evidence of poorly managed conflicts is especially dangerous to Goldman. Some damage has already been done.

"If I'm a corporate treasurer would I do a debt underwriting with Goldman right now? I might say it's not worth the hassle of trying to explain to a board of directors or irate shareholders or my boss," says Sanford C. Bernstein and Co. analyst Brad Hintz.

Goldman will always play in gray areas — that's the nature of the modern I-bank — but everyone can tell dark gray from light gray.

To regain its valuation premium, Goldman must steer back to the light side.

———

Goldman, Sachs & Co.
200 West Street | 30th Floor | New York, NY 10282
Tel: (212)-902-0393 | Fax: (212)-493-9791
Email: tamilla.ghodsi@gs.com

Tamilla Ghodsi
Managing Director
Business Selection & Conflicts

this email and your reliance on information contained in it. This message contains confidential or privileged information. If you are not the intended recipient please advise immediately and delete this message. See http://gs.com/disclaimer/email for further information on confidentiality and the risks of non-secure electronic email communication. If you cannot access these links, please notify as by reply message and we will send the contents to you.

FINANCIAL TIMES

Thursday June 10, 2010

US Regulators step up probe of second Goldman mortgage deal

CDO was not part of charges filed in April

By Francesco Guerrera, Justin Baer and Greg Farrell in New York

The US Securities and Exchange Commission has stepped up its inquiries into a complex mortgage-backed deal by Goldman Sachs that was not part of the civil fraud charges filed against the bank in April, according to people close to the matter.

SEC interest in Hudson Mezzanine Funding, a $2bn collaterised debt obligation, comes amid settlement talks with Goldman over accusations that the bank defrauded investors in Abacus, a similar CDO. Goldman has denied the SEC's complaint.

People familiar with the matter said that in recent weeks the SEC had been gathering information on Hudson Mezzanine, which featured prominently in an 11-hour grilling of Goldman's executives in the US Senate in April. The SEC and Goldman declined to comment.

The inquiry into Hudson Mezzanine is part of a wider investigation into the CDO activities of Wall Street banks. People close to the situation said the probe was preliminary and there was no certainty that it would lead to additional actions against Goldman.

The bank created and sold Hudson Mezzanine, which contained residential mortgage-backed securities from its own balance sheet, in late 2006.

In an internal e-mail unearthed by the Senate investigation, a Goldman employee said a potential investor in the CDO was “too smart to buy this kind of junk”.

Goldman went “short” on Hudson Mezzanine, buying protection on the entire value of the CDO, according to internal documents. Less than 18 months later, as the US housing bubble burst, Hudson Mezzanine’s credit rating had plunged to junk status, causing losses for investors and enabling Goldman to collect on the insurance.

Legal experts said that inquiries into Hudson Mezzanine were likely to focus on whether Goldman provided investors with adequate disclosure. In a marketing document, Goldman stated its interests were “aligned” with investors because it would buy equity in the CDO. In legal disclaimers, Goldman also said it would buy protection on the security, but it did not specify how much.

Carl Levin, the senator who chairs the sub-committee investigating Wall Street’s actions during the crisis, seized on the “junk” reference repeatedly during the hearing when questioning Lloyd Blankfein and other Goldman executives.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

10-CV-3229 (BSJ)

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GOLDMAN, SACHS & CO. and FABRICE TOURRE,

Defendants.

CONSENT OF DEFENDANT GOLDMAN, SACHS & CO.

1. Defendant Goldman, Sachs & Co. ("Defendant" or "Goldman") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violation of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)];

(b) orders Defendant to pay disgorgement in the amount of $15,000,000;

(c) orders Defendant to pay a civil penalty in the amount of $535,000,000 under Section 20(d)(2) of the Securities Act [15 U.S.C. § 77t(d)(2)]; and

(d) orders Defendant to comply with specified undertakings for three (3) years from the entry of the Final Judgment.

3. Goldman acknowledges that the marketing materials for the ABACUS 2007-AC1 transaction contained incomplete information. In particular, it was a mistake for the Goldman marketing materials to state that the reference portfolio was "selected by" ACA Management LLC without disclosing the role of Paulson & Co. Inc. in the portfolio selection process and that Paulson's economic interests were adverse to CDO investors. Goldman regrets that the marketing materials did not contain that disclosure.

4. Defendant acknowledges that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant agrees that it shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant agrees

that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the complaint in this action.

5. Defendant agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

6. Defendant acknowledges that the Court is not imposing a civil penalty in excess of $535,000,000 based on Defendant's agreement to cooperate as set forth in Paragraph 17 below. Defendant consents that if at any time following the entry of the Final Judgment the Defendant does not comply in any

material respect with its agreement to cooperate, the Commission may, at its sole discretion with reasonable notice to the Defendant, petition the Court for an order requiring Defendant to pay an additional civil penalty. In connection with the Commission's motion for civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that it did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Final Judgment, this Consent, or any related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

7. Defendant agrees to comply with the following undertakings, which shall expire three (3) years from the entry of the Final Judgment herein;

(a) Product Review and Approval

Firmwide Capital Committee. Defendant shall expand the role of its Firmwide Capital Committee (or any successor committee, the "FCC") in the vetting and approval process for offerings of residential mortgage-related securities, including, but not limited to, collateralized debt obligations that reference such securities (collectively "mortgage securities"). Except as described below, offerings of mortgage securities by Defendant's Mortgage Department will first be presented to the Structured Finance Capital Committee (or any successor committee, the "SFCC"), formerly the Mortgage Capital Committee. If the transaction is approved by the SFCC, it shall then be presented to the FCC, which, among other things, shall have the right in its sole discretion to approve or reject any such offerings. The FCC, in its discretion, may direct that some or all mortgage securities offerings shall be brought directly to the FCC. The FCC shall ensure that processes are in place so that written marketing materials (as defined below) for mortgage securities offerings do not include any material misstatement or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(b) Role of Internal Legal and Compliance

1. <u>Marketing Materials</u>. All written marketing materials (i.e., investor presentations or "flip books," term sheets, and offering circulars/ prospectuses) used in connection with mortgage securities offerings must be reviewed by representatives of Defendant's Legal Department or Compliance Department. The review process shall also include a review of the relevant memoranda presented to the FCC/SFCC as part of the approval process for mortgage securities offerings and all other material terms of the proposed transaction. Defendant shall establish and maintain a centralized process to record these reviews through recordation and retention of:

a. The name of each person in the Legal Department or the Compliance Department who reviewed the materials;

b. The date of completion of review; and

c. A list of the materials reviewed.

2. Internal Audit. On at least an annual basis, Defendant's internal audit function shall conduct a review to determine that these requirements are being complied with. Any deficiencies noted by internal audit shall be promptly addressed by Defendant.

(c) Role of Outside Counsel

In offerings of mortgage securities where Defendant is the lead underwriter and retains outside counsel to advise on the offering, such counsel will be asked to review the term sheets, if any, the offering circular or prospectus, and the form of any other marketing materials used in connection with the offering. In order to enhance the effectiveness of its review, outside counsel will be provided with the relevant FCC and/or SFCC memoranda as background information and such other documents necessary to reflect all material terms of the transaction.

(d) Education and Training

1. Within sixty (60) days following the hiring by, or transfer to, Defendant's Mortgage Department of new individuals who will be involved with the structuring or marketing of mortgage securities offerings, each such person shall participate in a training program that includes, among other matters, instruction on the disclosure requirements under the Federal securities laws and that specifically addresses the application of those requirements to offerings of mortgage securities.

2. Not less frequently than annually, each person in Defendant's Mortgage Department who is involved in the structuring or marketing of mortgage securities offerings shall participate in a training seminar that covers, among other matters, disclosure requirements under the Federal securities laws applicable to offerings of mortgage securities. The first training seminar shall take place not later than sixty (60) days following the date of the Final Judgment.

3. Defendant shall provide for appropriate record keeping to track compliance with these requirements.

(e) Certification of Compliance by Defendant

The General Counsel or the Global Head of Compliance of Defendant shall certify annually (one year, two years, and three years, respectively, after the date of entry of this Final Judgment), in writing, compliance in all material respects with the undertakings set forth above. The Commission staff may make reasonable requests for further evidence of compliance, and Defendant agrees to provide such evidence. The certification and any such additional materials shall be submitted to Kenneth R. Lench, Chief of the Structured and New Products Unit, with a copy to the Office of Chief Counsel of the Enforcement Division.

In addition, Defendant acknowledges that it is presently conducting a comprehensive, firmwide review of its business standards. This review includes, among other things, an evaluation of Defendant's conflict management, disclosure and transparency of firmwide activities, structured products and suitability, education, training and business ethics, and client relationships and responsibilities. The Commission has taken this review into account in connection with the settlement of this matter.

8. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

9. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

10. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

11. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

12. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

13. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

14. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that it shall not be permitted to contest the factual allegations of the complaint in this action.

15. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant agrees: (i) not to take any action or to make

or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

16. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

17. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to require its employees to make themselves available for interviews at such times and places reasonably requested by the Commission staff; (ii) agrees to require that its employees testify at trial and other judicial proceedings when requested by Commission

staff; (iii) will produce non-privileged documents and other materials as requested by the Commission staff; (iv) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (v) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (vi) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (vii) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

18. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

19. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: July 14, 2010

/s/ Goldman, Sachs & Co.
Goldman, Sachs & Co.

By: /s/ Gregory K. Palm
Gregory K. Palm
Managing Director and General Counsel
Goldman, Sachs & Co.
200 West Street, 15th Floor
New York, NY 10282

On July 14, 2010, Gregory K. Palm, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of Goldman Sachs, & Co. as its General Counsel.

/s/ Norman Feit
Notary Public
Commission expires:

[STAMP]

Approved as to form:

/s/ Richard H. Klapper

Richard H. Klapper
Gandalfo V. DiBlasi
Karen Patten Seymour
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
(212) 558-4000
Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File No. 1:10-cv-03461-PAC

CLASS ACTION
JURY TRIAL DEMANDED
ECF CASE

In re GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

This Document Relates To: ALL ACTIONS.

CONSOLIDATED
CLASS ACTION COMPLAINT FOR
VIOLATIONS OF FEDERAL SECURITIES LAWS

TABLE OF CONTENTS

Page

I. INTRODUCTION

Court appointed Lead Plaintiffs, the Arkansas Teacher Retirement System, the West Virginia Investment Management Board, and Plumbers and Pipefitters National Pension Fund (collectively, "Lead Plaintiffs"), by their undersigned attorneys, bring this action on behalf of themselves and all other similarly situated purchasers of the securities of The Goldman Sachs Group, Inc. ("Goldman" or "the Company") between February 5, 2007, and June 10, 2010, inclusive (the "Class Period").

Lead Plaintiffs allege the following upon personal knowledge as to themselves and their acts, and upon information and belief as to all other matters, based on the investigation of counsel. The investigation of counsel is predicated upon, among other things, review and analysis of: (i) documents filed publicly by Goldman with the Securities and Exchange Commission (the "SEC"); (ii) press releases, new articles, and other public statements issued by or concerning Goldman and other defendants named herein; (iii) research reports issued by financial analysts concerning Goldman's securities and business; and (iv) other publicly available information and data concerning Goldman and its securities, including information concerning investigations of Goldman and its affiliates by, among others: the United States Senate Permanent Subcommittee on Investigations ("Senate Subcommittee"); the SEC, including the investigation leading to the Complaints brought by the SEC against Goldman and one of its employees, Fabrice Tourre; the Financial Industry Regulatory Authority ("FINRA"); and the Financial Services Authority ("FSA") in the U.K., including the investigation leading to a substantial financial penalty on Goldman Sachs International ("GSI").

II. NATURE AND SUMMARY OF THE ACTION

1. This is a federal securities action on behalf of all persons and entities who purchased or otherwise acquired the publicly traded securities of Goldman from February 5, 2007 through June 10, 2010, inclusive and certain of its officers and directors for violations of the Securities Exchange Act of 1934 ("the Exchange Act").

2. On April 16, 2010, the SEC charged Goldman with securities fraud for collaborating with Paulson & Co., Inc. ("Paulson"), an important Goldman client, to create a portfolio of securities titled Abacus AC-1 ("Abacus") that was designed to fail, and for selling this toxic collateralized debt obligation ("CDO") to other Goldman clients without telling them of Paulson's role in creating Abacus or his massive short position on the CDO. In less than a year, Paulson earned more than $1 billion from shorting Abacus with Goldman's assistance. Goldman's clients, from whom Goldman concealed Paulson's key role in creating Abacus and his short position in the CDO, lost approximately $1 billion.

3. Following the SEC's announcement of securities fraud charges against Goldman, the Company's stock immediately plummeted from $184.27 to $160.70 per share, a loss of approximately $13 billion in shareholder value.

4. The next day, investors discovered that Goldman had concealed from the public that it had been under investigation by the SEC in connection with Abacus since August 2008, and that the SEC told Goldman in

July 2009 via a formal Wells Notice that the SEC was recommending the filing of securities fraud charges.

5. On April 25-26, 2010, the Senate Subcommittee released Goldman internal emails showing that, beginning in late 2006 through early 2008, Goldman made billions by betting against the very mortgage-related CDOs it sold to its clients, and structured and underwrote Abacus to fail – allowing one of its most important clients to reap billions at the expense of Goldman's other clients who bought Abacus.

6. On April 29, 2010, the *Wall Street Journal* revealed that Goldman was under investigation by the Department of Justice. On June 10, 2010, it was reported that in addition to Goldman's conduct in connection with Abacus, the SEC was investigating Goldman's conduct in the Hudson CDO, specifically whether Goldman rid itself of mortgage-backed securities and related CDOs on Goldman's books that it knew were going to decline by selling these securities to Goldman's clients who suffered billions in losses.

7. On July 15, 2010, Goldman agreed to pay the SEC $550 million for its conduct in the Abacus CDO. In connection with the settlement, Goldman acknowledged:

> [T]he marketing materials for the ABACUS 2007-AC1 transaction contained incomplete information. In particular, it was a mistake for the Goldman marketing materials to state that the reference portfolio was 'selected by' ACA Management LLC without disclosing the role of Paulson & Co. Inc. in the portfolio selection process and that Paulson's economic interests were adverse to CDO investors.

8. On April 13, 2011, the Senate Subcommittee issued a bi-partisan report authored by Senator Carl Levin and Senator Tom Coburn which concluded that Goldman had engaged in pervasive conflicts of interest with its clients. The Report issued formal findings of fact including that from 2006 through 2007, Goldman (i) identified toxic mortgage-backed securities and CDOs held on its books that Goldman believed would significantly decline in value and cause the Company to lose billions; (ii) packaged and sold these securities to Goldman's own clients; (iii) hid and made affirmative misrepresentations to hide the fact that Goldman had bet against these securities; and (iv) made billions at its own clients' expense when the value of these securities plummeted, just as Goldman anticipated they would.

9. The Senate identified four particular CDO deals in 2006-2007, Abacus, "Hudson," "Timberwolf," and "Anderson" in which Goldman engaged in the improper practice of recommending and selling securities to its clients while affirmatively hiding the fact it (or Paulson, a favored client) was placing bets that those same securities would significantly decline in value.[1]

[1] On May 11, 2011, the Senate Subcommittee referred its report to the Department of Justice and SEC for review and determination as to whether Goldman defrauded its clients, and whether the Company's executives, including CEO Blankfein committed perjury before Congress. Additionally, on May 16, 2010, the New York Attorney General demanded documents from Goldman in connection with an investigation into Goldman's mortgage-related CDO securities practices.

10. During the Class Period, defendants made three categories of materially false and misleading statements and omissions.

11. First, beginning in July 2009, Goldman concealed from its quarterly and year-end SEC filings, press releases and investor conference calls that the Company had been notified in July 2009, via a formal Wells Notice, that the SEC had recommended filing securities fraud charges relating to Goldman's conduct in connection with Abacus. By failing to disclose the Wells Notice, Goldman hid its improper conduct of betting against (or allowing a favored client to bet against) the very toxic securities that Goldman designed to fail and packaged and sold to its clients.

12. Goldman also concealed from shareholders two additional Wells Notices received by Goldman employees on September 28, 2009 and January 29, 2010, that were also related to Abacus.

13. In October 2009, Goldman came under intense scrutiny about the more than $16 billion in bonuses it was scheduled to pay to Goldman's executives and employees. The Company embarked on a full fledged public relations campaign to promote its reputation as the preeminent Wall Street bank focused first and foremost on responsible business practices that placed their clients' needs paramount to all else. Goldman highlighted its $200 million donation to promote education, and CEO Blankfein even went so far as to claim that Goldman was doing "God's work" – all while concealing the fact that the SEC had told Goldman that it had recommended the filing of securities fraud charges against the Company.

14. On December 24, 2009, the *New York Times* disclosed that Goldman had created and sold

mortgage-related debts in CDOs, bet against these securities and made billions. Goldman immediately issued a public denial defending its CDO practices as necessary to meet "client demand." In doing so, Goldman again hid the fact that the SEC had already notified the Company that the SEC had recommended filing charges based on Goldman's fraudulent conduct that hurt – not benefited – Goldman's clients. Goldman also failed to disclose that the CDOs it sold were not in response to "client demand," but were designed to allow Goldman to rid itself of mortgage-related securities that it wanted off its books and sold to its clients to make billions.

15. Goldman also lied to the market on April 2, 2010, when it issued its 2009 Annual Report. In a letter to "Fellow Shareholders," the Company again defended its mortgage securitization practices, stating that "our short positions were not a 'bet against our clients.'" Goldman again omitted that it had known since July 2009 that the SEC had recommended filing securities fraud charges, and that the Company had engaged in the fraudulent conduct of profiting at the expense of its own clients.

16. In addition, Goldman concealed information about the Wells Notices from both its domestic and international securities regulators, FINRA and the FSA in the U.K., which ultimately fined Goldman $650,000 and approximately $27 million, respectively, for Goldman's failure to report the Wells Notices.

17. Had Goldman disclosed and not affirmatively concealed its receipt of the Wells Notices, the public would have learned of Goldman's fraudulent conduct, which when disclosed between April 16, 2010 and June 10, 2010, caused severe damage to Goldman's

stock price and caused Goldman's shareholders to lose billions.

18. The second category of false and misleading statements and omissions during the Class Period is comprised of those statements by Goldman beginning on February 7, 2007 in which the Company reassured investors that "***[w]e have extensive procedures and controls that are designed to identify and address conflicts of interest*** . . . ." These include statements in which Goldman specified that "we increasingly have to address potential conflicts of interest, ***including situations where our services to a particular client or our own proprietary investments or other investments conflict, or are perceived to conflict, with the interests of another client*** . . . ."[2]

19. Goldman's warnings to shareholders regarding potential conflicts of interest omitted the fact that it was indeed aware of the existence of such conflicts at the time. Unbeknownst to Goldman's clients and shareholders, at the behest of Goldman senior management, Goldman had designed the Abacus deal from the outset to allow the Paulson hedge fund to short more than $1 billion worth of Abacus securities at the direct expense of its other clients to whom Goldman had recommended and sold those same securities.

20. The above statements were materially false and misleading because they failed to disclose that Goldman had deliberately created actual conflicts of interest by engaging in transactions that were designed from the outset by the Company to allow a

[2] All emphasis is added unless otherwise indicated.

favored client to benefit at the expense of its other clients.

21. The third category of false and misleading statements and omissions during the Class Period is comprised of those statements by Goldman beginning in February 2007 in which the Company repeatedly told the public that its "best in class" franchise and continued success depended on the Company's reputation, honesty, integrity and commitment to put its clients' interests first above all else.

22. These statements failed to disclose Goldman's clear conflicts of interest with its own clients, whereby Goldman intentionally packaged and sold to its clients billions in securities that were designed to fail, while at the same time reaping billions for itself or its favored clients by taking massive short positions on these securities. The Senate Subcommittee concluded that Goldman's undisclosed conduct constituted a clear conflict of interest, finding:

> **Conflict Between Client Interests and Proprietary Trading**. In 2007, Goldman Sachs went beyond its role as market maker for clients seeking to buy or sell mortgage related securities, traded billions of dollars in mortgage related assets for the benefit of the firm without disclosing its proprietary positions to clients, and instructed its sales force to sell mortgage related assets, including high risk RMBS and CDO securities that Goldman Sachs wanted to get off its books, and utilizing key roles in CDO transactions to promote its own interests at the expense of investors, ***creating a conflict between the firm's proprietary interests and the interests of its clients***.

23. The then-chair of the Senate Subcommittee stated that:

> Investment banks such as Goldman Sachs were not simply market-makers, they were self-interested promoters of risky and complicated financial schemes that helped trigger the [financial] crisis[.] They bundled toxic mortgages into complex financial instruments, got the credit rating agencies to label them as AAA securities, and sold them to investors, magnifying and spreading risk throughout the financial system, and all too often betting against the instruments they sold and profiting at the expense of their clients.

24. The following are examples of the third category of Goldman's false and misleading statements and omissions. In every Annual Report from 2006-2010, Goldman emphasized The Goldman Sachs Business Principles, including:

> 1 ***Our clients' interests always come first***. Our experience shows that if we serve our clients well, our own success will follow.
>
> 2 Our assets are our people, capital and ***reputation. If any of these is ever diminished, the last is the most difficult to restore***. ***We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us***. ***Our continued success depends upon unswerving adherence to this standard***.

* * *

14 ***Integrity and honesty are at the heart of our business***.

25. Goldman also repeatedly made specific statements and omissions in its SEC filings indicating that its undisclosed fraudulent conduct was not occurring – when in fact it was. Goldman warned its shareholders about the dangers posed by client conflicts of interest – all while omitting the fact that the Company was engaged in pervasive conflicts of interest by selling its clients securities that were designed to fail and profiting at their clients' expense. These include statements in which Goldman stressed:

> As we have expanded the scope of our businesses and our client base, we increasingly [must] address potential conflicts of interest***, including situations where our services to a particular client or our own [proprietary] investments or other interests conflict, or are perceived to conflict, with the interests of another client*** . . . .

Indeed, Goldman specifically identified the precise risks posed by client conflicts of interest and securities fraud violations that subsequently materialized when Goldman was sued by the SEC, stating that "conflicts could give rise to ***litigation or [regulatory] enforcement actions***." However, Goldman reassured investors, stating, ***"[w]e have extensive procedures and controls that are designed to identify and address conflicts of interest . . . ."***

26. Goldman's so-called "warnings" to shareholders regarding potential conflicts of interest created the false impression that it was unaware of the existence of any such conflicts at the time. At the same exact

time that it was issuing these warnings about potential conflicts, senior Goldman management was well-aware of the clear, direct, massive, but undisclosed conflicts created when Goldman shifted the risks of billions of dollars in toxic mortgage-backed securities from its books to its clients' books and made billions at its clients' expense.

27. Goldman publicly conveyed numerous other times during the Class Period the false and misleading message that it had placed its clients' interests paramount above all else, stating in form or substance what Goldman CEO Lloyd Blankfein stated in November 2009: "During our history, our Firm has been guided by three tenets – the needs and objectives of our clients, attracting talented and long term oriented people and ***our reputation and client franchise***."

28. As detailed in the SEC Complaint and settlement, the Senate Subcommittee Report, Goldman internal documents, and herein, Goldman's statements were false and misleading because Goldman purposefully failed to disclose its conduct whereby the Company packaged toxic securities that it wanted to clear from its books, sold them to its clients, and placed short bets against these securities, allowing Goldman to reap billions of dollars in profits at the direct expense of its clients.

29. Goldman's materially false and misleading statements and omissions caused Goldman's stock to trade at artificially inflated levels during the Class Period. When the SEC filed its securities fraud complaint against Goldman on April 16, 2010, the market learned that, contrary to Goldman's public representations, the Company had known that since late July 2009 that the SEC intended to bring formal

securities fraud charges based on Goldman's conduct in connection with Abacus, and that the Company had engaged in undisclosed conduct in which it profited at the direct expense of its clients who sustained severe losses. Goldman's stock plummeted from $184.27 to $160.70 per share, causing over a $13 billion loss in shareholder value.

30. The artificial inflation continued to dissipate from Goldman's stock price between April 16, 2010 and June 10, 2010, when the Senate Subcommittee released internal e-mails providing new details of Goldman's conduct in connection with Abacus, and the public learned that the SEC and Department of Justice were investigating Goldman's mortgage securitization practices beyond just the Abacus deal. On each of these dates, Goldman suffered a corresponding significant stock price decline, causing investors to suffer additional billions in damage.

III. JURISDICTION AND VENUE

31. The claims asserted herein arise under §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and SEC Rule 10b-5.

32. This Court has jurisdiction over the subject matter of this action pursuant to §27 of the Exchange Act.

33. Venue is proper in this District pursuant to §27 of the Exchange Act. Acts and transactions giving rise to the violations of law complained of herein occurred in this District.

IV. THE PARTIES

A. Plaintiffs

34. Lead Plaintiffs Arkansas Teacher Retirement System, the West Virginia Investment Management Board, and Plumbers and Pipefitters National Pension Fund each purchased Goldman common stock during the Class Period and was damaged thereby.

B. Defendants

35. Defendant Goldman is a financial holding company, headquartered in New York, New York, that provides global banking, securities and investment management services in the United States and internationally.

36. With respect to the CDO transactions underlying the allegations of this Complaint, Goldman senior management coordinated the activities of several Goldman subsidiaries, which acted in a collective and coordinated manner in a concerted effort to seek out customers and sell CDO securities, thereby transferring risks posed by the collapsing CDO market from Goldman to its clients. These Goldman subsidiaries include:

> Goldman Sachs & Co. ("GS&Co") a registered as a United States broker-dealer and is engaged in global investment banking, securities and investment management. GS&Co is Goldman's principal broker-dealer in the United States. Its principal executive offices are located in New York, New York; and
>
> Goldman Sachs International ("GSI"), which is engaged in global investment banking, securities and investment management. GSI

has offices in London and New York, and operates in the United States in conjunction with Goldman and GS&Co.

37. Because these Goldman subsidiaries were all acting in concert under common direction from Goldman senior management and for a common purpose, or, in the alternative, they were acting as agents of The Goldman Sachs Group, Inc. and they are referred to collectively herein as "Goldman," except where necessary to specify the particular entity.

38. Defendant Lloyd C. Blankfein ("Blankfein") is Chairman of the Board of Directors and Chief Executive Officer ("CEO") of Goldman. Blankfein participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings.

39. Defendant David A. Viniar ("Viniar") is Chief Financial Officer ("CFO") of Goldman. Viniar participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings.

40. Defendant Gary D. Cohn ("Cohn") is President of and Chief Operating Officer and a director of Goldman. Cohn participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings.

41. The defendants referenced above in ¶¶38-40 are referred to herein as the "Individual Defendants."

C. Relevant Non-Defendant Goldman Personnel

42. The following Goldman employees were involved in planning, creating, recommending and/or selling the CDO securities at issue in this Complaint:

(a) Daniel Sparks ("Sparks") was, at relevant times, Head of Goldman's Mortgage Department and a Partner in The Goldman Sachs Group, Inc.

(b) Jonathan Egol ("Egol") was, at relevant times, Head of Goldman's Correlation Trading Desk. On October 24, 2007, Egol was named a Managing Director of The Goldman Sachs Group, Inc.

(c) David Lehman ("Lehman") was, at relevant times, Head of the Goldman Commercial Mortgage Backed Securities Desk and Head of the CDO Origination Desk. Lehman was also a senior member of the Structured Products Group. On October 26, 2006, Lehman was named a Managing Director of The Goldman Sachs Group, Inc.

(d) Michael Swenson ("Swenson"), was, at relevant times, a Managing Director in the Structured Products Group Trading for The Goldman Sachs Group, Inc.

(e) Peter Ostrem ("Ostrem"), was, at relevant times, Head of Goldman's CDO Origination Desk. On October 26, 2007, Ostrem was named a Managing Director in The Goldman Sachs Group, Inc.

(f) Joshua Birnbaum ("Birnbaum") was, at relevant times, a Managing Director in the Structured Products Group Trading for The Goldman Sachs Group, Inc. He was among the Mortgage Department's top traders in ABX assets.

(g) Fabrice Tourre ("Tourre"), was, at relevant times, an Executive Director in the Structured Products Group Trading for The Goldman Sachs Group, Inc. Tourre also worked at the Correlation

Desk and was principally involved as a lead salesman in the Abacus CDO transaction.

(h) Jonathan Sobel ("Sobel") was, at relevant times, Head of Goldman's Mortgage Department. Sobel is also a Managing Director for The Goldman Sachs Group, Inc.

(i) Benjamin Case ("Case"), was, at relevant times, employed as a trader by Goldman Sachs & Co. on the CDO Origination Desk. Case was assigned lead responsibility for carrying out Goldman's liquidation agent functions.

(j) Matthew Bieber ("Bieber") was, at relevant times, employed on the CDO Origination Desk by Goldman Sachs & Co. Bieber was the assigned Deal Captain for the Anderson CDO.

(k) J. Michael Evans ("Evans"), was, at relevant times, Vice Chairman of The Goldman Sachs Group, Inc.

(l) Jon Winkelried ("Winkelried"), was, at relevant times, Co-President of The Goldman Sachs Group, Inc.

(m) Harvey Schwartz ("Schwartz"), was, at relevant times, Managing Director, Head of Global Sales and a Co-Head of the Securities division at The Goldman Sachs Group, Inc.

(n) Tom Montag ("Montag"), was, at relevant times, a Member of the Management Committee and Equities/FICC Executive Committee, and Co-Head of Global Securities at The Goldman Sachs Group, Inc.

(o) David Solomon ("Solomon"), was, at relevant times, Head of Investment Banking at The Goldman Sachs Group, Inc.

(p) Craig Broderick ("Broderick"), was, at relevant times, Chief Credit Officer of The Goldman Sachs Group, Inc.

(q) Melanie Herald-Granoff ("Herald-Granoff"), was, at relevant times, Vice-President of the Mortgage Bond-Trading Department at The Goldman Sachs Group, Inc.

(r) Mehra Cactus Raazi ("Raazi"), was, at relevant times, a Broker at The Goldman Sachs Group, Inc.

V. CLASS ACTION ALLEGATIONS

43. Lead Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons or entities who purchased or otherwise acquired Goldman common stock during the Class Period and who were damaged thereby (the "Class"). Excluded from the Class are defendants and their families, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

44. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. Goldman has over 525 million shares of common stock outstanding, owned by hundreds if not thousands of persons.

45. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

(a) whether the Exchange Act was violated by defendants' acts as alleged herein;

(b) whether statements made by defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business and management of Goldman;

(c) whether the price of Goldman common stock was artificially inflated; and

(d) to what extent the members of the Class have sustained damages and the appropriate measure of damages.

46. Lead Plaintiffs' claims are typical of those of the Class because Lead Plaintiffs and the Class sustained damages from defendants' wrongful conduct.

47. Lead Plaintiffs will adequately protect the interests of the Class and have retained counsel who are experienced in class action securities litigation. Lead Plaintiffs have no interests which conflict with those of the Class.

48. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

VI. FACTS SUPPORTING DEFENDANTS' FALSE AND MATERIAL MISSTATEMENTS AND OMISSIONS AND SCIENTER AFTER THE SEC NOTIFIED GOLDMAN IN JULY

2009 THAT IT HAD RECOMMENDED FILING SECURITIES FRAUD CHARGES

49. The first category of false and misleading statements and omissions are those from July 2009 until June 2010, in which Goldman concealed from its quarterly and year-end SEC filings, press releases and investor conference calls that the Company had been notified in July 2009, via a formal Wells Notice, that the SEC had recommended filing securities fraud charges relating to Goldman's conduct in connection with Abacus. By failing to disclose the Wells Notice, Goldman hid its improper conduct of betting against (or allowing a favored client to bet against) the very toxic securities that Goldman designed to fail and packaged and sold to its clients.

A. Goldman's Undisclosed Conduct in Connection with Abacus

50. Abacus 2007-AC1 was a $2 billion synthetic CDO[3] whose reference obligations were BBB rated mid

---

[3] A synthetic CDO such as Abacus combines a CDO and CDS. A CDO is an asset-backed security based on a portfolio of fixed-income collateral or notes, such as RMBS. To establish a CDO, an investment bank, such as Goldman, incorporates a special purpose vehicle ("SPV") to which equity investors contribute capital. A credit default swap ("CDS") is an over-the-counter (*i.e.*, not traded on formal exchange) derivative contract referencing a bond or other financial obligation (the "reference obligation"). The parties to a CDS are referred to as the protection buyer and the protection seller. The protection buyer makes fixed periodic payments, commonly referred to as premiums, to the protection seller. In exchange, the protection seller agrees to make a "contingent payment" to the protection buyer if the reference obligation experiences a defined credit event, such as a default. In the Abacus transaction, the sellers of protection and the noteholders take the long position – meaning they both take the position that the reference portfolio will perform – while the

and subprime RMBS securities issued in 2006 and early 2007. It was the last in a series of 16 Abacus CDOs referencing residential mortgage backed securities ("RMBS") designed by Goldman. Goldman served as the underwriter or placement agent, the lead manager, and the protection buyer, and also acted in other roles related to the CDO.

51. In mid-to-late 2006, Goldman was approached by the hedge fund Paulson, and asked to structure a transaction that would enable the hedge fund to short multiple RMBS securities. Goldman had previously worked with Paulson and was aware that Paulson held strong negative views of the residential mortgage market and was making investments based on that view. The Goldman Mortgage Capital Committee Memorandum seeking approval of Abacus 2007-AC1, for example, stated:

> Paulson is a large macro hedge fund that has taken directional views on the subprime RMBS market for the past few months. In 2006 the Desk worked an order for Paulson to buy protection on a supersenior tranche off a portfolio similar to the Reference Portfolio selected by ACA, and the AC1 Transaction is another mean[s] for Paulson to accomplish their trading objective: buying protection in tranched format on the subprime RMBS market.

52. An email sent to Daniel Sparks, head of the Mortgage Department, by Fabrice Tourre, a

---

buyers of protection take the short position – meaning they take the position that the reference portfolio will default.

Correlation Trading Desk employee who led the effort on the Abacus CDO for Paulson, was even more blunt:

> Gerstie and I are finishing up engagement letters . . . for the large RMBS CDO ABACUS trade that will help Paulson short senior tranches off a reference portfolio of Baa2 subprime RMBS risk selected by ACA.

53. These documents make it clear that Goldman knew Paulson's investment strategy was to identify a reference portfolio of assets for the Abacus CDO that Paulson believed would perform poorly or fail, so that its short position would profit at the expense of the long investors. In addition, during his Subcommittee interview, Tourre made it clear that he was aware of the Paulson investment strategy.

54. Out of concern for its reputation, at least one investment bank that Paulson approached prior to Goldman declined to assist Paulson in structuring what would eventually be called Abacus. Scott Eichel of Bear Stearns, who reportedly met with Paulson several times, has been quoted as saying that Paulson wanted: "especially ugly mortgages for the CDOs, like a bettor asking a football owner to bench a star quarterback to improve the odds of his wager against the team." According to Eichel, such a transaction "didn't pass [Bear's] ethics standards; it was a reputation issue, and it didn't pass our moral compass. We didn't think we should sell deals that someone was shorting on the other side."

55. In response to the inquiry from Paulson, Goldman proposed structuring an Abacus CDO. Fabrice Tourre was given lead responsibility for organizing and structuring the Abacus transaction. Goldman's primary role was to act as an agent and

administrator of the CDO, obtaining its profit from the fees it charged for the services rendered, rather than from any investment in the CDO itself. In effect, Goldman "rented" the Abacus platform to the Paulson hedge fund and served as Paulson's agent in carrying out the hedge fund's investment objectives.

56. Paolo Pellegrini, Paulson's Managing Director who led Paulson's selection of the reference assets for the Abacus 2007-AC1 transaction, told the SEC that it was Goldman's idea to have a portfolio selection agent. At the same time, Goldman internal communications made it clear that the objective was to select a portfolio selection agent that would comply with Paulson's suggestions for the assets to be referenced in the CDO. In an email to colleagues discussing the matter, Tourre suggested finding a manager that:

> will be flexible w.r.t. [with respect to] portfolio selection (*i.e.*, ideally we will send them a list of 200 Baa2-rated 2006-vintage RMBS bonds that fit certain criteria, and the portfolio selection agent will select 100 out of the 200 bonds).

57. In the early part of January 2007, Tourre sent an email to prospective selection agents describing their anticipated role in the CDO. One of his points was the following:

> Reference Portfolio: static, fully identified upfront, and consisting of approx 100 equally-sized mezzanine subprime RMBS names issued between Q4 [the fourth quarter of] 2005 and today. Starting portfolio would be ideally what the Transaction Sponsor shared, but there is flexibility around the names.

58. Jonathan Egol, chief architect of the Abacus structure and head of the Correlation Trading Desk, suggested that Goldman approach GSC Partners ("GSC"), a New York hedge fund that Goldman had worked with on other CDOs, including Anderson. Tourre sent an email to colleagues asking:

> Do you think gsc is easier to work with than faxtor? They will never agree to the type of names paulson want[s] to use, I don't think steffelin [a senior trader at GSC] will be willing to put gsc's name at risk for small economics on a weak quality portfolio whose bonds are distributed globally.

A colleague replied:

> There are more managers out there than just GSC / Faxtor. The way I look at it, the easiest managers to work with should be used for our own axes. Managers that are a bit more difficult should be used for trades like Paulson given how axed Paulson seems to be (i.e. I'm betting they can give on certain terms and overall portfolio increase).

59. On January 4, 2007, on behalf of Paulson, Goldman approached GSC as well as two other companies to act as the portfolio selection agent for the Abacus CDO. Shortly thereafter, Tourre reported to his colleagues that GSC had declined the offer to act as the Abacus portfolio selection agent due to its negative views of the assets Paulson wanted to include in the CDO:

> As you know, a couple of weeks ago we had approached GSC to ask them to act as portfolio selection agent for that Paulson-sponsored trade, and GSC had declined given

their negative views on most of the credits that Paulson had selected.

60. Later, when Goldman began to market Abacus 2007-AC1 securities, Edward Steffelin, a senior trader at GSC, sent an email to Peter Ostrem, head of Goldman's CDO Origination Desk saying: "I do not have to say how bad it is that you guys are pushing this thing." When asked by the Subcommittee what he meant, Steffelin responded that he believed that particular Abacus CDO created "reputational risk" for GSC as the collateral manager and for the whole market.

61. Without disclosing Paulson's intended role as the sole short party, Goldman and Paulson approached ACA Capital Management, LLC ("ACA"), a company with experience in selecting assets for CDOs. ACA agreed to act as the portfolio selection agent and Goldman employees expressed hope that ACA's involvement would improve the sales of the Abacus securities. In an internal memorandum seeking approval of the CDO, for example, Goldman personnel wrote: "We expect to leverage ACA's credibility and franchise to help distribute this Transaction."

62. During January, February, and March 2007, the Abacus reference assets were selected. The Paulson hedge fund initiated the asset selection process by providing Goldman with criteria for choosing RMBS securities for the CDO. According to Tourre, Goldman's subsequent identification of candidate assets was essentially ministerial, as Paulson's specified criteria had restricted the scope of the RMBS securities that could be proposed. For example, Paulson wanted RMBS securities that had adjustable rate mortgages, low borrower FICO scores,

and mortgages in states with slowing home price appreciation, like Arizona, California, Florida, and Nevada. Paulson specifically required 2006-vintage or 2007-vintage subprime RMBS that were rated BBB by S&P or Baa2 by Moody's. Goldman sent Paulson a database and spreadsheet listing the securities that met Paulson's criteria. Paulson used that database to select 123 securities, and Goldman forwarded the resulting list to ACA. Over the next two months, a series of negotiations and meetings took place to finalize selection of the reference assets and the structure of the CDO.

63. On March 22, 2007, ACA and Paulson agreed on the final $2 billion reference portfolio for Abacus 2007-AC1. The assets consisted of 90 Baa2 rated mid and subprime RMBS securities issued after January 1, 2006.

64. Goldman characterized Paulson's participation in the asset selection process as one in which the hedge fund merely "express[ed] [its] views" about the reference portfolio, which often happens in synthetic CDO transactions. The evidence indicates, however, that Paulson did more than express its views; it played an active and determinative role in the asset selection process. Paulson established the criteria used to identify the initial list of RMBS securities, proposed a majority of the reference assets in the final portfolio, and approved 100% of the reference assets.

65. Moreover, the "views" expressed by Paulson directly conflicted with the interests of the investors to whom Goldman was marketing the Abacus 2007-AC1 deal. Pellegrini was quite clear about Paulson's intentions in a deposition with the SEC:

Question: Your portfolio analysis was designed in large part to identify bonds that weren't going to perform, right?

Answer: Right.

Question: Because you wanted to short those bonds?

Answer: Right.

66. Notwithstanding Paulson's direct involvement in the asset selection process, the Abacus Marketing book falsely identified ACA as the only portfolio selection agent for the CDO, and stated that the portfolio selection agent had selected the reference assets. The Abacus Offering Memorandum stated: "The Initial Reference Portfolio will be selected by ACA Management, L.L.C."

67. Evidence obtained by the Senate Subcommittee indicates that Paulson's role in the Abacus asset selection process and its investment objectives for the CDO were not fully or accurately disclosed to key parties or investors at the time the CDO was being structured and sold.

68. Moody's, one of the credit rating agencies asked to rate the Abacus securities, was not informed of Paulson's role or investment objectives. At a Senate Subcommittee hearing on the role of the credit rating agencies in the financial crisis, Eric Kolchinsky, a former Moody's managing director who oversaw its CDO ratings and was familiar with Abacus 2007-AC1, provided sworn testimony that he had not known of Paulson's involvement with the CDO at the time it was rated, did not know of Paulson's role in selecting the referenced assets, and believed his staff did not know either. He testified that allowing an entity that wants

a CDO to “blow up” to pick its assets “changes the whole dynamic,” and was information that he would have wanted to know when rating the securities:

> Senator Levin: And were you or your staff aware at the time that Moody’s was working on the ABACUS rating that Paulson was shorting the assets in Abacus and playing a role in selecting referenced assets expected to perform poorly?
>
> Mr. Kolchinsky: I did not know, and I suspect, I am fairly sure, that my staff did not know either.
>
> Senator Levin: And are these facts that you or your staff would have wanted to know before rating ABACUS?
>
> Mr. Kolchinsky: From my personal perspective, it is something that I would have wanted to know because it is more of a qualitative not a quantitative assessment if someone who intends the deal to blow up is picking the portfolio. But, yes, that is something that I would have personally wanted to know. It changes the incentives in the structure.
>
> Senator Levin: Are people usually putting deals together that want the deal to succeed? Isn’t that the usual assumption?
>
> Mr. Kolchinsky: That is the basic assumption, yes.
>
> Senator Levin: And if the person wanting the deal to blow up is picking the assets, that would run counter to what the usual assumption is?

> Mr. Kolchinsky: It just changes the whole dynamic of the structure where the person who is putting it together, choosing it, wants it to blow up.

Moody's assigned AAA ratings to two tranches of the Abacus CDO.

69. ACA told the Senate Subcommittee that, throughout the asset selection process, it was not informed and remained unaware of Paulson's true investment objective, which was to identify and short a set of assets that it believed would not perform and would lose value. According to ACA, it believed that Paulson was going to be a long investor in the CDO through its purchase of the equity share that would incur the first losses in the CDO.

70. Contemporaneous ACA documents support that position. An internal ACA Commitments Committee Memorandum on Abacus 2007-AC1 dated February 12, 2007, for example, stated: "The hedge fund is taking the 0-9% tranche." Ten days later, on February 23, 2007, the ACA Managing Director who worked on the Abacus transaction spoke with a Goldman representative, and took notes of the conversation which stated in part: "Paulson taking 0-10%."

71. In April 2007, the same ACA Managing Director sent an email to the CEO and President of ACA's parent company, ACA Capital Holdings Inc., which was considering buying Abacus securities for itself. Her email stated: "We did price $192 million in total of Class Al and A2 today to settle April 26th. Paulson took down a proportionate amount of equity (0-10% tranche)."

72. In addition, on January 10, 2007, a few days after ACA was first approached by Goldman about

working on the Abacus CDO, Tourre sent ACA a "Transaction Summary" describing the proposed transaction. The Transaction Summary identified the Paulson hedge fund as the "Transaction Sponsor," described the "Contemplated Capital Structure" of the CDO, and indicated that the lowest tranche, "[0]%-[9]%," was "pre-committed first loss." The ACA Managing Director told the Subcommittee that the "[0]%-[9]%" tranche identified in the Transaction Summary matched the general description of an equity tranche, and the wording suggested that someone had already committed to buy it. She explained that it was typical for a CDO sponsor to purchase the equity tranche, and she believed that Paulson, as the Abacus "sponsor," had committed to buy that tranche.

73. The Abacus Marketing book also specified that the "First Loss" tranche of the CDO, of a "[+10%]" size, was "Not Offered" for sale. The ACA Managing Director declared in a statement to the SEC that she had interpreted the phrase, "Not Offered," to indicate the equity tranche had been "pre-placed" and "ha[d] already been committed to purchase by an investor and [would] not be marketed." She thought that investor was the Paulson hedge fund.

74. When asked about the Transaction Summary description of the lowest tranche in the Abacus CDO, Tourre told the Senate Subcommittee that the phrase "pre-committed first loss" normally indicated that the tranche had been sold. He stated that he actually meant to communicate that the tranche had not been sold, and that portion of the Transaction Summary was poorly worded.

75. ACA has since filed a civil lawsuit against Goldman asserting that Goldman did not inform ACA

that "Paulson intended to take an enormous short position" in Abacus and is seeking compensatory damages and punitive damages for fraudulent inducement, fraudulent concealment, and unjust enrichment.

76. Regardless of the communications between Goldman and ACA, it is clear that the Abacus marketing material and offering documents provided by Goldman to investors contained no mention of Paulson's short position in the CDO nor the significant role it played in the selection of the CDOs reference assets. This was confirmed by Tourre at the Senate Subcommittee hearing:

> Senator Levin: And was it reflected in the Goldman Sachs security offering to investors that Paulson had been part of the selection process? Was that represented in that document?
>
> Mr. Tourre: Paulson was not disclosed in the Abacus 07 AC-1 transaction, Mr. Chairman.
>
> Senator Levin: It was not?
>
> Mr. Tourre: No, it was not.

77. Still another troubling omission was Goldman's failure to advise potential Abacus investors that the firm's own economic interests were aligned with those of the Paulson hedge fund. As part of the Abacus CDO arrangement, Paulson agreed to pay Goldman a higher fee if Goldman could provide Paulson with CDS contracts containing premium payments below a certain level. The problem with the fee incentive offer was that, while lower premiums would result in lower costs to Paulson, it would also result in lower premium payments to the CDO, directly reducing the amount of

cash available to the long investors. The Paulson-Goldman compensation arrangement, thus, created a direct conflict of interest between Goldman and the investors to whom it was selling the Abacus securities.

78. Abacus 2007-AC1 closed, and its securities were issued on April 26, 2007. They were issued later than the securities from the Hudson, Anderson, and Timberwolf CDOs and hit the market as subprime mortgages were hitting record delinquency and default rates. Goldman sold the Abacus 2007-AC1 securities to just three investors: IKB, the German bank; ACA, the portfolio selection agent; and ACA Financial Guaranty Corp., the owner of ACA and a wholly owned subsidiary of ACA Capital Holdings Inc. IKB bought $150 million of the AAA rated Abacus securities. ACA bought about $42 million in the AAA securities for placement in another CDO it was managing. ACA Financial Guaranty Corp. was by far the largest investor, taking the long side of a $909 million CDS contract referencing the super senior portion of the CDO. Goldman took the short side of the CDS contract, which it then transferred to Paulson.

79. Within months, the high risk subprime mortgages underlying the RMBS securities referenced in the Abacus portfolio incurred steep rates of default, and the Abacus securities began to lose value. According to the SEC, by October 2007, six months after the securities were issued, 83% of the underlying assets had received a credit rating downgrade and 17% of the underlying assets had been placed on a negative credit watch. On October 26, 2007, a Goldman employee sent an email about Abacus 2007-AC1 with an assessment even more negative than that of the SEC:

> This deal was number 1 in the universe of CDO's that were downgraded by MOODY'S and S&P. 99.89% of the underlying assets were downgraded.

80. While Sparks testified that, in 2007, the Mortgage Department expected its CDOs "to perform," a contemporaneous draft presentation that he helped prepare in May 2007 stated that the "desk expects [the CDOs] to underperform." Many other emails provide his negative views of the CDO market at the time, including emails in which Sparks described the subprime market as "bad and getting worse," and directed Goldman's mortgage traders to "[g]et out of everything," and "stay on the short side." He wrote, among other things: "Game over," "bad news everywhere," and "the business is totally dead."

81. The three long investors in Abacus 2007-AC 1 together lost more than $1 billion. As the sole short investor, Paulson recorded a corresponding profit of about $1 billion.

82. In addition to reaping the millions of dollars in fees for structuring the Abacus 2007-AC 1 CDO, Goldman also profited by purchasing CDS protection or equity puts on ACA's stock, essentially betting that the stock price would fall or the company would lose value. Specifically, after ACA Financial Guaranty Corp., the parent company of ACA Management which acted as the collateral manager of Abacus 2007-AC1, purchased Abacus securities, Goldman purchased the short side of a CDS contract that referenced ACA Financial Guaranty. Once ACA Financial Guaranty encountered extreme financial distress in late 2007, Goldman made millions of dollars from ACA's misfortune – ironically, misfortune ultimately caused by Goldman.

B. The SEC Files Securities Fraud Charges that Goldman Settled for $550 Million

83. On April 16, 2010, the SEC filed a complaint against Goldman and Tourre alleging violations of Section 17(a) of the Securities Act of 1933, as well as Section 10(b) and Rule 10b-5 of the Exchange Act. The SEC contended that Goldman had failed to disclose to potential investors materially adverse information to its clients, stating:

> In sum, GS&Co arranged a transaction at Paulson's request in which Paulson heavily influenced the selection of the portfolio to suit its economic interests, but failed to disclose to investors, as part of the description of the portfolio selection process contained in the marketing materials used to promote the transaction, Paulson's role in the portfolio selection process or its adverse economic interests.

84. The day after the SEC filing, Lorin Reisner ("Reisner"), Deputy Director, Division of Enforcement, wrote in an e-mail to John Nester ("Nester"), Director, Office of Public Affairs, and Robert Khuzami ("Khuzami"), Deputy Director, Division of Enforcement:

> Goldman's counsel had numerous discussions with staff and a senior-level meeting in DC with Rob and me. No mention of pursuing settlement by Goldman. It was obvious that ***we were serious and planned to pursue charges***.

85. On April 18, 2010, Khuzami wrote in an e-mail to Nester, Reisner and others:

> [Goldman] attended a March mtg on [the Goldman Manager] and the ***seriousness of the matter was quite apparent***. Every other counsel we have been involved with in a Wells process ***knows it is serious and conveys an intent to recommend charges*** and thus lets us know that settlement is an option, or asks for that heads-up if charges are imminent.

86. On July 14, 2010, Goldman reached a $550 million settlement with the SEC. In connection with the settlement, Goldman acknowledged:

> [T]he marketing materials for the ABACUS 2007-AC1 transaction contained incomplete information. In particular, it was a mistake for the Goldman marketing materials to state that the reference portfolio was "selected by" ACA Management LLC without disclosing the role of Paulson & Co. Inc. in the portfolio selection process and that Paulson's economic interests were adverse to CDO investors.

87. In sum, Goldman failed to disclose to its own clients that it had engaged in fraudulent conduct which created clear conflicts of interest with its clients, including that it constructed Abacus to help Paulson, a favored client short multiple RMBS securities, and profit at the expense of other Goldman clients. Goldman further failed to disclose that it allowed Paulson to play a significant role in the selection of the CDOs referenced assets, while employing an outside portfolio agent to give the impression that the CDO assets were selected by a disinterested third party. Goldman also failed to disclose Paulson's investment objective and asset selection role to a credit rating agency that assigned

AAA ratings to two tranches of the Abacus securities. In addition, Goldman failed to disclose to the investors its compensation arrangement that provided incentives for Goldman to minimize the premium payments into the CDO. Within six months, the Abacus securities began incurring losses and ratings downgrades. Goldman watched its clients to whom it had sold the securities lose virtually all the funds they had invested, while its favored client Paulson walked away with a profit of approximately $1 billion.

C. Goldman's Receipt of the Wells Notice in July 2009

88. In August 2008, the SEC notified Goldman that it was commencing an investigation into Abacus and served Goldman with a subpoena. Goldman responded by producing approximately eight million pages of documents. The SEC took five days of testimony from Goldman's most senior management with responsibility over the Abacus transaction. Among others, the SEC took testimony from Gail Kreitman, a managing director, Melanie Herald-Granoff, a vice-president in the mortgage bond-trading department, and Fabrice Tourre, the Goldman vice president with lead responsibility for structuring and marketing Abacus.

89. In early February 2009, four senior personnel at Goldman were informed that Tourre and another Goldman employee (later identified as Jonathan Egol) had been asked to give testimony in connection with the SEC investigation.

90. On July 29, 2009, the SEC issued a Wells Notice to Goldman. A Wells Notice provides notice to a person or entity that the SEC intends to recommend an enforcement action and affords the respondent an

opportunity to respond concerning the recommendation.

91. Goldman provided written Wells submissions to the SEC Enforcement Staff on with the SEC Enforcement Staff on September 15, 2009, and Goldman senior management and counsel met with the SEC Enforcement Staff on a number of occasions up until the April 16, 2010 SEC fraud charge, even as it provided both formal and informal responses to the SEC. Goldman hid existence of the Wells Notice, omitting any mention in its financial statements and public announcements.

92. Top-level senior managers at Goldman were consulted with and made aware of the SEC investigation, including the Wells Notices. Yet, during the Class Period, Goldman did not reveal any information pertaining to this investigation. Nor was information about the SEC investigation available to the public.

93, The SEC Enforcement Staff also issued a Wells Notice to Tourre on September 28, 2009. Tourre made a written Wells submission on October 26, 2009, and met with the SEC Enforcement Staff on October 29, 2009.

94. Additionally, on January 29, 2010, the SEC Enforcement Staff issued a Wells Notice to a “Goldman Manager” on the Abacus transaction, subsequently identified as Jonathan Egol who was head of Goldman’s Correlation Trading Desk. Egol provided a written Wells submission on February 24, 2010 and met with the Staff on March 4, 2010.

95. In direct violation of long-standing rules set forth by its domestic and international regulators, FINRA and FSA, respectively, Goldman failed to

timely report Wells Notices issued to Tourre and Egol, who played primary roles in Abacus. Until the SEC filed its securities fraud complaint against Goldman on April 16, 2010, Goldman hid the Wells Notice received by the Company and the Wells Notices received by Tourre and Egol from its investors and regulators, as well as the existence of an SEC investigation.

96. Had Goldman timely disclosed the Wells Notices served on the Company, or either of its two employees, the public would have discovered the SEC investigation of the Abacus transaction and Goldman's undisclosed fraudulent conduct.

97. From the time Goldman received the first Wells Notice in July 2009 until the SEC filed its complaint on April 16, 2010, Goldman failed to disclose that it could potentially suffer corresponding material adverse effects, including:

(a) the filing of a formal SEC complaint;

(b) questions arising as to Goldman's integrity and the manner in which it conducts various lines of business;

(c) the impairment of certain highly profitable lines of business as a result of any governmental investigations;

(d) the impairment of certain highly profitable lines of business as a result of a loss of confidence in Goldman in the marketplace by clients that would normally do business with Goldman; and

(e) the possibility of criminal prosecution arising as a result of the civil investigation that would further disrupt Goldman's lines of business and cause further long-term damage to its professional reputation.

98. Additionally, Goldman's failure to disclose the SEC investigation and Wells Notices from both the investing public and from its foreign and domestic regulators strongly suggests a knowing effort to conceal rather than a mere failure of oversight.

99. Goldman's failure to timely disclose any Abacus Wells Notice, rendered its statements from August 2009 through April 2010 false, incomplete, and misleading and caused its stock to trade at artificially inflated levels during the Class Period. Upon news of the SEC complaint, on April 16, 2010 Goldman's stock plummeted from $184.27 to $160.70 per share, causing more than a $13 billion loss in shareholder value.

D. Goldman Admitted that It Violated the Rules of Its Securities Regulators by Failing to Disclose Its Receipt of Wells Notices Relating to Abacus

100. On May 10, 2010, Goldman disclosed that it had received notices of investigation from FINRA, the industry's self-regulator, and Britain's FSA relating to the Company's conduct in connection with Abacus. On November 9, 2010, FINRA announced that it had fined Goldman $650,000 for failing to disclose that Fabrice Tourre, the trader primarily responsible for structuring and marketing Abacus, and another employee, had received a Wells notice in September 2009.

101. Goldman admitted in its settlement with FINRA that it hid the Wells Notice received by Tourre from the investing public in violation of FINRA rules. Specifically, under NASD Conduct Rule 3010 and

FINRA Rule 2010, financial firms, like Goldman, are required to report a Wells Notice to FINRA within 30 days. The existence of the Wells Notice is then posted in a database that can be viewed by the public. As explained in Goldman's Settlement with FINRA:

> In August 2008, the SEC began seeking information from Goldman regarding Abacus, including the names of the principal employees responsible for Abacus and emails related to the CDO offering. Over the next year and a half, the SEC obtained documents and testimony from Goldman and a number of its employees related to the genesis, structuring and marketing of the Abacus transaction.
>
> Tourre had worked as a Vice President on the structured product correlation trading desk at Goldman's headquarters in New York City when Abacus was structured and marketed. On March 3-4, 2009, Tourre, who at the time had become an Executive Director working in London for the firm's Goldman Sachs International ("GSI") affiliate, testified at the SEC in Washington, D.C. in connection with the Abacus investigation.[4]

---

[4] GSI is a London-based wholly owned subsidiary of The Goldman Sachs Group, Inc. GSI is not a FINRA member firm. In a settlement with the United Kingdom's FSA announced on September 9, 2010, GSI paid a substantial fine in connection with the FSA's finding that GSI had failed to have proper and effective systems and controls in place to ensure that its Compliance department was apprised of information about the SEC's investigation of Goldman and Tourre.

Tourre's counsel received a written Wells Notice, dated September 28, 2009, stating that the staff of the SEC intended to recommend that the SEC file a civil action and institute a public administrative proceeding against Tourre alleging that he violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder in connection with the CDO offering. Tourre was registered with FINRA through Goldman at the time he received the Wells Notice. ***Tourre's counsel immediately informed Goldman's Legal Department that the Wells Notice had been received***.

* * *

Thus, receipt of a written Wells notice clearly triggers a reporting obligation on a person's Form U4. Despite the fact that the reporting obligation clearly existed, Goldman failed to ensure that Tourre's Form U4 was amended within 30 days of its knowledge of the Wells Notice, as required under the By-Laws. ***Tourre's Form U4 was not amended until May 3, 2010, more than seven months after Goldman learned of the Wells Notice, and only after the SEC filed its Complaint against Goldman and Tourre on April 16, 2010 (resulting in extensive news coverage.)***

102. As detailed in the FINRA Settlement, Goldman also hid receipt of an additional Wells Notice to another unidentified Goldman employee (later identified as Egol) from the investing public.

> ***Goldman's failure vis-à-vis Tourre's Form U4 was not an isolated incident***. Another Goldman employee in New York also received a written Wells Notice during the Relevant Period [Between November 2009 and May 2010], indicating that the staff of a regulatory agency had made a preliminary determination to recommend that disciplinary action be brought against him. The employee was registered with FINRA through Goldman at the time he received the Wells Notice. ***In this instance, too, Goldman's Legal Department was promptly informed that a Wells Notice had been received***. Goldman, however, did not ensure that the Form U4 was amended within 30 days of its knowledge of the Wells Notice, as required under the By-Laws.

103. In settling with FINRA, Goldman admitted:

> Between November 2009 and May 2010 (the "Relevant Period"), in two instances Goldman failed to update Uniform Applications for Securities Industry Registration or Transfer ("Forms U4") to disclose investigations when it was required to do so by FINRA By-Laws, Article V, Section 2(c). In the first instance, Goldman failed to file an amendment to Form U4 to disclose that Fabrice Tourre had received a "Wells Notice" from the Securities and Exchange Commission ("SEC") in connection with the agency's investigation of an offering of a synthetic collateralized debt obligation ("CDO") called Abacus 2007-AC I ("Abacus"). In the second instance, Goldman failed to

amend another employee's Form U4 to disclose that he had received a Wells Notice.

* * *

By reason of the foregoing, Goldman violated NASD Conduct Rule 3010 and FINRA Rule 2010.[5] **Goldman consents to the imposition of a censure and a fine of $650,000**, and an undertaking that it will certify that it has conducted a review of its procedures and systems concerning Form U4 amendments and compliance with FINRA By-Laws, Article V, Section 2(c) and implemented any necessary revisions.

Form U4 is used to register associated persons of broker-dealers with the appropriate jurisdiction(s) and/or self regulatory organization(s) ("SROs"). Disclosures made in response to the questions on Form U4 play a vital role in the securities industry. The disclosures are used to determine and monitor the fitness of securities professionals. Timely, truthful, and complete answers on Form U4 are essential to meaningful regulation.

104. The FINRA Settlement also details the fact that ***Goldman actively hid the Wells Notices from its Global Compliance division***. Senior executives and attorneys at Goldman had knowledge of the Tourre Wells Notice but ***treated the information as confidential and shared it only on a "need to know" basis***:

---

[5] NASD Conduct Rule 3010 became FINRA Rule 2010 effective December 15, 2008.

Global Compliance is the Division within Goldman that advises and assists the Firm's businesses to ensure compliance with applicable laws and regulations. . . . Global Compliance Employee Services ("GCES") manages registrations, outside interests and private investments. The "Registrations Group" within GCES is responsible for filing initial Forms U4 and amendments thereto.

For GCES to fulfill its responsibility, other sources within Goldman must identify and communicate reportable events to GCES. In the two instances here, GCES was not timely informed of the Wells Notices. ***In the case of Tourre, knowledge that he had received a Wells Notice was limited to a small circle of people inside the firm, including certain senior staff and attorneys, who treated the information as confidential and shared it only on a "need to know" basis***. The fact that a Wells Notice had been received was not communicated to GCES, and Tourre's Form U4 was not timely amended.

The divisional compliance personnel embedded in the business units where Tourre worked in London (for GSI) and where the other individual worked in New York (for Goldman) were not informed when the firm learned about the Wells Notices.

* * *

By reason of the foregoing, Goldman violated NASD Conduct Rule 3010 and FINRA Rule 2010.

105. Goldman was also heavily fined by the United Kingdom's financial regulator, the FSA, for the same conduct – failing to disclose the Abacus-related Wells Notices. On September 9, 2010, the FSA announced the ***second largest fine in its history***, penalizing Goldman nearly $27 million for failing to disclose (a) the SEC's investigation, (b) the Goldman Wells Notice, and (c) the Tourre Wells Notice.

106. The FSA stated in its September 9, 2010 Final Notice of Penalty ("FSA Notice") its reasons for the substantial fine:

> The FSA imposes the financial penalty on GSI for breaches of Principles 2, 3 and 11 in relation to:
>
> (1) GSI's failure to inform the FSA, until 16 April 2010, that the staff of the United States Securities and Exchange Commission ("SEC") had indicated by a Wells Call on 28 September 2009 that it would serve, and then on 29 September 2009 served, a Wells Notice indicating the SEC staff's proposal to recommend an enforcement action for serious violations of US securities law by an approved person employed by GSI, Mr. Fabrice Tourre, relating to his prior activities when working in the US for Goldman, Sachs & Co. ("the Tourre Wells Notice");
>
> (2) GSI's failure to ensure that it had proper and effective systems and controls in place for the communication to GSI Compliance of information about regulatory investigations relating to other members of The Goldman Sachs Group, Inc. ("GS Group") that might affect GSI, as a result of which GSI failed to

consider providing the FSA with information concerning the SEC's investigation ("the SEC Investigation") into the Abacus 2007-AC1 synthetic collateralised debt obligation ("Abacus" or "the Abacus transaction"), which Goldman, Sachs & Co. ("GSC") structured and which was marketed to sophisticated institutional investors, including by GSI from the UK. ***This could have been considered from February 2009 when approved persons at GSI were called to give testimony to the SEC regarding Abacus and should have been considered at the latest in July 2009, when GSC received a Wells Notice from the SEC staff indicating the SEC staff's proposal to recommend an enforcement action against GSC for serious violations of US securities law relating to Abacus*** ("the GSC Wells Notice"); and

(3) GSI's failure to conduct its business with due skill, care and diligence with respect to its regulatory reporting obligations.

* * *

During the Relevant Period, GSI breached Principle 2 by failing to conduct its business with due skill, care and diligence in relation to its regulatory reporting obligations. Specifically, GSI failed to consider the regulatory implications for GSI of the SEC Investigation, including the GSC Wells Notice and the Tourre Wells Notice.

107. The FSA viewed Goldman's failings as "***particularly serious***" because, *inter alia*:

(2) Given GSI's sophistication and global operations and the operation of Goldman Sachs as an integrated global firm, it should have had in place systems and controls that were effective to ensure relevant information concerning the SEC Investigation (and the Wells Notices issued to GSC and Mr. Tourre) potentially affecting GSI was communicated appropriately and, in particular, to its compliance department to enable it to consider whether it needed to make appropriate notifications to the FSA;

(3) In particular, throughout the Relevant Period, there were ***a number of developments which either individually or cumulatively should have been brought to the attention of GSI's compliance function so that it could properly consider their impact on GSI's regulatory reporting obligations***. This, however, did not occur. These developments included the following:

(a) when (from February 2009) the SEC staff indicated its intention to interview and subsequently (in March and May 2009) took testimony from certain GSI employees, who were holders of FSA-approved functions, for the purposes of its investigation;

(b) when the SEC staff issued a Wells Notice to GSC in respect of the SEC staff's proposal to recommend an enforcement action for serious violations of US securities law relating to Abacus, which was marketed and sold by GSI from the

UK to sophisticated institutional investors (on 28 July 2009); and

(c) when the SEC staff indicated that it would recommend enforcement action against Mr. Tourre, a GSI employee and the holder of a controlled function, by a Wells Call on 28 September 2009 and subsequently issued a Wells Notice to Mr. Tourre indicating the SEC staff's proposal to recommend an enforcement action for serious violations of US securities law against him personally (on 29 September 2009);

(4) A number of ***senior managers*** and other GSI personnel, ***including approved persons, were aware of certain aspects of the SEC Investigation***, including that Mr. Tourre had received a Wells Notice containing allegations of serious securities violations, well before 16 April 2010, but took no steps to ensure that GSI Compliance was made aware. Whilst it was not in the circumstances unreasonable for those people to assume that the matter would be properly handled, the FSA is disappointed that none of them raised the matter directly with GSI Compliance.

108. The FSA Notice made clear that Goldman senior managers had knowledge of the key events:

> From July 2009 onwards, a number of ***senior managers within GSC were aware that a Wells Notice had been issued to GSC***. From September 2009, certain senior managers at GSI also became aware of the

> GSC Wells Notice in the context of being made aware of the Tourre Wells Notice (as set out below). It appears that none of these individuals, nor the personnel in New York who were managing or involved with GSC's engagement with the SEC Investigation, considered the potential impact of the GSC Wells Notice on GSI. Consequently, relevant information relating to the GSC Wells Notice was not communicated to GSI Compliance.

109. The FSA found that, "the seriousness of GSI's breach . . . merits a very substantial financial penalty."

110. Consistent with its failure to inform shareholders about the SEC's Abacus-related investigation, Goldman did not disclose that it had received a notice of investigation from either FINRA or FSA until May 10, 2010, after the market had absorbed the April 16, 2010 SEC Complaint.

E. Goldman's False and Misleading Statements and Omissions Post-Receipt of the Wells Notice in July 2009

111. The first category of false and misleading statements and omissions consists of those by Goldman starting on August 2, 2009 in which Goldman hid from its investors, and its domestic and international financial regulators, the Company's knowledge that the SEC had issued a Wells Notice recommending the filing of securities fraud charges. By failing to disclose the Wells Notice, Goldman hid its improper conduct of betting against (or allowing a favored client to bet against) the very toxic securities that Goldman designed to fail and packaged and sold to its clients.

1. The False and Misleading Statements in SEC Filings and Public Announcements from August 2, 2009 to November 10, 2009

112. On August 2, 2009, only two days after receiving the Wells Notice, Goldman filed its Second Quarter 2009 10-Q, which was signed by defendant Viniar and included certifications from defendants Blankfein and Viniar. In the Legal Proceedings Section of the 10-Q, Goldman listed numerous proceedings including a section titled "mortgage related matters," but concealed the existence of the SEC Wells Notice or the investigation into Abacus.

113. The Legal Proceedings section was represented to "amend[] our discussion set forth under Item 3 "Legal Proceedings" in our Annual Report on Form 10-K for the fiscal year ended November 28, 2008, as updated by our Quarterly Report on Form 10-Q for the quarter ended March 27, 2009." Regulation S-K Item 103 ("Legal Proceedings") requires the disclosure of "proceedings known to be contemplated by governmental authorities" and provides:

> Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. ***Include similar information as to any such proceedings known to be contemplated by governmental authorities***.

114. Goldman's August 2, 2009 10-Q was false and misleading and also violated Regulation S-K Item 103. Goldman knew that the SEC had recommended the filing of securities fraud charges, and thus knew that a securities fraud "legal proceeding" was being "contemplated by governmental authorities." Goldman's failure to disclose its receipt of the Wells Notice and SEC investigation prevented the public from discovering Goldman's fraudulent conduct, which when revealed on April 16, 2010 caused Goldman's stock to plummet, resulting in investors suffering billions in losses. The above statement was also materially false and misleading for the reasons stated in ¶¶49-112.

115. On October 15, 2009, Goldman issued a press release reporting its third quarter 2009 results, but again failed to disclose that it had received a Wells Notice or that it was under investigation by the SEC. The above statement was materially false and misleading for the reasons stated in ¶¶49-114 above.

116. The next day, October 16, 2009, Blankfein told reporters that: "Our business correlates with growth. Once it starts to turn, we get very involved in that process. We benefit from it. . . . Behind that investment is wealth creation and jobs." When asked about credit default swaps, Blankfein said, "I think they serve a real social purpose." Blankfein's statement was materially false and misleading because he purposefully concealed the fact that the SEC had already recommended the filing of securities fraud charges in the Abacus transaction, which involved credit default swaps.

117. Then in October 2009, when Goldman came under intense scrutiny about the more than $16 billion in bonuses it was scheduled to pay to Goldman's

executives and employees, the Company embarked on a full-fledged public relations campaign to promote its reputation as the preeminent Wall Street bank focused first and foremost on responsible business practice that placed their clients needs paramount to all else. This public relations blitz included highlighting that the Company made a $200 million donation to promote education, while at the same time concealing the Wells Notice, SEC investigation and Goldman's abusive conduct of making billions at the direct expense of its clients.

118. On November 4, 2009, Goldman filed its Third Quarter 2009 10-Q, which was signed by defendant Viniar and included certifications by defendants Blankfein and Viniar. The Form 10-Q included a section entitled "Legal Proceedings."[6] Goldman listed numerous legal proceedings and referenced the IPO litigation and other ongoing proceedings, such as the specialists litigation and treasury matters and mortgage-related matters, but omitted the SEC investigation and Wells Notice.

119. Goldman's Third Quarter 2009 10-Q was materially false and misleading and also violated Regulation S-K Item 103. Goldman knew that the SEC had recommended the filing of securities fraud charges, and thus knew that a securities fraud "legal proceeding" was being "contemplated by governmental authorities." Goldman's failure to disclose its receipt of the Wells Notice and SEC investigation prevented the

---

[6] The Legal Proceedings section was represented to "amend[] our discussion set forth under Item 3 "Legal Proceedings" in our Annual Report on Form 10-K for the fiscal year ended November 28, 2008, as updated by our Quarterly Reports on Form 10-Q for the quarters ended March 27, 2009 and June 26, 2009."

public from discovering Goldman's fraudulent conduct, which when revealed on April 16, 2010 caused Goldman's stock to plummet, resulting in investors suffering billions in losses. The above statements were also materially false and misleading for the reasons stated in ¶¶49-117.

120. Only four days later, on November 8, 2009, the *Sunday Times* in London published an extensive interview with Blankfein which stated in part:

> We're very important . . . . We help companies to grow by helping them to raise capital. Companies that grow create wealth. This, in turn, allows people to have jobs that create more growth and more wealth. It's a virtuous cycle. . . . We have a social purpose.
>
> * * *
>
> Call him what you will. He is, [Blankfein] says, just a banker "doing God's work."

121. On November 10, 2009, CEO Blankfein spoke at the Bank of America/Merrill Lynch Banking Financial Services Conferences and hid from investors Goldman's knowledge of the SEC's intent to recommend fraud charges against the Company for its fraudulent conduct of betting against its clients. To the complete contrary, Blankfein highlighted that Goldman's reputation and past and continued commitment to its clients was, and remained, the key to Goldman's success:

> During our history, ***our Firm has been guided by three tenets – the needs and objectives of our clients***, attracting talented and long-term oriented people, ***and our reputation and client franchise***.

* * *

> [O]ur duty to shareholders, is to protect and grow ***this client franchise that is the lifeblood of Goldman Sachs***.

122. Blankfein's statements were materially false and misleading. He failed to disclose Goldman's receipt of the Wells Notice and the SEC investigation, which would have revealed Goldman's fraudulent conduct of subjugating its clients' interests below that of the Company, including, that Goldman had (i) identified toxic mortgage-backed securities and CDOs held on its books that Goldman believed would significantly decline in value and cause the firm to lose billions; (ii) packaged and sold these securities to Goldman's own clients at inflated prices; (iii) made affirmative misrepresentations to its own clients in order to hide the fact that Goldman (or a favored client) had bet against these securities; and (iv) made billions at its own clients' expense when the value of these securities plummeted, just as Goldman anticipated they would. The above statements were also materially false and misleading for the reasons stated in ¶¶49-120.

2. The False and Misleading Statements in Response to the *New York Times* Article

123. On December, 24, 2009, the *New York Times* disclosed that Goldman had created and sold mortgage related debts in CDOs, bet against these securities and made billions. The article referenced Goldman's series of Abacus CDOs and the Hudson CDO, but did not disclose Goldman's fraudulent conduct in connection with those securities.

124. On that same day, Goldman immediately issued a public denial defending its CDO practices as necessary to meet "client demand," all the while again hiding the fact that the SEC had already notified the Company that it intended to recommend securities fraud charges arising from its role in the Abacus deal. Goldman's press release stated:

> Background: The New York Times published a story on December 24th primarily focused on the synthetic collateralized debt obligation business of Goldman Sachs. In response to questions from the paper prior to publication, Goldman Sachs made the following points.
>
> As reporters and commentators examine some of the aspects of the financial crisis, interest has gravitated toward a variety of products associated with the mortgage market. One of these products is synthetic collateralized debt obligations (CDOs), which are referred to as synthetic because the underlying credit exposure is taken via credit default swaps rather than by physically owning assets or securities. The following points provide a summary of how these products worked and why they were created.
>
> Any discussion of Goldman Sachs' association with this product must begin with our overall activities in the mortgage market. Goldman Sachs, like other financial institutions, suffered significant losses in its residential mortgage portfolio due to the deterioration of the housing market (we disclosed $1.7 billion in residential mortgage exposure write-downs in 2008). These losses would have been substantially higher had we

not hedged. We consider hedging the cornerstone of prudent risk management.

Synthetic CDOs were an established product for corporate credit risk as early as 2002. With the introduction of credit default swaps referencing mortgage products in 2004-2005, it is not surprising that market participants would consider synthetic CDOs in the context of mortgages. Although precise tallies of synthetic CDO issuance are not readily available, many observers would agree the market size was in the hundreds of billions of dollars.

Many of the synthetic CDOs arranged were the result of demand from investing clients seeking long exposure.

Synthetic CDOs were popular with many investors prior to the financial crisis because they gave investors the ability to work with banks to design tailored securities which met their particular criteria, whether it be ratings, leverage or other aspects of the transaction.

The buyers of synthetic mortgage CDOs were large, sophisticated investors. These investors had significant in-house research staff to analyze portfolios and structures and to suggest modifications. They did not rely upon the issuing banks in making their investment decisions.

For static synthetic CDOs, reference portfolios were fully disclosed. Therefore, potential buyers could simply decide not to

> participate if they did not like some or all the securities referenced in a particular portfolio.
>
> Synthetic CDOs require one party to be long the risk and the other to be short so without the short position, a transaction could not take place.
>
> It is fully disclosed and well known to investors that banks that arranged synthetic CDOs took the initial short position and that these positions could either have been applied as hedges against other risk positions or covered via trades with other investors.
>
> Most major banks had similar businesses in synthetic mortgage CDOs.
>
> As housing price growth slowed and then turned negative, the disruption in the mortgage market resulted in synthetic CDO losses for many investors and financial institutions, including Goldman Sachs, effectively putting an end to this market.

125. Goldman's false and misleading press release had its intended effect of negating any impact from the *New York Times* article. As a result, Goldman stock traded up that day, closing at $163.97 up from $163.63 the prior day.

126. The above statements were materially false and misleading because they failed to disclose Goldman's receipt of the Wells Notice and the SEC investigation, which would have revealed Goldman's fraudulent conduct of subjugating its clients' interests below that of the Company; including that Goldman had (i) identified toxic mortgage-backed securities and CDOs held on its books that Goldman believed would

significantly decline in value and cause the firm to lose billions; (ii) packaged and sold these securities to Goldman's own clients at inflated prices; (iii) made affirmative misrepresentations to its own clients in order to hide the fact that Goldman had bet against these securities; and (iv) made billions at its own clients' expense when the value of these securities plummeted, just as Goldman anticipated they would. The above statements were also materially false and misleading for the reasons stated in ¶¶49-125.

3. The False and Misleading Statements in SEC Filings from January 21, 2010 to March 1, 2010

127. On January 21, 2010, Goldman reported its fourth quarter and year end December 31, 2009 results in a press release which emphasized the Company's commitment to its clients:

> Throughout the year, particularly during the most difficult conditions, Goldman Sachs was an active adviser, market maker and asset manager for our clients," said Lloyd C. Blankfein, Chairman and Chief Executive Officer. "Our strong client franchise across global capital markets, along with the commitment and dedication of our people drove our strong performance. That performance, as well as recognition of the broader environment, resulted in our lowest ever compensation to net revenues ratio. Despite significant economic headwinds, we are seeing signs of growth and remain focused on supporting that growth by helping companies raise capital and manage their

> risks, by providing liquidity to markets and by investing for our clients.

The above statement was materially false and misleading for the reasons stated in ¶¶49-126, 148-306.

128. On or about March 1, 2010, Goldman filed its Form 10-K for the year ended December 31, 2009, signed by Defendants Blankfein, Viniar and Cohn, which emphasized Goldman's client focus:

> In our client-driven businesses, FICC [Fixed Income, Currency and Commodities] and Equities strive to deliver high-quality service by offering broad market-making and market knowledge to our clients on a global basis. In addition, we use our expertise to take positions in markets, by committing capital and taking risk, to facilitate client transactions and to provide liquidity. Our willingness to make markets, commit capital and take risk in a broad range of fixed income, currency, commodity and equity products and their derivatives is crucial to our client relationships and to support our underwriting business by providing secondary market liquidity.

129. Goldman did not disclose the SEC investigation and Wells Notice in its 2009 Form 10-K. Instead, it vaguely mentioned that there are some unknown "investigations presently under way," and that it had received "requests" from "various governmental agencies." In the preamble to the Legal Proceedings section of its 2009 Form 10-K, Goldman stated:

> We are involved in a number of judicial, regulatory and arbitration proceedings (including those described below) concerning matters arising in connection with the conduct of our businesses. We believe, ***based on currently available information***, that the results of such proceedings, in the aggregate, ***will not have a material adverse effect on our financial condition***, but might be material to our operating results for any particular period, depending, in part, upon the operating results for such period. Given the range of litigation and investigations presently under way, our litigation expense can be expected to remain high.

Then, despite the ten pages reporting Goldman's legal proceedings, in the subsection reporting Mortgage-Related Matters, Goldman stated only that:

> GS&Co. and certain of its affiliates, together with other financial services firms, have received ***requests for information from various governmental agencies*** and self-regulatory organizations relating to subprime mortgages, and securitizations, collateralized debt obligations and synthetic products related to subprime mortgages. GS&Co. and its affiliates are cooperating with the requests.

The Form 10-K also mentioned certain "inquiries" into derivatives:

> *Credit Derivatives*
>
> Group Inc. and certain of its affiliates have received inquiries from various governmental

> agencies and self-regulatory organizations regarding credit derivative instruments. The firm is cooperating with the requests.

130. The above statements were materially false and misleading and also violated Regulation S-K Item 103. Goldman knew that the SEC had recommended the filing of securities fraud charges, and thus knew that a securities fraud "legal proceeding" was being "contemplated by governmental authorities." Goldman's failure to disclose its receipt of the Wells Notice and SEC investigation prevented the public from discovering Goldman's fraudulent conduct, which, when revealed on April 16, 2010, caused Goldman's stock to plummet, resulting in investors suffering billions in losses. The above statements were also materially false and misleading for the reasons stated in ¶¶49-127.

131. As set forth in Section X, Goldman's materially false and misleading statements and omissions caused Goldman's stock to trade at artificially inflated levels during the Class Period. When the SEC filed its securities fraud complaint against Goldman on April 16, 2010, the market finally learned that, contrary to Goldman's public representations, the Company had known that since late July 2009 that the SEC intended to bring formal securities fraud charges based on Goldman's conduct in connection with Abacus. Goldman's stock plummeted from $184.27 to $160.70 per share, causing over a $13 billion loss in shareholder value.

VII. FACTS SUPPORTING DEFENDANTS' FALSE AND MATERIAL MISSTATEMENTS AND OMISSIONS AND SCIENTER CONCERNING THEIR IMPROPER BUSINESS PRACTICES AND CLIENT CONFLICTS OF INTEREST RELATED TO ABACUS

132. The second category of false and misleading statements consists of those by Goldman beginning on February 5, 2007, when Goldman filed its Form 10-K for the fiscal year ended November 24, 2006, in which it reassured investors that it had extensive procedures and controls to avoid conflicts of interest with and among its clients. At the same time, Goldman hid from its clients, investors, and its domestic and international regulators, the Company's improper business practices with respect to Abacus, including that Goldman had deliberately created client conflicts of interest by designing the Abacus deal from the outset to allow the Paulson hedge fund to short more than $1 billion worth of Abacus securities at the direct expense of its other clients to whom Goldman made false representations while recommending and selling those same securities.

133. Goldman repeatedly made specific statements and omissions in its SEC filings indicating that its undisclosed fraudulent conduct was not occurring – when in fact it was. Goldman warned its shareholders about the dangers posed by client conflicts of interest – all while the omitting the fact that the Company was engaged in pervasive conflicts of interest by selling its clients securities that were designed to fail and profiting at their clients' expense.

134. In its Form 10-Ks throughout the Class Period, Goldman repeatedly reassured its shareholders that it

had "extensive procedures and controls that are designed to [identify and] address conflicts of interest." Goldman's Form 10-Ks for 2006 and 2007 filed on February 6, 2007 and January 29, 2008, respectively, stated:

> Conflicts of interest are increasing and a failure to appropriately deal with conflicts of interest could adversely affect our businesses.
>
> Our reputation is one of our most important assets. ***As we have expanded the scope of our businesses and our client base, we increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interests of another client*** . . . .
>
> * * *
>
> ***We have extensive procedures and controls that are designed to [identify and] address conflicts of interest***, including those designed to prevent the improper sharing of information among our businesses. However, appropriately [identifying and] dealing with conflicts of interest is complex and difficult, and our reputation could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to [identify and] deal appropriately with conflicts of interest. ***In addition, potential***

> ***or perceived conflicts could give rise to litigation or enforcement actions***.

135. Goldman's Form 10-Ks for 2008, 2009, and 2010 filed on January 27, 2009, February 26, 2010 and February 28, 2011, respectively, stated:

> Conflicts of interest are increasing and a failure to appropriately deal with conflicts of interest could adversely affect our businesses.
>
> * * *
>
> ***We have extensive procedures and controls that are designed to identify and address conflicts of interest***, including those designed to prevent the improper sharing of information among our businesses. However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and our reputation, which is one of our most important assets, could be damaged and the willingness of clients to enter into transactions [with us] may be affected if we fail, or appear to fail, to identify, [disclose] and deal appropriately with conflicts of interest. ***In addition, potential or perceived conflicts could give rise to litigation or [regulatory] enforcement actions***.

136. Indeed, Goldman specifically identified the precise risks posed by client conflicts of interest that subsequently materialized when Goldman was sued by the SEC. Goldman stated in each of its Form 10-Ks during the Class Period that "conflicts could give rise to ***litigation or [regulatory[enforcement actions***." However, Goldman, in these same filings, reassured investors by stating that "***[w]e have extensive***

procedures and controls that are designed to [identify and] address conflicts of interest . . . ."

137. Goldman's warnings to shareholders regarding potential conflicts of interest omitted the fact that it was aware of the existence of such conflicts at the time. Unbeknownst to Goldman's clients and shareholders, at the behest of Goldman senior management, Goldman had designed the Abacus deal from the outset to allow the Paulson hedge fund to short more than $1 billion worth of Abacus securities at the direct expense of its other clients to whom it had recommended and sold those same securities.

138. The above statements were materially false and misleading because they failed to disclose that Goldman had deliberately created ***actual*** conflicts of interest by engaging in transactions that were designed from the outset by the Company to allow a favored client to benefit at the expense of its other clients. The above statements were also materially false and misleading because they failed to disclose defendants' improper conduct with respect to Abacus.

139. As discussed in Section VI.E.2., *supra*, on December, 24, 2009, the *New York Times* disclosed Goldman's role in creating and selling the Abacus securities, and Paulson's short position, but did not disclose Goldman's fraudulent conduct with respect to Abacus.

140. On that same day, Goldman immediately issued a public denial defending its CDO practices as necessary to meet "demand from investing clients seeking long exposure."

141. As alleged in Section VI.E.2., *supra*, and alleged here as a separate misrepresentation, Goldman's statement that its CDO practices were

necessary to meet "client demand" was materially false and misleading because it failed to disclose Goldman's improper business practices in designing the Abacus deal from the outset in order to allow a favored client to benefit at the expense of its other clients. Specifically, defendants failed to disclose that Goldman had designed the Abacus deal to allow the Paulson hedge fund to short more than $1 billion worth of Abacus securities at the direct expense of its other clients to whom it made false representations while recommending and selling to them those same securities.

142. These statements were also materially false and misleading for the reasons stated in ¶¶49-141 above.

143. A reasonable investor would have viewed the Company's improper conduct in Abacus and the Company's deliberate conflict of interests with its clients in Abacus as significant, material information in making an investment decision.

144. As previously noted, on April 16, 2010, the SEC filed a complaint charging Goldman with securities fraud in connection with the Abacus deal. In July 2010, Goldman settled that case for ***$550 million***, the largest SEC penalty in history, and admitted that:

> [T]he marketing materials for the ABACUS 2007-AC1 transaction contained incomplete information. In particular, it was a mistake for the Goldman marketing materials to state that the reference portfolio was 'selected by' ACA Management LLC without disclosing the role of Paulson & Co. Inc. in the portfolio selection process and that Paulson's economic interests were adverse to CDO investors.

145. In addition, on June 10, 2011, Judge Barbara S. Jones issued an opinion denying in part Tourre's motion to dismiss the SEC's complaint against him based on the Abacus deal. Judge Jones held that the SEC had adequately pled "all of the elements of a Section 10(b) and Rule 10b-5 violation," reasoning:

> Here, having allegedly affirmatively represented Paulson had a particular investment interest in ABACUS—that it was long—in order to both accurate and complete . . . , Goldman and Tourre had a duty to disclose Paulson had a different investment interest—that it was short. . . . Indeed, the crux of the SEC's allegation is that rather than being financially interested in ABACUS's success, as the SEC alleges Tourre represented to ACA . . . , Paulson, in fact, had financial interests and expectations that were diametrically opposed to ABACUS's success.

SEC v. Tourre, No. 10 Civ. 3229, 2011 WL 2305988, at *13 (S.D.N.Y. June 10, 2011) (internal quotations and citations omitted).

146. ACA has also sued Goldman in New York state court, asserting state law claims for fraudulent inducement, fraudulent concealment and unjust enrichment against the Company.

147. As set forth in Section X, Goldman's materially false and misleading statements and omissions caused Goldman's stock to trade at artificially inflated levels during the Class Period. When the SEC filed its securities fraud complaint against Goldman on April 16, 2010, the market finally learned that, contrary to Goldman's public representations regarding its business practices, the Company had deliberately

created ***actual*** conflicts of interest by engaging in the Abacus transaction that was designed from the outset by the Company to allow a favored client to benefit at the expense of Goldman's other clients. In response, Goldman's stock plummeted from $184.27 to $160.70 per share, causing over a $13 billion loss in shareholder value.

VIII. FACTS SUPPORTING DEFENDANTS' FALSE AND MATERIAL MISSTATEMENTS AND OMISSIONS AND SCIENTER REGARDING GOLDMAN'S FAILURE TO DISCLOSE ITS CONFLICTS OF INTEREST WITH ITS CLIENTS AND THE IMPACT ON GOLDMAN'S CLIENT FRANCHISE AND REPUTATION

148. In addition to Abacus, the Senate Subcommittee identified Hudson Mezzanine Funding 2006-1 ("Hudson"), Anderson Mezzanine Funding 2007-1 ("Anderson") and Timberwolf I ("Timberwolf") as other Goldman CDOs in Fall 2006 through Summer of 2007, in which the Company engaged in clear conflicts of interest by packaging and selling poor quality mortgage-related securities, that were likely to lose value, to its clients at higher prices than the Company believed they were worth, and betting against those very securities – thereby allowing the Company to reap billions in profits at their clients' direct expense.

149. The third category of false and misleading statements and omissions consist of those made by Goldman beginning in February 2007 in which the Company repeatedly told the public that its "best in class" franchise and continued success depended on the Company's reputation, honesty, integrity and

commitment to put its clients' interests first above all else. These statements failed to disclose Goldman's clear conflicts of interest with its own clients in connection with the Abacus, Hudson, Anderson and Timberwolf CDOs, whereby Goldman intentionally packaged and sold billions of these securities that were designed to fail to its clients, while at the same time reaping billions for itself or its favored clients by taking massive short positions on these securities.

150. During the Class Period, market analysts incorporated the value of Goldman's "best in class" franchise, reputation and purported commitment to its clients above all else into their estimates of revenues, earnings and stock price, without knowledge that Goldman profited handsomely by betting against its own clients. Had Goldman disclosed these material facts, it would have suffered the severe damage to its franchise, reputation and stock price that it ultimately suffered when the truth was revealed between April 16, 2010 and June 2010.

A. Goldman's Financial Success Has Been Driven by Its Reputation, Client Franchise and Commitment to Put Its Clients First Above All Else

151. Goldman has been in existence since 1869, serving as a private investment bank, publicly traded corporation and now bank holding company. The Company manages almost a trillion in assets. Between 2007 and 2010 Goldman recorded a collective profit of over $35 billion.

152. The key to Goldman's success and survival for 140 years has been its name and its reputation for placing its clients' interests paramount above all else. As reported by the *New York Times*, "during the Great

Depression, Goldman was caught up in a scandal involving the Goldman Sachs Trading Corporation. The taint of the scandal drove away business for more than a decade and made the firm extremely focused on reputation."

153. The Company has repeatedly publicly stressed and highlighted its "best in class" franchise and reputation and commitment to its clients, including during the Class Period. At the very same time, Goldman purposefully concealed that it had sold toxic CDOs to its clients to reap huge profits at those clients' expense, and that the SEC had notified Goldman of its recommendation to file securities fraud charges relating to Abacus.

154. Goldman's statements include:

- <u>Goldman CEO Blankfein Statements at November 10, 2009 Bank of America/Merrill Lynch Banking Financial Services Conference</u>

  During our history, ***our Firm has been guided by three tenets – the needs and objectives of our clients***, attracting talented and long-term oriented people, ***and our reputation and client franchise***.

  * * *

  [O]ur duty to shareholders, is to protect and grow ***this client franchise that is the lifeblood of Goldman Sachs***.

- <u>Goldman CEO Blankfein Statements at November 13, 2007 Merrill Lynch Banking and Financial Investor Conference</u>

What drove performance was the quality of our client franchise. To me, franchise describes the extent to which ***our clients come to us for help, advice, and execution. From those relationships, business opportunities are brought to the firm***.

- Goldman CFO Viniar June 14, 2007 Statements on Goldman's 2d Quarter Investor Conference Call

Most importantly, and the basic reason for our success, is our extraordinary focus on our clients.

- Goldman's Annual Report (each year from 2006-2010)
- Goldman Business Principles

1 ***Our clients' interests always come first***. Our experience shows that if we serve our clients well, our own success will follow.

2 Our assets are our people, capital and ***reputation. If any of these is ever diminished, the last is the most difficult to restore***. ***We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us***. ***Our continued success depends upon unswerving adherence to this standard***.

* * *

14 ***Integrity and honesty are at the heart of our business***.

- Goldman's Form 10-Ks

Conflicts of interest are increasing and a failure to appropriately deal with conflicts of interest could adversely affect our businesses.

Our reputation is one of our most important assets. As we have expanded the scope of our businesses and our client base, we increasingly have to address potential conflicts of interest, ***including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interests of another client***, as well as situations where one or more of our businesses have access to material non-public information that may not be shared with other businesses within the firm.

* * *

We have extensive procedures and controls that are designed to address conflicts of interest, including those designed to prevent the improper sharing of information among our businesses. However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and our reputation, which is one of our most important assets, could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to identify and deal appropriately with conflicts of interest. In addition, potential or perceived conflicts could give rise to litigation or enforcement actions.

* * *

Trading and Principal Investments[7]

* * *

We believe our willingness and ability to take risk to facilitate client transactions distinguishes us from many of our competitors and substantially enhances our client relationships.

* * *

We generate trading net revenues from our ***client [or customer]-driven*** businesses in three ways:

- First, in large, highly liquid markets, we undertake a high volume of transactions for modest spreads and fees.

[7] Goldman's Trading and Principal Investments segment is divided into three components: Fixed Income, Currency and Commodities ("FICC"); Equities; and Principal Investments. FICC has five principal businesses: commodities; credit products; currencies; interest rate products, including money market instruments; and mortgage-related securities and loan products and other asset-backed instruments. The Goldman employees that did the relevant deals were part of the mortgage business section.

- Second, by capitalizing on our strong relationships and capital position, we undertake transactions in less liquid markets where spreads and fees are generally larger.
- Finally, we structure and execute transactions that address complex ***client needs***.

155. Indeed, Goldman continued to admit that its reputation, client franchise and commitment to its clients above all else was the key to the Company's success:

- <u>Goldman CEO Blankfein April 27, 2010 Testimony Before Congress</u>

  We have been a client-centered firm for 140 years and ***if our clients believe that we don't deserve their trust we cannot survive***.

156. The investment community has consistently recognized that Goldman's past and continued success as the preeminent Wall Street investment bank is undeniably tied to its reputation, client franchise and purported commitment to its clients:

<u>April 11, 2007 Deutsche Bank Analyst Report</u>

Goldman Sachs is set apart by its best-in-class franchise.

* * *

Reputation – the bar is higher: ***Because the firm probably benefits more from its reputation than any of its peers, it is also more vulnerable to high profile blow-ups***. A company lawyer speaks to employees each year and says that each person has the potential to do more harm than good, in an effort to remind all of ***how much is at stake with the firm's reputation***.

<u>August 8, 2007 CIBC World Markets</u>

"***In the end, all you have is your word, your name, and your reputation,***" *is what my granny would often say. Goldman Sachs operates from the same playbook,* ***a point that cannot be overemphasized and what we believe to be the key to understanding Goldman Sachs***.

Reputation is everything when entering into a new market. Goldman's reputation is such that it has garnered it the most coveted sovereign relationships from China to the Middle East and beyond. . . . Due to this, we believe Goldman will dominate market share in this region for years to come.

<u>November 28, 2007 CIBC World Markets</u>

[W]e met with CFO David Viniar, Head of IB David Solomon, and Co-President Gary Cohn at Goldman Sachs headquarters. ***Common to each meeting was the theme of communication amongst the organization and with clients. For this, GS maintains and grows its dominant market share.***

The message was direct: know what is going on everywhere inside GS at all times, manage risk, and ***put the client first in service***.

157. In fact, as subprime mortgage backed securities and CDOs experienced drastic declines from summer 2007-2009, and Goldman's competitors took billions in mortgage-related writedowns, the investment community stressed that Goldman's reputation for acting in the best interest of its clients would – and did in fact allow – the Company to not only withstand, but in fact profit, from the subprime meltdown:

> <u>November 28, 2007 CIBC World Markets Research Analyst Report</u>
>
> ***Goldman's third quarter results stood out by a mile from many of its peers who took billions of dollars in credit writedowns. Was this a fluke? Each manager yesterday spoke to the value of Goldman's franchise specific to customer relationships when characterizing the third quarter***. While many investors focus on GS's bet being "short" mortgages, management stated that had GS earned half what it did in mortgages during the third quarter, results would not have differed materially. ***The true strength of the quarter as viewed by management was in what Gary Cohn described as "one call" transactions, deals in which Goldman was brought in as the sole advisor due to its reputation as a "can do" firm***. These transactions include Countrywide, Home Depot, and the Bank of England for Northern Rock. Client trading worked much in the same way as Goldman gained market share from its clients understanding that if a deal

had any chance of getting done, Goldman could do it.

<u>September 18, 2008 HSBC Global Research Analyst Report</u>

We have long held the opinion that much of the world worships at the altar of Goldman. Rating agencies, equity investors, debt investors, and political officials all seem to ***hold the institution in higher regard than any of its competitors***. Its performance through the first stage of the credit bubble unwind reinforced those views.

<u>June 4, 2009 Bernstein Research Analyst Report</u>

[W]e believe Goldman Sachs will be the ultimate winner during a FICC [Fixed Income Currency and Commodities] recovery as GS is unrelenting in maintaining its reputation as the largest, most successful institutional trading firm on Wall Street and will continue to seize “up for grabs” market share and take advantage of credit market opportunities.

* * *

Risks

The biggest risk to any major broker-dealer is a loss of confidence in its name in the markets.

B. Goldman's Undisclosed Fraudulent Conduct in 2006-2007 in Connection with the Hudson, Anderson and Timberwolf CDOs

158. At the end of 2006 and throughout 2007, Goldman's senior management made a firm-wide decision to put Goldman's interests ahead of its own clients. Seeking to avoid the impending economic downturn which led to the collapse of some of Goldman's competitors, including Bear Stearns and Lehman Brothers, Goldman unloaded billions of dollars of deteriorating toxic assets off its books and onto its own clients. In addition to Abacus, the three CDO transactions detailed below demonstrate Goldman's fraudulent conduct in which Goldman took a substantial portion of the short side of each CDO, betting that the assets within the CDO would fall in value or not perform. Goldman's short position was in direct opposition to the clients to whom it sold the CDO securities, yet Goldman failed to disclose that it had designed these deals to fail, and that it took massive short positions to allow the Company to rid itself of mortgage related assets on its books and profit handsomely.

1. Hudson CDO

159. By mid-2006, Goldman's Mortgage Department had a predominantly pessimistic view of the U.S. subprime mortgage market. According to Michael Swenson, head of the Mortgage Department's Structured Products Group: "[D]uring the early summer of 2006 it was clear that the market fundamentals in subprime and the highly levered nature of CDOs [were] going to have a very unhappy ending."

160. By August 2006, Goldman management had decided that the upside for RMBS and CDOs linked to the ABX Index[8] had "run its course," and directed the Mortgage Department's Asset Backed Securities ("ABS") Desk to sell off its billions of dollars of ABX long holdings that Goldman accumulated throughout 2005 and 2006. After several weeks of effort, however, the ABS Desk was unable to find many buyers, and its ABX assets referencing mezzanine subprime RMBS securities, which were dropping in value, were losing hundreds of millions and began to pose a disproportionate risk to both Goldman's Mortgage Department and the firm as a whole.

161. In September 2006 Mortgage Department head Daniel Sparks and his superior, Jonathan Sobel, initiated a series of meetings with Swenson, head of the Structured Products Group ("SPG"), and Birnbaum, the Mortgage Department's top trader in ABX assets, to discuss the Department's long mortgage-related securities holdings. In those meetings, they discussed whether the Asset Backed Security (ABS) Trading Desk within SPG should get out of its existing positions or "double down."

162. In simple terms, if the Mortgage Department's existing long positions could be transferred off SPG's books by finding a "structured place to go with the risk," the ABS Trading Desk would then be free to "double down" by taking on new positions and risk.

163. That same month, September 2006, the ABS and CDO Desks reached agreement on constructing a

---

[8] The ABX index is a key point of reference for securities backed by home loans issued to borrowers with weak credit. The index is comprised of a series of credit-default swaps based on 20 bonds that consist of subprime mortgages.

new CDO to provide the ABS Desk with a "structured exit" from some of its existing investments. The CDO was called Hudson Mezzanine Funding 2006-1. Goldman designed Hudson from its inception as a way to transfer the risk of loss associated with assets from Goldman's inventory to the Goldman clients that invested in Hudson. In fact, Goldman admitted to the Senate that Hudson was "initiated by the firm as the most efficient method to reduce long ABX exposures," and was an "exit for our long ABX risk."

164. Hudson was a $2 billion static synthetic CDO that was structured and began to be marketed by Goldman in or around late 2006. The actual offering of the Hudson CDO securities commenced on or about December 5, 2006, and was led by Goldman employees, Peter Ostrem (who headed the desk that originated CDOs for Goldman) and Darryl Herrick ("Herrick") (who eventually became the Hudson deal captain).

165. Goldman used the Hudson CDO to short $1.2 billion in ABX Index assets from Goldman's own inventory and to short another $800 million in single name CDS contracts referencing subprime RMBS securities. By holding 100% of the short position at the same time it solicited clients to buy the Hudson securities, Goldman created and hid an egregious conflict of interest with its clients.

166. The Hudson transaction allowed Goldman to profit directly from its clients' losses – while misleading those clients about the source of the reference assets and Goldman's position on the short side. When the Hudson securities declined in value, Goldman made a $1.35 billion profit on its proprietary short position at the expense of the clients to whom it had sold the Hudson securities.

167. According to Goldman's contemporaneous records and its responses to Senate Subcommittee questions, 100% of the CDS contracts included in Hudson were supplied by Goldman's Mortgage Department. Because Hudson contained only CDS contracts, it was entirely "synthetic"; it contained no loan pools or RMBS securities that directed actual cash payments to the CDO. Instead, the only cash payments made to Hudson consisted of the cash paid by investors making initial purchases of the Hudson securities and the premiums that Goldman paid into Hudson as the sole short party.

168. After establishing its basic characteristics and selecting the CDS assets to be included in Hudson, Goldman began to look for investors. A key development took place early on, when near the end of September 2006, Morgan Stanley's proprietary trading desk committed to entering into a CDS agreement with Goldman referencing the "super senior" portion of Hudson, meaning the CDO's lowest risk tranche that would be the first to receive payments to the CDO." Morgan Stanley agreed to take the long side of a CDS that represented $1.2 billion of the $2 billion CDO. Goldman failed to disclose the fact that it would be the sole short party in the entire $2 billion CDO.

169. After getting the commitment from Morgan Stanley, Goldman turned its focus to selling the remaining Hudson securities. Goldman's CDO marketing strategy typically involved its sales personnel sending clients a marketing booklet outlining different features of a particular CDO. Herrick drafted the marketing booklet for Hudson, and circulated it for review to Ostrem and other members of the CDO Origination Desk including

Benjamin Case and Matthew Bieber. The executive summary of the marketing booklet described Goldman's Hudson CDO program generally and Hudson Mezzanine Funding 2006-1 in particular:

> Goldman Sachs developed the Hudson CDO program in 2006 to create a consistent, programmatic approach to invest in attractive relative value opportunities in the RMBS and structured product market[.]
>
> * * *
>
> Goldman Sachs has aligned incentives with the Hudson program by investing in a portion of equity and playing the ongoing role of Liquidation Agent.

170. The marketing booklet also described the Hudson assets, and the selection process for those assets:

> The portfolio composition of Hudson Mezzanine Funding 2006-1 will consist of 100% CDS on RMBS.
>
> – 60% of the RMBS will be single name CDS on all 40 obligors in ABX 2006-1 and ABX 2006-2.
>
> – 40% of the RMBS will consist of single name CDS on 2005 and 2006 vintage RMBS . . .
>
> Goldman Sachs' portfolio selection process:
>
> – Assets sourced from the Street. Hudson Mezzanine Funding is not a Balance Sheet CDO
>
> – Goldman Sachs CDO desk pre-screens and evaluates assets for portfolio suitability

> – Goldman Sachs CDO desk reviews individual assets in conjunction with respective mortgage trading desks (Subprime, Midprime, Prime, etc.) and makes decision to add or decline[.]

171. Goldman's statement that "Goldman Sachs has aligned incentives with the Hudson program by investing in a portion of equity," was false and misleading. Goldman did, in fact, purchase approximately $6 million in Hudson equity. However, that $6 million equity investment was outweighed 300 times over by Goldman's $2 billion short position in Hudson, which made Goldman's interest adverse to, rather than aligned with, the Hudson investors. Neither the marketing booklet nor other offering materials disclosed to investors the size or nature of Goldman's short position in Hudson.

172. The marketing booklet also stated that Hudson's assets were "sourced from the Street," and that it was "not a Balance Sheet CDO," even though all of the CDS contracts had been produced and priced internally by Goldman and $1.2 billion of the contracts offset Goldman ABX holdings. The plain meaning of the phrase, "sourced from the Street," is that the Hudson assets were purchased from several broker-dealers on Wall Street.

173. The Senate Subcommittee asked several Goldman employees involved in Hudson to explain their understanding of the phrase:

(a) A former Goldman salesperson, Andrew Davilman, who sold Hudson securities to investors, told the Senate Subcommittee that he thought "sourced from the Street" referred to ***assets being acquired from a variety of different broker-***

dealers at the best prices, and was surprised to learn that all of the Hudson assets had been provided by Goldman's ABS Desk;

(b) Herrick, who drafted the Hudson marketing booklet, stated that "sourced from the Street" meant the assets were "***sourced from a street dealer at street prices***";

(c) Ostrem stated that "sourced from the Street" referred to the fact the ***underlying RMBS securities were not originated or underwritten by Goldman***; and

(d) Deeb Salem, a Goldman mortgage trader who selected 40% of the assets in Hudson, described "the Street" as simply "***short hand for all broker-dealers***."

174. By using the phrase, "sourced from the Street," Goldman misled investors into thinking that the referenced assets had been purchased from several broker-dealers and obtained at arms-length prices, rather than simply taken directly from Goldman's inventory and priced by its own personnel. Moreover, this phrase hides the fact that Goldman had an adverse interest to investors and was seeking to transfer unwanted risk from its own inventory to the clients it was soliciting. By claiming it was "not a Balance Sheet CDO," Goldman also misled investors into believing that Goldman had little interest in the performance of the referenced assets in Hudson, rather than having selected the assets to offset risks on its own books.

175. In addition to the Hudson marketing booklet, in December 2006, Goldman issued an Offering Circular which it distributed to potential investors. The Offering Circular contained the statement that no

independent third party had reviewed the prices at which the CDS contracts were sold to Hudson. This purported disclosure was incomplete. In addition to lacking third-party verification, no external counterparty had participated in any aspect of the CDS contracts. All of the CDS contracts had been produced, signed, and priced internally by two Goldman trading desks which exercised complete control over the Hudson CDO.

176. Internally, while Hudson was being constructed, Goldman personnel acknowledged that they were using a novel pricing approach. At one point, Swenson sent an email to Birnbaum, raising questions about how they could explain some of the pricing decisions. Swenson wrote that he was: "concerned that the levels we put on the abx cdo for single-a and triple-bs do not compare favorably with the single-a off of a abx 1 + abx 2 trade," telling Birnbaum "[w]e need a goo[d] story as to why we think the risk is different." The prices that Goldman established for the CDS contracts that Hudson "bought" affected the value of the CDO and the Hudson securities Goldman sold to investors, but the Offering Circular failed to disclose the extent to which Goldman had single-handedly controlled the pricing of 100% of the CDOs assets.

177. Goldman also failed to disclose the fact that it would be the sole short party in the entire $2 billion CDO. The Goldman materials told investors that an affiliate, GSI, would be the "credit protection buyer" or initial short party for the Hudson CDO. It was common practice for underwriters to act as the initial short party in a CDO, acting as an intermediary between the CDO vehicle and broker-dealers offering competitive bids in order to short the assets referenced in the CDO. The disclosure provided by Goldman

contained boiler plate language suggesting that would be the role played by GSI in the Hudson transaction. Goldman never disclosed that it had provided all of Hudson's assets internally, GSI was not acting as an intermediary, and GSI would not be passing on any portion of the short interest in Hudson to any other party, but would be keeping 100% of the short position. The Hudson disclosures failed to state that, rather than serving as an intermediary, Goldman was making a proprietary investment in the CDO which placed it in a direct, adverse position to the investors to whom it was selling the Hudson securities.

178. The Offering Circular also contained a section entitled, "Certain Conflicts of Interest," which included a subsection entitled, "The Credit Protection Buyer and Senior Swap Counterparty," in which Goldman could have disclosed its short position. Rather than disclose that short position, however, Goldman stated in part:

> GSI and/or any of its affiliates may invest and/or deal, for their own respective accounts for which they have investment discretion, in securities or in other interests in the Reference Entities, in obligations of the Reference Entities or in the obligors in respect of any Reference Obligations or Collateral Securities (the "Investments"), or in credit default swaps (whether as protection buyer or seller), total return swaps or other instruments enabling credit and/or other risks to be traded that are linked to one or more Investments.

This disclosure indicates that GSI or an affiliate "may invest and/or deal" in securities or other "interests" in the assets underlying the Hudson CDO, and "may invest and/or deal" in securities that are "adverse to" the Hudson "investments." The Offering Circular, however, misrepresented Goldman's investment plans. At the time it was created in December 2006, Goldman had already determined to keep 100% of the short side of the Hudson CDO and act as the sole counterparty to the investors buying Hudson securities, thereby acquiring a $2 billion financial interest that was directly adverse to theirs.

179. Consistent with both industry and Goldman practice, customers learning of GSI's role as the initial sole counterparty in Hudson would have assumed that GSI planned to sell its initial short position to other parties.

180. Goldman placed a priority on selling Hudson securities, delaying the issuance of other CDOs in order to facilitate Goldman's own proprietary short position in Hudson. Goldman sales representatives reported that clients expressed skepticism regarding the quality of the Hudson assets, but Goldman continued to promote the sale of the CDO as if its interests were truly aligned with its clients' interests.

181. Once it constructed the Hudson CDO, Goldman personnel were focused on completing and selling the Hudson securities as quickly as possible. Goldman senior executives closely followed Hudson's development and sale. Hudson was discussed, for example, at five different Firmwide Risk Committee meetings attended by senior Goldman executives and chaired by CFO David Viniar. Mortgage Department executives also sent progress reports to the senior executives on Hudson. On October 25, 2006, for example, Sobel sent an email to COO Gary Cohn and Viniar alerting them to Hudson sales efforts and the pricing of its securities.

182. The Goldman sales force sold most of the Hudson securities prior to the CDOs closing in December 2006, and continued its sales efforts after the closing as well. Overall, Goldman sold Hudson securities to 25 investors. Morgan Stanley made the largest investment, taking $1.2 billion of the super senior portion of the CDO. Other investors included National Australia Bank, which purchased $80 million worth of the AAA rated securities; Security Benefit Mutual, which bought $10 million of the AA rated securities; and Bear Stearns, which bought $5 million of the equity tranche.

183. On October 30, 2006, after Hudson was presented to investors and pre-sold most of its securities, Peter Ostrem, the head of the CDO Origination Desk, sent a celebratory email to the ABS and CDO teams with Hudson highlights. He wrote: "Goldman was the sole buyer of protection on the entire $2.0 billion of assets," meaning Goldman had kept 100% of the short position. By shorting Hudson, Goldman had transferred $1.2 billion worth of risky ABX assets Goldman wanted off its books, and shorted another $800 million in RMBS securities.

184. Over the next year, Goldman pocketed nearly $1.7 billion in gross revenues from Hudson, all at the direct expense of the Hudson investors. Goldman collected $1.393 billion in gains from its short of the assets referencing its ABX inventory and collected another $304 million in gains due to its short of the other $800 million in single name CDS contracts included in Hudson.

185. Goldman also received substantial fees from the roles it played in underwriting and administering Hudson, including $31 million in underwriting fees and $3.1 million for serving as the liquidation agent.

Overall, Goldman recorded a profit from Hudson of more than $1.35 billion.

186. In contrast to Goldman, Hudson investors suffered substantial losses. In March 2007, less than three months after the issuance of the Hudson securities, when asked to analyze how a holder of Hudson securities could hedge against a drop in their value, a Goldman trader wrote: "their likelihood of getting principal back is almost zero." Six months later, the credit rating downgrades began. In September 2007, Moody's downgraded several Hudson securities and followed with additional downgrades in November 2007. S&P began downgrades of Hudson in December 2007, and by February 2008, had downgraded even the AAA rated securities.

187. Morgan Stanley, the largest Hudson investor, lost $930 million. As other investors incurred increasing losses, they sold their securities back to Goldman at rock bottom prices. In September 2007, for example, nine months after the Hudson securities were first issued, Goldman repurchased $10 million worth of Hudson securities from Greywolf Capital at a price of five cents on the dollar; in October 2007, another hedge fund sold $1 million in Hudson securities back to Goldman at a price of 2.5 cents on the dollar. In November 2008, Hudson was completely liquidated by Goldman. Today, Hudson securities are worthless.

188. In sum, Goldman constructed Hudson as a way to transfer its ABX risk to the investors who bought Hudson securities. When marketing the Hudson securities, Goldman misled investors by claiming its investment interests were aligned with theirs, when it was the sole short party and was betting against the very securities it was recommending. Goldman also

implied that Hudson's assets had been purchased from outside sources, and failed to state that it had selected the majority of the assets from its own inventory and priced the assets without any third party participation. ***By holding 100% of the short position at the same time it solicited clients to buy the Hudson securities, Goldman created a conflict of interest with its clients, concealed the conflict from them, and profited at their expense***.

2. Anderson

189. In the summer of 2006, Goldman began work on Anderson, a $500 million synthetic CDO whose assets were single name CDS contracts referencing subprime RMBS securities with mezzanine credit ratings. To execute the Anderson CDO, Goldman partnered with GSC, a New York hedge fund founded by a former Goldman partner. Goldman personnel working on the CDO included Peter Ostrem, head of the CDO Origination Desk, and Matthew Bieber, a CDO Origination Desk employee assigned to be deal captain for the Anderson CDO.

190. GSC and Goldman participated together in the selection of assets for Anderson. Anderson was designed to be a synthetic CDO whose assets would consist solely of CDS contracts referencing RMBS securities whose average credit ratings would be BBB or BBB-.

191. Anderson's assets were purchased from 11 different broker-dealers from September 2006 to March 2007. Goldman was the source of 28 of the 61 CDS contracts in Anderson, and Goldman retained the short side. Goldman also served as the sole credit protection buyer to the Anderson CDO, acting as the

intermediary between the CDO and the various broker-dealers selling it assets.

192. By February 2007, the Anderson warehouse account contained $305 million out of the intended $500 million worth of single name CDS, many of which referenced mortgage pools originated by New Century, Fremont, and Countrywide-subprime lenders known within the industry for issuing poor quality loans and RMBS securities. Approximately 45% of the referenced RMBS securities contained New Century mortgages.

193. During the same time period in which the Anderson single name CDS contracts were being accumulated, Goldman was becoming increasingly concerned about the subprime mortgage market, was reacting to bad news from the subprime lenders it did business with, and was building a large short position against the same types of BBB rated RMBS securities referenced in Anderson. By February 2007, the value of subprime RMBS securities was falling, and the Goldman CDO Origination Desk was forced to mark down the value of the long single name CDS contracts in its CDO warehouse accounts, including Anderson.

194. In February 2007, Goldman CEO Lloyd Blankfein personally reviewed the Mortgage Department's efforts to reduce its subprime RMBS whole loan, securities, and residual equity positions, asking Montag: "[W]hat is the short summary of our risk and the further writedowns that are likely[?]" After a short report from Montag, Blankfein replied:

> [Y]ou refer to losses stemming from residual positions in old deals. Could/should we have cleaned up these books before and are we

> doing enough right now to sell off cats and dogs in other books throughout the division?

195. Sparks also made increasingly dire predictions about the decline in the subprime mortgage market and issued emphatic instructions to his staff about the need to get rid of subprime loans and other assets. On February 8, 2007, for example, Sparks wrote:

> Subprime environment – bad and getting worse. Everyday is a major fight for some aspect of the business (think whack-a-mole) . . . . [P]ain is broad (including investors in certain GS issued deals).

196. On February 14, 2007, Sparks exchanged emails with Goldman's Co-President Jon Winkelried about the deterioration in the subprime market:

> Mr. Winkelried: Another downdraft?
>
> Mr. Sparks: Very large – it's getting messy . . . . Bad news everywhere. Novastar bad earnings and 1/3 of market cap gone immediately. Wells [Fargo] laying off 300 subprime staff and home price appreciation data showed for first time lower prices on homes over year broad based.

197. On February 26, 2007, when Montag asked him about two CDO^2 transactions being assembled by the CDO Origination Desk, Timberwolf and Point Pleasant, Sparks expressed his concern about both:

> Mr. Montag: cdo squared–how big and how dangerous
>
> Mr. Sparks: Roughly 2bb, and they are the deals to worry about

198. Goldman was also aware that its longtime customer, New Century, was in financial distress. On February 7, 2007, New Century announced publicly it would be restating its 2006 earnings, causing a sharp drop in the company's share price. On February 8, 2007, Goldman's Chief Credit Officer Craig Broderick sent Sparks and others a press clipping about New Century and warned:

> [T]his is a materially adverse development. The issues involve inadequate [early payment default] provisions and marks on residuals. . . . [I]n a confidence sensitive industry it will be ugly even if all problems have been identified. . . . We have a call with the company in a few minutes (to be led by Dan Sparks).

199. On some occasions, Sparks addressed negative news about New Century in the same email he discussed liquidating assets in warehouse accounts for upcoming CDOs. On March 8, 2007, for example, Sparks noted in an email to senior executives: "New Century remains a problem" due to loans experiencing early payment defaults, and informed them that the Mortgage Department had "liquidated a few deals and could liquidate a couple more."

200. On February 23, 2007, Sparks sent an email to senior Goldman executives estimating that Goldman had lost $72 million on the holdings in its CDO warehouse accounts, due to falling prices. He directed Mortgage Department personnel to liquidate rather than securitize the assets in certain warehouse accounts. Two days later, on February 25, 2007, Sparks informed senior executives of his intention to liquidate Anderson:

> [T]he CDO business liquidated 3 warehouses for deals of $530mm (about half risk was subprime related). . . . One more CDO warehouse may be liquidated this week – approximately $300mm with GSC as manager.

201. After Sparks relayed this decision, Ostrem and Bieber began to strategize ways to convince Sparks to reverse his decision. Ostrem and Bieber assembled a list of likely buyers of the Anderson securities to present to Sparks, and brainstormed about other CDOs that could potentially buy Anderson securities for their asset pools. Ostrem also proposed allowing a hedge fund to short assets into the deal as an incentive to buy the Anderson securities, but Bieber thought Sparks would want to "preserve that ability for Goldman."

202. At some point, Sparks changed his mind and decided to go forward with underwriting the Anderson CDO. The Anderson CDO closed on March 20, 2007. As finally constructed, 100% of its assets were CDS contracts referencing $307 million in mezzanine subprime RMBS securities, meaning RMBS securities carrying BBB or BBB- credit ratings. About 45% of the subprime mortgages in the referenced RMBS securities were issued by New Century. Another 8% were issued by Countrywide, and almost 7% were issued by Fremont. Goldman took about 40% of the short side of the Anderson CDO.

203. During March 2007, selling Anderson securities became a top priority for Goldman. Goldman even put another deal on hold, the Abacus 2007-AC 1 deal with the Paulson hedge fund, to promote Anderson. As Egol advised Goldman personnel: "Given risk priorities, subprime news and market conditions,

we need to discuss side-lining [Abacus 2007-AC1] in favor of prioritizing Anderson in the short term."

204. On March 13, 2007, Goldman issued internal talking points for its sales force on the Anderson CDO. Among the points highlighted were:

> Portfolio selected by GSC. Goldman is underwriting the equity and expects to hold up to 50%. . . . Low fee structure[.] . . . No reinvestment risk.

The talking points described Goldman as holding up to 50% of the equity tranche in the CDO – worth about $21 million, without mentioning that Goldman would also be holding 40% – about $135 million – of the short side of Anderson, placing its investment interests in direct opposition to the investors to whom it was selling Anderson securities. Goldman also did not disclose to potential investors that it had almost canceled the CDO, due to its assets' falling values.

205. Of particular concern for investors was the concentration of New Century mortgages in Anderson. On March 13, 2007, a potential investor, Rabobank, asked Goldman sales representatives: "how did you get comfortable with all the new centu ry [sic] collateral in particular the new century serviced deals – con sidering [sic] you are holding the equity and their servicing may not be around is that concerning for you at all?" Goldman and GSC prepared a list of talking points with which to respond to the investor:

- Historically New Century has on average displayed much better performance in terms of delinq[uency] and default data
- Prepayments have tended to be higher lowering the extension risk

- Losses and REO [Real Estate Owned by a lender taking possession of a property] are historically lower than the rest of the market
- Traditionally the structures have strong enhancement/subordination.

206. The talking points did not disclose that, in fact, Goldman, too, was uncomfortable with New Century mortgages. On March 8, 2007, five days before receiving the investor's inquiry, Sparks had reported to senior Goldman executives, including Co-President Gary Cohn and CFO David Viniar, that New Century mortgages "remain[ed] a problem on [early payment default]." On March 13, the same day as the investor inquiry, Goldman personnel completed a review of New Century mortgages with early payment defaults that were on Goldman's books and found fraud, "material compliance issues," and collateral problems. The review found that "62% of the pool has not made any pmts [payments]" and recommended "putting back 26% of the pool" to New Century for repurchase "if possible." Goldman also did not disclose to the investor that it was shorting 40% of the Anderson CDO.

207. Some Goldman clients also had questions about GSC's involvement in Anderson. An Australian sales representative wanted "more color on asset selection process, especially with respect to GSC involvement." This clarification was necessary, because although GSC's role was mentioned in numerous internal Goldman documents, the official Anderson marketing materials did not mention GSC's role in asset selection. In previous drafts of the marketing materials, for example, Goldman stated that "Goldman Sachs and GSC Group ("GSC") co-selected the assets"; "GSC pre-screens and evaluates

assets for portfolio suitability"; the CDO was "co-sponsored by Goldman Sachs and GSC Eliot Bridge Fund"; and "Goldman Sachs and GSC ha[ve] aligned incentives with Anderson Funding by investing in a portion of equity." But all of the references to GSC were removed from the final documents.

208. Despite the poor reception by investors, Goldman continued "pushing the axe" with its sales force to sell Anderson securities. Bieber identified and monitored potential investors and attempted to sell Anderson securities to pension funds and place Anderson securities in other Goldman CDOs as collateral securities. On March 20, 2007, when Bieber reported selling $20 million in Anderson securities, his supervisor, Ostrem, responded with the single word: "Profit!" In a separate email a week later, Ostrem told Bieber he did an "[e]xcellent job pushing to closure these deals in a period of extreme difficulty."

209. After several months of effort, Goldman sold approximately $102 million of the $307 million in Anderson securities.

210. Goldman profited from holding 40% of the short position on certain Anderson assets, which produced a $131 million gain at the direct expense of the investors to whom Goldman had sold the Anderson securities. Goldman was also paid $200,000 for serving as the liquidation agent, and collected $2 million in CDS premiums while it warehoused Anderson assets.

211. Anderson's investors suffered substantial losses. Seven months after its issuance, in November 2007, Anderson securities experienced their first ratings downgrades. At that point, 27% of the assets underlying Anderson were downgraded below a B-

rating. Within a year, Anderson securities that were originally rated AAA had been downgraded to BB. In the end, the Anderson investors were wiped out and lost virtually their entire investments.

212. In sum, Goldman constructed the Anderson CDO using CDS contracts referencing subprime RMBS securities, the majority of which were issued by subprime lenders like New Century who were known for issuing poor quality loans. When potential investors asked how Goldman was able to "get comfortable" with the New Century mortgage pools referenced in Anderson, Goldman attempted to dispel concerns about the New Century loans, withheld information about its own discomfort with New Century, and withheld that it was taking 40% of the short side of the CDO, essentially betting against the very securities it was selling to its clients. Instead, Goldman instructed its sales force to tell potential investors that Goldman was buying up to 50% of the equity tranche. Goldman also did not disclose to potential investors that it had almost cancelled the CDO due to the falling value of its assets.

3. Timberwolf I

213. Timberwolf I was a $1 billion hybrid CDO^2 transaction that Goldman constructed, underwrote, and sold.[9] It contained or referenced A rated CDO securities which, in turn, referenced primarily BBB rated RMBS securities. The assets in Timberwolf were selected by Greywolf Capital Management (a registered investment adviser founded by former Goldman employees), with the approval of Goldman.

---

[9] A collateralized debt obligation squared (CDO^2) is backed by a pool of CDO tranches.

Greywolf served as the collateral manager of the CDO. Goldman effectively served as the collateral put provider. Timberwolf was initiated in the summer of 2006, and closed in March 2007.

214. Timberwolf's single name CDS and CDO securities were acquired from 12 different broker-dealers. Goldman was the single largest source of assets, providing 36% of the assets by value, including $15 million in single name CDS contracts naming Abacus securities. As a result, Goldman held 36% of the short interest in Timberwolf.

215. Altogether, Timberwolf contained 56 different assets, of which 51 were single name CDS contracts referencing CDO securities and five were cash CDO securities. The 51 single name CDS contracts referenced both CDO and CDO^2 securities, and each CDO or CDO^2 security contained or referenced its own RMBS, CMBS, or CDO securities or other assets. In total, Timberwolf had over 4,500 unique underlying securities and a grand total of almost 7,000 securities. This process was further complicated by the fact that the CDO assets in Timberwolf were privately issued and often had little or no publicly available information on the underlying assets they contained.

216. Goldman's marketing booklet for Timberwolf stated that Goldman was purchasing 50% of the equity tranche, and that Greywolf was purchasing the other 50%. However, the booklet failed to disclose that Goldman's equity investment was far outweighed by its short investment.

217. By the time Greywolf and Goldman were nearing completion of the acquisition of the Timberwolf assets in the spring of 2007, Goldman was becoming increasingly concerned about the

deteriorating subprime mortgage market and the falling value of the assets in its CDO warehouse accounts. In February 2007, Sparks, the Mortgage Department head, and Goldman senior executive Thomas Montag exchanged emails about the warehouse risk posed by Timberwolf and another pending CDO^2 called Point Pleasant. Montag asked Sparks: "cdo squared–how big and how dangerous"" Sparks responded: "[R]oughly 2 bb [billion], and they are the deals to worry about." Sparks also told Montag that, due to falling subprime prices, the assets accumulated in the warehouse account for the $1 billion Timberwolf CDO had already incurred significant losses, those losses had eaten through all of Greywolf's portion of the warehouse risk sharing agreement, and any additional drops in value would be Goldman's exclusive obligation.

218. In March 2007, due to the falling values of subprime RMBS and CDO securities, Goldman decided against completing several CDOs under construction, and liquidated the assets in their warehouse accounts. Goldman decided, in contrast, to accelerate completion of Timberwolf.

219. At the same time, on March 3, 2007, Sparks memorialized the following remarks after a telephone call: "Things we need to do . . . Get out of everything." On March 7, 2007, Sparks again reported to Goldman's Firmwide Risk Committee on accelerating problems in the subprime mortgage market:

- "Game Over" – accelerating meltdown for subprime lenders such as Fremont and New Century.

- The Street is highly vulnerable, ... Current strategies are to "put back" inventory, . . . or liquidate positions.
- The Mortgage business is currently closing down every subprime exposure possible.

220. On March 8, 2007, Sparks emailed several senior executives, including Viniar and Cohn about "Mortgage risk": "we are trying to close everything down, but stay on the short side."

221. On March 8, 2007, in an email to senior management, Sparks listed a number of "large risks I worry about." At the top of the list was "CDO and Residential loan securitization stoppage – either via buyer strike or dramatic rating agency change." Sparks was referring to the possibility that Goldman would be unable to securitize and sell its remaining subprime mortgage related inventory by repackaging it into RMBS and CDOs for sale to customers.

222. Despite Goldman's internal concerns of the CDO market, the Company proceeded with Timberwolf I and the offering closed on March 27, 2007, approximately six weeks ahead of schedule. The final CDO had $1 billion in cash and synthetic assets, including $960 million in single name CDS referencing CDO securities, and $56 million in cash CDO securities.

223. Not surprisingly, selling Timberwolf securities was a high priority for Goldman. Sparks worked with senior sales managers to review ideas, telling them: "I can't overstate the importance to the business of selling these positions and new issues."

224. On March 9, 2007, Sparks emailed a call for "help" to Goldman's top sales managers around the world to "sell our new issues – CDOs and RMBS – and to sell our other cash trading positions." The Goldman sales manager for Europe and the Middle East suggested that Sparks focus the CDO sales efforts abroad, because the clients there were not involved in the U.S. housing market and therefore were "not feeling pain."

225. During the spring and summer of 2007, the Goldman Syndicate emailed the CDO sales force a list of "Senior CDO Axes" or sales directives on a weekly and sometimes daily basis, many of which placed a priority on selling Timberwolf securities. As early as February, the Goldman sales force developed "broader lists" of clients to target for Timberwolf sales. After exhausting those initial lists, Goldman sales personnel began to target "non-traditional" buyers' as well as clients outside of the United States. The sales force had some early successes. On March 28, 2007, for example, the Syndicate included a note in one of the axe sheets:

> Great job Cactus Raazi trading us out of our entire Timberwolf Single-A position – $16mm. Sales – Good job over the last two weeks moving over $66mm of risk off the axe sheet. Please stay focused on trading these axes.

226. As sales began to flag in April, Sparks sent emails reminding Goldman sales personnel that Timberwolf "is our priority." On one occasion, on April 19, 2007, Sparks suggested to a sales manager offering "ginormous credits" as an incentive to sell Goldman's CDO securities: "for example, let's double the current offering of credits for [T]imberwolf." Sparks was

informed in response: "[W]e have done that with timberwolf already."

227. On March 9, 2007, Harvey Schwartz, a senior executive at Goldman Sachs, expressed concern to Sparks and others about what Goldman sales personnel were telling clients: "Seems to me . . . one of our biggest issues is how we communicate our views of the market – consistently with what the desk wants to execute." Sparks responded by outlining several concerns and the need for the sales team and traders to work together. He wrote:

> 3 things to keep in mind:
>
> (1) The market is so volatile and dislocated that priorities and relative value situations change dramatically and constantly.
>
> (2) Liquidity is so light that discretion with information is very important to allow execution and avoid getting run over.
>
> (3) The team is working incredibly hard and is stretched.

He concluded: Priority 1 – sell our new issues and our cash positions.

228. Despite the urgency communicated by Goldman management, Timberwolf sales slowed. By May 11, 2007, only one Timberwolf sale had taken place in the previous several weeks. Goldman personnel also knew that the value of the Timberwolf securities, and the value of their underlying assets, were falling.

229. On May 11, 2007, Sparks notified Goldman senior executives that marking down the value of the

unsold CDO securities would indicate to the firm that their current market value had become a "real issue":

> Cdo positions and market liquidity and transparency have seized. I posted senior guys that I felt there is a real issue. . . . We are going to have a very large mark down – multiple hundreds. Not good.

That same evening, David Lehman sent out a "Gameplan" to colleagues in the Mortgage Department announcing that Goldman was going to undertake a detailed valuation of its CDO^2 securities using three different valuation methods, and would also take "a more detailed look" at the values of the assets in the CDO warehouse accounts and in Goldman's own inventory. Using the three valuation methods, the presentation estimated that the loss in value and the total writedowns required for the firm's CDO assets were between $237 and $448 million.

230. Also on May 11, Chief Credit Officer Craig Broderick sent an email to his team to set up a survey of Goldman clients who might encounter financial difficulty if Goldman lowered the value of the CDO securities they had purchased. As explained earlier, some Goldman clients had purchased their CDO securities with financing supplied by Goldman that required them to post more cash margin if the financed securities lost value. Other clients had invested in the CDO securities by taking the long side of a CDS contract with Goldman and also had to post more cash collateral if the value of the CDO securities declined. All of these clients would also have to record a loss on their books due to the lowered valuations.

231. With respect to the CDO securities that had yet to be sold, Goldman senior executive Harvey

Schwartz raised another issue related to lowering the values of the CDO securities Goldman was selling to clients: "[D]on't think we can trade this with our clients andf [sic] then mark them down dramatically the next day. . . . Needs to be a discussion if that risk exists." In an email to Sparks, Montag, and Schwartz, Goldman senior executive Donald Mullen acknowledged concerns "about the representations we may be making to clients as well as how we will price assets once we sell them to clients." The executives also agreed, however, not to "slow or delay" efforts to sell Timberwolf securities if they got "strong bids."

232. The CDO valuation project generated many comments on how to price the firm's unsold CDO securities, including Timberwolf. One Goldman employee, who was applying Goldman's most common valuation method to Timberwolf, wrote that the price should be dramatically lower:

> Based on current single-A CDO marks, the A2 tranche of Timberwolf would have a price of 72 cents on the dollar.

He also noted:

> Based on a small sample of single-A CDOs for which we have complete underlier marks, we believe that the risks of the RMBS underliers are frequently not fully reflected in the marks on the CDOs. If the trends in this small sample are extrapolated, the fair spread on the CDOs could even be double where they are marked now; if that were the case, the price of the A2 tranche of Timberwolf would actually be 35-41 cents on the dollar, depending on the correlation.

Several days later, in preparation for a meeting with senior executives on the valuation issue, the same Goldman employee calculated that, for the A2 tranche of Timberwolf, the "price based on CDO marks" was 66 cents on the dollar, while the "price based on RMBS marks" was 24 cents on the dollar.

233. Throughout the valuation process, senior management, including Co-President Gary Cohn, was kept posted on how the Mortgage Department planned to value the firm's CDO assets. On Sunday, May 20, 2007, the Mortgage Department presented its findings in a 9:00 p.m. conference call with CFO David Viniar and others. The presentation's executive summary expressed concern about valuing a range of CDO assets, including unsold securities from Goldman-originated CDOs. The presentation stated: "[T]he desk is most concerned about the CDO^2 positions, comprised of the recent Timberwolf and Point Pleasant transactions. The lack of liquidity in this space and the complexity of the product make these extremely difficult to value."

234. The presentation recommended unwinding and selling the assets in the CDO warehouse accounts and using "independent teams" to continue to value the unsold CDO securities from Goldman originations. It also recommended switching to a targeted sales effort for the unsold CDO^2 securities, focused on four hedge fund clients: Basis Capital, Fortress, Polygon, and Winchester Capital. The Goldman sales force apparently felt those four hedge funds were the clients most likely to buy the CDO^2 securities, and two of them, Basis Capital and Polygon, did subsequently purchase Timberwolf securities. An appendix to the presentation identified another 35 clients for targeted sales efforts and provided an assessment of the CDO

sales efforts for each. Several of those clients later purchased Timberwolf securities.

235. The CDO valuation project undertaken in May provided clear notice to Goldman senior management at the highest levels that its CDO assets had fallen sharply in value, and that despite their lower value, the Mortgage Department planned to aggressively market them to customers.

236. Despite Goldman's internal analysis that the value of the Timberwolf securities was in rapid decline, the Company did not lower the prices at which it marketed the securities to clients. Instead, Goldman took substantial writedowns on the value of its own CDO inventory on May 25, 2007. For example, Goldman marked down the AAA rated Timberwolf A2 securities to a value of $80. At the same time, Goldman continued to market them at inflated prices, selling Timberwolf A2 securities to clients at $87.00 on May 24, at $83.90 on May 30, and at $84.50 on June 11. On May 25, Goldman also marked the AA rated Timberwolf B securities to an internal value of $65.00. Over a month later, Goldman sold $9 million of those AA rated securities to Bank Hapoalim at a price of $78.25, but by then Goldman's internal valuation had fallen to $55, a difference of more than 30% of the market value.

Timberwolf Sales to Basis Capital

237. A couple of weeks before the CDO valuation project, Goldman's Australia sales representative, George Maltezos, announced he had found a potential Australian buyer for a Goldman CDO being constructed by the Correlation Desk: "I think I found white elephant, flying pig and unicorn all at once."

This "white elephant, flying pig and unicorn" would later be identified at Basis Capital.

238. Maltezos began pressing Basis Capital to buy the securities. On May 22, Maltezos urged Basis Capital to consider buying the securities before the end of the quarter:

> I appreciate you are flat chat [busy] at the moment, but pls [please] keep in mind GS is an aggressive seller of risk for QTR [quarter] end purposes (last day of quarter is this Friday). We would certainly appreciate your support, and equally help create something where the return on invested capital for Basis is over 60%.

At the same time Maltezos was claiming that a Timberwolf investment could provide over a 60% return on invested capital, Goldman's internal marks were showing that Timberwolf was continuing to fall in value.

239. Basis Capital indicated that it was interested in the Timberwolf securities, but had several issues it needed to work through. First, Basis Capital indicated that Goldman would have to help it find financing for the purchase price. Second, Basis Capital was concerned about the value of its existing CDO^2 investment with Goldman. On April 19, 2007, Basis Capital had purchased BBB rated Point Pleasant securities at a price of $81.72. Goldman had provided the financing for this purchase. Two weeks later, Goldman had marked down the value of the securities to $76.72, and asked Basis Capital to post additional cash collateral totaling $700,000. When Basis Capital asked how the value of the security had fallen $5 in just two weeks, Goldman responded that the price had

gone back up to $81.72, and no additional cash was required.

240. In May and June 2007, Maltezos worked to convince Basis Capital to purchase $100 million in Timberwolf securities. At one point Basis Capital pressed for a lower sales price, but was told by Maltezos: "I don't think the trading desk shares the sentiment with regard to such spread levels [lower prices]." During the negotiations over the Timberwolf sale, on June 12, 2007, Goldman again marked down the value of the Point Pleasant securities to $75, and again asked Basis to post more cash collateral. When Basis Capital asked Maltezos to justify the lower value, Maltezos wrote:

> [T]here has certainly been further softening in the market since the Point Pleasant trade was put on 8 weeks ago. We have infact [sic] traded some Point Pleasant BBBs at this level in the last 2 weeks.

In fact, no such sales had taken place, and the lower value could not be justified by any sales transactions. The lower mark was instead related to Goldman's CDO valuation project in May, which had concluded that its CDO^2 securities had lost significant value.

241. Stuart Fowler at Basis Capital brought up the valuation issue in the context of the Timberwolf securities, and asked Maltezos: "I need to be very clear on this and are we going to see a similar problem on [T]imberwolf?" Maltezos responded: "Stuart – I assure you no foul here," and offered to set up some "1-on-1 time with the trading desk" to discuss pricing.

242. On June 13, 2007, Lehman reported that Goldman had reached agreement on $100 million in Timberwolf sales to Basis Capital. The sale consisted

of the hedge fund taking the long side of a CDS contract with Goldman, referencing $50 million in AAA rated Timberwolf securities and $50 million in AA rated Timberwolf securities. Lehman told Montag that the CDS premiums that Basis Capital had agreed to accept implied a cash price of $84 for the AAA securities and $76 for the AA securities. Montag asked what Goldman's internal mark was for the Timberwolf AA securities, and Lehman responded: "$65."

243. The Timberwolf sale to Basis Capital was finalized on June 18, 2007. Goldman provided the financing. Just two weeks later, Goldman informed Basis Capital that the Timberwolf securities had lost value and required the hedge fund to post additional cash collateral.

244. Eight days later, on July 12, Goldman again marked down the value of the Timberwolf securities to prices of $65 and $60, after having sold them to Basis Capital one month earlier at $84 and $76. This repricing resulted in a $37.5 million movement in the value of the securities, and required Basis Capital to post substantially more cash collateral with the firm. On July 13, 2007, Basis Capital told Goldman that one of its funds was "in real trouble." On July 16, Goldman again marked down Basis Capital's securities to prices of $55 for AAA and $45 for AA. These prices matched Goldman's internal valuations. By the end of July, Basis Capital was forced to liquidate its hedge fund.

Other Timberwolf Sales

245. At the conclusion of the CDO valuation project, which found that Timberwolf and Goldman's other CDO securities had lost significant value, the Mortgage Department resumed its efforts to push Timberwolf sales. On May 24, 2007, a Goldman sales

associate told Lehman and Sparks that he wanted more information to send to a European hedge fund that was "not experts in this space at all but [I] made them a lot of money in correlation dislocation and will do as I suggest. Would like to show stuff in today if possible." Lehman told the sales associate that he was available to get on the telephone with the clients, and forwarded him the Timberwolf offering circular and marketing materials.

246. On June 5, 2007, Goldman trader Benjamin Case emailed Lehman with a "[g]ameplan for distribution" or sales of Goldman's remaining CDO^2 securities. The plan was to target "institutional buyers that can take larger bite size than traditional CDO buyers . . . for example, Asian banks and insurance companies." Case also noted that Goldman was shorting "51 CDO names in the two portfolios [Timberwolf and Point Pleasant] and we have been aggressively sourcing further protection in the CDS market on names in the two portfolios recently."

247. In early June, Goldman targeted a Korean insurance company called Hungkuk Life for Timberwolf sales. According to a Goldman employee in the Japan sales office, Jay Lee, "the largest hurdle from the client's perspective is whether or not they can get the mandate to buy something backed by synthetically sourced CDO's [sic], as they have never bought CDO^2 before." Lee was also concerned that the value of the securities would drop soon after the office sold the Timberwolf securities to the insurance company. Lee stated:

> [T]he largest hurdle from a sales' perspective is MTM [mark to market]. It is an important client, and if the mark widens out more than 1pt immediately after selling the

> asset to them, sales cannot sell it. Understanding that it is a volatile asset, sales wants to know that where we sell it to the client will not be more than 1pt less than where the mark would be, provided no new market information.

Despite Lee's concerns, on June 1, he reported that Hungkuk Life had purchased $36 million in AAA rated Timberwolf securities. Sparks responded "good job – keep going."

248. Six days later, on June 7, 2007, the head of the Goldman Japan sales office, Omar Chaudhary, contacted Sparks and Lehman about a possible additional sale of Timberwolf securities to Hungkuk Life. Chaudhary wrote that the head of Goldman's Korean sales office was "pushing on our personal relationships" to make the sale and wanted to be assured he'd be paid more if he "got it done":

> Jay and I spoke to the head of Korea Sales today. He said that he feels like he can push for H[ungkuk] Life to increase their size from the 36mm of AAA's and wanted to see if we would pay more GC's [sales credits] if he got it done. Told him that if we sell –45-50mm+ [$45-50 million more] that we would honor the 7.0% even if we trade at 84.5 dollar px [expected price]. Trust you will support this as we are pushing on our personal relationships to get this done.

Lehman and Sparks told Chaudhary to "go for it" and "[g]et `er done." The Korean office did get it done, and Goldman sold another $56 million in Timberwolf securities to Hungkuk Life at a price of $84.50. The sales representative was awarded the 7% sales credit.

Sparks wrote to the sales office: "you boys are awesome and many people are noticing." Montag, a senior Goldman executive monitoring the Timberwolf sales, told the mortgage team it had done an "incredible job – just incredible."

249. On June 11, 2007, Lehman received an email from the Goldman Syndicate asking whether the CDO axe sheet, which included directives to sell Timberwolf securities, could be sent to the Japan sales office for re-distribution to sales representatives across Asia. Lehman agreed: "let's send to all Japan sales." Two days later, on June 13, 2007, the Japan sales office reported over $250 million in new sales of Goldman's CDO securities, including Timberwolf.

250. Montag continued to monitor the sales of Timberwolf as well as other CDO securities in Goldman's inventory and warehouse accounts. On June 22, 2007, Sparks reported to him on the completion of a number of sales of CDO and RMBS securities that Goldman had purchased from the two failed Bear Stearns hedge funds. Montag asked Sparks to provide him with a "complete rundown" on "what[']s left." Sparks responded that the "main thing left" was $300 million in Timberwolf securities. Montag responded: "***boy that timeberwo[l]f was one shitty deal***."

251. Despite Montag's assessment of Timberwolf, he continued to press for the sale of Timberwolf securities to Goldman clients. On June 25, 2007, Sparks emailed Montag and others with another update on selling Goldman's remaining CDO assets. Sparks informed the group that Goldman would probably have to lower the values of the CDO assets over the next few days, but that the net effect for Goldman would be positive, since its short position

was larger than its long. In fact, the Mortgage Department made $42.5 million that day. Montag remained focused on Timberwolf, responding: "[h]ow are twolf sales doing?"

252. On July 12, 2007, another Goldman sales representative, Leor Ceder, reported selling $9 million in Timberwolf securities to Bank Hapoalim at a price of $78.25. Goldman trader Mitchell Resnick asked Lehman "to pay him well on this." Ceder was paid an 8% sales credit. That was Goldman's last Timberwolf sale, even though its Syndicate continued to list the CDO as a top sales priority for months afterward.

253. Goldman ultimately sold about $853 million of the $1 billion in Timberwolf securities to about 12 investors.

Limited Disclosures

254. Despite their aggressive sales efforts, Goldman sales personnel typically did not help potential investors analyze the Timberwolf securities and the 4,500 unique assets underlying the CDO. One Goldman employee told his colleagues: "In terms of telling customers. I prefer to give them the general idea of the trade. Then give them the excel spread sheet with our info on ref obs [reference obligations] and let them draw their own conclusions." Another Goldman employee, discussing a potential buyer of Timberwolf, warned:

> [H]e is going to want to look at the TWOLF trade on a fundamental basis with a lot of supporting runs to back up any additional mark downs we have – telling him we are busy when it comes to month end and we can't run that analysis because we are resource-constrained will not be good enough.

Still another Goldman employee stated with respect to Timberwolf and Point Pleasant: "The trickiest part about sharing this [pricing] analysis with custies [customers] is that it shows just how rudimentary our own understanding of these positions actually is."

255. Goldman also in many instances refused to provide investors with its pricing methodology or specific prices or values for the CDO securities it was selling. After its securities began to lose value, Basis Capital emailed George Maltezos, David Lehman, and others asking: "How many times do we have to request data points and scenarios by email. These were read out to us on the call and it was agreed that GS would send them through. I am getting weary of continually hearing about transparency and yet an obvious avoidance of 'putting things to paper.'"

256. Similarly, when Hungkuk Life requested additional information about the underlying Timberwolf assets, Goldman sent an asset report, but only after removing all of its pricing and valuing information related to those assets. In August 2007, Jay Lee from Goldman's Japan sales office told a sales associate who was seeking information about Goldman's marks for Tokyo Star Bank:

> [U]nder no circumstances are we going to be able to provide materials specific to Timberwolf . . . or even use the word "mark" in written materials. . . . Everything will be described in general terms, and if what we provide is too vague or general, the medium for further clarification must be oral, not written.

Lehman added: "[W]e should be clear that the information we are providing is not our pricing methodology but rather some tho[ugh]ts on the current market."

257. A Goldman salesperson in Taiwan sought help in explaining Goldman's markdowns to a bank whose CDO investment had been marked down from about 97 to about 45 cents on the dollar in a matter of weeks:

> [B]ank just bought the altius deal from gs [Goldman Sachs] 5 weeks ago and the mtm [mark-to-market] dropped over 50%. We understand the liquidity is thin but I really need some info to support this price. . . . This is very important as this transaction has a lot to do with our reputation in Taiwan market. I understand that all deals are down and spread is trading wider now. Unless the principal is at risk now, the mtm is not supposed to drop so quickly during such short period of time.

258. Furthermore, as Goldman marked down the values in the summer of 2007, it began to decrease the volume of the securities it was willing to buy or sell at the prices it quoted to clients. Goldman was initially willing to buy or sell CDO securities in blocks of $10 million, but by July, it lowered the maximum size to $3 million for some securities and $1 million for others: "Given the current market environment, we would like our bid for size for CDO valuations to be MAX $3mm for AAA to AA, and $1mm for A and below. No valuations should go out with a bid for $10mm."

"A Day that Will Live in Infamy"

259. The Timberwolf securities issued by Goldman steadily lost money from the day they were issued. Less than four months after they were issued, on July 16, 2007, Lehman instructed the Timberwolf deal

captain, Bieber, to "create an 'unwind' spreadsheet . . . where we can input CDS spds [spreads]/prices and liability prices so we can determine if unwinding these deals makes sense." The analysis appeared to show that it would cost Goldman $140 million to unwind Timberwolf, and the conclusion was to "Hold Off." Instead of unwinding, Goldman continued its sales push.

260. In September 2007, Montag asked for data tracking the drop in prices for a Goldman CDO that experienced a dramatic fall in value, such as Timberwolf. In response, a Goldman employee provided prices for the A2 tranche of the Timberwolf securities using a combination of Goldman's internal marks and the bids provided to investors, from the issuance of the CDO on March 27, 2007 through September. The data showed that, in six months, prices for Timberwolf's AAA rated A2 security had fallen from $94 per security to $15, a drop of almost 80%:

3/31/07	94-12
4/30/07	87-25
5/31/07	83-16
6/29/07	75-00
7/31/07	30-00
8/31/07	15-00
Current	15-00

261. After receiving this pricing history, Bieber, the Timberwolf deal captain, described March 27, the Timberwolf issuance date, as "a day that will live in infamy."

262. Between mid-June 2007 and early August 2007, the value of Timberwolf securities dropped precipitously. Indeed, Goldman personnel were aware

of its falling value while selling the securities to clients. Goldman profited in part from Timberwolf's decline in value due to its 36% short interest in the CDO. In addition, June was the month that Goldman built its $13.9 billion big short, which meant that the decline in most mortgage related assets translated into increasing profits for Goldman.

263. Timberwolf experienced its first credit rating downgrades in November 2007, just eight months after the CDO closed and issued its securities. The downgrades included the AAA rated securities. In March 2008, one year after Timberwolf was issued, its AAA securities were downgraded to junk status. In June 2008, a controlling class of debt investors voted to liquidate Timberwolf, and the deal was terminated in October 2008.

264. Goldman's 36% short position in Timberwolf produced about $330 million in revenues at the direct expense of the clients to whom Goldman had sold the Timberwolf securities. Goldman also made $3 million in interest while the Timberwolf assets were in Goldman's warehouse account.

265. Timberwolf's investors lost virtually their entire investments. Basis Capital ended up declaring bankruptcy and has filed suit against Goldman.

266. One Goldman salesperson expressed remorse over the impact on their customers of CDO sales followed by large markdowns within days or weeks of the client's purchase:

> Real bad feeling across European sales about some of the trades we did with clients. ***The damage this has done to our franchise is very significant.*** Aggregate loss for our clients on just . . . 5 trades alone is 1bln+.

267. In sum, Goldman constructed Timberwolf using CDO assets that began to fall in value almost as soon as the Timberwolf securities were issued, yet solicited clients to buy the securities. Timberwolf contained or referenced CDO assets with more than 4,500 unique mortgage related securities, but Goldman offered potential investors little help in understanding those securities, and targeted clients with limited or no experience in CDO investments. When marketing Timberwolf, Goldman withheld its internal marks showing the securities losing value and did not mention its short position. Senior Goldman executives knew the firm was selling poor quality assets at inflated prices. Within six months of issuance, AAA Timberwolf securities lost almost 80% of their value. Due to its overall short position in Timberwolf and other mortgage related assets, Goldman profited at the expense of the clients to whom it sold the Timberwolf securities.

C. The Findings of the Senate Subcommittee

268. The Senate Subcommittee found that Goldman's undisclosed conduct in connection with Abacus, Hudson, Anderson and Timberwolf created a clear conflict of interest with Goldman's clients. The Senate Subcommittee found:

> (2) **Magnifying Risk**. Goldman Sachs magnified the impact of toxic mortgages on financial markets by re-securitizing RMBS securities in collateralized debt obligations (CDOs), referencing them in synthetic CDOs, selling the CDO securities to investors, and using credit default swaps and index trading to profit from the failure of the same RMBS and CDO securities it sold.

(3) **Shorting the Mortgage Market**. As high risk mortgage delinquencies increased, and RMBS and CDO securities began to lose value, Goldman Sachs took a net short position on the mortgage market, remaining net short throughout 2007, and cashed in very large short positions, generating billions of dollars in gain.

(4) **Conflict Between Client Interests and Proprietary Trading**. In 2007, Goldman Sachs went beyond its role as market maker for clients seeking to buy or sell mortgage related securities, traded billions of dollars in mortgage related assets for the benefit of the firm without disclosing its proprietary positions to clients, and instructed its sales force to sell mortgage related assets, including high risk RMBS and CDO securities that Goldman Sachs wanted to get off its books, and utilizing key roles in CDO transactions to promote its own interests at the expense of investors, creating a conflict between the firm's proprietary interests and the interests of its clients.

269. Further, according to then-Senate Subcommittee Chairman Sen. Carl Levin:

> Investment banks such as Goldman Sachs were not simply market-makers, they were self-interested promoters of risky and complicated financial schemes that helped trigger the [financial] crisis[.] They bundled toxic mortgages into complex financial instruments, got the credit rating agencies to label them as AAA securities, and sold them to investors, magnifying and spreading risk

> throughout the financial system, and all too often betting against the instruments they sold and profiting at the expense of their clients.

270. As set forth below, defendants' undisclosed fraudulent conduct rendered its statements from February 2007 – April 2010 false and misleading.

D. Defendants' False and Material Misstatements and Omissions Which Failed to Disclose Goldman's Conflicts of Interest with Its Clients and the Impact on Goldman's "Best in Class Franchise"

271. On February 6, 2007, Goldman issued its Form 10-K for fiscal year ended November 24, 2006, which was signed by defendants CEO Blankfein and CFO Viniar and represented that:

Trading and Principal Investments

> Trading and Principal Investments represented 68% of 2006 net revenues. . . .
>
> * * *
>
> ***We believe our willingness and ability to take risk to facilitate client transactions distinguishes us from many of our competitors and substantially enhances our client relationships***.
>
> * * *
>
> We generate trading net revenues from our customer-driven businesses in three ways:
>
> - First, in large, highly liquid markets, we undertake a high volume of transactions for modest spreads and fees.

- Second, by capitalizing on our strong relationships and capital position, we undertake transactions in less liquid markets where spreads and fees are generally larger.
- Finally, we structure and execute transactions that address complex ***client needs***.

272. Goldman, in its 2006 Form 10-K, further stated that:

> Conflicts of interest are increasing and a failure to appropriately deal with conflicts of interest could adversely affect our businesses.
>
> ***Our reputation is one of our most important assets***. As we have expanded the scope of our businesses and our client base, we increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interests of another client, as well as situations where one or more of our businesses have access to material non-public information that may not be shared with other businesses within the firm.
>
> * * *
>
> ***We have extensive procedures and controls that are designed to address conflicts of interest***, including those designed to prevent the improper sharing of information among our businesses. However, appropriately dealing with conflicts of interest is complex and difficult, and ***our reputation could be damaged and the***

> ***willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to deal appropriately with conflicts of interest. In addition, potential or perceived conflicts could give rise to litigation or enforcement actions.***

273. In its 2006 Form 10-K, Goldman stressed the various committees that monitored the Company's business practices and purportedly ensured that Goldman conducted itself with the highest priority. Specifically, Goldman represented that its "Business Practices Committee" assisted senior management in its oversight of compliance and operational risks and related ***reputational*** concerns and that "the Business Practices Committee also reviews Goldman Sachs' business practices, policies and procedures for consistency with our business principles."

274. Goldman also represented in its 2006 Form 10-K that a separate committee, the "Commitments Committee," reviewed and approved underwriting and distribution activities, primarily with respect to offerings of equity and equity-related securities, and "sets and maintains policies and procedures designed to ensure that legal, ***reputational***, regulatory and business standards are maintained in conjunction with these activities."

275. Goldman further stated in its 2006 Form 10-K that's its "Structured Products Committee" reviewed and approved structured product transactions entered into with clients that "raise legal, regulatory, tax or accounting issues or present ***reputational*** risk to Goldman Sachs."

276. The above statements were materially false and misleading because defendants failed to disclose Goldman's fraudulent conduct and conflicts of interest with its clients in connection with Hudson, Anderson, Timberwolf and Abacus, including that Goldman had (i) identified toxic mortgage-backed securities and CDOs held on its books that Goldman believed would significantly decline in value and cause the firm to lose billions; (ii) packaged and sold these securities to Goldman's own clients in order to shift the risks posed by those toxic assets from Goldman's books onto those of its clients, and not in response to client demand; (iii) made affirmative misrepresentations to its own clients in order to hide the fact that Goldman had bet against these securities; and (iv) made billions at its own clients' expense when the value of these securities plummeted, just as Goldman anticipated they would. They also omitted the known fact that Goldman was engaged in direct conflicts of interest with its clients, while Goldman warned that such conflicts could only "potentially" arise. These statements were further materially false and misleading because Goldman did not adequately monitor the business conduct of its employees. Indeed, senior management openly instructed employees to shift the risks of toxic mortgage-backed securities from Goldman's books on to investors, which when ultimately disclosed caused severe ***reputational*** damage to Goldman's client franchise. These statements were also materially false and misleading for the reasons stated in ¶¶148-270.

277. On February 21, 2007 Goldman issued its 2006 Annual Report to Shareholders, which contained "The Goldman Sachs Business Principles," including:

> 1 ***Our clients' interests always come first.*** Our experience shows that if we serve our clients well, our own success will follow.
>
> 2 Our assets are our people, capital and ***reputation. If any of these is ever diminished, the last is the most difficult to restore. We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard***.
>
> * * *
>
> 14 ***Integrity and honesty are at the heart of our business***.

278. The above statements were materially false and misleading for reasons stated in ¶¶148-276 above.

279. On March 13, 2007, Goldman held an investor conference call to discuss its first quarter 2007 results. CFO Viniar told investors: "[Our] record results for the first quarter, . . . reflects the depth of our client franchise and the diversity of our business mix." The above statement was materially false and misleading for the reasons stated in ¶¶148-278 above.

280. On June 14, 2007, Goldman held an investor conference call to discuss its second quarter 2007 results, Goldman CFO Viniar stressed that it was "another strong quarter" for the Company:

> Most importantly, and ***the basic reason for our success, is our extraordinary focus on our clients***.

The above statements was materially false and misleading for the reasons stated in ¶¶148-279 above.

281. On November 13, 2007, Goldman CEO Blankfein told investors at the 2007 Merrill Lynch Banking and Financial Investor Services Conference that:

> ***What drove performance was the quality of our client franchise***. To me, franchise describes the extent to which ***our clients come to us for help, advice, and execution. From those relationships, business opportunities are brought to the firm***.

The above statements were materially false and misleading for the reasons stated in ¶¶148-280 above.

282. On December 18, 2007, Goldman held an investor conference call to discuss fourth quarter 2007 results. Goldman CFO Viniar highlighted that Goldman's client franchise and reputation allowed the Company to continue to flourish in the midst of the subprime meltdown unlike its main competitors:

> In light of the recently more challenging market conditions, ***our record results demonstrate*** the diversity of our business mix, the breadth of our global footprint and most importantly ***the strength of the Goldman Sachs client franchise***.
>
> * * *
>
> FICC produced another record year in arguabl[y] the most challenging mortgage and credit markets [we] have seen in almost a decade. ***At the core of fixed success is the strength of its clients franchise***.

The above statement was materially false and misleading for the reasons stated in ¶¶148-281 above.

283. On January 29, 2008, Goldman issued its Form 10-K for fiscal year ended November 30, 2007 which was signed by defendants CEO Blankfein and CFO Viniar and represented that:

> **Trading and Principal Investments**
>
> Trading and Principal Investments represented 68% of 2007 net revenues.
>
> * * *
>
> ***We believe our willingness and ability to take risk to facilitate client transactions distinguishes us from many of our competitors and substantially enhances our client relationships***.
>
> * * *
>
> We generate trading net revenues from our ***customer-driven*** businesses in three ways:
>
> - First, in large, highly liquid markets, we undertake a high volume of transactions for modest spreads and fees.
> - Second, by capitalizing on our strong relationships and capital position, we undertake transactions in less liquid markets where spreads and fees are generally larger.
> - Finally, we structure and execute transactions that address complex client needs.

284. In its 2007 Form 10-K, Goldman further stated that:

Conflicts of interest are increasing and a failure to appropriately identify and deal with conflicts of interest could adversely affect our businesses.

Our reputation is one of our most important assets. As we have expanded the scope of our businesses and our client base, we increasingly have to address potential conflicts of interest, ***including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interests of another client***, as well as situations where one or more of our businesses have access to material non-public information that may not be shared with other businesses within the firm.

* * *

We have extensive procedures and controls that are designed to identify and address conflicts of interest, including those designed to prevent the improper sharing of information among our businesses. However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and ***our reputation could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to identify and deal appropriately with conflicts of interest. In addition, potential or perceived conflicts could give rise to litigation or enforcement actions***.

285. In its 2007 Form 10-K, Goldman touted the various committees that monitored the Company's business practices. Specifically, Goldman represented in its annual SEC filings that its "Business Practices Committee" assisted senior management in its oversight of compliance and operational risks and related ***reputational*** concerns, in order to "ensure the consistency of our policies, practices and procedures with our Business Principles."

286. Goldman also represented in its 2007 Form 10-K that a separate committee, the "Commitments Committee," reviewed and approved underwriting and distribution activities, primarily with respect to offerings of equity and equity-related securities, and "sets and maintains policies and procedures designed to ensure that legal, ***reputational***, regulatory and business standards are maintained in conjunction with these activities."

287. Goldman further stated in its 2007 Form 10-K that's its "Structured Products Committee" reviewed and approved structured product transactions entered into with clients that "raise legal, regulatory, tax or accounting issues or present ***reputational*** risk to Goldman Sachs."

288. The above statements were materially false and misleading for the reasons stated in ¶¶148-282 above.

289. On March 7, 2008, Goldman issued its 2007 Annual Report to Shareholders which contained "The Goldman Sachs Business Principles," including:

> 1 ***Our clients' interests always come first***. Our experience shows that if we serve our clients well, our own success will follow.

> 2 ***Our assets*** are our people, capital and ***reputation***. ***If any of these is ever diminished, the last is the most difficult to restore***. ***We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us***. ***Our continued success depends upon unswerving adherence to this standard***.
>
> * * *
>
> 14 ***Integrity and honesty are at the heart of our business***.

290. The above statements were materially false and misleading for the reasons stated in ¶¶148-288 above.

291. On March 18, 2008, Goldman held an investor conference call to discuss first quarter results. CEO Viniar stated:

> However, given the significant weakness in the broader market environment during the first quarter, ***we believe our results clearly demonstrate value of the Goldman Sachs client franchise*** and business model, as well as our culture of teamwork and risk management.

The above statement was materially false and misleading for the reasons stated in ¶¶148-290 above.

292. On September 16, 2008 Goldman held an investor call to discuss its third quarter 2008 results. CFO Viniar stated:

> Through our financial performance as a public company, we have repeatedly demonstrated the benefits of having a deep

> and broad franchise. It is this business model and franchise which, despite the challenging environment, generated a return on equity of nearly 19% over the past four quarters.
>
> * * *
>
> While I cannot predict the near-term macro environment, ***I can assure you that Goldman Sachs has never been closer to our clients*** or better positioned to face tough markets and take advantage of profitable opportunities. ***We will continue to manage this firm with our focus utmost on protecting this valuable franchise***.

The above statements were materially false and misleading for the reasons stated in ¶¶148-291 above.

293. On January 27, 2009, Goldman issued its Form 10-K for fiscal year ended November 30, 2008 which was signed by defendants CEO Blankfein and CFO Viniar and represented that:

Trading and Principal Investments

> Trading and Principal Investments represented 41% of 2008 net revenues.
>
> * * *
>
> ***We believe our willingness and ability to take risk to facilitate client transactions distinguishes us from many of our competitors and substantially enhances our client relationships***.
>
> * * *
>
> We generate trading net revenues from our client-driven businesses in three ways:

- First, in large, highly liquid markets, we undertake a high volume of transactions for modest spreads and fees.
- Second, by capitalizing on our strong relationships and capital position, we undertake transactions in less liquid markets where spreads and fees are generally larger.
- Finally, we structure and execute transactions that address complex client needs.

294. Goldman, in its 2008 Form 10-K, further stated that:

> Conflicts of interest are increasing and a failure to appropriately identify and deal with conflicts of interest could adversely affect our businesses. As we have expanded the scope of our businesses and our client base, we increasingly must address potential conflicts of interest, ***including situations where our services to a particular client or our own investments or other interests conflict, or are perceived to conflict, with the interests of another client***, as well as situations where one or more of our businesses have access to material non-public information that may not be shared with other businesses within the firm and situations where we may be a creditor of an entity with which we also have an advisory or other relationship.
>
> * * *
>
> ***We have extensive procedures and controls that are designed to identify and address conflicts of interest***, including

> those designed to prevent the improper sharing of information among our businesses. However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and our reputation, which is one of our most important assets, could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to identify and deal appropriately with conflicts of interest. In addition, potential or perceived conflicts could give rise to litigation or enforcement actions.

295. In its 2008 Form 10-K, Goldman also touted the various committees that monitored the Company's business practices. Specifically, Goldman represented in its annual SEC filings that its "Business Practices Committee" assisted senior management in its oversight of compliance and operational risks and related ***reputational*** concerns, in order to "ensure the consistency of our policies, practices and procedures with our Business Principles."

296. Goldman also represented in its 2008 Form 10-K that a separate committee, the "Commitments Committee," reviewed and approved underwriting and distribution activities, primarily with respect to offerings of equity and equity-related securities, and "sets and maintains policies and procedures designed to ensure that legal, ***reputational***, regulatory and business standards are maintained in conjunction with these activities."

297. Goldman further stated in its 2008 Form 10-K that's its "Structured Products Committee" reviewed and approved structured product transactions entered into with clients that "raise legal, regulatory, tax or

accounting issues or present ***reputational*** risk to Goldman Sachs."

298. The above statements were materially false and misleading for the reasons stated in ¶¶148-292 above.

299. On April 6, 2009 Goldman issued its 2008 Annual Report to Shareholders which contained "The Goldman Sachs Business Principles," including:

> 1 ***Our clients' interests always come first***. Our experience shows that if we serve our clients well, our own success will follow.
>
> 2 Our assets are our people, capital and ***reputation. If any of these is ever diminished, the last is the most difficult to restore. We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard***.
>
> * * *
>
> 14 ***Integrity and honesty are at the heart of our business***.

300. The above statements were materially false and misleading for the reasons stated in ¶¶148-298 above.

301. On July 14, 2009 Goldman held an investor conference call to discuss its second quarter 2009 results. CFO Viniar stated:

> For the past two years, we've operated in an extremely challenging environment. ***Our performance in this cycle has been guided by several principles, including***

> ***putting our clients' needs first***, executing our stated strategy and acting as a good steward of the Firm. ***We adhere to these philosophies to enhance and preserve our franchise*** and protect the interest of our shareholders. These are longstanding principles, and we remain committed to them.

The above statements were materially false and misleading for the reasons stated in ¶¶148-300 above.

302. Goldman, in its 2009 Form 10-K, which was issued on February 26, 2010, stated that:

Trading and Principal Investments

> Trading and Principal Investments represented 76% of 2009 net revenues. . . .
>
> ***We believe our willingness and ability to take risk to facilitate client transactions distinguishes us from many of our competitors and substantially enhances our client relationships***.
>
> * * *
>
> We generate trading net revenues from our ***client-driven*** businesses in three ways:
>
> - First, in large, highly liquid markets, we undertake a high volume of transactions for modest spreads and fees.
> - Second, by capitalizing on our strong relationships and capital position, we undertake transactions in less liquid markets where spreads and fees are generally larger.
> - Finally, we structure and execute transactions that address complex ***client needs***.

303. Goldman, in its 2009 Form 10-K, further stated that:

> Conflicts of interest are increasing and a failure to appropriately identify and deal with conflicts of interest could adversely affect our businesses. As we have expanded the scope of our businesses and our client base, we increasingly must address potential conflicts of interest, ***including situations where our services to a particular client or our own investments or other interests conflict, or are perceived to conflict, with the interests of another client***, as well as situations where one or more of our businesses have access to material non-public information that may not be shared with other businesses within the firm and situations where we may be a creditor of an entity with which we also have an advisory or other relationship. . . .
>
> ***We have extensive procedures and controls that are designed to identify and address conflicts of interest***, including those designed to prevent the improper sharing of information among our businesses. However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and ***our reputation, which is one of our most important assets, could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to identify and deal appropriately with conflicts of interest. In addition,***

> ***potential or perceived conflicts could give rise to litigation or regulatory enforcement actions***.

304. The above statements were materially false and misleading for the reasons stated in ¶¶148-301 above.

305. On April 7, 2010, Goldman issued its 2009 Annual Report to Shareholders which contained "The Goldman Sachs Business Principles," including:

> 1 ***Our clients' interests always come first***. Our experience shows that if we serve our clients well, our own success will follow.
>
> 2 Our assets are our people, capital and ***reputation. If any of these is ever diminished, the last is the most difficult to restore. We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard***.
>
> * * *
>
> 14 ***Integrity and honesty are at the heart of our business***.

306. The above statements were materially false and misleading for the reasons stated in ¶¶148-304 above.

IX. THE TRUTH REGARDING GOLDMAN'S FRAUDULENT CONDUCT IS REVEALED

307. On April 16, 2010, shortly after the market opened, the SEC filed a complaint charging Goldman with securities fraud in connection with the Abacus CDO. The SEC alleged:

The Commission brings this securities fraud action against Goldman, Sachs & Co. ("GS&Co") and a GS&Co employee, Fabrice Tourre ("Tourre"), for making ***materially misleading statements and omissions in connection with a synthetic collateralized debt obligation*** ("CDO") GS&Co structured and marketed to investors. This synthetic CDO, Abacus 2007AC1, was tied to the performance of subprime residential mortgage-backed securities ("RMBS") and was structured and marketed by GS&Co in early 2007 when the United States housing market and related securities were beginning to show signs of distress. Synthetic CDOs like Abacus 2007-AC1 contributed to the recent financial crisis by magnifying losses associated with the downturn in the United States housing market.

GS&Co marketing materials for Abacus 2007-AC1 – including the term sheet, flip book and offering memorandum for the CDO – ***all represented that the reference portfolio of RMBS underlying the CDO was selected by ACA Management LLC*** ("ACA"), a third-party with experience analyzing credit risk in RMBS. ***Undisclosed*** in the marketing materials and ***unbeknownst to investors***, a large hedge fund, Paulson & Co. Inc. ("Paulson"), with economic interests directly adverse to investors in the Abacus 2007-AC1 CDO, played a significant role in the portfolio selection process. After participating in the

> selection of the reference portfolio, Paulson effectively shorted the RMBS portfolio it helped select by entering into credit default swaps ("CDS") with GS&Co to buy protection on specific layers of the Abacus 2007-AC1 capital structure. Given its financial short interest, Paulson had an economic incentive to choose RMBS that it expected to experience credit events in the near future. ***GS&Co did not disclose Paulson's adverse economic interests or its role in the portfolio selection process in the term sheet, flip book, offering memorandum or other marketing materials provided to investors***.
>
> * * *
>
> By engaging in the misconduct described herein, GS&Co and Tourre directly or indirectly engaged in transactions, acts, practices and a course of business that violated Section 17(a) of the Securities Act of 1933, 15 U.S.C. §77q(a) ("the Securities Act"), Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b)("the Exchange Act") and Exchange Act Rule 10b-5, 17 C.F.R. §240.10b-5. The Commission seeks injunctive relief, disgorgement of profits, prejudgment interest, civil penalties and other appropriate and necessary equitable relief from both defendants.

308. Upon this news, Goldman stock immediately declined, ultimately falling from $184.27 per share on April 15, 2010 to $160.70 per share on April 16, 2010, a decline of 13% on extremely high volume of 101.9

million shares. Shareholders suffered a $13 billion dollar loss in the value.

309. Market analysts estimated that the financial impact to Goldman of the SEC lawsuit was approximately $1 billion, reflecting the potential penalties relating to the Abacus deal.

310. The $13 billion loss in shareholder value in Goldman's stock on April 16, 2010, immediately following the filing of the SEC fraud suit grossly exceeded the $1 billion estimated "worst case" financial impact to Goldman from an unfavorable verdict in the SEC fraud suit.

311. Despite this undeniable fact, on April 20, 2010, Goldman Co-General Counsel Gregory Palm told the public that Goldman's failure to disclose the fact that it knew as soon as July 2009 that the SEC intended to bring securities fraud charges was justified because Goldman did not consider the Wells Notice to be material:

> [W]hat I would say about that is our policy has always been to disclose to our investors everything that we consider to be material. And that would include investigations, obviously lawsuits, regulatory matters, anything. Whether there is a Wells or not a Wells, if we consider it to be material we go ahead and disclose it and that is our policy. To get to your question we do not disclose every Wells we get simply because that wouldn't make sense. Therefore we just disclose it if we consider it to be material.

312. Market commentary further confirmed what the $13 billion dollar loss in shareholder value already established – that the financial impact to Goldman

due to the SEC fraud charge was obviously material and not limited to the potential penalties relating to Abacus. Rather, when the SEC's fraud charge revealed Goldman's undisclosed conduct of betting against its clients to make billions, Goldman suffered severe harm and investors punished the stock accordingly.

313. On April 16, 2010, Professor John Coffee, one of the leading and renowned defense experts in the securities fraud area told *Dow Jones*:

> "These charges are far more severe than anyone had imagined," and suggest Goldman teamed with "the leading short-seller in the industry to design a portfolio of securities that would crash," said ***John Coffee***, a securities law professor at Columbia Law School in New York.
>
> "***The greatest penalty for Goldman is not the financial damages – Goldman is enormously wealthy – but the reputational damage***," he said, adding that "it's not impossible" to contemplate that the case could lead to criminal charges.

314. Market analysts agreed with Professor Coffee:

- April 19, 2010 Macquarie (USA) Equities Research

> Normally, firms settle with the SEC to avoid the risk of losing in court, which would tee-up huge class-action wins. However, in this case, the losses only total $1bn. ***Typically, reputational damage, particularly in the institutional context, is a paper tiger. However, in this case, the response by the media and Washington***

has been so severe, that we believe management will want their day in court to prove the firm's innocence. As a result, we may not see the typical settlement but a trial.

As for the direct financial impact, the worst-case scenario is probably $1.10/sh or 6% of our 2010 estimate while there were no material expectations for synthetic CDO revenue in forward estimates. ***As for reputation, Goldman clients are "eyes-wide-open"***.

- April 22, 2010 the *Times (London)*

There were signs yesterday that the scandal was costing Goldman business. BayernLB, one of Germany's biggest banks, said that it would stop dealing with Goldman with immediate effect.

315. Moody's, one of the largest credit rating agencies, confirmed that the damage caused by the SEC lawsuit went well beyond the potential $1 billion penalty relating to Abacus:

April 19, 2010 Moody's Weekly Credit Outlook Report:

On Friday morning in a civil complaint, the SEC accused Goldman Sachs (A1, negative) of fraud in the marketing and origination of a synthetic collateralized debt obligation (CDO). Later on Friday, Goldman Sachs denied the SEC's allegations. ***This development is a credit negative for Goldman Sachs given the potential franchise implications and direct financial costs***.

316. Between April 16, 2010 and June 10, 2010, Goldman suffered additional significant stock price declines. On April 25-26, 2010, the Senate Subcommittee released Goldman internal emails further detailing that Goldman made billions by betting against the CDOs it sold to its clients.

317. Upon the disclosure of this new information relating to Goldman's fraudulent conduct, on April 26, 2010, Goldman stock declined approximately 3.5% from $157.40 to $152.03.

318. On April 29, 2010, two days after ten Goldman executives, including CEO Blankfein, CFO Viniar, COO Cohn, and Mortgage Department Head Daniel Sparks testified before the Senate Subcommittee and vehemently denied that they had done anything wrong, the *Wall Street Journal* reported that Goldman was the subject of a criminal investigation by the Department of Justice.

319. Upon the disclosure of this news on April 30, 2010, Goldman suffered an approximate 9.5% stock price decline from $160.24 to $145.20.

320. Market commentary again confirmed that this new information caused Goldman's stock to decline.

321. On May 5, 2010 Fitch Ratings lowered Goldman's "Ratings Outlook" from "Stable" to "Negative," stating:

> ***The Rating Outlook revision to Negative incorporates recent legal developments and ongoing regulatory challenges that could adversely impact Goldman's reputation and revenue generating capacity. Goldman's franchise and market position are***

> ***potentially vulnerable to scrutiny by stakeholders, and like peers, may be affected by the industry's regulatory evolution***.
>
> Subsequent to civil fraud charges filed by the Securities and Exchange Commission (SEC) last month, it appears that the U.S. Attorney's Office in Manhattan is initiating a criminal probe in connection with Goldman's mortgage trading activity. Given the level of recent public scrutiny, it is not surprising that other authorities outside of the U.S. have also expressed intentions to investigate select mortgage-related transactions conducted by Goldman. At a minimum, ***Fitch believes the civil charges to date and the pending criminal investigation, coupled with a highly public hearing by the U.S. Senate's Permanent Subcommittee on Investigations, generate adverse publicity that tarnishes Goldman's reputation. And for financial services companies, particularly those dependent on the capital markets, reputation is critically important***.

322. On June 10, 2010, it was reported that the SEC was investigating whether in connection with the Hudson CDO, Goldman profited by ridding itself of mortgage backed securities and related CDO's on Goldman's books that it knew were going to decline by selling these securities to Goldman's clients who suffered billions in losses. Goldman stock fell over 2%, from $136.80 to $133.77.

323. Market commentary again confirmed that the negative news which began with the filing of the SEC

fraud suit on April 16, 2010 had caused severe damage to Goldman's stock price:

- June 11, 2010 *Reuters Hedgeworld (New York)*

To date, the regulatory scandal, which began with the filing of the SEC lawsuit on April 16, has cost Goldman $25 billion in market capitalization.

- July 19, 2010 *Wall Street Journal Europe*

The SEC's fraud accusations hurt Goldman in the battle for some plum assignments, people familiar with the matter said.

Investment bankers up and down Wall Street spent months courting General Motors Co. and the U.S. government to handle the auto maker's expected initial public offering later this year.

Goldman President Gary D. Cohn flew to Washington to make the case that Goldman should be considered to lead the deal. ***But the firm couldn't overcome the black eye inflicted by the SEC's*** suit over Goldman's creation and sale of a mortgage-securities deal called **Abacus** 2007-AC1, according to people familiar with the discussions.

- June 23, 2010 *HedgeWorld Daily News*

The firm has already taken some hits. Goldman didn't make the cut as a lead underwriter on a $300 million initial public offering for consulting firm Booz Allen Hamilton, said people familiar with the situation. The Carlyle Group,

> ***the private equity firm which acquired Booz Allen in a $2.54 billion buyout, was worried about the public perception of Goldman leading an IPO for a company with close ties to the U.S. Department of Defense***.

X. LOSS CAUSATION/ECONOMIC LOSS

324. During the Class Period, defendants made numerous false and misleading statements and omissions of material facts necessary to render those statements not false or misleading, which artificially inflated Goldman's stock price.

325. These include the three categories of Goldman's materially false and misleading statements and omissions made during the Class Period.

326. First, from July 2009 until April 2010 Goldman concealed from its quarterly and year-end SEC filings, press releases and investor conference calls that the Company had been notified in July 2009, via a formal Wells Notice, that the SEC had recommended filing securities fraud charges relating to Goldman's conduct in connection with Abacus. By failing to disclose the Wells Notice, Goldman hid its improper conduct of betting against (or allowing a favored client to bet against) the very toxic securities that Goldman designed to fail and packaged and sold to its clients.

327. Second, from February 7, 2007 through April 2010, Goldman reassured investors that "***[w]e have extensive procedures and controls that are designed to [identify and] address conflicts of interest*** . . . ." Goldman's statements were false and misleading and omitted the fact that the Company was

engaged in pervasive conflicts of interest, including that Goldman had designed Abacus to allow a favored client to benefit at the expense of Goldman's other clients.

328. Third, Goldman repeatedly told the public that its client franchise and continued success depended on the Company's reputation, honesty, integrity and commitment to put its clients' interests first above all else, all while concealing that the Company had (i) identified toxic mortgage-backed and CDOs held on its books that Goldman believed would significantly decline in value and cause the firm to lose billions; (ii) created clear conflicts of interest by packaging and selling these securities to Goldman's own clients in order to shift the risk posed by these toxic assets from Goldman's books onto those of its clients; (iii) hid and made affirmative misrepresentations which obscured the fact that Goldman had bet against these securities; and (iv) made billions at its own clients' expense when the value of these securities; plummeted, just as Goldman anticipated they would.

329. Lead Plaintiffs and investors purchased Goldman stock at these inflated prices and suffered damages when the price of Goldman stock declined upon the revelations of the truth, in contrast to earlier misstatements.

330. The inflation in Goldman's stock was dissipated through a series of partial disclosures of the truth that revealed that, contrary to its representations, the Company had engaged in the abusive conduct of placing the Company's interests above its own clients. The resulting significant stock price declines upon release of truthful information were due to firm-specific fraud related disclosures, and not a result of market or industry. The following

examples are not exhaustive because fact and expert discovery have yet to commence:

331. On April 16, 2010 the SEC filed its securities fraud case against Goldman, which revealed that Goldman's had collaborated with a favored client to design a portfolio of securities that would decline in value, and sold this toxic portfolio to other Goldman clients. The SEC's fraud charge inflicted severe damage. Upon this news, Goldman stock immediately declined, ultimately falling from $184.27 per share on April 15, 2010 to $160.70 per share on April 16, 2010, a decline of 13% on extremely high volume of 102 million shares – while the S&P 500 was down only 1.6% and the S&P 500 financials was down only 3.9%. Shareholders suffered a $13 billion dollar loss in the value of Goldman stock.

332. The $13 billion loss in shareholder value in Goldman's stock on April 16, 2010, immediately following the filing of the SEC fraud suit grossly exceeded the $1 billion estimated "worst case" financial impact to Goldman from an unfavorable verdict in the SEC fraud suit.

333. On April 25-26, 2010, the Senate Subcommittee released Goldman internal emails further revealing that Goldman's practice of betting against the very securities it sold to its clients. Upon the disclosure of this new material information on April 26, 2010, Goldman stock declined approximately 3.5% from $157.40 to $152.03, while the S&P 500 was down only .4% and the S&P 500 financials was down only 1.7%.

334. On April 29, 2010, two days after ten Goldman executives, including CEO Blankfein, CFO Viniar, COO Cohn, and Mortgage Department Head Daniel

Sparks testified before the Senate Subcommittee and vehemently denied that they had done anything wrong or illegal whatsoever, the *Wall Street Journal* reported that Goldman was the subject of a criminal investigation by the Department of Justice. Upon the disclosure of this new material information, on April 30, 2010, Goldman suffered an approximate 9.5% stock price decline from $160.24 to $145.20, while the S&P 500 was down only 1.7% and the S&P 500 financials was down only 2.5%.

335. On June 10, 2010, it was reported that the SEC was investigating whether in connection with the Hudson CDO, Goldman profited by ridding itself of mortgage backed securities and related CDO's on Goldman's books that it knew were going to decline by selling these securities to Goldman's clients who suffered billions in losses. Upon disclosure of this new material information, on June 10, 2010, Goldman stock fell over 2%, from $136.80 to $133.77, while the S&P 500 was up 2.9% and the S&P 500 financials was up 3.3%.

XI. APPLICABILITY OF PRESUMPTION OF RELIANCE FRAUD ON THE MARKET DOCTRINE

336. At all relevant times, the market for Goldman's common stock was an efficient market for the following reasons, among others:

> (i) Goldman stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(ii) As a regulated issuer, Goldman filed periodic public reports with the SEC and the NYSE;

(iii) Goldman regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;

(iv) Goldman was followed by securities analysts employed by major brokerage firms who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace; and

(v) Goldman's stock price reacted to the disclosure of firm specific news about the Company.

337. As a result of the foregoing, the market for Goldman's common stock promptly digested current information regarding Goldman from all publicly available sources and reflected such information in Goldman's stock price. Under these circumstances, all purchasers of Goldman's common stock during the Class Period suffered similar injury through their purchase of Goldman's common stock at artificially inflated prices and a presumption of reliance applies.

COUNT I

For Violation of §10(b) of the Exchange Act and Rule 10b-5 Against All Defendants

338. Lead Plaintiffs incorporate ¶¶1-337 by reference.

339. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

340. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

(a) employed devices, schemes and artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon Lead Plaintiffs and others similarly situated in connection with their purchases of Goldman common stock during the Class Period.

341. Lead Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Goldman common stock. Lead Plaintiffs and the Class would not have purchased Goldman common stock at

the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

COUNT II

For Violation of §20(a) of the Exchange Act Against All Defendants

342. Lead Plaintiffs incorporate ¶¶1-341 by reference.

343. The Individual Defendants acted as controlling persons of Goldman within the meaning of §20(a) of the Exchange Act. By reason of their positions with the Company, and their ownership of Goldman stock, the Individual Defendants had the power and authority to cause Goldman to engage in the wrongful conduct complained of herein. Goldman controlled the Individual Defendants and all of its employees. By reason of such conduct, defendants are liable pursuant to §20(a) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiffs pray for judgment as follows:

A. Declaring this action to be a proper class action pursuant to Fed. R. Civ. P. 23;

B. Awarding Lead Plaintiffs and the members of the Class damages, including interest;

C. Awarding Lead Plaintiffs' reasonable costs and attorneys' fees; and

D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Lead Plaintiffs demand a trial by jury.

DATED: July 25, 2011

LABATON
SUCHAROW LLP
/s/ Thomas A. Dubbs
Thomas A. Dubbs
James W. Johnson
Louis Gottlieb
Thomas G. Hoffman
Jeffrey R. Alexander
140 Broadway,
34th Floor
New York, NY 10005
Tel: 212/907-0700
Fax: 212/818-0477

ROBBINS GELLER
RUDMAN & DOWD LLP
/s/ Spencer A. Burkholz
Spencer A. Burkholz
Jonah H. Goldstein
Robert R. Henssler Jr.
Eric I. Niehaus
Danielle S. Myers
655 West Broadway,
Suite 1900
San Diego, CA 92101
Tel: 619/231-1058
Fax: 619/231-7423

ROBBINS GELLER
RUDMAN & DOWD LLP
SAMUEL H. RUDMAN
58 South Service Road,
Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)

Co-Lead Counsel for Lead Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

10 Civ. 3461 (PAC)

ILENE RICHMAN, Individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

GOLDMAN SACHS GROUP, INC, *et al*.,

Defendants.

OPINION & ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

Plaintiffs in this class action allege that Goldman Sachs & Co. ("Goldman"), Lloyd C. Blankfein, David A. Viniar, and Gary D. Cohn (the "Individual Defendants," and collectively with Goldman, the "Defendants") violated § 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder (Count One); and § 20(a) of the Exchange Act (Count II). Plaintiffs, who are purchasers of Goldman's common stock during the period February 5, 2007 through June 10, 2010, claim that Defendants made material misstatements and omissions regarding: (1) Goldman's receipt of "Wells Notices" from the Securities and Exchange Commission ("SEC") relating to Goldman's role in the synthetic collateralized debt obligation ("CDO"), titled ABACUS 2007 AC-1 ("Abacus"); and (2) Goldman's conflicts of interest that arose from its role in the Abacus, Hudson Mezzanine Funding 2006-1

("Hudson"), The Anderson Mezzanine Funding 2007-1 ("Anderson"), and Timberwolf I CDO transactions.

Defendants move, pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6), to dismiss the Consolidated Class Action Complaint (the "Complaint"). For the following reasons, Defendants' motion with respect to the failure to disclose the Wells Notices is GRANTED, and otherwise DENIED.

BACKGROUND

I. Abacus and the SEC Investigation

On April 26, 2007, the Abacus synthetic CDO transaction closed.[1] Goldman served as the underwriter or placement agent, the lead manager, and the protection buyer for the Abacus transaction. (Compl. ¶ 50 & n.3.) Plaintiffs claim that "the Abacus transaction [ ] was designed from the outset by [Goldman] to allow a favored client to benefit at the expense of Goldman's other clients." (*Id.* ¶ 147.) Specifically, Plaintiffs claim that Goldman allowed Paulson & Co., a hedge fund client, to "play[ ] an active and determinative role in the selection process," and knew that Paulson was picking assets that it "believed would perform poorly or fail." (*Id.* ¶¶ 53, 64.) Indeed,

---

[1] In a typical CDO, a special purpose vehicle ("SPV") issues notes and uses the proceeds to acquire a portfolio of assets, such as residential mortgage-backed securities ("RMBS"). The SPV makes payments to noteholders from the income generated by the underlying assets. In a synthetic CDO, the SPV contains a CDO and credit default swap ("CDS"). The SPV obtains derivative exposure to a "reference" portfolio—which may be RMBS or CDOs—by entering into a CDS, pursuant to which counterparties agree to make periodic payments to the SPV in exchange for commitment by the SPV to make payments to the counterparties in the event that the reference securities experience adverse credit events. (*See* Compl. ¶ 50 & n.3.)

"Paulson had agreed to pay Goldman a higher fee if Goldman could provide Paulson with CDS contracts containing premium payments below a certain level." (*Id.* ¶ 77.) Rather than disclose Paulson's role in the asset selection process, Goldman "falsely identified ACA [Management LLC] as the only portfolio selection agent for the CDO." (*Id.* ¶¶ 59-66.) Goldman hid Paulson's role, because it "expect[ed] to leverage ACA's credibility and franchise to help distribute this Transaction." (*Id.* ¶ 61 (quoting a Goldman internal memorandum)). The Abacus transaction performed poorly, as Paulson intended; the investors lost approximately $1 billion, and Paulson, holding the sole short position, profited by this amount. (*Id.* ¶ 81.)

In August 2008, the SEC notified Goldman that it had commenced an investigation into Abacus and served Goldman with a subpoena. (Compl. ¶ 88.) Goldman disclosed in its SEC filings that it had "received requests for information from various governmental agencies and self-regulatory organizations relating to subprime mortgages, and securitizations, collateralized debt obligations and synthetic products relating to subprime mortgages" and that Goldman was "cooperating with the requests." (*Id.* ¶¶ 129, 130.) On July 29, 2009, the SEC issued a Wells Notice to Goldman, notifying it that the SEC's Enforcement Division staff "intends to recommend an enforcement action" and providing Goldman with "an opportunity to respond concerning the recommendation." (*Id.* ¶ 90.) On September 10 and 25, 2009, Goldman provided written Wells submissions to the SEC. (*Id.* ¶ 91.) Goldman thereafter met with the SEC on numerous occasions. (*Id.* ¶ 91.) Plaintiffs claim that by failing to disclose its receipt of a Wells Notice, Goldman "hid its improper conduct of betting against" its clients, and caused its stock to trade at artificially inflated levels. (*Id.* ¶¶ 49, 99.)

On September 28, 2009 and January 29, 2010, the SEC issued Wells Notices to Fabrice Tourre and Jonathan Egol, two Goldman employees involved in the Abacus transaction. (*Id.* ¶¶ 93, 94.) On April 16, 2010, the SEC filed a complaint against Goldman and Tourre—but not Egol—alleging securities fraud violations. (*Id.* ¶ 83.) As a result, Goldman's stock dropped from $184.27 to $160.70 per share, a drop of approximately 13%. (*Id.* ¶ 99.)

On July 14, 2010, Goldman reached a $550 million settlement with the SEC, in which Goldman acknowledged that its marketing material was incomplete and that it had made a mistake:

> [T]he marketing material for the ABACUS 2001-AC1 transaction contained incomplete information. In particular, it was a mistake for the Goldman marketing materials to state that the reference portfolio was "selected by" ACA Management LLC without disclosing the role of Paulson & Co. Inc. in the portfolio selection process and that Paulson's economic interests were adverse to CDO investors.

(*Id.* ¶ 87.)

On November 9, 2010, the Financial Industry Regulatory Authority ("FINRA") announced that it fined Goldman $650,000 for failing to disclose, within 30 days, that Tourre and Egol had received Wells Notices, in violation of National Association of Securities Dealers' ("NASD") Conduct Rule 3010 (which became FINRA Rule 2010, when FINRA succeeded NASD). (*Id.* ¶¶ 100-102.) In settling with

FINRA, Goldman admitted that it violated these rules. (*Id.* ¶¶ 101, 102.)

II. Hudson

Hudson was a synthetic CDO that commenced on or around December 5, 2006, which Goldman packaged and sold. (*Id.* ¶¶ 148, 164.) Plaintiffs allege that Goldman had "clear conflicts of interest" in the Hudson transaction because it knew that the reference assets were poor quality mortgage related securities which were likely to lose value, and yet, sold these products to its clients at higher prices than Goldman believed they were worth, while betting against those very securities, "thereby allowing the Company to reap billions in profits at their clients direct expense." (*Id.* ¶ 148.) Goldman had told investors that it "has aligned incentives with the Hudson program by investing in a portion of equity," without disclosing that it also held 100% of the short position at the same time. (*Id.* ¶¶ 165, 171, 177.) Goldman's incentive from holding $6 million in equity was substantially outweighed by its $2 billion short position. (*Id.* ¶ 171.) Further, Goldman had not disclosed that the assets had been taken directly from Goldman's inventory, and had been priced by Goldman's own personnel. (*Id.* ¶¶ 174, 177.)

III. Anderson

Anderson was a synthetic CDO transaction that closed on March 20, 2007, for which Goldman served as the sole credit protection buyer and acted as an intermediary between the CDO and various broker-dealers. (Compl. ¶¶ 190, 191, 202.) Goldman was the source of 28 of the 61 CDS contracts that made up Anderson, and held a 40% short position. (*Id.* ¶¶ 189-191.) Plaintiffs allege that Goldman developed misleading talking points for its sales force, which did not adequately disclose the asset selection process and touted that Goldman would hold up to 50% of the equity tranche in the CDO, which was worth $21 million, without mentioning its $135 million short position. (*Id.* ¶¶ 204-207).

IV. Timberwolf I

Timberwolf I is a hybrid CDO squared transaction,[2] which closed in March 2007, that Goldman constructed, underwrote, and sold. (*Id.* ¶ 213.) In its marketing booklet, Goldman stated that it was purchasing 50% of the equity tranche, but failed to disclose that it was the largest source of assets and held a 36% short position in the CDO. (*Id.* ¶¶ 214, 216.) Goldman aggressively sold Timberwolf I without explaining its pricing methodology. (*Id.* ¶ 255.) Plaintiffs allege that Goldman knew it was selling poorly quality assets at inflated prices, and profited from its short position. (*Id.* ¶¶ 264-67.)

LEGAL STANDARDS

Since Plaintiffs bring claims for security fraud, they must meet heightened pleading requirements of Fed. R. Civ. P. 9(b), and the Private Securities Litigation Reform Act of 1995 ("PSLRA"). *ATSI Commc'ns v. Shaar Fund, Ltd.*, 493 F.3d 87, 99 (2d Cir.2007); *see also* 15 U.S.C. § 78u–4(b)(1).

Section 10(b) of the Exchange Act prohibits any person from using or employing "any manipulative or deceptive device or contrivance in contravention" of SEC rules. 15 U.S.C. § 78j(b). Rule 10b-5, promulgated under Section 10(b), prohibits "any device, scheme, or artifice to defraud" and "any untrue statement of a

[2] A CDO squared is backed by a pool of CDO tranches.

material fact or to omit to state a material fact necessary in order to make the statements made . . . not misleading . . . .” 17 C.F.R. § 240.10b-5.

To state a claim in a private action under section 10(b) and Rule 10b–5, a plaintiff must prove: “(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission [or transaction causation]; (5) economic loss; and (6) loss causation.” *Stoneridge Inv. Partners, L.L.C. v. Scientific–Atlanta, Inc.*, 552 U.S. 148, 157 (2008).

Defendants argue that the Complaint should be dismissed because: (1) Plaintiff failed to plead an actionable misstatement or omission; (2) Plaintiffs failed to allege facts giving rise to a strong inference of scienter; and (3) Plaintiffs failed to adequately allege loss causation.

ANALYSIS

I. Goldman’s Failure to Disclose Its Receipt of Wells Notices

A. Disclosure Requirements and The Wells Notice Process

Under Section 13 of the Exchange Act, Regulation S-K Item 103, a company is required to “[d]escribe briefly any material pending legal proceedings . . . known to be contemplated by governmental authorities.” 17 C.F.R. § 229.103. Section 240.12b-20 “supplements Regulation S–K by requiring a person who has provided such information in ‘a statement or report . . . [to] add[ ] such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.'" *United States v. Yeaman*, 987 F.Supp. 373, 381 (E.D.Pa. 1997).

The SEC provides a target of an investigation with a Wells Notice "whenever the Enforcement Division staff decides, even preliminarily, to recommend charges." *In re Initial Public Offering Sec. Litig.*, No. 21 MC 92(SAS), 2004 WL 60290, at *1 (S.D.N.Y. Jan. 12. 2004). The party at risk of an enforcement action is then entitled, under SEC rules, to make a "Wells submission" to the SEC, "presenting arguments why the Commissioners should reject the [Enforcement Division] staff's recommendation for enforcement." *WHX Corp. v. S.E.C.*, 362 F.3d 854, 860 (D.C. Cir. 2004) (citing 17 C.F.R. § 202.5(c)). A party's entitlement to make a Wells submission is "obviously based on recognition that staff advice is not authoritative." *Id.* Indeed, "[t]he Wells process was implemented so that the Commission would have the opportunity to hear a defendant's arguments before deciding whether to go forward with enforcement proceedings." *In re Initial Public Offering*, 2004 WL 60290, at *1. Accordingly, receipt of a Wells Notice does not necessarily indicate that charges will be filed.

"An investigation on its own is not a 'pending legal proceeding' until it reaches a stage when the agency or prosecutorial authority makes known that it is contemplating filing suit or bringing charges." *ABA Disclosure Obligations under the Federal Securities Laws in Government Investigations—Part II.C.*; *Regulation S-K*, *Item 103: Disclosure of "Legal Proceedings*," 64 Bus. Law. 973 (2009). A Wells Notice may be considered an indication that the staff of a government agency is considering making a recommendation, *id.*, but that is well short of litigation. Further, Plaintiffs conceded at oral argument that no court has ever held that a company's failure to disclose receipt of a Wells Notice constitutes an actionable omission under § 10(b) or Rule 10b-5. (May 21, 2012 Oral Arg. Tr. 22:17-22.)

In addition to Regulation S-K, Item 103, FINRA Rule 2010, and NASD Conduct Rule 3010 explicitly require financial firms to report an employee's receipt of a Wells Notice to FINRA within 30 days. (Compl. ¶ 100.)

In this case, the Defendants disclosed, as early as January 27, 2009, that there were governmental investigations into, *inter alia*, Goldman's synthetic CDO practices.[3] Goldman never disclosed the Wells Notices that it and its employees received on July 29, 2009, September 28, 2009, and January 29, 2010. (Compl. ¶¶ 90-94, 129.)

An omission is actionable where (1) the omitted fact is material; and (2) the omission is (a) "in contravention of an affirmative legal disclosure obligation"; or (b) needed "to prevent existing disclosures from being misleading." *In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 360 (2d Cir. 2010). Plaintiffs argue (1) that Defendants had to disclose their receipt of Wells Notices in order to

---

[3] Plaintiffs' Complaint cites to the 2009 10-K concerning "requests for information from various governmental agencies" regarding, *inter alia*, synthetic CDOs. (Compl. ¶ 129.) Both parties refer to this statement as notice of governmental "investigations." (*See e.g.*, Pl. Opp. 4.) Defendants attached SEC filings going back to at least January 27, 2009 that contain an identical disclosure. (*See* Walker Decl. Ex. J.) While these materials were not attached to the Complaint, the Court can take judicial notice of SEC filings. *See Finn v. Barney*, No. 11–1270–CV, 2012 WL 1003656, at *1 (2d Cir. Mar. 27, 2012).

prevent their prior disclosures about government investigations from being misleading, and (2) that Defendants had an affirmative legal obligation to disclose their receipt of Wells Notices under Regulation S-K, Item 103, FINRA and NASD Rules.

B. <u>A Duty to Be Accurate and Complete in Making Disclosures</u>

Plaintiffs' primary argument is that Defendants' disclosures about governmental investigations triggered a duty to disclose Goldman's subsequent receipt of Wells Notices. Specifically, Plaintiffs argue that by failing to disclose that the government inquiries resulted in Wells Notices, Defendants misled the public into "erroneously" concluding that "no significant developments had occurred which made the investigation more likely to result in formal charges." (Pl. Opp. 6.)

When a corporation chooses to speak—even where it lacks a duty to speak—it has a "duty to be both accurate and complete." *Caiola v. Citibank, N.A.*, 295 F.3d 312, 331 (2d Cir. 2002). A corporation, however, "only [has to reveal] such [facts], if any, that are needed so that what was revealed would not be so incomplete as to mislead." *In re Bristol Myers Squibb Co. Sec. Litig.*, 586 F.Supp.2d 148, 160 (S.D.N.Y. 2008) (citation omitted). The federal securities laws "do not require a company to accuse itself of wrongdoing." *In re Citigroup, Inc. Sec. Litig.*, 330 F.Supp.2d 367, 377 (S.D.N.Y. 2004) (citing *In re Am. Express Co. Shareholder Litig.*, 840 F.Supp. 260, 269-70 (S.D.N.Y. 1993)); *see also Ciresi v. Citicorp*, 782 F.Supp. 819, 823 (S.D.N.Y. 1991) (dismissing Exchange Act claims in part because "the law does not impose a duty to disclose uncharged, unadjudicated wrongdoing or mismanagement"). Moreover, "defendants [a]re not bound to predict as the 'imminent' or 'likely' outcome of the investigations that indictments of [the company] and its chief officer[s] would follow, with financial disaster in their train." *Ballan v. Wilfred Am. Educ. Corp.*, 720 F.Supp. 241, 248 (E.D.N.Y. 1989).

In *In re Citigroup*, plaintiffs' 10(b) claims premised on Citigroup's failure to disclose "litigation risks associated with its Enron-related, analysis/ investment banking and reporting activities" were dismissed because "Citigroup was not required to make disclosures predicting such litigation"; plaintiffs did not allege that litigation "was substantially certain to occur"; and the SEC filings at issue contained some "discuss[ion of] pending litigation." 330 F.Supp.2d at 377. Similarly, here, Plaintiffs do not allege that litigation was substantially certain to occur, and concede that Defendants provided some notice about ongoing governmental investigations in their SEC disclosures. Indeed, Plaintiffs cannot claim that a Wells Notice indicated that litigation was "substantially certain to occur" because Jonathan Egol, a Goldman employee, received a Wells Notice regarding the Abacus transaction and ultimately was not sued by the SEC. While Goldman and Tourre were sued, the Defendants were not obligated to predict and/or disclose their predictions regarding the likelihood of suit. *See Ballan*, 720 F.Supp. at 248.

Moreover, revealing one fact about a subject does not trigger a duty to reveal all facts on the subject, so long as "what was revealed would not be so incomplete as to mislead." *In re Bristol Myers*, 586 F.Supp.2d at 160 (quoting *Backman v. Polaroid Corp.*, 910 F.2d 10, 16 (1st Cir. 1990)). Plaintiffs have not shown that Defendants were required to disclose their receipt of Wells Notice to prevent their prior disclosures from being inaccurate or incomplete, as their receipt of Wells Notices indicated that the governmental investigations were indeed ongoing. While Plaintiffs claim to want to know about the Wells Notices, "a corporation is not required to disclose a fact merely because a reasonable investor would very much like to know that fact." *In re Time Warner Sec. Litig*, 9 F.3d 259, 267 (2d Cir. 1993). At best, a Wells Notice indicates not litigation but only the desire of the Enforcement staff to move forward, which it has no power to effectuate. This contingency need not be disclosed.

Plaintiffs also argue that Defendants' statements in response to a December 24, 2009 New York Times Article (the "Article") triggered a duty to disclose the Wells Notices. The Article, which mentioned other investment companies but focused on Goldman, stated that the SEC, Congress, and FINRA are scrutinizing "[h]ow these disastrously performing [synthetic CDO] securities were devised." (Walker Decl. Ex. O at 1.)[4] In response, Goldman released a one-page press release addressing answers to questions the Times had asked prior to publication, but which had not been included in the Article. Goldman explained how synthetic CDOs worked and why they were created. (Compl. ¶ 124.) Goldman's response did not address or mention the existence of governmental investigations. Accordingly, Goldman's press release contained nothing concerning the investigations that could be considered inaccurate or incomplete.

---

[4] Since Plaintiffs obviously relied on this Article in drafting their Complaint, the Court can consider it here. *Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007).

In sum, Plaintiffs have not shown that Defendants' nondisclosure of their receipt of Wells Notices made their prior disclosures about ongoing governmental investigations materially misleading; or that Defendants breached their duty to be accurate and complete in making their disclosures.

C. A Regulatory Duty To Disclose

Plaintiffs also argue that Defendants had an affirmative legal obligation to disclose their receipt of Wells Notices under Regulation S-K, Item 103, FINRA and NASD Rules. There is nothing in Regulation S-K, Item 103 which mandates disclosure of Wells Notices. Item 103 does not explicitly require disclosure of a Wells Notices, and no court has ever held that this regulation creates an implicit duty to disclose receipt of a Wells Notice. When the regulatory investigation matures to the point where litigation is apparent and substantially certain to occur, then 10(b) disclosure is mandated, as discussed above. Until then, disclosure is not required. Moreover, even if Goldman had such a duty here, "[i]t is far from certain that the requirement that there be a duty to disclose under Rule 10b–5 may be satisfied by importing the disclosure duties from [an] S–K [regulation]." *In re Canandaigua Sec. Litig.*, 944 F.Supp. 1202, 1210 (S.D.N.Y. 1996) (addressing S-K regulation 303).

With respect to FINRA Rule 2010 and NASD Conduct Rule 3010, there is no dispute that Goldman was bound by and violated these regulations by failing to disclose Tourre and Egol's receipt of Wells Notices within 30 days. (Compl. ¶¶ 100-103.) Courts, however, have cautioned against allowing securities fraud claims to be predicated solely on violations of NASD rules[5] because such "rules do not confer private rights of action." *Weinraub v. Glen Rauch Sec., Inc.*, 399 F.Supp.2d 454, 462 (S.D.N.Y. 2005); *Tucker v. Janney Montgomery Scott, Inc.*, No. 96 Civ. 1923(LLS), 1997 WL 151509, at *3 (S.D.N.Y. Apr. 1, 1997); *see also GMS Grp., LLC v. Benderson*, 326 F.3d 75, 81-82 (2d Cir. 2003) ("arguably there is no right of action simply for a violation of NASD rules.").[6]

Plaintiffs have not shown that Goldman had a regulatory duty, upon which a Section 10(b) or Rule 10b-5 claim can be based, to disclose its receipt of Wells Notices. Accordingly, Plaintiffs' claim premised on Defendants' failure to disclose receipt of Wells Notices fails.

D. Scienter

While there was no duty to disclose, even if there was such a duty, Plaintiffs' claim would still fail because Plaintiffs have not adequately alleged scienter.

"The requisite state of mind, or scienter, in an action under section 10(b) and Rule 10b-5 is 'an intent to deceive, manipulate or defraud.'" *In re GeoPharma, Inc. Sec. Litig.*, 411 F.Supp.2d 434, 441 (S.D.N.Y. 2006) (quoting *Ganino v. Citizens Utils. Corp.*, 228 F.3d 154, 168 (2d Cir.2000)). Moreover, to satisfy Rule 9(b), a plaintiff must allege "facts that give rise to a strong inference of fraudulent intent." *Shields v.*

---

[5] This is applicable to FINRA rules, since FINRA is NASD's successor.

[6] A violation of Item 103 or NASD rules may nonetheless be relevant to a 10(b) and 10b-5 analysis. *See GMS Grp.*, 326 F.3d 75, 82 (NASD "violations may be considered relevant for purposes of § 10(b) unsuitability claims"); *Clark v. John Lamula Investors, Inc.*, 583 F.2d 594, 601 (2d Cir. 1978).

Citytrust Bancorp, *Inc*., 25 F.3d 1124, 1128 (2d Cir. 1994). A plaintiff claiming fraud can plead scienter "either (a) by alleging facts to show that defendants had both motive and opportunity to commit fraud, or (b) by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness." *Lerner v. Fleet Bank*, *N.A*., 459 F.3d 273, 290-91 (2d Cir. 2006).

While Plaintiffs failed to raise a strong inference of motive and opportunity,[7] "they could raise a strong inference of scienter under the 'strong circumstantial evidence [of conscious misbehavior or recklessness]' prong, 'though the strength of the circumstantial allegations must be correspondingly greater' if there is no motive." *ECA*, *Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co*., 553 F.3d 187, 198-99 (2d Cir. 2009) (quoting *Kalnit v. Eichler*, 264 F.3d 131, 143-44 (2d Cir. 2001). Recklessness sufficient to establish scienter involves conduct that is "highly unreasonable and . . . represents an extreme departure

---

[7] Plaintiffs argue (in a footnote) that Defendants "had a motive to maintain [Goldman's] appearance of financial health . . . ." (Pl. Opp. 20-21 n.17 (quoting *RMED Intern*., *Inc*. *v*. *Sloan's Supermarkets*, *Inc*., 878 F.Supp. 16, 19 (S.D.N.Y. 1995).) In *RMED Intern*., the court found that Defendants had a motive to hide the existence of an FTC investigation in order to "maintain [Defendant's] appearance of financial health to both its existing shareholders and its potential investors." *Id*. This argument is made in Plaintiffs' opposition brief, but their Complaint does not allege that Defendants omitted any mention of Wells Notices in order to maintain the appearance of financial health. Even if Plaintiffs had made such an allegation, the Second Circuit has since held: "Motives that are common to most corporate officers, such as the desire for the corporation to appear profitable and the desire to keep stock prices high . . . do not constitute 'motive' for purposes of this inquiry." *ECA*, 553 F.3d at 198.

from the standards of ordinary care." *Chill v. Gen. Elec. Co.*, 101 F.3d 263, 269 (2d Cir.1996) (quoting *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir.1978)). A strong inference of scienter may arise where a plaintiff alleges, *inter alia*, defendants "'knew facts or had access to information suggesting that their public statements were not accurate'; or [ ] 'failed to check information they had a duty to monitor.'" *Novak v. Kasaks*, 216 F.3d 300, 311 (2d Cir. 2000).

Plaintiffs argue that Defendants knew of the Wells Notices and admitted that their failure to disclose Tourre and Egol's receipt of Wells Notices violated FINRA and NASD rules. As previously indicated, Defendants' failure to disclose receipt of Wells Notices did not make their prior and ongoing disclosures inaccurate. Thus, Defendants "failure to disclose [their receipt of Wells Notices], by itself, can only constitute recklessness if there was an obvious duty to disclose that information." *In re GeoPharma*, 411 F.Supp.2d at 446 (citing *Kalnit*, 264 F.3d at 143-44)). The requirement that the duty be "obvious" ensures that fraudulent intent will not be imputed to a company every time a public statement lacks detail. *See Bragger v. Trinity Capital Enter. Corp.*, No. 92 Civ. 2124 (LMM), 1994 WL 75239, at *4 (S.D.N.Y. Mar. 7, 1994).

Plaintiffs failed to show that Defendants had an obvious duty to disclose their receipt of Wells Notices. Regulation S-K, Item 103 and FINRA and NASD Rules do not create an obvious duty to disclose, sufficient for Section10(b) and Rule 10b-5 purposes; no court has ever held otherwise. Since "the duty to disclose . . . was not so clear," Defendants' "recklessness cannot be inferred from the failure to disclose." *Kalnit*, 264 F.3d at 143 (holding that since "this case does not present facts indicating a clear duty to disclose, plaintiff's scienter allegations do not provide *strong* evidence of conscious misbehavior or recklessness."); *see also In re GeoPharma*, 411 F.Supp.2d at 446-47 (holding that defendants had no "obvious duty to disclose [the contents of an] FDA letter" given "what defendants *did* disclose" in their press release).

In sum, Plaintiffs failed to satisfy both the duty and scienter requirements to state a Section 10(b) and Rule 10b-5 claim. Accordingly, Defendants' motion to dismiss Plaintiffs' claims premised on Defendants' failure to disclose their receipt of Wells Notices is GRANTED.

II. Goldman's Alleged Conflicts of Interest

Plaintiffs claim that Goldman made material misstatements and omissions concerning Goldman's business practices and conflicts of interest, which are actionable in light of Goldman's misstatements and fraudulent conduct in the Abacus, Hudson, Anderson, and Timberwolf I CDO transactions. Plaintiffs are Goldman's own shareholders—not investors in the Abacus, Hudson, Anderson, and Timberwolf I CDO transactions. Accordingly, to state a claim, Plaintiffs have to show that Goldman made material misstatements and omissions with the intent to defraud its own shareholders. *See In re Sadia*, *S.A. Sec. Litig.*, 643 F.Supp.2d 521, 532 (S.D.N.Y. 2009) (distinguishing acts that deceive a company's *own* shareholders, which can give rise to shareholders' securities fraud claims, from those that deceive investors in the securities of other companies, which are not actionable when raised by the company's own shareholders).

A. Actionable Misstatements and Omissions

Plaintiffs claim that Goldman's conduct in the Abacus, Hudson, Anderson, and Timberwolf I CDO transactions made the following disclosures materially misleading:

- "[W]e increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interest of another client . . . ." (Compl. ¶ 134 (Form 10-K));
- "We have extensive procedures and controls that are designed to . . . address conflicts of interest" (Compl. ¶¶ 134, 154 (Form 10-K));
- "Our clients' interests always come first. Our experience shows that if we serve our clients well, our own success will follow." (Compl. ¶ 154 (Goldman Annual Report));
- "We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard." (Compl. ¶ 154 (Goldman Annual Report));
- "Integrity and honesty are at the heart of our business" (Compl. ¶ 289 (Goldman Annual Report));
- "Most importantly, and the basic reason for our success, is our extraordinary focus on our clients" (Compl. ¶ 154 (Viniar's

Statements on Goldman's Investor Conference Call));

- "Our reputation is one of our most important assets" (Compl. ¶ 154 (Form 10-K)).

Defendants argue that these statements are non-actionable statements of opinion, puffery, or mere allegations of corporate mismanagement (Def. Br. 20-21); and that Goldman's conflict of interest disclosures foreclose liability (Def. Reply Br. 8-10).[8]

"Expressions of puffery and corporate optimism do not give rise to securities violations." *Rombach v. Chang*, 355 F.3d 164, 174 (2d Cir. 2004) (citation omitted). "Likewise, allegations of corporate mismanagement without an element of deception or manipulation are not actionable." *Lapin v. Goldman Sachs Grp., Inc.*, 506 F.Supp.2d 221, 239 (S.D.N.Y. 2006) (citing *In re Citigroup, Inc. Sec. Litig.*, 330 F. Supp.2d 36, 375-76 (S.D.N.Y. 2004)). "The important limitation on these principles is that optimistic statements may be actionable upon a showing that the defendants did not genuinely or reasonably believe the positive opinions they touted (i.e., the opinion was without a basis in fact or the speakers were aware of facts undermining the positive statements), or that the opinions imply certainty." *Id.* (citing cases). Moreover, by putting the "topic of the cause of its financial success at issue, [a company] then [ ] is

---

[8] Goldman's arguments in this respect are Orwellian. Words such as "honesty," "integrity," and "fair dealing" apparently do not mean what they say; they do not set standards; they are mere shibboleths. If Goldman's claim of "honesty" and "integrity" are simply puffery, the world of finance may be in more trouble than we recognize.

'obligated to disclose information concerning the source of its success, since reasonable investors would find that such information would significantly alter the mix of available information." *In re Van der Moolen Holding N.V. Sec. Litig.*, 405 F.Supp.2d 388, 400-01 (S.D.N.Y. 2005) (quoting *In re Providian Fin. Corp. Sec. Litig.*, 152 F.Supp.2d 814, 824-25 (E.D.Pa. 2001).

Additionally, disclaimers do not always shield a defendant from liability. For example, "[c]autionary words about future risk cannot insulate from liability the failure to disclose that the risk has transpired." *Rombach*, 355 F.3d at 173. Indeed, "under certain circumstances, cautionary statements can give rise to Section 10(b) liability." *In re Van der Moolen*, 405 F.Supp.2d at 400. "[T]he disclosure required by the securities laws is measured not by literal truth, but by the ability of the material to accurately inform rather than mislead prospective buyers." *McMahan v. Wherehouse Entm't, Inc.*, 900 F.2d 576, 579 (2d Cir. 1990).

With respect to the Abacus transaction, Plaintiffs argue that Goldman's conduct "involved both client conflicts and outright fraud." (Pl. Opp. 15). Plaintiffs allege that Goldman knowingly allowed Paulson to select the assets for the Abacus CDO, and knew that Paulson was selecting assets that it believed would perform poorly or fail. (*See*, *e.g.*, Compl. ¶¶ 59-66.) To compound this absence of transparency, Goldman hid Paulson's role, and disclosed only ACA's role in the asset selection process, in order to "leverage ACA's credibility and franchise to help distribute this Transaction." (*Id.*) Plaintiffs have thus plausibly alleged that Goldman made a material omission regarding Paulson's role in the asset selection process when it spoke about this topic. *See Caiola v. Citibank, N.A.*, 295 F.3d 312, 331 (2d Cir. 2002) (holding that corporations have a "duty to be both accurate and complete" in their disclosures). Investors on the long side of this offering, the ratings agencies, and ACA were kept in the dark.

Goldman's assertion that it "neither admitted, nor denied" that its Abacus disclosures were fraudulent is eviscerated by its concession that "it was a mistake for the Goldman marketing materials to state that the reference portfolio was 'selected by' ACA Management LLC without disclosing the role of Paulson & Co. Inc. in the portfolio selection process and that Paulson's economic interests were adverse to CDO investors." (*Id*. ¶ 144.) Goldman paid a $550 Million settlement to the SEC—the largest SEC penalty in history—because of the "mistake" it acknowledged. (*Id*.) In the SEC action, District Court Judge Barbara S. Jones found Tourre's conduct fraudulent because: "having allegedly affirmatively represented Paulson had a particular investment interest in ABACUS—that it was long—in order to be both accurate and complete, Goldman and Tourre had a duty to disclose Paulson had a different investment interest—that it was short . . . [because it was] a fact that, if disclosed, would significantly alter the 'total mix' of available information." *S.E.C. v. Goldman Sachs & Co.*, 790 F.Supp.2d 147, 162-63 (S.D.N.Y. 2011) (internal citations and quotations omitted).

In the Hudson, Anderson, and Timberwolf I CDO transactions Goldman affirmatively represented that it held a long position in the equity tranches, without disclosing its substantial short positions. Specifically, in the Hudson transaction, Goldman stated that it had "aligned incentives" with investors by "investing in a portion of equity," which amounted to $6 Million, without disclosing that it also held 100% of the short position at the same time, which amounted to $2 Billion. (Compl. ¶¶ 148, 164, 165, 171, 174, 177.)[9] Goldman's talking points in the Anderson transaction touted that Goldman would hold up to 50% of the equity tranche, which would be worth up to $21 Million, without mentioning its $135 Million short position. (*Id*. ¶¶ 204-207). Goldman's marketing booklet for the Timberwolf I transaction stated that Goldman was purchasing 50% of the equity tranche, without disclosing that it was the largest source of assets and held a 36% short position in the CDO. (*Id*. ¶¶ 214, 216.) Thus, as with the Abacus transaction, Plaintiffs have plausibly alleged that Goldman made material omissions in the Hudson, Anderson, and Timberwolf I transactions because "having allegedly affirmatively represented [Goldman] had a particular investment interest in [these synthetic CDOs]—that it was long—in order to be both accurate and complete, Goldman . . . had a duty to disclose [it] had a [greater] investment interest [from its] short [position]. . . .

[9] Goldman's statements in the Hudson transaction were made before the beginning of the class period. (Compl. ¶¶ 148, 164, 165, 171, 174, 177.) While a defendant can be found "liable only for those statements made during the class period," *In re IBM Sec. Litig*., 163 F.3d 102, 107 (2d Cir. 1998), a prior misstatement does not require dismissal, if the prior statement is "relevant in determining whether defendants had a duty to make a corrective disclosure during the Class Period." *In Re Quintel Entm't Sec. Litig*., 72 F. Supp. 2d 283, 290-291 (S.D.N.Y. 1999). Here, it was Goldman's subsequent statements regarding its business practices and conflicts of interest, which were made during the relevant time period, that are alleged to be material misstatements when viewed in light of Goldman's previous conduct in the Hudson transaction. Accordingly, the Court need not dismiss such conduct.

[because that was] a fact that, if disclosed, would significantly alter the 'total mix' of available information." *S.E.C. v. Goldman Sachs & Co.*, 790 F.Supp.2d at 162-163.

Plaintiffs plausibly allege that Goldman's material omissions in the Abacus, Hudson, Anderson, and Timberwolf I transactions: (1) made its disclosures, to its own shareholders, concerning its business practices materially misleading; and (2) conflicted with its shareholders' interests, because fraudulent conduct hurts a company's share price, and concealing such conduct caused Goldman's stock to trade at artificially high prices, as discussed below. Given Goldman's fraudulent acts, it could not have genuinely believed that its statements about complying with the letter and spirit of the law—and that its continued success depends upon it, valuing its reputation, and its ability to address "potential" conflict of interests were accurate and complete. *See Lapin*, 506 F.Supp.2d at 240 (upholding securities law claims where the complaint "alleges that Goldman knew about the pervasive conflicts and the effect they had on its research reports and buy recommendations, allegedly one of its core competencies, yet, they allegedly failed to disclose such material information to its investors."); *see also In re Sadia, S.A. Sec. Litig.*, 643 F.Supp.2d at 532 (upholding securities law claims where plaintiffs alleged that defendants materially misstated in their Sarbanes-Oxley certifications that there was not "any fraud" at the company, while "knowingly conceal[ing] that the Company had entered into substantial high-risk currency hedging contracts in violation of its internal hedging policy.")

Goldman must not be allowed to pass off its repeated assertions that it complies with the letter and spirit of the law, values its reputation, and is able to address "potential" conflicts of interest as mere puffery or statements of opinion. Assuming the truth of Plaintiffs' allegations, they involve "misrepresentations of existing facts." *Freudenberg v. E*Trade Financial Corp.*, 712 F.Supp.2d 171, 190 (S.D.N.Y. 2010) (finding "statements touting risk management [that] were . . . juxtaposed against detailed factual descriptions of the Company's woefully inadequate or non-existent credit risk procedures" were actionable misstatements) (quoting *Novak*, 216 F.3d at 315). Moreover, Goldman's allegedly manipulative, deceitful, and fraudulent conduct in hiding Paulson's role and investment position in Abacus transaction, and in hiding its own investment position in Hudson, Anderson, and Timberwolf I transactions takes Plaintiffs' claim beyond that of mere mismanagement. *See Lapin*, 506 F.Supp.2d at 240 ("Goldman also misconstrues Plaintiff's allegations as merely stating it mismanaged its research business by allowing conflicts to proliferate[,] . . . . [when the complaint] actually alleges that Goldman knew about the pervasive conflicts and the effect they had on its research reports and buy recommendations, allegedly one of its core competencies, yet, they allegedly failed to disclose such material information to its investors."); *see also Freudenberg*, 712 F.Supp.2d at 193 ("Because Plaintiffs allege that Defendants intentionally misled the public, rather than simply making bad business decisions, Plaintiffs have pled more than mere mismanagement.").

Defendants also argue that the above statements were not material. A complaint, however, "may not properly be dismissed . . . on the ground that the alleged misstatements or omissions are not material unless they are so obviously unimportant to a reasonable investor that reasonable minds could not differ on the question of their importance." *ECA*, 553 F.3d at 197 (quoting *Ganino*, 228 F.3d at 162). Plaintiffs have sufficiently alleged that Goldman's misstatements in the Abacus, Hudson, Anderson, and Timberwolf I transactions were material. *See S.E.C. v. Goldman Sachs*, 790 F.Supp.2d at 162-63 (finding that Paulson's role was "a fact that, if disclosed, would significantly alter the 'total mix' of available information."). Accepting Plaintiffs allegations as true at this juncture, as the Court must, the Court cannot say that Goldman's statements that it complies with the letter and spirit of the law and that its success depends on such compliance, its ability to address "potential" conflict of interests, and valuing its reputation, would be so obviously unimportant to a reasonable investor. *See generally*, *Lapin*, 506 F.Supp.2d at 240-41 ("[I]t defies logic to suggest that, for example, an investor would not reasonably rely on a statement, contained in . . . a list of Goldman's business principles, that recognized Goldman's dedication to complying with the letter and spirit of the laws and that Goldman's success depended on such adherence."); *In re Citigroup Inc. Sec. Litig.*, 753 F.Supp.2d 206, 236 (S.D.N.Y. 2010).

Accordingly, Plaintiffs have sufficiently alleged that Goldman made material misstatements about its business practices and conflicts of interest, viewed in light of its role and conduct in the Abacus, Hudson, Anderson and Timberwolf I transactions.

B. Scienter

A strong inference of scienter can arise where defendants "knew facts or had access to information suggesting that their public statements were not accurate." *Novak*, 216 F.3d at 311.

With respect to Abacus, Goldman certainly knew that Paulson played an active role in the asset selection process. How else could Goldman admit that it was a "mistake" not to have disclosed such information. Goldman knew that Paulson's interests were adverse to investors as "Paulson had agreed to pay Goldman a higher fee if Goldman could provide Paulson with CDS contracts containing premium payments below a certain level." (*Id.* ¶ 77.) Goldman approached and enlisted ACA without disclosing Paulson's intended role as the sole short party. (*Id.* ¶ 61.) Goldman "expressed hope that ACA's involvement would improve sales" and "expect[ed] to leverage ACA's credibility and franchise to help distribute this transaction." (*Id.*) Rather than disclose Paulson's role or adverse interests, however, Goldman concealed its actions and put forward ACA as the sole asset selector. (*Id.* ¶ 66.) Plaintiffs have thus plausibly created a strong inference of scienter with respect to Goldman's knowledge of its material misstatements and omissions in the Abacus transaction. *See S.E.C. v. Goldman Sachs & Co.*, 790 F.Supp.2d at 163.

With respect to the Hudson, Anderson, and Timberwolf I CDOs, Plaintiffs have plausibly alleged that Goldman knew that its statements about holding long positions and having aligned interest with investors were inaccurate due to its substantial short positions. Indeed, Plaintiffs have referenced a number of internal Goldman communications showing that Goldman believed that the "[s]ubprime environment" was "bad and getting worse," and wanted to make a "structured exit" by "trying to close everything down, but stay on the short side."[10] (Compl. ¶¶ 195, 202.) Goldman concealed its efforts to shut "everything down" and "stay on the short side" in the Hudson, Anderson, and Timberwolf I CDOs by claiming to have aligned interest with investors and disclosing only its long position.

Meanwhile, Goldman repeatedly reassured its own shareholders that it was complying with the letter and spirit of the law and that its "continued success depends upon unswerving adherence to this standard"; and that it had procedures in place to address "potential conflicts of interest." (Compl. ¶¶ 134, 154). Given Goldman's practice of making material misrepresentations to third party investors regarding its short position, or Paulson's short position, Goldman knew or should have known that its statements about complying with the letter and spirit of the law, and its disclaimers regarding "potential" conflicts of interest were inaccurate and incomplete. *See Lapin*, 506 F.Supp.2d at 241-42; *In re Citigroup Inc. Sec. Litig.*, 753 F.Supp.2d 206, 238 (S.D.N.Y. 2010) (finding Plaintiffs adequately alleged scienter by

[10] "When the defendant is a corporate entity, the law imputes the state of mind of the employees or agents who made the statement(s) to the corporation." *In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 543 (S.D.N.Y. 2011) (citing *Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital Inc.*, 531 F.3d 190, 195 (2d Cir. 2008) ("To prove liability against a corporation, of course, a plaintiff must prove that an agent of the corporation committed a culpable act with the requisite scienter, and that the act (and accompanying mental state) are attributable to the corporation.")). Accordingly, the scienter reflected in Goldman's Mortgage Department Head's statements can be attributed to Goldman.

showing that "Citigroup was taking significant steps internally to address increasing risk in its CDO portfolio but at the same time it was continuing to mislead investors about the significant risk those assets posed."). Accepting Plaintiffs allegations as true, there is a strong inference of scienter with respect to Goldman's conduct in the Hudson, Anderson and Timberwolf I transactions.

C. Loss Causation

Allegations of loss causation are not subject to the heightened pleading requirements of Rule 9(b) and the PSLRA. Rather, a "short and plain statement"—the standard of Rule 8(a)—"is all that is necessary at this stage of the litigation." *CompuDyne Corp. v. Shane*, 453 F.Supp.2d 807, 828 (S.D.N.Y. 2006).

To survive a motion to dismiss, a plaintiff need only allege either: "(i) facts sufficient to support an inference that it was a defendant's fraud — rather than other salient factors—that proximately caused plaintiff's loss," *Lentell v. Merrill Lynch & Co., Inc*, 396 F.3d 161, 177 (2d Cir. 2005), or (ii) "facts that would allow a factfinder to ascribe some rough proportion of the whole loss to . . . [the defendant's fraud]." *Lattanzio v. Deloitte & Touche LLP*, 476 F.3d 147, 158 (2d Cir. 2007). "[L]oss causation has to do with the relationship between the plaintiff's investment loss and the information misstated or concealed by the defendant. If that relationship is sufficiently direct, loss causation is established, but if the connection is attenuated, or if the plaintiff fails to demonstrate a causal connection between the content of the alleged misstatements or omissions and the harm actually suffered, a fraud claim will not lie." *Lentell*, 396 F.3d at 174 (quotations and citations omitted).

A decline in stock price following a public announcement of "bad news" does not, by itself, demonstrate loss causation. *See Leykin v. AT & T Corp.*, 423 F.Supp.2d 229, 245 (S.D.N.Y. 2006). A plaintiff may, however, "successfully allege loss causation by . . . alleging that the market reacted negatively to a 'corrective disclosure,' which revealed an alleged misstatement's falsity or disclosed that allegedly material information had been omitted." *In re Merrill Lynch & Co. Research Reports & Sec. Litig.*, No. 02 Civ. 9690(JFK), 2008 WL 2324111, at *5 (S.D.N.Y. June 4, 2008). "[A] corrective disclosure need not take the form of a single announcement, but rather, can occur through a series of disclosing events." *In re Bristol Myers Squibb Co. Sec. Litig.*, 586 F.Supp.2d 148, 165 (S.D.N.Y. 2008) (citing cases).

Plaintiffs claim to have purchased Goldman stock at inflated values because they purchased stock before Goldman's practice of making material misstatements and omissions came to light. (Compl. ¶ 329.) They claim that Goldman's misstatements and conflicts of interest came to light on: (1) April 16, 2010, when the SEC filed fraud charges related to the Abacus transaction, which caused Goldman's stock to drop from $184.27 per share to $160.70 per share (a 13% drop); (2) April 25-26, 2010, when the Senate released Goldman's internal emails reflecting its practice of betting against the securities it sold to investors, which caused a stock drop from $157.40 per share to $152.03 per share (a 3% drop); and (3) June 10, 2010, when the SEC announced it was investigating the Hudson CDO transaction, which caused a stock drop from $136.80 per share to $133.77 per share (a 2% drop). (Compl. ¶¶ 329-35.)

While Defendants argue that the lawsuits and investigations themselves cause the stock decline, these suits and investigations can more appropriately be seen as a series of "corrective disclosures," because they revealed Goldman's material misstatements—and indeed pattern of making misstatements—and its conflicts of interest. *See In re Bristol Myers*, 586 F.Supp.2d at 164 (finding that a "disclosure of the Justice Department investigation" was "more akin to a corrective disclosure" because it revealed that Defendants had not complied with their obligation to present accurate information to regulators which resulted in the investigation). Plaintiffs' allegations are thus sufficient at this juncture to show that Goldman's misstatements and omissions caused, or at least contributed to, Plaintiffs' losses. *See id*. at 164-66; *see also Emergent Capital Inv. Mgmt., LLC v. Stonepath Grp., Inc.*, 343 F.3d 189, 197 (2d Cir. 2003) (viewing the facts most favorably to plaintiff and finding allegations that defendants artificially inflated the stock before "dumping" their own was adequate to allege loss causation).

III. Individual Defendants

For the Individual Defendants "to be liable for securities fraud, these defendants must also be responsible for [Goldman's] misleading statements and omissions." *In re Citigroup Inc. Sec. Litig.*, 753 F.Supp.2d 206, 239 (S.D.N.Y. 2010). Each of the Individual Defendants is alleged to have helped prepare the SEC filings at issue. (Compl. ¶ 38-40, 154.)

To show scienter, Plaintiffs allege that each of the Individual Defendants had knowledge of Goldman's synthetic CDO operations. Specifically, Plaintiffs allege that in February 2007—before the Abacus, Anderson, and Timberwolf I CDOs closed, Blankfein reviewed the Mortgage Department's efforts to reduce its subprime RMBS positions and asked about: "losses stemming from residual positions in old deals. Could/should we have cleaned up these books before and are we doing enough right now to sell off cats and dogs in other books throughout the division." (Compl. ¶ 194.) Viniar and Cohn were the recipients of the email from Goldman's Mortgage Department Head stating that Goldman was trying to make a "structured exit" from the subprime market by "trying to close everything down, but stay on the short side." (Compl. ¶ 202.) Cohn and Viniar were alerted to Hudson's sales efforts, and how the CDO assets were valued. (Compl. ¶ 181.) Viniar was also alerted to how the CDOs were valued in general, Goldman's sales efforts with respect to CDOs, and even chaired multiple meetings on the CDO transactions at issue. (Compl. ¶¶ 181, 233.) "Although plaintiffs do not allege with specificity the matters discussed at these meetings, their mere existence is indicative of scienter: That defendants engaged in meetings concerning [Goldman's] CDO risks is inconsistent with the company's public statements" that they held equity positions and had interests that were aligned with the purchasers of the synthetic CDOs. *In re Citigroup*, 753 F.Supp.2d at 238-239 (S.D.N.Y. 2010).

These allegations, taken as true, show that each Individual Defendant actively monitored the status of Goldman's subprime assets and subprime deals during the relevant time, and that each knew that Goldman was trying to purge these assets from its books and stay on the short side. These allegations create a strong inference that the Individual Defendants knew that Goldman was making material misstatements in the Abacus, Hudson, Anderson, and

Timberwolf I CDOs, when it sold poor quality assets to investors without disclosing its or Paulson's substantial short positions. Given such knowledge, the Individual Defendants were in a position to know that Goldman's statements about complying with the letter and spirit of the law, valuing its reputation, and disclaimers regarding "potential" conflicts of interest were inaccurate and incomplete.

IV. Section 20 Claims

To maintain a claim for control person liability pursuant to Section 20(a), a plaintiff must "allege facts showing (1) 'a primary violation by the controlled person,' (2) 'control of the primary violator by the targeted defendant,' and (3) that the 'controlling person was in some meaningful sense a culpable participant in the fraud perpetrated.'" *In re Citigroup*, 753 F.Supp.2d at 248 (quoting *In re Beacon Assocs. Litig.*, 745 F.Supp.2d at 411, 2010 WL 3895582, at *17).

The Individual Defendants do not contest their control person status; rather they argue that Plaintiffs have not alleged a primary violation by a controlled person. For the reasons above, however, Plaintiffs have plausibly alleged § 10(b) and 10b-5 claims against Goldman. Moreover, for the reasons above, Plaintiffs have adequately alleged culpable participation with respect to the Individual Defendants, because "[a]llegations sufficient to plead scienter for the purposes of primary liability pursuant to Section 10(b) 'necessarily satisfy' the culpable participation pleading requirement for Section 20(a) claims." *Id*. Accordingly, Defendants' motion to dismiss Count Two is denied.

CONCLUSION

In conclusion, Defendants' motion to dismiss is GRANTED with respect to Plaintiffs' claim relating to Defendants' failure to disclose their receipt of Wells Notices, and DENIED in all other respects. The Clerk of Court is directed to terminate this motion.

Dated: New York, New York
June 21, 2012

SO ORDERED,

/s/ Paul A. Crotty
PAUL A. CROTTY
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File No. 10 Civ. 3461 (PAC)

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

This Document Relates To: ALL ACTIONS

MEMORANDUM & ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

In this consolidated securities class action, Plaintiffs allege that Goldman Sachs Group, Inc. ("Goldman") and certain of its senior executives (collectively, "Defendants") made material misstatements and misleading omissions relating to four collateralized debt obligation ("CDO") transactions in 2006 and 2007. Previously, the Court (1) granted Defendants' motion to dismiss claims regarding their failure to disclose Goldman's receipt of Wells notices from the Securities and Exchange Commission ("SEC"), but (2) denied the motion with respect to claims that Goldman had made misstatements about its conflicts of interest in those transactions. *See Richman v. Goldman Sachs Grp., Inc.*, 868 F. Supp. 2d 261 (S.D.N.Y. 2012). Defendants now move for partial reconsideration of that decision on the grounds that three intervening Second Circuit decisions have clarified what kinds of statements constitute inactionable "puffery." The motion is denied.

BACKGROUND

A. The Court's Prior Decision

As explained more fully in the Court's prior decision, Plaintiffs allege that Goldman improperly failed to disclose that it, or a favored client, held short positions in certain CDO transactions that it sold to other clients. *See id.* 269–71. That is, Goldman allegedly had conflicts of interests with those buyer-clients because it was selling them the same financial products that it was effectively betting against and profiting from the clients' losses. *See id.* In three of those transactions, "Goldman affirmatively represented that it held a long position in the equity tranches, without disclosing its substantial short positions." *Id.* at 278. In one of those three, "Goldman stated that it had 'aligned incentives' with investors by 'investing in a portion of equity,' which amounted to $6 Million, without disclosing that it also held 100% of the short position at the same time, which amounted to $2 Billion." *Id.* at 278–79.

In light of the foregoing conduct, Plaintiffs claim that the following statements made by Defendants during the class period were materially misleading:

- "[W]e increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interest of another client . . . ." (Compl. ¶ 134 (Form 10–K))
- "We have extensive procedures and controls that are designed to . . . address conflicts of interest." (Compl. ¶¶ 134, 154 (Form 10–K))

- "Our clients' interests always come first. Our experience shows that if we serve our clients well, our own success will follow." (Compl. ¶ 154 (Goldman Annual Report))
- "We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard." (Compl. ¶ 154 (Goldman Annual Report))
- "Integrity and honesty are at the heart of our business." (Compl. ¶ 289 (Goldman Annual Report))
- "Most importantly, and the basic reason for our success, is our extraordinary focus on our clients." (Compl. ¶ 154 (Viniar's Statements on Goldman's Investor Conference Call))
- "Our reputation is one of our most important assets." (Compl. ¶ 154 (Form 10–K))

See 868 F. Supp. 2d at 277.

Both parties previously addressed *ECA & Local 134 IBEW Joint Pension Trust of Chi. v. JP Morgan Chase Co.*, 553 F.3d 187, 206 (2d Cir. 2009) ("*JP Morgan*"), which held that the statements at issue were "no more than 'puffery'" because they were "too general to cause a reasonable investor to rely upon them." The defendant's statements at issue there were that it "had 'risk management processes [that] are highly disciplined and designed to preserve the integrity of the risk management process,' that it 'set the standard' for 'integrity,' and that it would 'continue to reposition and strengthen [its] franchises with a focus on financial discipline.'" *Id.* at 205–06 (citations omitted). The plaintiffs argued that those statements "were misleading because [defendant]'s poor financial discipline led to liability in the WorldCom litigation and involvement in the Enron scandal." *Id.* at 206. The Second Circuit rejected the argument, reasoning that they "were merely generalizations regarding [defendant]'s business practices" and did not "amount to a guarantee that its choices would prevent failures in its risk management practices." *Id.*

In this case, the Court rejected Defendants' argument that *JP Morgan* required dismissal: "[T]he Court cannot say that Goldman's statements that it complies with the letter and spirit of the law and that its success depends on such compliance, its ability to address 'potential' conflict of interests, and valuing its reputation, would be so obviously unimportant to a reasonable investor." 868 F. Supp. 2d at 280.

B. Intervening Second Circuit Decisions

Defendants cite three subsequent Second Circuit decisions which held that certain general statements about compliance, reputation, and integrity were inactionable puffery. *See City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, No. 12-4355-CV, 2014 WL 1778041, at *5, 6 (2d Cir. May 6, 2014) ("*UBS*"); *Carpenters Pension Trust Fund of St. Louis v. Barclays PLC*, No. 13-2678-CV, 2014 U.S. App. LEXIS 7864, at *22–23 (2d Cir. Apr. 25, 2014) ("*Barclays*"); *Boca Raton Firefighters & Police Pension Fund v. Bahash*, 506 F. App'x 32, 37 (2d Cir. 2012) (summary order) ("*Bahash*"). Defendants contend that if applied here, these cases would result in dismissal of the pending claims.

In *UBS*, the defendant stated that it "held its employees to the highest ethical standards and complied with all applicable laws, and that [its] wealth management division did not provide services to clients in the United States when, in fact, [it] was [allegedly] engaged in [a] cross-border tax scheme." 2014 WL 1778041, at *4. The Second Circuit affirmed dismissal of the plaintiffs' claim that the statements were misleading:

> It is well-established that general statements about reputation, integrity, and compliance with ethical norms are inactionable "puffery" . . . . This is particularly true where, as here, the statements are explicitly aspirational, with qualifiers such as "aims to," "wants to," and "should." Plaintiffs' claim that these statements were knowingly and verifiably false when made does not cure their generality, which is what prevents them from rising to the level of materiality required to form the basis for assessing a potential investment.

Id. at *5 (citing *JP Morgan*, 553 F.3d at 206). The court also affirmed dismissal of a claim that defendant had falsely stated that it "avoided 'concentrated positions' of assets," though it had accumulated a portfolio of $100 billion in residential mortgage-backed securities ("RMBS") and related CDOs. *Id.* at *6–7. The court observed that the plaintiffs' contention that this statement was an "important" representation missed the mark: "[W]hile importance is undoubtedly a *necessary* element of materiality, importance and materiality are not synonymous. To be 'material' within the meaning of § 10(b), the alleged misstatement must be sufficiently specific for an investor to reasonably rely on that statement as a guarantee of some concrete fact or outcome . . . ." *Id.* at *6 (citing, *inter alia*, *JP Morgan*, 553 F.3d at 206). The court further explained that the statements at issue were "too open-ended and subjective to constitute a guarantee that UBS would not accumulate a $100 billion RMBS portfolio, comprising 5% of UBS's overall portfolio, or 16% of its trading portfolio." *Id.* at *7.

In *Barclays*, the defendant stated that "[m]inimum control requirements have been established for all key areas of identified risk," even though it allegedly "submit[ted] false information for the purpose of calculating the London Interbank Offered Rate ("LIBOR")" and "had no specific systems or controls for its LIBOR submissions process." 2014 U.S. App. LEXIS 7864, at *3, 9. The Second Circuit affirmed dismissal on the grounds that the plaintiffs did not "demonstrate with specificity that Barclays's minimum control statements were false or misleading" as required by the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4(b)(1)(B). *Id.* at *22–23. The court explained that "Barclays's statements do not mention LIBOR, nor do they say that Barclays had established 'specific systems or controls' relating to LIBOR submission rates. . . . [,] but only that it had established controls for other areas of its business." *Id.* at *22.

In *Bahash*, the Second Circuit affirmed dismissal of claims that defendants "made public statements about the honesty and integrity of S&P's credit-ratings services while knowing that its ratings method was basically a sham." 506 F. App'x at 34. The court stated that these statements "are the type of mere 'puffery' that we have previously held to be not actionable" due to their "generic, indefinite nature." *Id.* at 37.

DISCUSSION

I. Standard for Motion for Reconsideration

A district court's discretion to reconsider a prior decision is "limited" by the doctrine of the law of the case: "where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again." *Official Comm. of Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, L.L.P.*, 322 F.3d 147, 167 (2d Cir. 2003) (internal quotation marks omitted). Accordingly, decisions should "not usually be changed unless there is 'an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent a manifest injustice.'" *Id.*

"It is not enough . . . that defendants could now make a more persuasive argument . . . . The law of the case will be disregarded only when the court has 'a clear conviction of error' with respect to a point of law on which its previous decision was predicated." *Fogel v. Chestnutt*, 668 F.2d 100, 109 (2d Cir. 1981) (citation omitted). "Thus generally, there is a strong presumption against amendment of prior orders." *Bergerson v. N.Y. State Office of Mental Health*, 652 F.3d 277, 288 (2d Cir. 2011).

II. Analysis

A. Basis for Reconsideration

Contrary to Defendants' argument, *UBS*, *Barclays*, and *Bahash* do not constitute an intervening change in controlling law, but merely elaborate on *JP Morgan*, which the Court considered in its June 2012 decision.

Defendants principally rely on *UBS*, where the Second Circuit stated that the "puffery" rule it was applying was "well-established" liberally quoted the portion of *JP Morgan* that was at issue in the motion to dismiss. *See* 2014 WL 1778041, at *5 & nn.43, 44. Likewise, *UBS*'s subsequent observations—regarding the "guarantee" element of materiality and the distinction between "importance" and materiality—cited substantially identical statements in *JP Morgan*. *See id.* at *6 & nn.56, 57.

Nor do *Barclays* or *Bahash* constitute a *sub silentio* change in controlling law. *Barclays* did not announce any new rule regarding materiality; rather, it contains a brief discussion applying the PSLRA's heightened pleading standard to the issue of whether particular statements were false or misleading under the circumstances. *See* 2014 U.S. App. LEXIS 7864, at *22–23 ("Plaintiffs fail, therefore, to demonstrate with specificity that Barclays's minimum control statements were false or misleading."). *Bahash* was a nonprecedential summary order[1] concluding that the statements at issue "regarding [defendant]'s integrity and credibility and the objectivity of S&P's credit ratings are the type of mere 'puffery' that we have ***previously held*** to be not actionable." 506 F. App'x at 37 (emphasis added) (citing *JP Morgan*, 553 F.3d at 206).

Defendants apparently seek an exception to the requirement that there be a change in controlling law, suggesting that a decision that "clarif[ies]" or "extend[s] and crystallize[s] the scope and meaning" of a prior decision is sufficient to warrant reconsideration. (Defs.' Mem. at 4, 8.) Of course, the law changes, but reconsideration is not warranted

---

[1] *See* 2d Cir. Local R. 32.1.1(a) ("Rulings by summary order do not have precedential effect.").

when an appellate court "merely applie[s] the existing standard to a new set of facts." *In re Fannie Mae 2008 ERISA Litig.*, No. 09-CV-1350, 2014 WL 1577769, at *4 (S.D.N.Y. Apr. 21, 2014). Accordingly, the motion for reconsideration must be denied.

B. There Was No Error in the Prior Decision

Even if the Court were to grant the motion for reconsideration, it would adhere to its prior decision. As Judge Scheindlin noted in distinguishing *Barclays* and *Bahash* from this case, Goldman's "statements about business practices were directly related to the subject of the fraud." *Gusinsky v. Barclays PLC*, 944 F. Supp. 2d 279, 290 n.74 (S.D.N.Y. 2013), *aff'd in relevant part*, *Barclays*, 750 F.3d 227.

The statements at issue in *UBS*, *Barclays*, and *Bahash* were too open-ended, indefinite, or subjective to be actionable under the circumstances. For instance, in *UBS*, the defendant's statement that it strove to comply with applicable laws could not be interpreted as a guarantee that it would never be out of compliance, and its statement that it avoided "concentrated positions of assets" was not a guarantee that it would avoid investing 5% of its portfolio in RMBS. Likewise, in *Barclays*, stating that "[m]inimum control requirements have been established for all key areas of identified risk" was too general to constitute a guarantee that it had specific control systems for potential manipulations of LIBOR. Finally, in *Bahash*, statements about the reputation and integrity of S&P was not a guarantee against the specific deficiencies alleged to have afflicted its ratings process.

In contrast, Goldman's representations about its purported controls for avoiding conflicts were directly at odds with its alleged conduct. For instance, Goldman represented that "[w]e have extensive procedures and controls that are designed to . . . address conflicts of interest" and "we increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interest of another client . . . ." (Compl. ¶¶ 134, 154 (Form 10– K).) Meanwhile, Goldman is alleged to have sold financial products to clients despite clear and egregious conflicts of interest—indeed, where its "services to a particular client" (Paulson & Co. in the Abacus deal) and its "own proprietary investments" (in short positions in the Hudson, Anderson, and Timberwolf I deals) "conflict[ed] with the interest of [the] []other client[s]" investing in those deals. Particularly in light of Goldman's statements prior to the class period regarding its "aligned incentives" with its clients, the Court cannot say that as a matter of law no reasonable investor would have relied on the statements above in making an investment decision. *See* 17 C.F.R. § 240.10b-5 (whether omission is materially misleading is judged "in the light of the circumstances under which [the statements] were made"); *JP Morgan*, 553 F.3d at 197, 206 (statements not immaterial as a matter of law "unless they are so obviously unimportant to a reasonable investor that reasonable minds could not differ on the question of their importance" or "too general to cause a reasonable investor to rely upon them").

The parties have seized upon the Court's observations about the financial crisis in a footnote in the prior decision. *See* 868 F. Supp. 2d at 277 n.8 ("If Goldman's claim of 'honesty' and 'integrity' are simply puffery, the world of finance may be in more trouble than we recognize."). The real issue in the prior decision was whether Plaintiffs had adequately alleged that Defendants made a material misstatement or misleading omission. On the basis of Defendants' statements regarding conflicts of interest alone, the Court adheres to its conclusion that Plaintiffs have pleaded a viable claim.

CONCLUSION

For the foregoing reasons, Defendants' motion for partial reconsideration is DENIED.

Dated: New York, New York
June 23, 2014

SO ORDERED

/s/ Paul A. Crotty
PAUL A. CROTTY
United States District Judge

[1] **CONFIDENTIAL**
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File
No. 1:10-CV-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

October 28, 2014
8:01 a.m.

Videotaped Deposition of DAVID VINIAR, taken by Plaintiffs, pursuant to Notice, held at the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, New York, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New York.

* * *

[14] Q. How about a failure to control for potential conflicts of interest [15] between Goldman and its customers, would that affect Goldman's reputation?

A. Yes, it would.

Q. Any examples you can recall of that happening?

A. I can recall more recent examples of people thinking that we had not handled a conflict particularly well. There was one with, I'm trying to remember the deal recently where an investment banker was representing a company and also owned stock in that company, and it was deemed to be, you know, a conflict.

Q. How about between Goldman Sachs and its clients or customers, any examples you recall of a breach of conflicts of interest policy that harmed Goldman's reputation?

A. Well, sure, there was the SEC suit on the Abacus case.

Q. And so you will agree that the SEC suit harmed Goldman's reputation?

A. Yes.

* * *

[1]** CONFIDENTIAL **
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File No. 1:10-cv-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

PURSUANT TO PROTECTIVE ORDER
Videotaped deposition of
JOHN D. FINNERTY, PH.D.
New York, New York
Thursday, March 19, 2015

Reported by: Annette Arlequin, CCR, RPR, CRR, CLR
Job No. 90764

* * *

[142] So when I read that body of information, I can form a judgment concerning what was disclosed in April 16th, April 30th, June 10th, and I can then run the statistical tests to see if the market reacts in a statistically significant way, but I'm forming my judgment as an economist before I look at the statistical test results.

Q. What are these -- what are the objective factors, if any, that you use to determine whether news is economically significant?

A. There's a large body of research that identify certain kinds of events that the market has reacted to in a significant way and therefore one can conclude that the market believes that these types of information are significant.

One type of information is fraud. If a company is accused of fraud by a regulatory body, that's bad news and the market reacts negatively.

* * *

[147] Q. So an allegation alleging the same offense but one in the form of a criminal complaint versus one in the form of a civil complaint could engender a different price reaction?

A. Yes, it could.

Q. Does this literature discuss the difference between, say, a regulatory complaint where it's filed and settled at the same time versus one where it's filed but not settled?

A. Yes, I think it does.

Q. And what does it say?

A. I don't recall, but I believe that's one of the issues that is covered, is it -- because you get resolution. If you announce the settlement and it gets resolved, that's [148] different from having the case filed and having uncertainties as to how it will come out. So certainly there's a difference in the timing of the reactions, and I believe that has been the subject of research, but I can't give you any citations off the top of my head.

Q. But why would there be a difference in impact of those two events?

A. The resolution of the uncertainty.

Q. The uncertainty of a case hanging out there?

A. Yes.

* * *

[1]** CONFIDENTIAL **
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File
No. 1:10-CV-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

May 1, 2015
9:07 a.m.

Videotaped Deposition of CHARLES PORTEN, taken by Plaintiffs, pursuant to Notice, held at the offices of Labaton Sucharow LLP, 140 Broadway, New York, New York, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New York.

---

[2] APPEARANCES:

LABATON SUCHAROW LLP
140 Broadway
34th Floor
New York, New York 10005

Attorneys for Plaintiffs

BY: MICHAEL H. ROGERS, ESQ.
mrogers@labaton.com
JEFFREY A. DUBBIN, ESQ.
jdubbin@labaton.com

ROBBINS GELLER RUDMAN & DOWD LLP
655 West Broadway
Suite 1900
San Diego, California 92101

Attorneys for Plaintiffs

BY: BRIAN E. COCHRAN, ESQ.
bcochran@rgrdlaw.com

SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498

Attorneys for Defendants

BY: DAVID M.J. REIN, ESQ.
reind@sullcrom.com
JESSICA P. STOKES, ESQ.
stokesj@sullcrom.com

ALSO PRESENT:

VILDAN ALTUGLU, Cornerstone Research
DEVERELL WRITE, Videographer

[3] THE VIDEOGRAPHER: We are on the record. Please note that the microphones are sensitive and may pick up whispering and private conversations.

My name is Deverell Write representing Veritext Legal Solutions. Today's date is May 1st, 2015. The time on the video monitor is approximately [sic] a.m.

This deposition is being taken on behalf of the plaintiff in the case of In Re Goldman Sachs Group, Inc. Securities Litigation. This case is filed in the U.S. District Court for the Southern District of New York, case number 1:10-CV-03461. The name of the witness is Charles Porten.

At this time will counsel please state their appearances.

MR. ROGERS: Michael Rogers, Labaton Sucharow LLP, for plaintiffs and the class.

MR. DUBBIN: Jeff Dubbin from Labaton Sucharow as well.

[4] MR. COCHRAN: Brian Cochran from Robbins Geller for plaintiffs.

MR. REIN: David Rein, Sullivan & Cromwell LLP, for defendants.

MS. STOKES: Jessica Stokes, Sullivan & Cromwell LLP, for defendants.

MS. ALTUGLU: Vildan Altuglu from Cornerstone Research.

* * *

[4] CHARLES PORTEN, called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. ROGERS:

Q. Good morning.

A. Good morning.

Q. Is it Mr. Porten or is it Dr. or Professor Porten?

A. Most people call me Charlie.

Q. I'm going to call you either by one of those titles though. Is it Dr. or Professor or are you just Mr. in this case?

A. Just Mr.

[5] Q. Okay, Mr. Porten. You can call me Mr. Rogers. We will get all those jokes out in advance. Have you had your deposition taken?

A. Yes.

Q. How many times approximately?

A. About 10, 12.

Q. And those 10 to 12 depositions, are those all in an expert capacity or were some of those where you were a party or a witness to a suit?

A. All in an expert capacity.

Q. And I only ask that right now just to make sure we all know the rules of the road. So you understand the basics.

I will ask questions, you will answer. We have to be careful not to talk over each other. There is a reporter taking down all of our words, so try to articulate answers, not just nod or shake your head. If at any time you need a break, let me know and as long as there is no question pending we will accommodate

* * *

[198][“]. . . However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and our reputation could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to identify and deal appropriately with conflicts of interest. In addition, potential or perceived conflicts could give rise to litigation or enforcement actions.”

Did you consider whether this statement on page 289 of the Merrill Lynch report related to the misstatement as alleged in our complaint?

A. Yes.

Q. And your conclusion was?

A. As you read this report, it refers to discussion of private equity and then goes on to make some generalized statements about the importance of dealing with conflicts of interest.

There is no reference to any [199] statements the company made in its 10-Ks about conflicts of interest or in the conference call. He is just saying there were discussion of private equity, and he is going on to say that dealing with conflicts of interest is important, which is obvious, and he thinks the company does a good job of it.

There is no reference to what was reported in the 10-K or what was cited in the conference call. So I concluded this report did not make reference to the alleged misstatements.

Q. You just said you thought it is obvious that dealing with conflicts of interest is important; is that correct?

A. Yes.

Q. Important to whom?

A. To everyone.

Q. Including investors?

A. Yes.

Q. So it's important for investors whether a company manages its conflicts of interest, correct?

[200] A. Yes.

Q. And it was important to investors whether Goldman Sachs managed its conflicts of interest, correct?

A. Yes.

Q. Now, going back to the answer that you just gave a moment ago, is there any specific basis that you concluded that this statement about conflicts of interest does not relate to Goldman's statement about prevention of conflicts of interest and how its reputation could be damaged if conflicts arose?

MR. REIN: I object to the form, asked and answered.

A. He begins this paragraph referring to a discussion of private equity, and then he says it gives rise to concerns over conflicts, and then everything else that follows is his statement about why dealing with conflicts is important.

I see nothing here where he says he is citing specific statements made [201] in the 10-K or made in a conference call. He is talking about discussion of private equity and then going on to offer his viewpoint about the importance of managing conflicts of interest.

Q. So it's the absence of the citation to the 10-K that causes you to reach that conclusion?

MR. REIN: I object to the form, foundation, misstates testimony.

A. There is no reference in this statement that he is citing that the company made certain statements in its 10-K about conflicts of interest or in the conference call. He is referring to discussion of private equity and he has an a-ha moment. "Private equity gives rise to concerns over conflicts."

He goes on to make some general statements about he thinks the company does a good job.

Q. And what was his basis of concluding that he thinks the company was doing a good job; do you know?

[202] A. He says "The consistency with which the firm has avoided crossing the line and damaging its reputation is such that it must be doing something right."

That's his basis for saying that.

Q. And did you consider whether his basis for that conclusion was what Goldman said in its 10-K?

MR. REIN: I object to the form, foundation.

Q. Did you consider that possibility?

MR. REIN: I object to the form.

A. He is basing this, as he says at the outset, based on the discussion of private equity.

Q. Now, you said a few moments ago that it was obvious that conflict of interest management was important, right?

MR. REIN: I object to the form.

A. It is important to every firm.

[203] Q. And important to investors as well, correct?

A. Yes.

Q. So based upon that expert conclusion, do you conclude that it also would have been important on March 13th, 2007 if Goldman was failing to control for conflicts of interest?

MR. REIN: I object to the form.

A. Well, certainly if conflicts of interest are important, as I said they are, and if it's proven that a company failed to deal with conflicts, that would be important.

Q. Now, would you expect the Merrill Lynch analyst to say in his report "and I'm also very pleased to report that I'm not aware of any instances of Goldman violating its conflicts policies"? Would you expect him to say that?

MR. REIN: I object to the form.

A. No.

[204] Q. Now, you said a moment ago, though, that if conflicts of interest are important and if it is proven that a company failed to deal with conflicts, that would be important. You said that, right?

A. Yes.

Q. Now, would such a statement of that importance need to necessarily include the words "we failed to properly prevent conflicts"?

MR. REIN: I object to the form.

A. I'm not sure I understand your question.

Q. You said that information proving that a company failed to prevent conflicts would be important information, right?

MR. REIN: I object to the form, foundation.

A. Yes.

Q. And therefore if it is important analysts would address it, [205] correct?

A. Yes.

Q. Now, is it your expert testimony that any analyst discussing that important information, proving a failure to prevent conflicts, would only be valid if it said explicitly "and Goldman failed to prevent conflicts"; in other words, are there any other ways that information could be revealed other than saying "a failure to prevent conflicts"?

MR. REIN: I object to the form, foundation.

A. I don't know.

Q. I'm going to mark as Porten 8 a document that runs from the Bates number Porten 00012298 through 2309, a Merrill Lynch analyst report with a buy recommendation, July 28th, 2008, covering the Goldman Sachs Group, titled Position For Opportunity Amid Chaos.

(Porten Exhibit 8 marked for identification.)

Q. As always, feel free to review

* * *

[302] MR. REIN: I object to the form, foundation.

A. The time to buy or sell a company is really case specific.

Q. But, in other words, the idea that a particular company can have extremely harmful news come out in which its stock price plummets, but if the market believes that all the bad news is out and the future news is going to be good, it is a great time to buy, right?

MR. REIN: I object to the form, foundation.

A. It is case-specific.

Q. But what I just described is a possibility, correct?

MR. REIN: I object to form, asked and answered.

A. Anything is possible. In my opinion, what you are saying always happens to me is case-specific when it is time to buy or sell.

Q. Well, let's look at some of that specificity. It's not just a buy [303] recommendation, more specifically it's a buy high risk as a change from buy medium risk, correct?

A. But what carries the day is the buy recommendation.

Q. So you are saying his change of the word "medium risk" to "high risk" is meaningless?

MR. REIN: I object to the form, mischaracterization.

A. It's of much less significance than the fact that he is still carrying a buy recommendation.

What prevails in IBES reports where the analysts give their opinion and their target price and their earnings is just the opinion, not whether it is high or low risk. So that's not deemed to be of great significance in the industry.

Q. But in your expert opinion, information that affects a company's stock price will be addressed by analysts in their reports, correct?

A. Correct.

[304] Q. And this analyst talks about reputational risk and the possibility of follow-on lawsuits related to the SEC action, correct?

A. Correct.

Q. And Goldman's misstatement about its conflict of interests policies identified that its reputation could be damaged if conflicts arose as well as perceived conflicts could possibly give rise to litigation actions, correct?

MR. REIN: I object to the form, foundation.

Q. Is that correct, sir?

A. Yes, you properly read from my report.

Q. Let's mark as Porten 17 a document that's been Bates numbered PORTEN 00011802 through 807.

And this is a Merrill Lynch — excuse me, Bank of America Merrill Lynch, this is after the merger, April 16, 2010 report titled SEC Case Seems Limited, But Reputational Fall-Out Worrisome.

[305] (Porten Exhibit 17 marked for identification.)

Q. You will see that the first bullet point is entitled "SEC brings a civil fraud case relating to alleged misrepresentations" — strike that.

Before we go on, in your expert opinion, does what analysts focus on in the title of the report indicate the importance of a certain subject?

A. It could.

Q. How about in this case where they are saying "reputational fall-out is worrisome"?

A. Well, I haven't studied the whole report as to all the things he is saying and why he chose to give it the title he did.

Q. Would you agree that reputation is one of the concerns of this analyst in this report?

A. He is citing that the SEC case, while it seems limited, could result in some reputational fall-out.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 1:10-cv-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

CLASS ACTION
JURY TRIAL DEMANDED
ECF CASE

EXPERT REPORT OF
JOHN D. FINNERTY, Ph.D.

IN SUPPORT OF LOSS CAUSATION
AND DAMAGES

Table of Contents

I, John D. Finnerty, declare pursuant to 28 U.S.C. § 1746, as follows:

I. Qualifications

1. I am a Managing Director at AlixPartners, LLP, a financial and operational consulting firm. I have extensive experience in securities valuation, derivatives valuation, solvency analysis, business valuation, the calculation of damages, and litigation support for matters involving securities fraud, breach of contract, commercial disputes, valuation disputes, solvency, fairness, breach of fiduciary duty, and employment disputes involving the valuation of employee stock options. I have testified as an expert in securities and other financial matters, broker hiring disputes, and valuation disputes, in federal and state court and in arbitration and mediation proceedings. I have also testified as an expert in bankruptcy court concerning the valuation of securities and businesses and the fairness of proposed plans of reorganization.

2. Prior to joining AlixPartners, I was a Managing Principal at Finnerty Economic Consulting, LLC ("FinnEcon"), which provided financial consulting and valuation services to law firms, corporations, industry associations, and government agencies. Prior to forming FinnEcon in 2003, I was a Managing Principal at Analysis Group, Inc., an economic consulting firm. Prior to joining Analysis Group, I was a Partner (non-audit) in the PricewaterhouseCoopers Financial Advisory Services Group. I have also held investment banking positions at Morgan Stanley, Lazard Frères, McFarland Dewey, and Houlihan Lokey Howard & Zukin.

3. I am on leave from my position as a Professor of Finance at Fordham University's Graduate School of Business Administration, where I was the founding Director of the school's Master of Science in Quantitative Finance Program. I was awarded early tenure in 1991, and I received the Gladys and Henry Crown Award for Faculty Excellence in 1997. I have published 15 books, including *Corporate Financial Management*, 4th ed., *Project Financing*, 3rd ed., and *Debt Management*, and I have published more than 100 articles and professional papers concerning corporate finance, fixed income, and business and securities valuation.

4. I have previously published a paper on the calculation of damages in securities fraud cases entitled, "An Improved Two-Trader Model for Measuring Damages in Securities Fraud Class Actions," which was published in the Spring 2003 issue of the Stanford Journal of Law, Business & Finance. I have also published a paper on the settlement amounts in securities fraud class actions, entitled, "Determinants of the Settlement Amount in Securities Fraud Class Action Litigation," which was published in the Summer 2006 issue of the Hastings Business Law Journal. I have extensive experience testing for market efficiency, performing loss causation analysis, and calculating damages in securities fraud cases.

5. My teaching and research deal mainly with corporate finance, investment banking, fixed income securities valuation, fixed income portfolio management, and the design and valuation of complex securities. My corporate finance and investment banking courses cover business valuation and securities valuation, among other topics. My corporate

finance and fixed income courses cover derivative instruments and their use in designing and implementing investment and hedging strategies. I was inducted into the Fixed Income Analysts Society Hall of Fame in 2011.

6. I previously served as the Chair of the Trustees, President, and Director, and I am currently serving as a Trustee of the Eastern Finance Association, an academic finance organization. I am a former Director of the Financial Management Association. I have served as the President and Director of the Fixed Income Analysts Society, an association of finance professionals based in New York City. I am a former editor of *Financial Management*, one of the leading academic finance journals, and a former editor of *FMA Online*. I am an associate editor of the *Journal of Applied Finance* and a member of the editorial boards of the *Journal of Portfolio Management* and the *International Journal of Portfolio Analysis & Management*.

7. I received a Ph.D. in Operations Research from the Naval Postgraduate School, an M.A. in Economics from Cambridge University, where I was a Marshall Scholar, and a B.A. in Mathematics from Williams College. Attached as Appendix A is a true and correct copy of my current resume, which lists all publications I have written or co-authored and includes a brief description of my trial and deposition testimony within at least the past four years.

8. AlixPartners is being compensated at a rate of $1,020 per hour for my work on this matter. My compensation is not contingent on my findings or on the outcome of this matter. I have been assisted in the preparation of this expert report by AlixPartners's staff working under my direction and supervision.

9. Attached as Appendix B is a list of the documents I considered in coming to my opinions in this matter.

II. Assignment

10. Labaton Sucharow LLP ("Labaton") and Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), co-counsel for the Plaintiffs in this matter (collectively "Counsel"), have asked me to (1) perform a loss causation analysis and opine on whether the declines in the price of the common stock of Goldman Sachs Group, Inc. ("Goldman" or the "Company") on the alleged disclosure dates were attributable to and substantially caused by identifiable news events relating to the disclosure of the fraud allegedly committed by Goldman during the period extending from February 5, 2007 through June 10, 2010, inclusive (the "Class Period") and (2) calculate the amount of damages per share experienced by class members who purchased shares of Goldman's common stock when the fraud-related inflation was removed from the stock price during the Class Period.

III. Summary of Opinions

11. I have reached the following opinions, after conducting appropriate studies, the results of which are described in this expert report:

a. Goldman's common stock price declined on April 16, 2010, April 26, 2010, April 30, 2010, and June 10, 2010 (the "Disclosure Dates") immediately following the public revelation of previously undisclosed facts regarding Goldman's fraudulent conduct concerning management of its conflicts of interest and its business principles;

b. The abnormal returns on Goldman's common stock on April 16, 2010, April 30, 2010, and June 10, 2010 are -9.27%, -7.75%, and -4.52%, respectively. These abnormal returns are all statistically significant. The abnormal return on April 26, 2010 is -1.68%, which is not statistically significant. Goldman's rebuttal and forthcoming Senate testimony the very next day appear to have muted the market's reaction.

c. The statistically significant abnormal returns on April 16, 2010, April 30, 2010, and June 10, 2010 were not due to any macroeconomic factors, industry-specific factors, or non-fraud-related Goldman news, but were substantially caused by a series of revelations concerning Goldman's alleged fraudulent conduct related to the management of its conflicts of interest and its business principles; and

d. The amount of damages suffered by purchasers of the shares of Goldman's common stock as a result of the disclosure of the truth about Goldman's fraudulent conduct on April 16, 2010, April 30, 2010, and June 10, 2010 is, in total, up to $35.70 per share, depending on when the shares were bought and sold during the Class Period.

12. These opinions are based on the results of the loss causation analysis and the damages calculations that are described in this expert report.

IV. Factual Background

A. The Four Synthetic CDOs at Issue in This Matter

13. The Complaint in this matter alleges that Goldman made a series of misrepresentations and

omissions with respect to four CDO transactions that Goldman structured and sold between December 2006 and April 2007. The four CDO transactions at issue in this matter are Abacus 2007-AC1, Hudson Mezzanine Funding 2006-1 ("Hudson 2006-1"), Anderson Mezzanine Funding 2007-1 ("Anderson 2007-1"), and Timberwolf 1.

* * *

88. For example, a *Financial Times* article announced that Whitehall Street International, Goldman's internal real estate fund, had lost almost all of its $1.8 billion of equity from its investments across U.S., Japan, and Germany, and that it was down to $30 million, according to the annual report sent to investors the preceding month.[69] This news article did not contain new information because the information was previously revealed in the fund's annual report to its investors.[70]

89. Another *Financial Times* article reported that Demand Media Inc., which sifts online search engine data, had hired Goldman for an initial public offering as early as August of 2010 that may value the company at $1.5 billion.[71] Such a transaction would occur normally in Goldman's investment banking business.

---

[69] Financial Times, "Goldman real estate fund down to $30m," April 15, 2010; and SmarTrend News Watch, "Goldman Sachs Group, Inc. Affected by Real Estate Market Losses," April 16, 2010.

[70] Financial Times, "Goldman Real Estate Fund Down to $30m," April 16, 2010.

[71] Financial Times, "Demand Media enlists Goldman for IPO," April 15, 2010. Bloomberg News, "Demand Media Hires Goldman Sachs for IPO, FT Says," April 15, 2010.

90. The majority of news articles and securities analysts' reports released after the market close on April 15, 2010 through the market close on April 16, 2010 predominantly covered the SEC's law suit against Goldman in connection with Abacus 2007-AC1. (*See* Appendix B.) The SEC Complaint revealed that Goldman had been engaged in fraudulent conduct in connection with Abacus 2007-AC1, not adequately disclosing Paulson's involvement in the portfolio selection process and intentionally misleading ACA with respect to the CDO transaction. The confounding news released on this date was not economically significant.

91. In order to examine the impact of the news concerning the SEC Complaint and its allegations on the price of Goldman's common stock, I investigated Goldman stock price movements after the market close on April 15, 2010 through the market close on April 16, 2010. (*See* Exhibit 4.) As illustrated in the chart, on April 16, 2010, immediately after a news article concerning the SEC's regulatory enforcement action was released around 10:38 AM, the price of Goldman's common stock plunged more than 10 percent in the first half-hour of trading and stayed low throughout the day through the market close.

92. Thus, the abnormal return on Goldman's common stock of -9.27% on April 16, 2010 is attributable to the announcement of the SEC's regulatory enforcement action against Goldman. The SEC's regulatory enforcement action was, in fact, a direct consequence of Goldman's alleged fraudulent conduct in connection with Abacus 2007-AC1. Furthermore, the announcement of the SEC's regulatory enforcement action finally disclosed to market participants that Goldman had engaged in

undisclosed conflicts of interest and violated its business principles in contrast to the false and misleading statements during the Class Period.

93. Defendants' experts have argued that Goldman's stock price reaction on the Disclosure Date was due to the announcement of the SEC enforcement action by itself and was not due to the revelation of Goldman's fraudulent conduct in connection with the CDO transaction at issue.[72] However, the regulatory enforcement action by the SEC would not have been brought if there had been no evidence of fraudulent conduct with respect to the Abacus 2007-AC1 CDO transaction, which revealed that Goldman had made alleged false and misleading statements and omissions during the Class Period. I examined this argument and provided a complete rejection of it in the Finnerty Rebuttal Declaration.

94. Therefore, it is my opinion that the abnormal return of -9.27% on Goldman's common stock on April 16, 2010 is attributable to the corrective information revealed in the announcement of the SEC's regulatory enforcement action in connection with Abacus 2007-AC1. The SEC's fraud charge provided new information to the market that Goldman had been engaged in undisclosed conflicts of interest and violated its business principles in contrast to the false and misleading statements during the Class Period.

---

[72] The Gompers Declaration, ¶¶ 61, 66, 81, and 91. Declaration of Stephen Choi, Ph.D., dated April 6, 2015 (the "Choi Declaration"), ¶¶ 18-19.

C. April 26, 2010

1) Corrective Disclosures with Regard to the Alleged False and Misleading Statements and Omissions

95. On Saturday, April 24, 2010, the Senate Subcommittee on Investigations announced the release of four emails, which indicated that Goldman made money betting against the CDOs it had sold to its clients.[73] In particular, Senator Carl Levin, chairman of the Senate Subcommittee on Investigations, noted that:

> Investment banks such as Goldman Sachs were not simply market-makers, they were self-interested promoters of risky and complicated financial schemes that helped trigger the crisis. They bundled toxic mortgages into complex financial instruments, got the credit rating agencies to label them as AAA securities, and sold them to investors, magnifying and spreading risk throughout the financial system, and all too often betting against the instruments they sold and profiting at the expense of their clients.[74]

96. He noted that the 2009 Goldman annual report stated that the Company "did not generate enormous

---

[73] U.S. Senate Committee on Home Land Security & Governmental Affairs, "Senate Subcommittee Investigating Financial Crisis Releases Documents on Role of Investment Bank," April 24, 2010 and underlying exhibits (http://www.hsgac.senate.gov/subcommittees/investigations/media/senate-subcommittee-investigating-financial-crisis-releases-documents-on-role-of-investment-banks).

[74] *Ibid*.

net revenues by betting against residential related products. These e-mails show that, in fact, Goldman made a lot of money by betting against the mortgage market."[75]

97. In one of the internal Goldman emails dated November 18, 2007, Lloyd Blankfein, Goldman's Chief Executive Officer, wrote that "[o]f course we didn't dodge the mortgage mess. We lost money, then made more than we lost because of shorts."[76]

98. In other email correspondence dated July 25, 2007, Goldman's employees discussed Goldman's trading activities, which reveal that the Company netted over $50 million by taking short positions that increased in value. In the email, David Viniar, Goldman's Chief Financial Officer, wrote that the profit from short selling "[t]ells you what might be happening to people who don't have the big short."[77]

99. In email correspondence dated May 17, 2007, Goldman employees discussed the mortgage-related securities issued by Long Beach Mortgage Company and its charge-off of an unpaid principal balance.[78] In the email exchange, one employee, referencing a recent "wipeout" of one security issued by Long Beach Mortgage Company, wrote that another imminent wipe out would cost Goldman $2.5 million but that Goldman would make $5 million on its short position.

---

[75] *Ibid*.

[76] *Ibid.*

[77] *Ibid.*, Exhibit 104, E-mail from David Viniar to Gary Cohn, subject: RE: Private & Confidential: FICC Financial Package 7/25/07.

[78] *Ibid.*, Exhibit 103, E-mail from Deeb Salem to Michael Swenson, subject: FW: LBML 06A.

100. In email correspondence dated October 11, 2007, discussing RMBS downgrades by Moody's, one of Goldman's managers wrote that, because of Goldman's short position, "[s]ounds like we will make some serious money."[79]

101. In response to the release of internal Goldman documents by the Senate Subcommittee, on April 24, 2010, a Goldman official stated that "the contents of some of the emails [were] embarrassing but showed no evidence of wrongdoing."[80] Goldman also published on its website a 12-page document, which included emails and revenue data regarding its mortgage-business risk management during 2007-08, to demonstrate that its subprime mortgage trading reflected prudent risk management rather than speculation.[81]

2) Abnormal Return Analysis

102. On Monday, April 26, 2010, Goldman's common stock price *decreased* 3.41% from $157.40 to $152.03. (*See* Exhibit 3.) Based on the Modified Fama-French Three-Factor Model, including the percentage change in the Industry Index as an explanatory variable, the abnormal return on April 26, 2010 is -1.68%, which is not statistically significant at the 10% level.

---

[79] *Ibid.*, Exhibit 102, E-mail from Michael Swenson to Donald Mullen, subject: RE: Early post on P and L.

[80] Bloomberg News, "Goldman Vulnerable? Don't Ask Plaintiff Lawyers," April 25, 2010.

[81] Financial Times, "Goldman Releases Internal Paper Trail," April 25, 2010. Bank of America Merrill Lynch, "GS Publishes new '07-08 MBS e-mail, data," April 26, 2010.

103. However, the abnormal return may not have risen to a level of statistical significance at the 95% confidence level (more than 1.96 standard deviations from the mean) because of Goldman's immediate rebuttal and claims that its conduct was proper. It was also publicly known that Goldman executives, including its CEO, were going to testify before the Senate the following day. These facts may have led to the decline not being statistically significant.

3) Loss Causation Analysis

104. As discussed above, on Saturday, April 24, 2010, the Senate Subcommittee on Investigations released several internal Goldman documents, including emails and reports, which indicated that Goldman had made money betting against the CDOs it had sold to its clients.[82]

105. In response to the release of the internal Goldman documents, Bank of America Merrill Lynch published a securities analyst report on April 26, 2010, commenting on the recently released Goldman internal documents as well as Goldman's response. Bank of America Merrill Lynch securities analysts noted that:[83]

---

[82] United State Senate Committee on Home Land Security & Governmental Affairs, "Senate Subcommittee Investigating Financial Crisis Releases Documents on Role of Investment Bank," April 24, 2010 and underlying exhibits (http://www.hsgac.senate.gov/subcommittees/investigations/media/senate-subcommittee-investigating-financial-crisis-releases-documents-on-role-of-investment-banks). Bloomberg News, "Goldman Fraud Charges: Emails and Internal Reports Revealed," April 26, 2010.

[83] Bank of America Merrill Lynch, "GS Publishes new '07-08 MBS e-mail, data," April 26, 2010, p. 3.

> Press reports over the weekend covered the e-mails released from the Subcommittee, which appear to show Goldman broadly shorting mortgages before and during the crisis. Goldman then released a broader group of emails, in an attempt to provide more context. GS is trying to make clear that its risk disciplines, in the face of huge market uncertainty, were designed to minimize the firm's exposure rather than take big directional bets.
>
> They do seem, in our view, to show considerable internal debate as to how the firm should be positioned (i.e., no clear "house" view that the firm should be short), and a general mandate, in our opinion, from top management that the firm should be basically "close to home" in the MBS market, i.e. not significantly exposed one way or the other.

106. I have reviewed the media databases on Bloomberg, Thomson Research, and other news sources for Goldman-related news articles published after the market close on Friday April 23, 2010 through the market close on Monday April 26, 2010. I did not find any additional notable news items regarding Goldman that received any news coverage during that time period.

107. Goldman's denial of the Senate Committee's allegations in conjunction with the upcoming Senate testimony likely led to a more muted market reaction. Since the abnormal return on Goldman's common stock on April 26, 2010 was not statistically

significant, I excluded the abnormal return on April 26, 2010 from my damages calculation.

D. April 30, 2010

1) Corrective Disclosures with Regard to the Alleged False and Misleading Statements and Omissions

108. On Thursday, April 29, 2010 after the market closed, the *Wall Street Journal* reported that the Department of Justice (DOJ) had opened a criminal investigation into whether Goldman or its employees had committed securities fraud in connection with Goldman's mortgage trading.[84] This criminal investigation was announced after a Senate hearing that was held on April 27, 2010, where Goldman employees were questioned regarding its fraudulent conduct in connection with certain CDOs that Goldman structured and sold. Therefore, as part of my review of the Disclosure Date of April 30, 2010, the first trading day after the disclosure of the DOJ investigation, I also reviewed the information that was released into the market on April 27, 2010.

109. On Tuesday, April 27, 2010, the Senate's Permanent Subcommittee on Investigations held a hearing, where seven employees of Goldman appeared in front of the subcommittee, to examine the role that Goldman played in the credit crisis, particularly in connection with sub-prime mortgage securitization.[85]

---

[84] New York Times, "U.S. Said to Open Criminal Inquiry Into Goldman," April 29, 2010.

[85] Hearings before the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs United States Senate, "Wall Street and the Financial Crisis: The Role of Investment Banks," April 27, 2010 (the "April 27, 2010 Senate Hearings").

In addition to the SEC's enforcement action concerning the Abacus 2007-AC1 CDO, the Subcommittee claimed that Goldman devised a series of transactions (and not just a single CDO transaction)[86] to profit from the collapse of the home mortgage market.

110. In the hearing, Senator Carl Levin, the chairman of the Senate's Permanent Subcommittee on Investigations, asserted that Goldman repeatedly placed its own interests and profits ahead of its clients' interest,[87] and profited substantially by betting against its own clients in connection with synthetic CDOs.[88] In highlighting Goldman's fraudulent conduct, Senators referenced the Abacus 2007-AC1, Hudson 2006-1, Timberwolf 1, and Anderson 2007-1 CDO transactions.[89]

111. For example, Senator Levin noted that "Anderson Mezzanine Funding 2007-1 was a synthetic product assembled by Goldman... and [Goldman] sold Anderson securities to its clients without disclosing that it would profit if those securities suffered losses."[90] In particular, Senator Levin emphasized that, instead of responding to clients' questions and disclosing Goldman's significant short position in the CDO tranches, Goldman had continued to "push hard" on its clients to buy the Anderson 2007-1 CDO.

---

[86] *Ibid.*, pp. 6-7. For example, Senator Levin noted that "Abacus may be the best-known example of conflicts of interest revealed in the Goldman documents, but it is far from the only example."

[87] *Ibid.*, p. 3.

[88] *Ibid.*, pp. 4-5.

[89] *Ibid.*, pp. 6, 19, 24, 39, and 60.

[90] *Ibid.*, pp. 6-7.

Goldman did not properly disclose its short position and misrepresented to clients that it was holding the equity tranche, and thereby misled clients into believing that Goldman was taking only the long side of the CDO transaction.[91]

112. Senator Levin also discussed Goldman's conflicts of interest in connection with the Timberwolf 1 CDO, which consisted of low-quality assets.[92] He asserted that, while Goldman was taking short positions against the Timberwolf 1 CDO to protect itself, Goldman continued to sell this CDO to clients without adequately disclosing to them the risks associated with the CDO. He quoted internal Goldman email correspondence dated June 22, 2007, in which Goldman employees discussed its mortgage-linked securities. In the email, Tomas Montag, the former head of sales and trading at Goldman, wrote "[b]oy that Timberwo[l]f was one shi**y deal."[93]

113. The Senate committee also examined the Hudson 2006-1 CDO, which Goldman allegedly structured to "shift risks" from Goldman's balance sheet to investors.[94] Senator Ensign stated, in reference to the Hudson 2006-1 CDO, that:[95]

> It was a synthetic CDO that referenced $2 billion in subprime BBB-rated mortgage-backed securities. Goldman selected the referenced assets. The purpose of the transaction appears to have been to get those

---

[91] *Ibid.*, p. 22.

[92] *Ibid.*, pp. 24-25.

[93] *Ibid.*, pp. 24-25.

[94] *Ibid.*, p. 60.

[95] *Ibid.*, p. 60.

> assets off Goldman's own books. Basically Goldman was the only buyer to see this CDO and then make a bet against it.

114. Senator Levin also noted that Goldman's marketing booklet for the Hudson 2006-1 CDO only disclosed one side of Goldman's position.[96] The Executive Summary section of the marketing booklet stated that "Goldman Sachs has aligned incentives with the Hudson program by investing in a portion of equity and playing the ongoing role of Liquidation Agent."[97] In fact, it was revealed in an internal Goldman email dated October 30, 2006 that "Goldman was the sole buyer of protection on the entire $2.0 billion of assets."[98]

115. In response to the Senate's allegations in the hearing, Goldman executives and managers repeatedly denied the allegations and defended their actions, and they emphasized that Goldman had always tried to balance its portfolio investments so that Goldman would not have a long or short net position.

116. For example, Lloyd Blankfein, Goldman's Chief Executive Officer, defended the Company's practice by stating that "we certainly did not bet against our client."[99] Tourre, executive director in the Structured Products Group, who was mainly responsible for structuring and organizing the Abacus

---

[96] *Ibid*., p. 71.

[97] *Ibid.*, p. 554.

[98] *Ibid.*, p. 588.

[99] *Ibid.*, p. 132.

2007-AC1 transaction, also denied the SEC's allegations.[100]

117. Two days later, on Thursday, April 29, 2010 after the market closed, the *Wall Street Journal* reported that the DOJ had opened a criminal investigation.[101] The article noted that the investigation was led by the Manhattan US Attorney's office and stemmed from a referral from the SEC. The *Wall Street Journal* also reported that the criminal investigation was centered on different evidence than the SEC's civil case but that it was unable to determine which of Goldman's deals were being scrutinized in the investigation.

118. The *Washington Post* also published an article on April 29, 2010, covering the DOJ's criminal investigation into Goldman, reporting that:[102]

> The Justice Department usually investigates high-profile cases of securities fraud, but the threshold for criminal prosecution is significantly higher than that of civil cases . . . It is rare for the government to indict a firm, and even the threat of criminal prosecution can doom a company.

119. The *Washington Post* published another article on April 30, 2010, covering the same issue, reporting that:[103]

---

[100] *Ibid.*, pp. 17-18.

[101] New York Times, "U.S. Said to Open Criminal Inquiry Into Goldman," April 29, 2010.

[102] Washington Post, "Goldman May Be Prosecuted," April 29, 2010.

[103] Washington Post, "Justice Department Opens Goldman Sachs Criminal Investigation, Sources Say," April 30, 2010.

> It was not immediately clear if the FBI and prosecutors are probing different mortgage-related transactions than those at issue in the civil case.

120. *The Washington Post* published a follow-up article on the same day, reporting that:[104]

> The Justice Department's criminal investigation into Goldman Sachs goes beyond the financial transactions targeted by the Securities and Exchange Commission in the civil fraud suit brought against the firm last month, the law enforcement sources said Friday.
>
> The Justice Department probe began weeks ago and is essentially on a parallel track with the SEC investigation, the sources said. While prosecutors and investigators are focusing on some of the same mortgage-related transactions as the SEC, the sources said, the Justice Department cast a wider net.

121. A few days later on May 5, 2010, in response to the news concerning the DOJ's criminal investigation, Fitch Ratings also released a report, in which it lowered Goldman's rating outlook to Negative from Stable confirming that the DOJ's investigation provided additional new information to the market participants. [105]Fitch Ratings stated in the release that:

---

[104] Washington Post, "Justice Probe of Goldman Goes Beyond Deals Cited By SEC," April 30, 2010.

[105] Bloomberg News, "Fitch Affirms Goldman Sachs at 'A+/F1+'; Outlook to Negative," May 5, 2010.

> The Rating Outlook revision to Negative incorporates recent legal developments and ongoing regulatory challenges that could adversely impact Goldman's reputation and revenue generating capacity. Goldman's franchise and market position are potentially vulnerable to scrutiny by stakeholders, and like peers, may be affected by the industry's regulatory evolution.
>
> Subsequent to civil fraud charges filed by the Securities and Exchange Commission (SEC) last month, it appears that the U.S. Attorney's Office in Manhattan is initiating a criminal probe in connection with Goldman's mortgage trading activities. Given the level of recent public scrutiny, it is not surprising that other authorities outside of the U.S. have also expressed intentions to investigate select mortgage-related transactions conducted by Goldman. At minimum, Fitch believes the civil charges to date and the pending criminal investigation, coupled with a highly public hearing by the U.S. Senate's Permanent Subcommittee on Investigations, generate adverse publicity that tarnishes Goldman's reputation. And for financial services companies, particularly those dependent on the capital markets, reputation is critically important.
>
> While not expected, Fitch believes Goldman's franchise is at greater risk in the event the company was to be the recipient of a formal criminal indictment.

122. While Goldman consistently denied the SEC's charges, the criminal investigation by the DOJ

disclosed, with respect to other CDOs in addition to the Abacus 2007-AC1 CDO, that Goldman did not have extensive procedures to control conflicts of interest with its clients and did not comply with its business principles, in contrast to what the Company had consistently stated in its public announcements.

123. In sum, the *Wall Street Journal* article reporting DOJ's criminal investigation into Goldman's potential securities fraud in connection with certain CDO transactions provided new information to the market regarding the severity of Goldman's conflicts of interest and violations of its business principles in contrast to the false and misleading statements during the Class Period.

2) Abnormal Return Analysis

124. On Friday, April 30, 2010, Goldman's common stock price *decreased* 9.39% from $160.24 to $145.20. (*See* Exhibit 3.) Based on the Modified Fama-French Three-Factor Model, including the percentage change in the Industry Index as an explanatory variable, the abnormal return on April 30, 2010 is -7.75%, which is statistically significant at the 1% level. Such a significance level means that there is less than a 1 in 100 chance that the abnormal return happened by mere chance.

3) Loss Causation Analysis

125. As discussed above, on Thursday, April 29, 2010, after the market closed, the *Wall Street Journal* reported that US federal prosecutors had opened a criminal investigation into whether Goldman or its employees had committed securities fraud in

connection with its mortgage trading.[106] The *Washington Post* also reported that the DOJ's criminal prosecution could potentially "doom a company." [107]

126. Subsequent to the *Wall Street Journal* news report concerning the DOJ's criminal investigation, Bank of America Merrill Lynch issued a securities analyst report on April 30, 2010, and reduced its rating stating that: [108]

> We are lowering our rating on GS to Neutral from Buy and our price objective to $160 from $220. Our downgrade is prompted by news reports filed Thursday evening by the media including the Wall St. Journal indicating that federal prosecutors have opened an investigation of GS in connection with its trading activities, raising the possibility of criminal charges.
>
> However, it is very difficult to see the shares making further progress until the matter has been resolved.

127. Standard & Poor's Equity Research Group cut its investment recommendation on Goldman's stock to Sell from Hold and lowered its price target by $40 to $140, stating that "we think the risk of a formal securities fraud charge, on top of the SEC fraud charge

---

[106] New York Times, "U.S. Said to Open Criminal Inquiry Into Goldman," April 29, 2010.

[107] Washington Post, "Goldman May Be Prosecuted," April 29, 2010.

[108] Bank of America Merrill Lynch, "Goldman Sachs – Cutting to Neutral: concerns over reports of Federal probe," April 30, 2010.

and pending legislation to reshape the financial industry, further muddies Goldman's outlook."[109]

128. Buckingham Research Group downgraded Goldman's stock to Neutral from Buy, noting that they were not convinced that Goldman's issues would be resolved in the near-term, which would leave a significant amount of uncertainty in Goldman's stock for some time.[110]

129. Additionally, I have also reviewed a few analyst reports published after April 30, 2010, which continued to comment on the DOJ's criminal investigation into Goldman.

130. On May 2, 2010, Citigroup Global Market issued a securities analyst report, extensively covering Goldman's legal risk and the potential for regulatory reform. The report highlighted, among other issues, the recent regulatory enforcement actions brought by the SEC and the DOJ stating that (emphasis supplied):[111]

> It appears the civil case against Goldman is focused on a single transaction and is based on disclosure issues and questions of misrepresentation.
>
> Additional lawsuits from other investors remains a risk.

---

[109] Bloomberg News, "Goldman Shares Slide on Criminal-probe Concerns," April 30, 2010.

[110] Buckingham Research Group, "Goldman Sachs: Downgrade to Neutral; Litigation/Political Risk Too Difficult to Handicap," April 30, 2010.

[111] Citigroup Global Markets, "Goldman Sachs Group, Inc. (GS), Reiterate Buy – Risks Are There, But Still See Significant Upside," May 2, 2010, pp. 8-9.

> Reputational risk could damage Goldman's franchise – While we do not believe at this point Goldman's institutional client base has altered their business practices at this point, **Goldman's reputation is one of the firm's greatest assets. To the extent clients lose faith and either reduce or eliminate their transactions with Goldman, it could have significant detrimental effect across all of the firm's business.**
>
> Potential implications to securities dealer of criminal charges – There are several potential implications of the filing of criminal charges against a securities dealer. Trading counterparties could pull back from the firm. Investment banking clients could also turn away from a firm, for fear of deals being tainted by reputation of the charged firm.
>
> Potential implications to criminal conviction for a securities firm are severe – If a securities firm were convicted of criminal fraud, then it could lose its license as a primary treasury dealer; broker dealer licenses to sell securities could also be revoked.

131. On May 5, 2010, in response to the news concerning the DOJ's criminal investigation, Fitch Ratings also released a report, in which it lowered Goldman's rating outlook to Negative from Stable confirming that the DOJ's investigation provided significant new information to the market participants.[112]

---

[112] Bloomberg News, "Fitch Affirms Goldman Sachs at 'A+/F1+'; Outlook to Negative," May 5, 2010.

132. I have reviewed the media databases on Bloomberg, Thomson Research, and other news sources for Goldman-related news articles published after the market close on Thursday, April 29, 2010 through the market close on Friday, April 30, 2010. I did not find any additional notable news items regarding Goldman that received any news coverage during that time period.

133. The majority of news articles and securities analysts' reports released after the market close on April 29, 2010 through the market close on April 30, 2010 mainly covered the news regarding the DOJ's criminal investigation into certain Goldman CDO transactions.

134. In order to examine the impact of the news concerning the DOJ's criminal investigation on the price of Goldman's common stock, I investigated Goldman stock price movements in response to the disclosure of the DOJ's criminal investigation. (*See* Exhibit 5.) As illustrated in the chart, a news article concerning the DOJ's criminal investigation was released on April 29, 2010 after the market had closed. Before the market opened on April 30, 2010, Bank of America Merrill Lynch analysts published an analyst report, in which they downgraded Goldman's stock rating. Following the news regarding the DOJ criminal investigation, the opening price of Goldman's stock on April 30, 2010 was significantly lower than the previous day's closing price. Subsequently, Goldman's stock price did not show any significant reaction through the market close on that day.

135. Thus, the abnormal return on Goldman's common stock of -7.75% on April 30, 2010 is attributable to the news announcement of the DOJ's criminal investigation into Goldman's CDO

transactions, including securities analysts' downgrades in response to the news. The DOJ's criminal investigation was, in fact, a direct consequence of Goldman's alleged fraudulent conduct in connection with certain CDOs other than Abacus 2007-AC1.

136. The news about the DOJ's criminal investigation provided significant new information about the severity of Goldman's conflicts of interest and violations of its business principles in contrast to its false and misleading statements during the Class Period.

137. Therefore, it is my opinion that the abnormal return of -7.75% on Goldman's common stock on April 30, 2010 is attributable to the corrective information revealed in the announcement of the DOJ's criminal investigation.

E. June 10, 2010

1) Corrective Disclosures with Regard to the Alleged False and Misleading Statements and Omissions

138. On Wednesday, June 9, 2010, after the market closed, it was reported that the Hudson 2006-1 CDO, which was sold in 2006, was also the target of a probe by the SEC in addition to the Abacus 2007-AC1 CDO.[113] Internal Goldman emails released in April 2010 revealed one October 2006 email, in which a Goldman employee had described how the Hudson 2006-1 transaction might have been viewed by

[113] Bloomberg News, "Goldman Sachs Hudson CDO Said to Be Probed by SEC (Update1)," June 9, 2010. Bloomberg News, "Goldman Sachs Hudson CDO Said to Be Target of Second SEC Probe," June 10, 2010.

investors as "junk."[114] It was also alleged that, while Goldman was shorting the Hudson 2006-1 CDO, a marketing document distributed to its CDO investors stated that "Goldman Sachs has aligned incentives with the Hudson program."[115]

139. Senator Levin criticized Goldman at the Senate hearing held on April 27, 2010, noting that Goldman's sales of CDOs such as Hudson 2006-1 raised "a real ethical issue." The additional SEC investigation in connection with Hudson 2006-1, however, implied that the issue might be beyond "an ethical issue."

140. In sum, while several internal Goldman emails mentioning Hudson 2006-1 were previously released in April 2010 and private litigation by investors may have been expected, the second SEC probe into a Goldman CDO transaction provided significant new information regarding the severity of Goldman's conduct and revealed that Goldman had been engaged in undisclosed conflicts of interest and violated its business principles in contrast to the false and misleading statements during the Class Period.

2) Abnormal Return Analysis

141. On Thursday, June 10, 2010, Goldman's common stock price *decreased* 2.21% from $136.80 to $133.77. (*See* Exhibit 3.) Based on the Modified Fama-French Three-Factor Model, including the percentage change in the Industry Index as an explanatory variable, the abnormal return on June 10, 2010

---

[114] E-mail from Darryl Herrick to Tetsuya Ishikawa, "RE: Hudson Mezz," October 12, 2006, and the April 27, 2010 Senate Hearings, Exhibit 170c.

[115] The April 27, 2010 Senate Hearings, Exhibit 87.

is -4.52%, which is statistically significant at the 5% level. Such a significance level means that there is less than a 1 in 20 chance that the abnormal return happened by mere chance.

3) Loss Causation Analysis

142. As discussed above, after the market closed on Wednesday, June 9, 2010, it was reported that Goldman's $2 billion Hudson 2006-1 CDO was also the target of a probe by the SEC (in addition to the Abacus 2007-AC1 transaction).[116]

143. Following the announcement of a second SEC investigation into Goldman's CDO transactions, this one concerning Hudson 2006-1, Wells Fargo issued an analyst report concerning Goldman's short-term "tough" environment after the market close. Wells Fargo noted that near-term challenges for Goldman's stock were likely to persist, although it believed that a settlement with the SEC in the future would be positive for Goldman's stock. Wells Fargo also noted that media reports of a second SEC investigation into Goldman's CDO marketing practices, specifically the Hudson 2006-1 CDO, pushed Goldman shares down as much as 4% that day.[117]

144. I have reviewed the media databases on Bloomberg, Thomson Research, and other news sources for Goldman-related news articles published

---

[116] Bloomberg News, "Goldman Sachs Hudson CDO Said to Be Probed by SEC (Update1)," June 9, 2010. Bloomberg News, "Goldman Sachs Hudson CDO Said to Be Target of Second SEC Probe," June 10, 2010.

[117] Wells Fargo Equity Research, "The Goldman Sachs Group, Inc. – GS: Reiterating Outperform Rating Despite Near-Term Volatility," June 10, 2010.

after the market close on Wednesday, June 9, 2010 through the market close on Thursday, June 10, 2010. I identified other Goldman-specific news unrelated to the alleged fraud, which was not economically significant. For example, it was reported that Bank of America Corp. and Goldman were attempting to remove $5 billion in debt from their books in connection with loans they had made to help finance the buyout of Hilton Worldwide.[118] Such a transaction would occur normally in Goldman's investment banking business.

145. I did not find any additional notable news articles regarding Goldman that received any news coverage after the market close on June 9, 2010 through the market close on June 10, 2010.

146. In order to examine the impact of the news concerning the second SEC probe concerning Hudson 2006-1 on the price of Goldman's common stock, I investigated Goldman stock price movements after the market close on June 9, 2010 through the market close on June 10, 2010. (*See* Exhibit 6.) As illustrated in the chart, a news article concerning the second SEC investigation was released on June 9, 2010 after the market close. On June 10, 2010 in the morning, the price of Goldman's common stock was lower than the previous day's closing price. Subsequently, Goldman's stock price exhibited some volatility but did not increase or decrease significantly through the market close on that day.

147. Thus, the abnormal return on Goldman's common stock of -4.52% on June 10, 2010 is substantially attributable to the news announcement

[118] Bloomberg News, "Bank of America, Goldman Said to Offer $5 Billion Hilton Debt," June 10, 2010.

of the SEC investigation into Goldman's Hudson 2006-1 transaction. The second SEC investigation was, in fact, a direct consequence of Goldman's alleged fraudulent conduct in connection with Hudson 2006-1. Furthermore, the news report of the second SEC investigation disclosed to market participants the severity of Goldman's conduct and revealed that Goldman had been engaged in undisclosed conflicts of interest and violated its business principles in direct contrast to the false and misleading statements during the Class Period.

F. Overall Conclusion Regarding Loss Causation

148. It is my opinion that the abnormal return of -9.27% on Goldman's common stock on April 16, 2010 is attributable to the corrective information revealed in the announcement of the SEC's regulatory enforcement action in connection with Abacus 2007-AC1.

149. It is my opinion that the abnormal return of -1.68% on Goldman's common stock on April 26, 2010 is attributable to the corrective information revealed in several internal Goldman documents released by the Senate Committee on Investigations. Nonetheless, due to the factors discussed in paragraph 104 in this expert report, the abnormal return on Goldman's common stock on April 26, 2010 was not statistically significant. Thus, I excluded the abnormal return on April 26, 2010 from my damages calculation.

150. It is my opinion that the abnormal return of -7.75% on Goldman's common stock on April 30, 2010 is attributable to the corrective information revealed in the announcement of the DOJ's criminal investigation.

151. It is my opinion that the abnormal return of -4.52% on Goldman's common stock on June 10, 2010 is attributable to the corrective information revealed in the announcement of the SEC's second Goldman investigation, this one concerning the Hudson 2006-1 CDO.

* * *

No. 20-222

In the Supreme Court of the United States

GOLDMAN SACHS GROUP, INC., ET AL., PETITIONERS

v.

ARKANSAS TEACHER RETIREMENT SYSTEM, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT APPENDIX
(VOLUME 2; PAGES 401-804)

KANNON K. SHANMUGAM
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

Counsel of Record for Petitioners

THOMAS C. GOLDSTEIN
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Avenue
Suite 850
Bethesda, MD 20814
(202) 362-0636
tg@goldsteinrussell.com

Counsel of Record for Respondents

PETITION FOR A WRIT OF CERTIORARI FILED: AUGUST 21, 2020
CERTIORARI GRANTED: DECEMBER 11, 2020

TABLE OF CONTENTS

Page

VOLUME 1

Page

Page

<u>VOLUME 3</u> (Supplemental Joint Appendix)

The following opinions and orders have been omitted in printing the joint appendix because they appear as appendices to the petition for certiorari as follows:

Appendix A:	Court of appeals opinion, April 7, 2020
Appendix B:	District court opinion, August 14, 2018
Appendix C:	Court of appeals opinion, January 12, 2018
Appendix D:	District court opinion, September 24, 2015
Appendix E:	Court of appeals order denying rehearing, June 15, 2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 1:10-cv-03461-PAC

ECF Case

In re GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

This Document Relates To: ALL ACTIONS

REPORT OF PAUL GOMPERS, Ph.D.

July 2, 2015

Table of Contents

I. Qualifications

1. I am the Eugene Holman Professor of Business Administration and Faculty Chair of the M.B.A. Elective Curriculum at the Harvard Business School. I teach courses and conduct research in corporate finance, the structure and governance of public and private companies, valuation of companies, the behavior of institutional investors, and entrepreneurial finance and management. I teach these courses to Ph.D., M.B.A., and Executive Education students. In addition to my teaching responsibilities, I am a Research Associate at the National Bureau of Economic Research. Before joining the Harvard faculty in 1995, I was a member of the faculty at the University of Chicago Graduate School of Business, where I taught entrepreneurial finance from 1993 to 1995. I received an A.B. in Biology from Harvard College in 1987, an M.Sc. in Economics from Oxford University in 1989, and a Ph.D. in Business Economics from Harvard University in 1993.

2. In my career, I have written numerous case studies and technical notes, and published articles in peer-reviewed finance and economics journals on valuation, venture capital and private equity industries, and entrepreneurial finance. Many of these case studies, notes, and research articles have directly examined financial and valuation issues relating to business entities. I am the coauthor of three books: *The Venture Capital Cycle* (Editions 1 and 2) published by MIT Press, *The Money of Invention* published by Harvard Business School Press, and *Entrepreneurial Finance: A Casebook* published by John Wiley & Sons, Inc. I am an Associate Editor of the *Journal of Finance*, *Small Business Economics*, and the *Journal of Private Equity*, and a referee for a number of

academic journals, including the *Journal of Financial Economics*, the *Journal of Political Economy*, the *Quarterly Journal of Economics*, the *Review of Financial Studies*, and the *Journal of Law and Economics*. I have also served on the boards of directors of several companies, including ZEFER, Mercanteo, and OnTheFrontier.com. In addition, I have advised firms on fundraising, future projections, and valuation. I have also been a member of the advisory boards of a number of venture capital funds where my duties included valuation of companies. My curriculum vitae, which contains a list of my publications from the last 10 years, is included as Appendix A.

3. I have served as an expert in numerous cases concerning the following topics: factors affecting public company securities prices, the valuation of public and private companies, whether securities traded in efficient markets, the custom and practice of venture capital and private equity organizations, and the terms and conditions of employment agreements at entrepreneurial firms, as well as multiple matters in which I have been asked to analyze alleged damages. Courts have cited my findings favorably in rendering their opinions, such as in *IBEW Local 90 Pension Fund* v. *Deutsche Bank AG et al*. and *Fener* v. *Belo Corp. et al*. I have been qualified to serve as an expert witness in securities and valuation cases, and to provide testimony as to alleged damages in a variety of industries. A list of matters in which I have testified in the last four years is attached as Appendix B to this report.

II. Assignment and Compensation

4. I have been retained by counsel for The Goldman Sachs Group, Inc. ("Goldman"), Lloyd C. Blankfein, David A. Viniar, and Gary D. Cohn (collectively, "Defendants") to review and respond to the report of Plaintiffs' expert, Dr. John Finnerty, dated May 22, 2015 concerning loss causation and damages ("Finnerty Report").[1]

5. I am being compensated at my standard billing rate of $900 per hour. I have been assisted in this matter by staff of Cornerstone Research, who worked under my direction. I have received and anticipate that I may receive future compensation from Cornerstone Research that reflects, among other things, my relationship with that firm as an expert on this and other corporate and client matters. Neither

---

[1] Expert Report of John D. Finnerty, Ph.D. in Support of Loss Causation and Damages, filed May 22, 2015. Previously, Dr. Finnerty submitted a declaration in support of Plaintiffs' Motion for Class Certification, filed on January 30, 2015 (Declaration of John D. Finnerty, Ph.D. in Support of Lead Plaintiff's Motion for Class Certification, filed January 30, 2015 ("Finnerty Declaration")). I submitted a response to the Finnerty Declaration on April 6, 2015 (Declaration of Paul Gompers, Ph.D., filed April 6, 2015 ("Gompers Declaration")). Dr. Finnerty submitted a rebuttal declaration on May 15, 2015 (Rebuttal Declaration of John D. Finnerty, Ph.D. in Support of Lead Plaintiffs' Motion for Class Certification, filed May 15, 2015 ("Finnerty Rebuttal Declaration")). I submitted a surreply declaration on June 23, 2015 (Reply Declaration of Paul Gompers, Ph.D., filed June 23, 2015 ("Gompers Surreply Declaration")). Dr. Finnerty testified in a deposition on March 19, 2015 (Deposition of John D. Finnerty, Ph.D. on March 19, 2015 ("Finnerty Deposition")) and I testified in a deposition on April 30, 2015 (Deposition of Paul A. Gompers, Ph.D. on April 30, 2015 ("Gompers Deposition")).

my compensation in this matter nor my compensation from Cornerstone Research is in any way contingent or based on the content of my opinion or the outcome of this or any other matter.

6. A list of documents, data, and other information that I have considered in forming the opinions set forth in my report is attached hereto as Appendix C. My work on this matter is ongoing. The opinions presented in this report are a result of the information available to me as of the report date, and I reserve the right to revise or supplement my opinions in response to further information or documents.

III. Summary of Opinions

7. Based on my review of Dr. Finnerty's loss causation and damages report, I conclude:

- Dr. Finnerty fails to establish loss causation—i.e., that the alleged misstatements directly caused Goldman's shareholders' economic losses, either by causing Goldman's stock price to increase or by preventing Goldman's stock price from declining.
    - Dr. Finnerty fails to show that Goldman's stock price was inflated (or increased) as a result of the alleged misstatements on the 18 misstatement days. In fact, Dr. Finnerty concedes that Goldman's stock price did not increase due to the alleged misstatements.
    - Rather, under Dr. Finnerty's theory of loss causation, the impact of the alleged fraud did not become evident until it was disclosed in April and June 2010. Dr.

Finnerty's assertion is flawed and unreliable because he merely observes residual stock price declines on those dates and makes an unsupported assumption that all news released on those days constituted new allegation-related information. Dr. Finnerty does not distinguish between allegation and non-allegation information and does not establish whether the alleged corrective information was actually new to the marketplace. Specifically:

- Dr. Finnerty baselessly dismisses compelling evidence contradicting his assertion. I find that (a) the information regarding Goldman's potential conflicts of interest and Goldman's alleged collateralized debt obligations ("CDO") practices that Dr. Finnerty claims Goldman failed to disclose to investors was publicly known in the marketplace prior to the first alleged corrective disclosure on April 16, 2010; and (b) when such information was discussed publicly, it did not cause Goldman's stock price to decline.
    - Dr. Finnerty's claim that Goldman's "denials" on those days "thwarted" any stock price effect is without basis. For many of those days, Dr. Finnerty does not indicate that Goldman "denied" wrongdoing and yet Goldman's residual stock price movement was not statistically significant on those

days either. Dr. Finnerty also ignores that Goldman denied wrongdoing on April 16, 2010, one of the days that Dr. Finnerty claims revealed the partial truth about Goldman's alleged misstatements. Dr. Finnerty further offers no reliable methodology to distinguish denials that were effective from those that were not.

- Dr. Finnerty fails to link the alleged corrective information released on the four alleged corrective disclosure dates back to specific statements or disclosures that Goldman allegedly should have made to its equity investors on the alleged misstatement dates. Thus, Dr. Finnerty has not established that the informationthat was released on the alleged corrective disclosures rendered the alleged misstatements to be false.

- In analyzing the alleged corrective disclosure dates on which Goldman's residual stock price movements were statistically significant, he fails to account for confounding information also released on those dates—information that could not reasonably have been released or predicted on the alleged misstatement dates.

  - On April 16, 2010, an unusually aggressive U.S. Securities and Exchange Commission ("SEC") enforcement action against Goldman was announced.

- □ On April 30, 2010, there was public discussion of a purported U.S. Department of Justice ("DOJ") investigation into Goldman's "mortgage-related transactions."
- □ On June 10, 2010, there was public discussion of a purported SEC investigation into the Hudson Mezzanine Funding 2006-1, Ltd. ("Hudson") CDO.

- ▪ Dr. Finnerty fails to explain how Goldman's residual stock price movement on April 26, 2010 is consistent with the removal of inflation. On that day—a day that Plaintiffs' Complaint alleges included the release of new information about Goldman's alleged misconduct—Goldman's residual stock price movement was not statistically significant (i.e., could not be distinguished from random price movements). The fact that Goldman's stock did not react to what, according to Plaintiffs, was important new information correcting the alleged misstatements—on the only alleged corrective disclosure date without an announcement of a governmental action or investigation—provides further evidence that Goldman's stock price declines on the other three corrective disclosure dates were caused by information about governmental enforcement actions or investigations and not a correction of the alleged misstatements.

- ▪ Dr. Finnerty ignores that, with regard to April 30, 2010 and June 10, 2010, there was no new information about Goldman's alleged misconduct released into the marketplace on those days, and, therefore, the alleged misstatements could not have been corrected on those dates.
  - □ On April 30, 2010, Dr. Finnerty points only to a news article that describes a purported DOJ investigation in general terms and as related to "mortgage-related transactions."
  - □ On June 10, 2010, Dr. Finnerty identifies only news of an SEC investigation into the Hudson CDO but he does not identify any new information or allegations about Goldman's conduct with respect to the Hudson CDO subsequent to e-mail releases and Senate testimony, all of which was known prior to April 27, 2010.

- Dr. Finnerty's damages model is flawed, unscientific, and, even assuming liability, it overstates damages.
  - o Dr. Finnerty's damages model is flawed and overstates damages because it is based entirely on Goldman's residual

stock price movements on the three corrective disclosure dates on which Goldman's residual stock price movement was statistically significant—April 16, 2010, April 30, 2010, and June 10, 2010—and assumes that 100 percent of Goldman's residual stock price movement on each day is due to the correction of the alleged misstatements. Dr. Finnerty fails to exclude the effects on Goldman's stock price of non-allegation-related information also released on those days.

- With respect to April 30, 2010, Dr. Finnerty arbitrarily, and without providing any basis, bases his damages calculation on attributing one-third of Goldman's residual stock movement on that day to the Hudson CDO, one-third to the Anderson Mezzanine Funding 2007-1, Ltd. ("Anderson") CDO, and one-third to the Timberwolf I, Ltd. ("Timberwolf") CDO, without making any effort to explain why these CDO offerings are sufficiently similar so as to deserve identical weighting.

- With respect to April 30, 2010 and June 10, 2010, Dr. Finnerty not only fails to exclude the impact of non-allegation-related information released on those days, he fails to show that any specific new allegation-related information about Goldman's alleged misconduct was introduced into the market. Without new allegation-related information being released, there is no basis for calculation of economic losses on these days.

- Finally, even putting aside Dr. Finnerty's failure to establish that some inflation was removed from Goldman's stock price on the alleged corrective disclosure days, his methodology incorrectly assumes that any inflation attributable to a given CDO would have been constant on a dollars-per-share basis going back to February or June 2007 (depending on the CDO). This approach is flawed because it assumes that the investors would have valued information about Goldman's alleged misconduct identically throughout the three years between February 5, 2007 and June 10, 2010 (the "Class Period"), notwithstanding that the Class Period included the global financial crisis and a changing regulatory environment.

IV. Background

8. In the following section, I provide background on Plaintiffs' allegations (Section IV.A) and event study analysis (Section IV.B), including a description of my regression model (Section IV.B.1) and Dr. Finnerty's regression models (Section IV.B.2).

A. Allegations

9. Plaintiffs assert that Defendants made representations about Goldman's business practices and management of conflicts of interest that were allegedly false or misleading due to Goldman's role

and conduct in four CDO transactions.[2, 3] The four CDOs, which closed between December 5, 2006 and April 26, 2007, are Abacus 2007-AC1, Ltd. (“Abacus”), Hudson, Anderson, and Timberwolf.[4]

10. Specifically, Plaintiffs allege that Goldman made misrepresentations on 18 dates between February 5, 2007 and June 10, 2010 (the “Class Period”).[5]

11. Plaintiffs allege that, on five dates during the Class Period,[6] Goldman made false and misleading statements regarding its procedures and controls designed to identify and address conflicts of interest with clients (“Conflict Management Statements”).[7] For example, Plaintiffs allege that the following

---

[2] Lead Plaintiffs’ Memorandum of Points and Authorities in Support of Motion for Class Certification, *In re Goldman Sachs Group, Inc. Securities Litigation*, filed January 30, 2015 (“Lead Plaintiffs’ Memorandum”), p. 2.

[3] A CDO is a security collateralized by a referenced asset or group of assets (“reference portfolio”), such as loans, bonds, or asset-backed securities (“ABS”), including residential mortgage-backed securities (“RMBS”).

[4] Consolidated Class Action Complaint for Violations of Federal Securities Laws, *In re Goldman Sachs Group, Inc. Securities Litigation*, filed July 25, 2011 (“Complaint”), ¶¶9, 78, 164, 189, 202, 213; Lead Plaintiffs’ Memorandum, p. 2.

[5] Complaint, p. 1; Finnerty Declaration, Exhibit 8.

[6] Plaintiffs identify the following dates in the Complaint: February 6, 2007, January 29, 2008, January 27, 2009,

December 24, 2009, and February 26, 2010 (Complaint, ¶¶123–124, 134–135).

[7] Complaint, ¶132.

statements in Goldman's annual 2006, 2007, 2008, and 2009 SEC Form 10-Ks were false and misleading:[8]

- "Conflicts of interest are increasing and a failure to appropriately deal with conflicts of interest could adversely affect our businesses."

- "Our reputation is one of our most important assets. As we have expanded the scope of our businesses and our client base, we increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interests of another client.

  …

  We have extensive procedures and controls that are designed to [identify and] address conflicts of interest, including those designed to prevent the improper sharing of information among our businesses. However, appropriately [identifying and] dealing with conflicts of interest is complex and difficult, and our reputation could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to [identify and] deal appropriately with conflicts of interest. In addition, potential or

[8] Complaint, ¶¶134–137, 275–276, 284–287, 293–297, 302–304; *see also* The Goldman Sachs Group, Inc. Form 10- K, filed February 6, 2007, January 29, 2008, January 27, 2009, and February 26, 2010.

> perceived conflicts could give rise to litigation or enforcement actions."[9]

12. Plaintiffs also allege that, on 17 dates,[10] Goldman made false and misleading statements regarding its business principles, including its honesty, integrity, and commitment to putting its clients' interests first above all else ("Business Principles Statements").[11] For example, Plaintiffs allege that Goldman made the following misrepresentations in its annual reports:[12]

- "Our clients' interests always come first. Our experience shows that if we serve our clients well, our own success will follow."
- "Our assets are our people, capital and reputation. If any of these is ever diminished, the last is the most difficult to restore. We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard."

---

[9] Complaint, ¶134, quoting The Goldman Sachs Group, Inc. Form 10-K, filed February 6, 2007 and January 29, 2008.

[10] Plaintiffs identify the following dates in the Complaint: February 6, 2007, February 21, 2007, March 13, 2007, June 14, 2007, November 13, 2007, December 18, 2007, January 29, 2008, March 7, 2008, March 18, 2008, September 16, 2008, January 27, 2009, April 6, 2009, July 14, 2009, November 10, 2009, January 21, 2010, February 26, 2010, and April 7, 2010 (Complaint, ¶¶121, 127, 134, 277–306).

[11] Complaint, ¶¶21–24, 149.

[12] Complaint, ¶¶277, 289–290, 299–300, 305–306.

- “Integrity and honesty are at the heart of our business.”

13. Dr. Finnerty claims that the two categories of alleged misstatements—that is, the Conflict Management Statements and the Business Principles Statements—are inextricably linked and cannot be analyzed in isolation.[13]

14. Plaintiffs allege that Goldman’s Conflict Management and Business Principles Statements were revealed to be false and misleading on four separate dates in 2010—April 16, April 26, April 30, and June 10—when certain information about Goldman’s conduct related to the four CDOs was made public, and that this revelation caused a decline in Goldman’s stock price.[14] Moreover, Plaintiffs allege that this revelation caused losses, claiming that “investors purchased Goldman stock at these inflated prices and suffered damages when the price of Goldman stock declined upon the revelations of the truth, in contrast to earlier misstatements.”[15]

15. Plaintiffs have not specified precisely what they believe Goldman’s statements to the market should have been on each of the 18 alleged misrepresentation dates during the Class Period. However, Dr. Finnerty notes five misstatements Goldman allegedly made throughout the Class Period: “(1) the Company’s clients’ interests always come first, (2) the Company has extensive procedures and controls that are designed to identify and address conflicts of interest

[13] Finnerty Report, ¶20.

[14] Complaint, ¶¶307–323.

[15] Complaint, ¶¶329.

with its clients as well as among clients, (3) reputational capital is one of its most important assets, (4) integrity and honesty are the essence of its business, and (5) the Company focuses on protecting its valuable franchise."[16]

16. Dr. Finnerty then adds that Goldman also "failed to disclose that the Company, in fact, had conflicts of interest with its clients in connection with the synthetic CDOs Goldman structured and sold, e.g., Abacus 2007-AC1, Hudson 2006-1, Anderson 2007-1, and Timberwolf 1 CDOs."[17]

17. Dr. Finnerty appears to have concluded that the corrective disclosures revealed CDO specific misrepresentations that, in turn, rendered Goldman's general Business Principles Statements or Conflict Management Statements false or misleading.

B. Event Study Analysis

18. Generally, stock prices move in response to information about a company's future cash flows, or

---

[16] Finnerty Report, ¶43.

[17] Finnerty Report, ¶44. In addition, without specifying whether Goldman should have disclosed such information, Dr. Finnerty adds that "Goldman allegedly structured and sold to clients these synthetic CDOs, which were structured to fail, while the Company took short positions on these CDOs, without disclosing its short positions to Goldman's clients. Moreover, by engaging in the Abacus 2007-AC1 transaction in particular, Goldman allegedly created conflicts of interest by allowing one client, Paulson, to benefit at the expense of other clients and issued misleading marketing and offering materials to other clients" (Finnerty Report, ¶45).

the risk of these cash flows.[18] In order to analyze a company's stock price movement, it is necessary to consider the various factors that could have revealed new information about these cash flows. On a given date, a company's stock price is affected by numerous factors, some of which may be new company-specific information related to the alleged misrepresentations, but some of which may be in response to new market developments, industry developments, or company-specific information unrelated to the alleged misrepresentations.[19] A company's stock price may also move due to random fluctuations.

19. An event study is a commonly used and widely accepted technique that, if used correctly, provides an objective measure of whether there has been a significant change in the price of a company's stock that is attributable to firm-specific news. An event study seeks to isolate the firm-specific component of a company's stock price movement from movements due to market- wide or industry-wide information.[20] In an event study, the financial economist will (a) remove the stock price movements attributable to market and

---

[18] *See*, *e.g.*, Bodie, Z., A. Kane, and A. Marcus (2014), *Investments*, Tenth Edition, New York, NY: McGraw-Hill, pp. 595–612.

[19] "When the purchaser subsequently resells such shares, even at a lower price, that lower price may reflect, not the earlier misrepresentation, but changed economic circumstances, changed investor expectations, new industryspecific or firm-specific facts, conditions, or other events, which taken separately or together account for some or all of that lower price" (*Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 342–343 (2005)).

[20] MacKinlay, A. C. (1997), "Event Studies in Economics and Finance," *Journal of Economic Literature*, 35(1), 13–39 ("MacKinlay"), at pp. 13–16.

industry factors and calculate the stock's "residual" or "abnormal" price movement on the event date, and (b) examine whether the residual price movement is outside the range of typical random stock price fluctuations observed for that stock.[21] If the residual price movement on the event date falls sufficiently outside the range of typical random stock price fluctuations, it is deemed to be statistically significant, that is, unlikely to represent a random movement.[22] But if the residual price movement is not statistically distinguishable from random movements in the stock price, it cannot be attributed to any company-specific information announced on the event date.

20. An event study can be used to evaluate whether an alleged misrepresentation affected a company's stock price by isolating the firm-specific component of a security's price movement from other, non-firm-specific factors such as those that impact the broad economy or the industry as a whole.[23] An event study can be used to examine stock price movements on any

---

[21] MacKinlay, at p. 15.

[22] *See*, *e.g.*, National Research Council (2000), "Reference Manual on Scientific Evidence," *Federal Judicial Center*, pp. 124, 128–129; Mitchell, M. L., and J. M. Netter (1994), "The Role of Financial Economics in Securities Fraud Cases: Applications at the Securities and Exchange Commission," *Business Lawyer*, 49, 545–590, at p. 564, for a discussion that five percent is the typical threshold for statistical significance. The residual stock price movement is deemed statistically significant at the five percent significance level if there is less than a five percent chance that the value of the residual is actually zero. The five percent significance level is also referred to as the "95 percent confidence interval." Unless otherwise specified, I use the five percent significance level for evaluating statistical significance in this report.

[23] *See*, *e.g.*, MacKinlay, at pp. 13–14.

date during the Class Period, including the alleged misrepresentation dates and the alleged corrective disclosure dates. Both Dr. Finnerty and I use event studies to examine Goldman's stock price movement on days during the Class Period.

21. A standard event study approach uses a statistical method called a regression model to measure the changes in a company's stock price that may be related to company-specific information. Market and industry indices, if properly selected, capture the stock price movements of a broad cross-section of companies in the market as a whole and the industry in which the company operates. Using a regression model, a financial economist estimates the typical relationship between movements in a company's stock price and movements in market and industry indices.[24] The period over which this relationship is estimated, and over which the typical level of daily random fluctuations in the stock price is measured, is termed the "control period."[25] It is important to choose a control period that is similar to, and therefore representative of, the period during which the event being analyzed occurred.

1. Summary of My Regression Model

22. My regression model analyzes daily pricing data for Goldman's stock and the factors in my model, namely (a) the New York Stock Exchange ("NYSE")/ American Stock Exchange ("AMEX")/NASDAQ/ ArcaEx Composite Index ("Market Index") provided by

---

[24] MacKinlay, at p. 18.

[25] The typical daily random fluctuation in the stock price is measured by the volatility of residual stock price movements during the control period.

the Center for Research in Security Prices ("CRSP") (this is a broad market index that captures companies' stocks trading on these four U.S. stock exchanges), and (b) a group of comparable companies ("Industry Index").[26] In order to isolate the period of high volatility of Goldman's stock during the Class Period due to the financial crisis, I performed my regression analysis over three different sub-periods: (a) from February 5, 2007—the start of the Class Period—to the trading day prior to the bankruptcy of Lehman Brothers on September 15, 2008 ("Volatility Period A"); (b) from the bankruptcy of Lehman Brothers on September 15, 2008 to the trading day prior to the Federal Reserve Stress Test announcement on February 25, 2009 ("Volatility Period B"); and (c) from the Federal Reserve Stress Test announcement on February 25, 2009 to the end of the Class Period on June 10, 2010 ("Volatility Period C").[27] My regression estimates the residual stock price movements of

---

[26] To objectively select the appropriate Industry Index, I considered several potential industry indices. I estimated linear, two-factor regression models using the stock price movements of the market index and each of 15 potential industry indices for each of the three volatility sub-periods, and compared the average adjusted R2 (a measure of the "fit" of a regression) for each industry index. After evaluating the indices, I determined that the S&P Supercomposite Investment Banking and Brokerage Industry Index GICS Level 4—with no fewer than 11 members during the Class Period—is the Industry Index most appropriate for my regression analysis. For additional details, see Gompers Declaration, Appendix D.

[27] I identified these sub-periods and deemed them appropriate based on the results of a statistical test—called a Levene test. A Levene test is a statistical test that examines whether there is a difference in variance between data series. *See*, *e.g.*, Baum, C. (2006), *An Introduction to Modern Econometrics Using Stata*. College Station, TX: Stata Press, p. 150.

Goldman's stock on each day during the Class Period. Exhibit 1 shows Goldman's stock price movements, its residual stock price movements, and the statistical significance of the residuals on each day during the class period. A detailed description of my regression model is provided in the Gompers Declaration.[28]

23. In conducting an event study, I also review news items, such as public press and equity analyst reports, to understand what factors may have caused a company's stock price movements on a given day.[29] Equity analysts are important market participants who provide research reports and investment recommendations on companies that they are covering. Equity analysts rely on various sources of information including company press releases, conference calls, SEC filings, annual reports, and interviews with company management to identify what factors may affect, or have affected, the value of a company. When new information is released, I consider the reaction by analysts and discussion in public press in my assessment of the information and its potential impact on a company's stock price. A qualitative news analysis allows a researcher to determine whether a cause-and-effect relationship exists between certain information and stock price movements.

---

[28] Gompers Declaration, ¶¶22–24.

[29] For each date analyzed in this report, I reviewed public press and analyst reports from the trading day prior to the analysis date through the trading day following the analysis date. For alleged corrective disclosure dates, I extend my review of analyst reports to three trading days after the analysis date.

2. Summary of Dr. Finnerty's Regression Models

24. Dr. Finnerty uses a regression model to estimate the relationship between Goldman's stock price movements and movements in the market index, the industry index, and the movements of two other stock portfolios over the Class Period. Specifically, Dr. Finnerty uses a modified version of the so-called Fama-French Three-Factor Model—a regression model commonly used in academia that examines the relationship between companies' stock price movements and three factors known to be correlated with stock price movements for all stocks.[30] In his regression analysis, Dr. Finnerty examines Goldman's stock price movements using four factors:

- A market factor equal to the price movement of all NYSE, AMEX, and NASDAQ stocks.[31]
- An industry factor identified as the Standard & Poor's 500 Investment Banking and Brokerage Index, excluding Goldman.[32]
- A factor accounting for the difference in price movements between small and big market capitalization stocks ("SMB").[33]

---

[30] Finnerty Report, ¶52; Fama, E. F., and K. R. French (1993), "Common Risk Factors in the Returns on Stocks and Bonds," *Journal of Financial Economics*, 33, 3–56.

[31] Dr. Finnerty models Goldman's stock price movement net of the risk-free interest rate, and uses the market index movement net of the risk-free interest rate (Finnerty Report, ¶52).

[32] Finnerty Report, ¶61.

[33] Finnerty Report, ¶52.

- A factor accounting for the difference in price movements between stocks with high and low book-to-market[34] ratios, commonly referred to as value and growth stocks ("HML").[35]

25. Dr. Finnerty uses the Class Period as the period over which he estimates his regression model.[36] Dr. Finnerty states that Goldman stock price's historical volatility—which is often used as a proxy for the level of uncertainty of stock prices—was elevated during the Class Period relative to the periods before and after the Class Period.[37, 38] However, he does not address the changing stock price volatility *during* the Class Period—particularly, the spike in volatility during the financial crisis.[39]

26. In addition to the above model, following my criticism of this model in the Gompers Declaration,

---

[34] Book-to-market ratio is the ratio of a company's book value, based on historical cost, and market value, based on market capitalization. Firms with a low book value relative to market value are generally referred to as growth companies, while those with a high book value are referred to as value companies (Bodie, Z., A. Kane, and A. Marcus (2014), *Investments*, Tenth Edition, New York, NY: McGraw Hill, pp. 112, 592–593).

[35] Finnerty Report, ¶52.

[36] Dr. Finnerty excluded the trading dates of alleged misrepresenations and alleged corrective disclosures from his estimation period (Finnerty Report, ¶¶57, 59).

[37] A stock's historical volatility is a measure of the variance of the stock price movements over a specific time period. *See, e.g.*, Hull, J. (2002), *Options, Futures & Other Derivatives*, Fifth Edition, Upper Saddle River, NJ: Prentice Hall, pp. 239–240, 713.

[38] Finnerty Report, ¶57.

[39] I discuss the impact of the changing volatility in Goldman's stock price in Gompers Declaration, ¶¶102–106.

Dr. Finnerty also provides an additional set of regression models using the same Fama-French Three-Factor Model regression model framework but adjusted to the changing volatility in Goldman's stock during the Class Period. He uses the same three volatility periods as I describe above and estimates three Fama-French Three-Factor Model regression models. Dr. Finnerty also estimates damages in this matter using this alternative set of regressions, in addition to his original regression.[40]

V. Dr. Finnerty Fails to Establish Loss Causation

27. Plaintiffs allege that Goldman made false and misleading statements on 18 dates during the Class Period[41] and that these misrepresentations "caused Goldman's stock to trade at artificially inflated levels during the Class Period."[42] It is my understanding that Plaintiffs need to demonstrate loss causation—i.e., that the alleged misstatements directly caused Goldman's shareholders economic losses or "damages." I also understand that, in order to prove loss causation, Plaintiffs must show that (a) the alleged false and misleading statements caused Goldman's stock price to be inflated, and (b) Goldman's stock price declined in response to one or more corrective disclosures that corrected the alleged misstatements and thus removed prior inflation from the stock price. Importantly, any price decline attributable to information that is not corrective of the alleged false and misleading statements cannot represent a

[40] Finnerty Report, ¶¶169–170.

[41] Finnerty Declaration, Exhibit 8.

[42] Complaint, ¶29.

removal of inflation and therefore cannot form the basis of economic losses to investors (i.e., basis of loss causation).

28. Dr. Finnerty's claim that the alleged misstatements regarding Goldman's Business Principles Statements and/or Conflict Management Statements caused inflation in Goldman's stock price can be empirically tested using an event study of Goldman's stock price reaction on each of the 18 alleged misstatement dates and the four alleged corrective disclosure dates. In order for inflation to have been present in Goldman's stock price during the Class Period, the alleged misstatements must have either (a) caused Goldman's stock price to increase, or (b) prevented Goldman's stock price from reflecting decreases (that would otherwise have occurred on those dates) until the dates of the alleged corrective disclosures. Dr. Finnerty has not established that either of these two theories of inflation is true.

29. In order to prove inflation under the first theory—that the alleged misstatements caused inflation by causing Goldman's stock price to increase—one would need to show that on alleged misstatement dates with positive residual stock price movements, these price movements can be directly attributed to the alleged misstatements. However, as I discuss below, Dr. Finnerty fails to provide any evidence of such stock price reactions. In fact, Dr. Finnerty concedes that the alleged misstatements did not cause any statistically significant residual stock price increases.[43] Nevertheless, I performed my own analysis and my event study results indicate that

[43] Finnerty Report, ¶18.

Goldman's stock price did not react to any of these 18 alleged misstatements.

30. Under the second theory, if the alleged misstatements did not cause an increase in Goldman's stock price, then in order to demonstrate price inflation, Plaintiffs would need to prove that the alleged misstatements maintained Goldman's existing stock price—or, in other words, that the alleged misstatements prevented Goldman's stock price from declining. Dr. Finnerty fails to prove this theory of inflation as well. In order to demonstrate inflation under this theory, it is necessary to show that Goldman's stock price would have decreased had Goldman made the disclosures that Plaintiffs allege Goldman should have made, and to show that these disclosures would have caused a contemporaneous decline in Goldman's stock price. However, Dr. Finnerty merely asserts, without providing an adequate basis, that Goldman's residual stock price declines on four alleged corrective disclosure dates represent the removal of inflation in Goldman's stock price. Dr. Finnerty's blanket reliance on the stock price declines on the alleged corrective disclosure days is inadequate to establish that the alleged misstatements caused Goldman's stock price to be inflated for the reasons described below.

31. First, when I examined numerous dates, apart from the four alleged corrective disclosure dates identified by Plaintiffs, on which information was released into the marketplace alleging that Goldman was prioritizing its own interests over those of its clients and favoring certain clients over others (both in general and specifically with respect to Goldman's CDO or mortgage practices), there was no statistically significant reaction in Goldman's stock price. This

information also included allegations that Goldman had failed to disclose conflicts of interest to its customers. Again, this information describes the similar transaction structures or business arrangements that Plaintiffs argue were allegedly revealed to the marketplace on the alleged corrective disclosure dates. The finding that (a) information mirroring the alleged corrective disclosures was released prior to the alleged corrective disclosure dates, and (b) this information did not cause a statistically significant residual stock price movement in Goldman's stock undermines Dr. Finnerty's assertion that the alleged misstatements caused Goldman's stock price declines on the four alleged corrective disclosure dates.

32. Second, on the four alleged corrective disclosure dates, there was confounding information released to the marketplace that could not possibly have been disclosed earlier in the Class Period—information such as the inception of a new SEC enforcement action and the rumors of a purported DOJ investigation. The revelation that the Business Principles Statements or Conflict Management Statements were false could not alone have fully allowed market participants to anticipate an SEC enforcement action or subsequent government investigations, as Dr. Finnerty's analysis assumes. Dr. Finnerty fails to disentangle this non-allegation-related information—the new SEC enforcement action and rumors of a purported DOJ investigation—from the information supposedly correcting the alleged misstatements and, as such, fails to demonstrate that the price declines on the alleged corrective disclosure dates are attributable to a correction of the alleged misstatements.

33. Third, according to Dr. Finnerty's own model, Goldman's residual stock price movement on April 26, 2010 was not statistically significant.[44] A statistically insignificant residual stock price movement cannot be reliably differentiated from no stock price movement at all. Dr. Finnerty recognizes there is no basis to conclude that Goldman's investors experienced losses linked to the alleged corrective disclosures on that date, as he excludes the April 26, 2010 residual stock price movement from his damages calculation. Moreover, as described below, Plaintiffs' Complaint alleges that additional new information about Goldman's conflicts of interest was revealed on this day, including through the release of internal Goldman e-mails.[45] Unlike the other three alleged corrective disclosure dates, there are no alleged new reports of governmental enforcement actions or investigations on this date. The absence of a statistically significant residual stock price movement on this date thus contradicts Dr. Finnerty's assertion that when new reports related to the same alleged conflicts were released on the subsequent alleged corrective disclosure dates, the information caused economic losses to investors. In fact, unlike April 26, 2010, the only new information on the subsequent disclosure dates concerned the possibility of governmental enforcement actions or investigations, not new information about the alleged misstatements.

---

[44] According to Dr. Finnerty's model, Goldman's residual stock price movement was -1.68 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -1.96 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[45] Complaint, ¶333.

34. Fourth, on April 30, 2010 and June 10, 2010, Dr. Finnerty is unable to point to any new information about Goldman's alleged misconduct with respect to conflicts of interests in its CDO business. Rather, Dr. Finnerty refers to general information released days, or even months, earlier. The only new information Dr. Finnerty points to on those dates relates to purported new investigations into Goldman by governmental entities.

A. Goldman's Stock Price Movements on the 18 Alleged Misstatement Dates Do Not Establish that the Alleged Misstatements Introduced Inflation into Goldman's Stock Price

35. Dr. Finnerty provides no evidence that the alleged misstatements caused a statistically significant reaction in Goldman's stock price, thereby introducing inflation into Goldman's stock price during the Class Period. In fact, Dr. Finnerty agrees that it is a "fact" that the alleged misstatements did not cause a reaction in Goldman's stock price when those statements were made, and instead simply dismisses that fact as not alone sufficient to conclude that the alleged misstatements did not cause Goldman's stock price to be inflated.[46] Nevertheless, I conducted my own analysis of the alleged misstatements and evaluated whether those statements are associated with statistically significant increases in Goldman's stock price and thus whether these price movements provide potential evidence of

---

[46] "The fact that Goldman's stock price did not increase in a statistically significant manner on the dates of the alleged false statements does not necessarily mean there was no inflation on that day from the misstatements" (Finnerty Report, ¶18).

stock price inflation. Based on my analysis, as described in more detail in the Gompers Declaration paragraphs 28–49, I determined that the information related to the alleged misstatements released on the 18 alleged misstatement dates did not cause an increase in Goldman's stock price and thus the residual stock price movements on those days do not provide evidence of inflation.

36. I found that for 14 of these 18 misstatement dates, Goldman's residual stock price movements were not statistically significant. On days on which the residual stock price movement is not statistically significant, one cannot conclude that Goldman's price reacted to any company-specific news and, by extension, one cannot conclude that the alleged false and misleading statements introduced inflation into Goldman's stock based on these price movements.[47]

37. On two of the alleged misstatement days—June 14, 2007 and December 18, 2007—Goldman's residual stock price movement was negative and statistically significant (in other words, the stock price went down, after controlling for market and industry movements, notwithstanding the alleged misstatements).[48] Based

---

[47] Plaintiffs have not shown that there was negative information on any of these dates that could have offset a stock price increase associated with the alleged misstatements. Exhibit 4 summarizes the information released on the 14 misstatement dates on which Goldman's residual stock price movement was not statistically significant.

[48] According to Dr. Finnerty's model, on June 14, 2007, Goldman's residual stock price movement was -3.73 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on June 14, 2007, Goldman's residual stock price movement was -3.80 percent and was statistically significant (Finnerty Report, Exhibit 9). According to Dr. Finnerty's model, on December 18, 2007,

on my event study analysis, I found that there was negative information disclosed on this day separate from the alleged misstatements and that this information did not obscure a price impact of the alleged misstatements. Specifically, on June 14, 2007, market participants discussed Goldman's exposure to subprime mortgages,[49] while on December 18, 2007, market participants discussed comments by Goldman's CFO David Viniar warning of a challenging environment.[50] Moreover, I found no market commentary about the Conflict Management Statements or Business Principles Statements on these two dates. Therefore, I did not find evidence that

---

Goldman's residual stock price movement was -2.08 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on December 18, 2007, Goldman's residual stock price movement was -2.37 percent and was statistically significant (Finnerty Report, Exhibit 9).

[49] On June 12, 2007, Lehman Brothers "blew through estimates." As a result, many analysts expected Goldman to "do the same" when it announced earnings on June 14, 2007 ("Goldman Net Rises; Shares Drop As Profit Growth Slows (Update 4)," *Bloomberg News*, June 14, 2007). In other words, "Lehman Brothers' results raised expectations that [Goldman's] earnings didn't meet" ("Business Week: Goldman's Big Quarter Leaves Street Cold," *Bloomberg News*, June 15, 2007).

[50] "[I]nvestors chose to focus on comments from David Viniar, Goldman chief financial officer, indicating that if brutal conditions [seen in the credit markets in November] continued, it could be very difficult for Goldman to continue its record-shattering run. . . . [Mr. Viniar's] comments helped drive Goldman's share down as much as 5 per cent in early New York trading as investors began to fear that the investment bank's earnings had peaked, at least in the near term" ("Goldman Encounters Hard-To-Please Investors," *Financial Times*, December 18, 2007).

the alleged false and misleading statements on these dates introduced inflation into Goldman's stock.[51]

38. On two alleged misstatement dates—November 13, 2007 and March 18, 2008—Goldman's residual stock price movement was positive and statistically significant.[52] As I described in detail in the Gompers Class Certification Declaration, my review of the public press and equity analyst reports indicates that Goldman's positive residual stock price movements on these dates were due to positive news other than Goldman's Conflict Management Statements and/or Business Principles Statements.[53] On November 13, 2007, market participants attributed the stock price increase on this day to positive news including Goldman's announcements that (a) despite the market's expectations of significant write-downs, it would not take write-downs on its subprime mortgage portfolio; and (b) it retained a hedged position in subprime mortgages. On March 18, 2008, I found that market participants attributed the stock price increase on this day to positive news unrelated to the alleged misstatement including (a) Goldman's

[51] Gompers Declaration, ¶30.

[52] According to Dr. Finnerty's model, on November 13, 2007, Goldman's residual stock price movement was 4.12 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on November 13, 2007, Goldman's residual stock price movement was 3.60 percent and was statistically significant (Finnerty Report, Exhibit 9). According to Dr. Finnerty's model, on March 18, 2008, Goldman's residual stock price movement was 3.90 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on March 18, 2008, Goldman's residual stock price movement was 3.11 percent and was statistically significant (Finnerty Report, Exhibit 9).

[53] Gompers Declaration, ¶¶31–47.

better-than-expected earnings announcement, and (b) Goldman's stronger-than-expected liquidity position. Equity analysts also upgraded or reiterated their highest recommendations for Goldman's stock based on this news. Therefore, I did not find evidence that the alleged false and misleading statements on these dates introduced inflation into Goldman's stock price.

39. In sum, there is no evidence to support the first theory of price inflation: that the alleged misstatements introduced inflation by causing Goldman's stock price to increase. Indeed, Dr. Finnerty reaches the same conclusions.[54] I now address the alternative theory that the alleged misstatements improperly maintained Goldman's existing stock price at an inflated level.

B. Goldman's Stock Price Movements on the Alleged Corrective Disclosure Dates Do Not Establish that the Alleged Misstatements Introduced Inflation into Goldman's Stock Price

40. Under Dr. Finnerty's theory of loss causation, "the impact of the alleged fraud on the price of Goldman's common stock did not become evident until the fraud was disclosed in April and June 2010."[55] In other words, the alleged misstatements supposedly maintained Goldman's existing stock price, whereas, had the alleged "truth" been known, the stock price would have declined. Dr. Finnerty's assertion is based entirely on Goldman's residual stock price movements on the four alleged corrective disclosure dates. This

---

[54] Finnerty Report, ¶18.

[55] Finnerty Report, ¶42.

assertion is flawed and unreliable because, as set forth below, merely observing residual stock price declines on those dates and improperly designating all news as new allegation-related information—without distinguishing between allegation and non-allegation information and without establishing whether the alleged corrective information was new to the marketplace—does not establish that the alleged misstatements inflated Goldman's stock price for the reasons described below.

41. First, Dr. Finnerty baselessly dismisses evidence contradicting his assertion. Specifically, my analysis finds that (a) information that Goldman allegedly failed to disclose to investors was publicly known in the marketplace prior to the first alleged corrective disclosure on April 16, 2010; and (b) when such information was discussed publicly, the price of Goldman's stock did not decline in a statistically significant manner.

42. Second, Dr. Finnerty fails to link the alleged corrective information directly to the alleged misstatements and fails to disentangle the impact of confounding non-allegation information on the alleged corrective disclosure days, rendering his analysis flawed and insufficient to demonstrate loss causation. Specifically, on April 16, 2010, an unusually aggressive SEC enforcement action against Goldman was announced.[56] Dr. Finnerty asserts that the full residual stock price impact of this announcement should be attributed to Goldman's alleged misstatements because the SEC enforcement

---

[56] *See* Declaration of Stephen Choi, Ph.D., filed April 6, 2015 ("Choi Declaration"), ¶¶33–37.

action pertained to the Abacus CDO.[57] However, as I address below, the SEC enforcement action itself conveyed information to the investors separate and apart from Goldman's allegedly undisclosed misconduct. It is my understanding that the remaining allegations in this case do not include an allegation that Goldman failed to disclose an SEC enforcement action, nor would it have been possible for Goldman to have made such a disclosure any earlier in the Class Period. Therefore, the stock price impact of the SEC enforcement action itself should not be attributed to any losses to Goldman's equity investors due to the alleged misstatements. In addition, on April 30, 2010 information about a purported, non-specific DOJ investigation was released to the marketplace and on June 10, 2010 an expanded SEC investigation into the Hudson CDO was announced. Based on my event study, no new information concerning Goldman's alleged misconduct was released into the marketplace on either of these days, nor did Dr. Finnerty provide evidence that any such new information was in fact released. For the same reasons as the SEC enforcement action, the impact of the purported DOJ investigation and the expanded SEC investigation into the Hudson CDO on Goldman's stock price should not be attributed to the alleged misstatements.

---

[57] Finnerty Report, ¶93.

1. An Event Study Demonstrates that Information About Goldman's Business Conflicts and Conflicts of Interest Related to Goldman's CDO and Mortgage Businesses Was Known Well Before the First Alleged Corrective Disclosure Date and Did Not Affect Goldman's Stock Price

43. As an initial matter, it is important to note that large investment banks such as Goldman are exposed to a wide variety of potential conflicts of interest, given the nature of the diverse business lines in which they operate and the client and counterparty relationships they maintain in financial markets. In an article titled "Investment Banks, Scope, and Unavoidable Conflicts of Interest," Erik Sirri, former Director of the Division of Trading and Markets at the SEC,[58] states, "[t]he conflicts are a consequence of the function of investment banks, which intermediate the interaction between issuers and investors in capital markets." For any bank that chooses to offer a comprehensive set of investment banking services, "[t]hese conflicts are unavoidable."[59]

44. A financial economist can test empirically whether information about Goldman's general business conflicts or CDO-specific conflicts of interest would have caused a decline in Goldman's stock value by examining Goldman's stock price movement on days where such information was released into the

[58] Biography of Erik R. Sirri, Babson College, http://faculty.babson.edu/sirri/.

[59] Sirri, E. (2004), "Investment Banks, Scope, and Unavoidable Conflicts of Interest," *Federal Reserve Bank of Atlanta Economics Review*, Fourth Quarter 2004, 23–35, at pp. 23–24.

marketplace. Dr. Finnerty has performed no such analysis beyond considering the four alleged corrective disclosure days, three of which contained confounding information of reports of governmental enforcement actions and/or investigation (*see* detailed discussion below). I, however, empirically tested Dr. Finnerty's unsupported assertion that information about conflicts of interests at Goldman, including information that CDO investors may have been unaware of or misled about such conflicts, would have affected Goldman's stock price.

45. Using an event study, I examined days during the Class Period on which information about Goldman's behavior—information mirroring the information released on the four alleged disclosure dates but for news of governmental enforcement actions and/or investigations—was released into the marketplace. Specifically, my event study analyzed public statements prior to April 16, 2010, containing allegations that Goldman prioritized its interests over those of its clients or prioritized the interests of one client over those of another client.[60] These statements include (a) allegations of conflicts in Goldman's business lines outside the mortgage and CDO market, such as in general proprietary trading, private equity, and other Goldman business areas ("Business Conflicts"); and (b) allegations of conflicts related to the mortgage or CDO market in particular ("Mortgage/CDO Conflicts"). The information in these statements mirrors the information released on the corrective disclosure dates that Plaintiffs allege revealed the "truth" regarding the alleged

[60] My event study analysis was also discussed in the Gompers Declaration, ¶¶48–60.

misstatements—for example, that Goldman "plac[ed] the Company's interests above its own clients" and "collaborated with a favored client" at the expense of other clients.[61]

46. In conducting my event study, I employed an objective and replicable methodology. This is consistent with accepted practice in academic research and is scientifically valid. The approach has been used in peer-reviewed publications and has a known error rate.[62] I have previously employed this approach in my own academic research and in other litigation assignments.

47. Specifically, I searched the *Factiva* database's major business publications and newswires—a commonly used database of public press—for articles about Goldman that contained certain keywords. I reviewed those articles to determine which ones discussed a specific event or events that had been characterized as an alleged conflict of interest, as opposed to articles that provided general commentary on Goldman and conflicts, discussion of potential alleged conflicts of interest that had been avoided due to actions taken by Goldman, or articles that mentioned the keywords in an unrelated context. I then performed an additional review of public press to

---

[61] Complaint, QQ330–331.

[62] "We measure the impact of an event by estimating the abnormal return on a stock (or group of stocks) at the moment the information about the event becomes known to the market" (Bodie, Z., A. Kane, and A. Marcus (2014), *Investments*, Tenth Edition, New York, NY: McGraw-Hill, p. 360). Other academic studies employ *ex-ante* news analysis in an event study. *See, e.g.*, Faccio, Mara, and David Parsley (2009), "Sudden Deaths: Taking Stock of Geographic Ties," *Journal of Financial and Quantitative Analysis* 44(3), 683–718.

identify the first public statement that may have contained these allegations. In identifying news related to general Business Conflicts, I searched for articles about Goldman containing the word "conflict." In identifying news related to Goldman's Mortgage/CDO Conflicts, I searched for articles about Goldman that (a) contained the word "conflict," (b) contained search terms related to discussion of a short position in mortgages, or (c) contained search terms related to discussion of John Paulson or Paulson and Company in conjunction with CDOs. I reviewed these articles and other sources the articles referenced in order to identify relevant discussion of conflicts of interest in the mortgage and CDO markets.

48. I analyzed 34 dates on which allegations about Goldman's Business Conflicts or Mortgage/CDO Conflicts were discussed prior to the first alleged corrective disclosure on April 16, 2010.[63] I found that on each and every one of the 11 dates on which new allegations about Goldman's Business Conflicts were discussed, Goldman's residual stock price movements were not statistically significant. Similarly, on each and every one of the 23 dates on which allegations about Goldman's Mortgage/CDO Conflicts were discussed, Goldman's residual stock price movements were not statistically significant. On none of those days did I find confounding information related to SEC or DOJ actions or investigations. In sum, when information that Goldman allegedly misstated or failed to disclose to investors on the alleged misstatement dates was released to the marketplace

[63] I also analyzed additional dates when the effective trading date of an allegation was unclear, or if I found full discussion of the facts relating to an allegation prior to the allegation itself. *See* Exhibits 2 and 3.

prior to the alleged disclosure dates (and absent confounding information related to SEC and DOJ actions or investigations), one cannot conclude that there was any effect on Goldman's stock price. As such, there is no basis to conclude that on future dates when similar allegedly corrective information was released in combination with confounding information, that the resulting residual stock price movement is attributable to the alleged misrepresentations as opposed to the confounding information. Because there is no basis to conclude that the price declines on the future dates were in fact a correction, there is therefore no basis on which to conclude that the alleged misstatements introduced inflation into Goldman's stock price, as Dr. Finnerty claims.

a) When Allegations Regarding Goldman's Business Conflicts Were Discussed in the Marketplace, They Did Not Affect Goldman's Stock Price

49. I reviewed public press from the start of the Class Period through April 15, 2010 to identify statements that contained allegations of Goldman's Business Conflicts.[64] I found 11 event dates when Goldman's Business Conflicts were discussed (*see* Exhibit 2). This information includes public discussion of allegations that (a) Goldman distributed different information to, or distributed information first to, the Company's proprietary traders or preferred clients;

---

[64] Exhibit 2 provides a review of the statements I identified relating to allegations of Goldman's Business Conflicts. The exhibit also summarizes my responses to the "implications" noted in the Finnerty Rebuttal Declaration Exhibit 6, which are also discussed in V.B.1.c).

(b) Goldman's investing activity, including trading and private equity investing, led to conflicts of interest; and (c) Goldman's services to one client led to conflicts of interest against another client. I also reviewed public press and analyst reports surrounding these dates to understand the factors potentially impacting the stock price on each of these dates. I found that Goldman's residual stock price movement on each of these 11 dates was not statistically significant, indicating that when allegations of Goldman's Business Conflicts were made in the marketplace, the allegations did not cause Goldman's stock price to decline.

50. First, I identified two dates that were accompanied by public discussion of allegations that Goldman distributed different information to, or distributed information first to, the Company's proprietary traders or preferred clients. Specifically:

- On August 24, 2009, *The Wall Street Journal* reported that Goldman held "trading huddles" with top clients to provide advice on "short-term developments" to traders that sometimes differed from its long-term research, creating concerns that Goldman's publicly available research is sometimes at odds with its analysts' privately held views and that this practice "hurts other customers who aren't given the opportunity to trade on the information."[65,66]

---

[65] "Goldman's Trading Tips Reward Its Biggest Clients," *The Wall Street Journal,* August 24, 2009.

[66] Goldman's residual stock price movement on this date was -0.51 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock

- On January 12, 2010, *The New York Times* reported that Goldman disclosed in an email to clients that its Fundamental Strategies Group might have shared investment ideas with Goldman's proprietary trading desk and certain clients before sharing those ideas with other clients. This discussion "demonstrates the various conflicts that Goldman and other firms face in balancing the interest[s] of its various clients and its own trading operation."[67,68]

51. Second, I identified four dates that were accompanied by public discussion of allegations that Goldman's investing activity, including trading and private equity investing, led to conflicts of interest. For example:

- On May 17, 2007, *The Economist* reported that Goldman would likely "provide the third-biggest equity portion" in a bid for TXU while it had been retained as an advisor by the other

---

price movement on this date was -0.31 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -0.37 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[67] "Goldman Acknowledges Conflicts with Clients," *The New York Times*, January 12, 2010.

[68] Goldman's residual stock price movement on this date was -0.83 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was -0.53 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -0.35 percent and was not statistically significant (Finnerty Report, Exhibit 9).

buyers; as such, the article stated, "[a]t times it was hard to tell whether it was Goldman's deal or that of its clients."[69, 70]

- On May 13, 2009, *The Wall Street Journal* reported that a "Whitehall" fund, "[o]ne of [Goldman's] premier real-estate funds," was in discussions with its lenders—including Goldman—to restructure debt. The article notes that "Goldman is in an especially tricky position when acting as both a borrower and lender to itself, critics say. Concessions granted by Whitehall may benefit Goldman, the lender, at the expense of Whitehall investors, the critics add."[71,72]

52. Third, I identified five dates that were accompanied by public discussion of allegations that

---

[69] "Merchants of Boom," *The Economist*, May 17, 2007.

[70] Goldman's residual stock price movement on this date was 0.18 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was 0.07 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.17 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[71] "Goldman Takes Heat for Conflicts at Whitehall," *The Wall Street Journal*, May 13, 2009.

[72] Goldman's residual stock price movement on this date was -0.60 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was -1.05 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -0.98 percent and was not statistically significant (Finnerty Report, Exhibit 9).

Goldman's services to one client led to conflicts of interest against another client. For example:

- On May 6, 2007, a Sunday, an article in *The New York Times* noted that Goldman, "which has been a longtime banker" to the News Corporation, was advising the board of Dow Jones & Company on a bid Dow Jones had received for an acquisition by the News Corporation. This article asked rhetorically, "[h]ow hard do you really think Goldman is going to push the News Corporation, considering that if a deal is ever struck, Goldman will want to make Mr. Murdoch's company [News Corporation] a client again?"[73, 74]
- On June 10, 2007, a Sunday, the *Financial Times* reported that minority investors in Arcelor threatened legal action against Goldman on the grounds that Goldman and other banks that had provided a fairness opinion related to Mittal's acquisition of Arcelor in July 2006 "have all had advisory

[73] "What to Do When Rupert Calls?" *The New York Times*, May 6, 2007.

[74] Goldman's residual stock price movement on May 7, 2007 was 0.13 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was -0.02 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.17 percent and was not statistically significant (Finnerty Report, Exhibit 9).

and/or financing mandates from either Mittal or Arcelor during the past two years."[75, 76]

- On February 12, 2010, *The New York Times* reported that Goldman, "a primary Airgas adviser," faced an alleged conflict in relation to a takeover bid of Airgas by Air Products because Goldman had recently served as an adviser to Air Products.[77, 78]

b) Allegations of Conflicts of Interest Related to Goldman's CDO and Mortgage Businesses Were Known to Market Participants and They Did Not Affect Goldman's Stock Price

---

[75] "Arcelor Minorities Prepare for a Fight," *Financial Times*, June 10, 2007.

[76] Goldman's residual stock price movement on June 11, 2007 was 0.34 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was 0.21 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.31 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[77] "Air Products Revises Its Airgas Lawsuit," *The New York Times*, February 12, 2010.

[78] Goldman's residual stock price movement on this date was -0.27 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was 0.24 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.02 percent and was not statistically significant (Finnerty Report, Exhibit 9).

53. I reviewed public press from the start of the Class Period through April 15, 2010 to identify statements that contained allegations of Goldman's Mortgage/CDO Conflicts.[79] I found that, on 23 dates, such information was discussed in the marketplace (*see* Exhibit 3). This information includes public discussion of allegations that (a) Goldman took positions in CDOs opposite to those taken by its clients; (b) Goldman might have profited by selling mortgage-backed securities and CDOs to its clients, who lost money on these securities; and (c) CDO investor John Paulson assisted Goldman in designing a CDO which his firm intended to short. On several of the 23 dates, I found items discussing issues relevant to more than one of the above categories. In addition, some of the articles included explicit discussion of allegations that conflicts of interest were not disclosed to CDO investors. I also reviewed public press and analyst reports surrounding these dates to understand the factors potentially impacting the stock price on each of these dates. I found that Goldman's residual stock price movement on each of these 23 dates was not statistically significant, indicating that when allegations of Goldman's Mortgage/CDO Conflicts were made in the marketplace, they did not cause a decline in Goldman's stock price.

54. First, I identified 22 dates that were accompanied by public discussion of allegations that

[79] Exhibit 3 provides a review of the statements I identified relating to allegations of Goldman's Mortgage/CDO Conflicts. The exhibit also summarizes my responses to the "implications" noted in the Finnerty Rebuttal Declaration Exhibit 6, which are also discussed in V.B.1.c).

Goldman took positions in CDOs opposite to those taken by its clients. For example:

- On December 14, 2007, *The Wall Street Journal* reported that "Goldman's success at wringing profits out of the subprime fiasco, however, raises questions about how the firm balances its responsibilities to its shareholders and to its clients. . . . The question now being raised: Why did Goldman continue to peddle CDOs to customers early this year while its own traders were betting that CDO values would fall?"[80, 81] An article in the July 9, 2009 issue of *Rolling Stone* stated that "[Goldman] was taking short positions in [CDOs], in essence betting against the same crap it was selling. Even worse, Goldman bragged about it in public."[82, 83]

---

[80] "How Goldman Won Big on Mortgage Meltdown – A Team's Bearish Bets Netted Firm Billions; A Nudge from the CFO," *The Wall Street Journal,* December 14, 2007.

[81] Goldman's residual stock price movement on this date was 1.78 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was 1.39 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 1.63 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[82] "The Great American Bubble Machine," *Rolling Stone*, July 9, 2009. This article was publicly available on June 24, 2009 ("Goldman Sachs: 'Engineering Every Major Market Manipulation Since the Great Depression'," *Zero Hedge*, June 24, 2009).

[83] Goldman's residual stock price movement on June 24, 2009 was 0.16 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price

55. Second, I identified 11 dates that were accompanied by public discussion of allegations that Goldman might have profited by selling mortgage-backed securities and CDOs to its clients, who lost money on these securities. For example:

- On December 16, 2007, a Sunday, *Reuters* reported, "Goldman will face questions on how it once again profited when everyone else, including clients, suffered. More than any other firm, Goldman under Blankfein has deployed its capital boldly, pursuing strategies that can sometimes run contrary to what clients are doing . . . . Another trouble spot could be how Goldman's underwriters issued collateralized debt obligations . . . through May, several months after it turned bearish on mortgages. 'You've got two departments not communicating, which are sent out to go make money,' said analyst Richard Bove of Punk Ziegel & Co. 'One part of the firm's underwriting CDOs and the other is shorting the hell out of them.' For most firms that would be chalked up to independence. For Goldman, it may only convince rivals and conspiracy theorists that the firm is utterly conflicted."[84, 85]

movement on this date was 0.55 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.56 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[84] "Analysis-Goldman Success Brings Unwanted Attention," *Reuters News*, December 16, 2007.

[85] Goldman's residual stock price movement on December 17, 2007 was 0.38 percent and was not statistically significant

56. Third, I identified four dates that were accompanied by public discussion of allegations that CDO investor John Paulson assisted Goldman in designing a CDO which his firm intended to short. For example:

- An October 31, 2009 article in *The Wall Street Journal* reported that "[Paulson & Co.] met with bankers at Bear Stearns, Deutsche Bank, Goldman Sachs, and other firms to ask if they would create [CDOs] that Paulson & Co. could wager against. The investment banks would sell the CDOs to clients who believed the value of the mortgages would hold up. Mr. Paulson would buy CDS [credit default swap] insurance on the CDO mortgage investments—a bet that they would fall in value. This way, Mr. Paulson could wager against $1 billion or so of mortgage debt in one fell swoop. Paulson & Co. wasn't doing anything new. A few other hedge funds also worked with banks to short CDOs the banks were creating. Hundreds of other CDOs were being created at the time. Other bankers, including those at Deutsche Bank and Goldman Sachs, didn't see anything wrong

---

(Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was -0.15 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.32 percent and was not statistically significant (Finnerty Report, Exhibit 9).

with Mr. Paulson's request and agreed to work with his team."[86, 87]

- On November 3, 2009, *The Greatest Trade Ever* was released. This book noted that "Paulson's team would pick a hundred or so mortgage bonds for the CDOs, the bankers would keep some of the selections and replace others." Although a Bear Stearns trader "worried that Paulson would want especially ugly mortgages for the CDOs" and "suspected that [he] would push for combustible mortgages and debt to go into any CDO . . . [f]or his part, Paulson [said] that investment banks . . . didn't need to worry about including only risky debt for the CDOs because 'it was a negotiation; we threw out some names, they threw out some names, but the bankers ultimately picked the collateral.'" Similarly, Mr. Paulson acknowledged that he "'provided the collateral' for the CDOs . . . '[b]ut the deals weren't created for us, we just facilitated it; we proposed recent vintages of mortgages' to the banks." The book also noted that "other bankers including . . . Goldman Sachs, didn't see anything wrong with

[86] "Profiting from the Crash," *The Wall Street Journal*, October 31, 2009.

[87] Goldman's residual stock price movement on November 2, 2009 (the next trading day) was 0.27 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was 0.89 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 1.00 percent and was not statistically significant (Finnerty Report, Exhibit 9).

> Paulson's request and agreed to work with his team."[88, 89]

57. In sum, my event study analysis shows that information mirroring the information allegedly correcting the alleged misstatements was publicly discussed in the marketplace prior to the first alleged corrective disclosure on April 16, 2010. In addition, my event study also indicates that Goldman's residual stock price movements were not statistically significant on any of the 34 dates on which this information was released. Both of these findings support the conclusion that there is no basis to conclude that when similar information was released on future dates (i.e., the alleged corrective disclosure dates) in conjunction with confounding information, that the resulting residual stock price movement is attributable to the alleged misrepresentations. Therefore, contrary to Dr. Finnerty's assertion, there is no basis to conclude that the alleged misstatements introduced inflation into Goldman's stock price.

c) Dr. Finnerty Incorrectly Dismisses Evidence that the Market Knew About the Alleged Corrective

---

[88] Zuckerman, G. (2009), The Greatest Trade Ever: The Behind-the-Scenes Story of How John Paulson Defied Wall Street and Made Financial History, New York, NY: Crown Business, pp. 179–182.

[89] Goldman's residual stock price movement on this date was 0.07 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was -0.32 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -0.68 percent and was not statistically significant (Finnerty Report, Exhibit 9).

Information Prior to the First Alleged Corrective Disclosure and that Such Information Did Not Affect Goldman's Stock Price

58. Dr. Finnerty apparently rejects the above evidence that the market knew about the alleged corrective information prior to the first alleged corrective disclosure and that such information did not affect Goldman's stock price based on four arguments: (a) that Goldman "denied" wrongdoing and thereby negated a stock price movement on those dates;[90] (b) that a discrete piece of new information, not previously disclosed, was released on April 16, 2010;[91] (c) that Plaintiffs' allegations in this matter are not actually alleged misstatements regarding Goldman's Business Principles Statements and/or Conflict Management Statements, but alleged misstatements that Goldman had committed fraudulent conduct;[92] and (d) that various other "implications" of the articles I cite in the Gompers Declaration apparently distinguish the information released on the 34 days from the information released on the alleged corrective disclosure dates.[93] Each of Dr. Finnerty's arguments is either illogical or simply factually incorrect (or both).

59. First, Dr. Finnerty attempts to explain the lack of any price impact on any of the 34 dates during the Class Period with public allegations of Goldman's conflicts with its clients by arguing that Goldman "denied" that it engaged in inappropriate conduct and

---

[90] Finnerty Report, ¶70.

[91] Finnerty Report, ¶71.

[92] Finnerty Report, ¶73.

[93] Finnerty Rebuttal Declaration, Exhibit 6.

that these denials "thwarted" any potential price impact.[94] Dr. Finnerty identifies denials on just 10 of the 34 dates, less than 30 percent of the dates identified in my analysis. Dr. Finnerty provides no basis to conclude that these 10 denials somehow "thwarted" the price impact of the reports of conflicts, especially given that Goldman's stock price did not decline in response to the 24 instances of conflicts allegations where he identified no such denial. Moreover, Dr. Finnerty provides no methodology to distinguish effective denials from ineffective ones, or to explain how or why these denials precisely offset the price impact that (supposedly) would otherwise have occurred from the conflicts allegations.

60. Further, Dr. Finnerty's "denial" theory does not address, and is directly contradicted by, what took place on April 16, 2010 (the first alleged corrective disclosure date). In his initial declaration, Dr. Finnerty acknowledged that Goldman publicly denied the allegations of the SEC enforcement action

---

[94] Finnerty Rebuttal Declaration, ¶184. In his Exhibit 6, under the heading "Implications," Dr. Finnerty explicitly references denials on 10 days based on the following variants: "Goldman Denied Anything Improper" or "Goldman Denied Any Wrong Doing" or "Author Conveyed that Goldman Denied Any Wrong Doing." In addition, Dr. Finnerty asserts in Exhibit 6 the following "Implications" on three additional days, but does not specify whether he considers them "denials": "Goldman Represented that CDO Products Were Fueled by Client Demand" or "Goldman Conveyed That Its Interests Are Aligned With Clients" or "Goldman Affirmed Its Stock Tips Are Consistent with Fundamental Analysis" or "Goldman Conveyed That It Appropriately Managed Conflicts of Interest." My opinions are unchanged regardless of whether Dr. Finnerty has identified 10 or 13 "denials." I also note that Dr. Finnerty has noted multiple "implications" for certain days (Finnerty Rebuttal Declaration, Exhibit 6).

that day, stating that they were "completely unfounded."[95] Dr. Finnerty provides no explanation as to why this denial was ineffective in "thwarting" price impact, whereas the denials in response to 10 of the earlier allegations of Goldman conflicts were wholly effective. Apparently, Dr. Finnerty assumes his own conclusion—namely, that whenever public discussions about allegations of Goldman's conduct are not associated with statistically significant residual stock price movements, Goldman's denials "thwarted" the effect, but on some days where Goldman's residual stock price reaction was statistically significant, no such "thwarting" occurred. I thus find that Dr. Finnerty's "denial" theory is inconsistent and lacks foundation.

61. Second, Dr. Finnerty argues that new information was disclosed on April 16, 2010, specifically that Goldman "misled investors by failing to disclose Paulson's role in selecting the reference portfolio of the Abacus 2007-AC1 CDO, and the fact that Goldman had misled ACA [Financial Guaranty Corp.] by telling ACA that Paulson was a sponsor of the CDO transaction and would have an equity interest in the transaction."[96] However, contrary to Dr. Finnerty's assertion, information about the allegation that Goldman had failed to disclose Paulson's positions in the CDO was discussed publicly

---

[95] For example, Dr. Finnerty notes that Goldman stated that the "SEC's charges are completely unfounded in law and fact and we will vigorously contest them and defend the firm and its reputation" (Finnerty Declaration, ¶60). *See also* Finnerty Rebuttal Declaration, ¶¶3, 186 (stating that April 16, 2010 was the date that the "truth" was revealed to the market about Goldman's alleged conflicts).

[96] Finnerty Report, ¶71.

as early as November 2009. For example, *The Greatest Trade Ever,* a book released on November 3, 2009, specifically noted:

> But some [CDO] investors later would complain that they wouldn't have purchased the CDO investments had they known that some of the collateral behind them was chosen by Paulson and that he would be shorting it.[97]

62. Similarly, a December 6, 2009 book review in *The New York Times* reported:

> Mr. Paulson persuaded Goldman Sachs and Deutsche Bank to put together securitized collateralized debt obligations (known as C.D.O.'s), which were filled with nasty mortgages that he could then short. Of course, nobody told the suckers—er, investors—who bought those C.D.O.'s that they were designed to help a man who wanted the most toxic mortgages imaginable so he could profit when they went sour.[98]

63. Goldman's residual stock price movements on November 3, 2009 and December 7, 2009, two days on which those allegations were publicly discussed, were not statistically significant.[99]

---

[97] Zuckerman, G. (2009), The Greatest Trade Ever: The Behind-the-Scenes Story of How John Paulson Defied Wall Street and Made Financial History, New York, NY: Crown Business, p. 182.

[98] "Economy's Loss Was One Man's Gain," *The New York Times*, December 6, 2009.

[99] According to Dr. Finnerty's model, on November 3, 2009, Goldman's residual stock price movement was -0.32 percent and

64. Moreover, in paragraphs 44–45 of the Finnerty Report, Dr. Finnerty recognizes that the purported disclosure violation is that Goldman "failed to disclose that the Company, in fact, had conflicts of interest with its clients in connection with the synthetic CDOs Goldman structured and sold, e.g., Abacus 2007-AC1, Hudson 2006-1, Anderson 2007-1, and Timberwolf 1 CDOs."[100] Nowhere in this discussion does Dr. Finnerty state, or even imply, that Plaintiffs' claim is predicated on specific information about what was disclosed specifically to ACA about Paulson's role in Abacus. Dr. Finnerty provides no explanation as to how Goldman's alleged misconduct with respect to ACA "corrected" alleged misstatements regarding "conflicts of interests with its clients," nor an explanation as to how information about the identity

---

was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on November 3, 2009, Goldman's residual stock price movement was -0.68 percent and was not statistically significant (Finnerty Report, Exhibit 9). According to Dr. Finnerty's model, on December 7, 2009, Goldman's residual stock price movement was -0.97 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on December 7, 2009, Goldman's residual stock price movement was -1.19 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[100] Finnerty Report, ¶44. In addition, without specifying whether Goldman should have disclosed such information, Dr. Finnerty adds that "Goldman allegedly structured and sold to clients these synthetic CDOs, which were structured to fail, while the Company took short positions on these CDOs, without disclosing its short positions to Goldman's clients. Moreover, by engaging in the Abacus 2007-AC1 transaction in particular, Goldman allegedly created conflicts of interest by allowing one client, Paulson, to benefit at the expense of other clients and issued misleading marketing and offering materials to other clients" (Finnerty Report, ¶45).

of ACA as an entity that was allegedly misled was a "corrective disclosure" of general statements about conflicts of interest whereas information alleging that investors were misled was not.[101] As I discuss in further detail below, Dr. Finnerty's failure to link alleged "corrective information" to the alleged misstatements throughout his report renders his analysis economically imprecise and unreliable.

65. Third, Dr. Finnerty now argues that the information revealed on the alleged corrective disclosure dates was not just that Goldman "may or did not have conflicts of interest, but, instead, that Goldman had committed fraudulent conduct, misleading its clients and failing to disclose to its investors that it did not effectively manage its conflicts of interest for the Abacus 2007-AC1 transaction."[102] Again, Dr. Finnerty ignores the fact that the allegations (a) that Goldman had conflicts of interest with its CDO investors; and (b) that Goldman misled, or hid those conflicts from, its CDO investors were already known in the marketplace prior to the alleged corrective disclosure dates. For example:

- A *McClatchy Washington Bureau* article published on November 1, 2009 stated: "Despite updating its numerous disclosures to investors in 2007, Goldman never revealed its secret wagers . . . . Another question is whether, by keeping the trades a secret, the company withheld material information that

---

[101] Finnerty Report, ¶44.

[102] Finnerty Report, ¶73.

would enable investors to assess Goldman's motives for selling the bonds."[103]

- A *McClatchy Washington Bureau* article published on December 30, 2009 reported that it had been alleged that "Goldman inserted the credit-default swaps into CDO deals 'like a Trojan Horse—secret bets that the same types of bonds that they were selling to their clients would in fact fail.'"[104]
- An article in *The Wall Street Journal* published on December 14, 2007 noted that "[Goldman's structured-products trading] group also has another mission: If it spots an opportunity, it can trade Goldman's own capital to make a profit. And when it does so, it doesn't necessarily have to share such information with clients, who may be making opposite bets."[105]
- A *Rolling Stone* article published on July 9, 2009 stated: "I ask the manager how it could be that selling something to customers that you're actually betting against—particularly when you know more about the weaknesses of those products than the customer—doesn't amount to securities fraud. 'It's exactly

[103] "How Goldman Secretly Bet on the U.S. Housing Crash," *McClatchy Washington Bureau,* November 1, 2009.

[104] "Goldman's Offshore Deals Deepened Global Financial Crisis," *McClatchy Washington Bureau*, December 30, 2009.

[105] "How Goldman Won Big on Mortgage Meltdown — A Team's Bearish Bets Netted Firm Billions; A Nudge From the CFO," *The Wall Street Journal*, December 14, 2007.

> securities fraud,' he says. 'It's the heart of securities fraud.'"[106]

66. In addition to these examples, as discussed above in paragraphs 61–62, allegations that Goldman misled investors specifically in the Abacus CDO transaction were also discussed in the public domain prior to the alleged corrective disclosure dates. Thus, Dr. Finnerty's assertion that, prior to the first alleged corrective disclosure, the public allegations of Goldman's conflicts of interest related to CDOs were limited to the existence of such conflicts is incorrect. Rather, those public discussions included allegations that Goldman's CDO investors were unaware of these conflicts or that Goldman failed to disclose information about these conflicts to its CDO investors.

67. Finally, in Exhibit 6 of his Rebuttal Declaration, Dr. Finnerty identifies additional "implications" of the articles I identified, which he presumably believes invalidate my findings, although he does not reference those specifically in the Finnerty Report. In addition to his "denial" theory as discussed above, Dr. Finnerty describes the following categories of "implications" from the news articles: (a) that the allegations were not directly related to the four CDOs at issue, (b) that the article concerned the four CDOs but did not reveal new information about the specific CDOs at issue, and/or (c) that the article in some way conveyed that Goldman may not have done anything wrong or

[106] "The Great American Bubble Machine," *Rolling Stone*, July 9, 2009. This article was publicly available on June 24, 2009 ("Goldman Sachs: 'Engineering Every Major Market Manipulation Since The Great Depression'," *Zero Hedge*, June 24, 2009).

illegal.[107] These additional "implications" are irrelevant to my conclusions for the reasons set forth below. I will address these categories of "implications" in turns.

68. Dr. Finnerty criticizes my analysis of the 34 days with conflicts allegations and no responsive stock price impact because "many of [the conflicts allegations] had nothing to do with the mortgage market or selling of CDOs."[108] Even where the Goldman conflicts allegations concerned CDOs, Dr. Finnerty argues that many are irrelevant because the news was "not directly related to the four deals at issue."[109] This criticism is baseless. Dr. Finnerty ignores that the alleged misstatements—as stated in the Complaint—are not specific to the four CDOs or Goldman's CDO practices more generally. Dr. Finnerty assumes that the alleged general statements regarding Business Principles and Conflict Management could only be rendered false by revelations about the four CDOs at issue in this case, but that assumption is at odds with the actual language of the alleged misstatements, which cover all of Goldman's many business lines. Notwithstanding the general language of the alleged misstatements, as discussed above, I identified 23 days during the Class Period in which there were public allegations of Goldman having conflicts of interest in connection with its mortgages or CDOs practices, and determined

[107] Finnerty Rebuttal Declaration, Exhibit 6. Note that on some days Dr. Finnerty asserts more than one "implication."

[108] Finnerty Rebuttal Declaration, ¶184, Exhibit 6.

[109] Dr. Finnerty argues that on 31 days the news was "Not Directly Related to the Four Deals At Issue" (Finnerty Rebuttal Declaration, Exhibit 6).

that these public allegations did not cause any stock price impact. Dr. Finnerty does not dispute this finding.

69. Furthermore, Dr. Finnerty attempts to explain the lack of price impact on eight of the 34 days with public allegations of Goldman conflicts on the grounds that on those days "no incremental factual information regarding the four deals was disclosed."[110] This criticism is puzzling, because Dr. Finnerty fails to identify any "incremental factual information regarding the four deals" disclosed on two of the alleged corrective disclosure dates (April 30, 2010 and June 10, 2010). On April 30, 2010, for example, the only new information allegedly released to investors was a news report that the DOJ was investigating unspecified "mortgage trading" at Goldman.[111] This news report did not allege anything new about Goldman conflicts of interest, did not allege anything about any specific CDO, and it did not provide any "incremental factual information regarding the four deals." Dr. Finnerty provides no explanation for his inconsistent theory that the earlier eight conflicts allegations had no stock price impact because of an absence of "incremental" information, whereas an

[110] In Exhibit 6 of his Rebuttal Declaration, Dr. Finnerty uses the following variants of this theory on eight days: "No Incremental Factual Information Regarding the Four Deals was Disclosed" or "No Incremental Factual Information Regarding Paulson's Involvement in the Portfolio Selection was Disclosed" or "No Incremental Factual Information Regarding Goldman's Non-disclosure Regarding Paulson's Involvement in the Portfolio Selection was Disclosed" (Finnerty Rebuttal Declaration, Exhibit 6).

[111] "Criminal Probe Looks Into Goldman Trading," *The Wall Street Journal*, April 30, 2010.

absence of "incremental" information on the April 30, 2010 and June 10, 2010 alleged corrective disclosure dates did not similarly result in no stock price impact.

70. Dr. Finnerty also contends that the public reports of Goldman's conflicts of interest on 11 of the 34 days I identified had no price impact because the article "conveyed that Goldman's conduct was legal" or "conveyed that Goldman appropriately managed conflicts of interest."[112] As an initial matter, Dr. Finnerty's theory implicitly recognizes that there were (at least) 23 days during the Class Period with public allegations that Goldman had conflicts that were not "legal" or not "appropriate" and that there was no statistically significant residual stock price movement on these days. Further, Dr. Finnerty does not provide an accurate account of what these 11 reports supposedly "conveyed." For example:

- "Who Needs Wall Street?" *The New York Times Magazine* (March 17, 2010): Dr. Finnerty dismisses this article about Goldman having interests adverse to its clients as "convey[ing] that Goldman appropriately managed conflicts of interest." Far from

[112] In Exhibit 6 of his Rebuttal Declaration, Dr. Finnerty describes this theory on 11 days as follows: "Article Conveyed that Goldman Appropriately Managed Conflicts of Interest" or "Writer Did Not Believe Goldman Did Anything Wrong" or "Market Participants Believed that Goldman Appropriately Managed Conflicts of Interest" or "Article Noted That The Public Did Not Believe Goldman Did Anything Wrong" or "Analysts Believed Goldman Appropriately Managed Conflicts of Interest" or "Article Conveyed That Goldman Did Not Violate Any Laws" or "Article Conveyed that Goldman's Conduct Was Legal" or "Article Conveyed that Some or All of the Products and Practices Were Not Illegal" (Finnerty Rebuttal Declaration, Exhibit 6).

praising Goldman, this article, after recapping testimony that Goldman's CEO gave to the Financial Crisis Inquiry Commission, concluded: "[s]o much for putting the customer first."[113, 114]

- "Goldman Looking at an Own Goal," *Financial Times* (March 4, 2010): Dr. Finnerty asserts this article "convey[s] that Goldman appropriately managed conflicts of interest." In fact, the article notes that one of Goldman's clients was "considering severing ties" with Goldman as the result of a conflict of interest. The article also states that "so-called Chinese Walls" that should prevent or mitigate conflicts are "only as sound as the integrity of the banks that erect them."[115]
- "Betting Against All of Us," *The New York Times* (December 29, 2009): From an editorial describing Goldman's mortgages practices, Dr. Finnerty cites a statement that "[i]t may turn out that some or all of the products and practices were not illegal . . . . " That "some" "products and practices" "may turn out" to be

[113] Finnerty Rebuttal Declaration, Exhibit 6; "Who Needs Wall Street?" *The New York Times Magazine*, March 17, 2010.

[114] In Exhibit 6 of his Rebuttal Declaration, Dr. Finnerty claims that I "omitted" a quote from this article about what Goldman "epitomized" "from its founding in 1869 through recent decades" (Finnerty Rebuttal Declaration, Exhibit 6) Dr. Finnerty omits the next sentence: "Wall Street's emphasis began to change in the '90s, as financiers devised new securities—the more incomprehensible, or so it seemed—the better" ("Who Needs Wall Street?" *The New York Times Magazine*, March 21, 2010.)

[115] Finnerty Rebuttal Declaration, Exhibit 6; "Goldman Looking at an Own Goal," *Financial Times*, March 4, 2010.

> "not illegal," as well as the editorial headline, does not suggest a view that the conduct was appropriate.[116]

71. Moreover, Dr. Finnerty does not address the multiple reports on the alleged corrective disclosure days that similarly questioned whether Goldman's conduct was actually illegal or inappropriate in spite of the SEC's enforcement action. For example, the *Washington Post* described the SEC's charges as "flimsy,"[117] while a *Financial Times* article noted that "[t]he SEC is on particularly uncertain ground because it has questioned a transaction involving professional investors, rather than the retail clients it most often protects. Sellers owe far fewer obligations to sophisticated investors under US law."[118]

72. In sum, Dr. Finnerty baselessly and incorrectly dismisses evidence both that market participants were already aware of the alleged "corrective information" prior to the first alleged corrective disclosure date and that such information, when previously released, had no effect on Goldman's stock price. Thus, Dr. Finnerty's analysis is incorrect and misleading as it ignores the evidence demonstrating that the alleged misstatements did not introduce inflation in Goldman's stock price.

---

[116] Finnerty Rebuttal Declaration, Exhibit 6; "Betting Against All of Us," *The New York Times*, December 29, 2009.

[117] "Goldman's Non-Scandal," *Washington Post*, April 20, 2010.

[118] "SEC Engages in High Risk Game," *Financial Times*, April 19, 2010.

2. On Other Days, Prior to the Alleged Corrective Disclosures, Allegations of Conflicts of Interest at Goldman Were Publicly Discussed Without a Statistically Significant Residual Stock Price Movement

73. In addition to the 34 news days identified by my search methodology described above, I was asked by counsel to examine several additional days on which allegations of conflicts of interest at Goldman were discussed in public reports as described in Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification.[119] At the request of counsel, I have reviewed two additional news articles—published on November 11, 2008 and November 19, 2009—and examined Goldman's residual stock price movements on those dates.[120] Based on my regression model, I found that Goldman's residual stock price movement on these two dates was not statistically significant.[121] Thus, this finding

[119] Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification, *In re Goldman Sachs Group, Inc. Securities Litigation*, filed April 6, 2015, pp. 13–14.

[120] Declaration of Jessica P. Stokes, filed April 6, 2015, Exhibits 1 and 2: "Firm Urged Hedge Against State Bonds It Helped Sell," *Los Angeles Times*, November 11, 2008; "GS a Short? And Five Reasons We Hate Goldman Sachs," *MarketWatch,* November 19, 2009. My search methodology relies on the *Factiva* database's major business publications and newswires, which does not include publications by the *Los Angeles Times or MarketWatch*.

[121] According to Dr. Finnerty's model, on November 11, 2008, Goldman's residual stock price movement was 7.25 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on November 11, 2008, Goldman's residual stock price movement was 7.17 percent

further supports my conclusion that allegations of conflicts of interest at Goldman were disseminated months prior to the first alleged corrective disclosure date, and when these allegations were publicly discussed, they did not affect Goldman's stock price.

74. For example, a *Los Angeles Time*s article, published on November 11, 2008, reported that Goldman acted against the interests of a client by urging investors to bet against municipal bonds issued by the State of California, despite having been paid millions of dollars in fees by the State to help structure those bonds. Specifically, the article notes:

> Some experts said the investment bank's actions, while not illegal, might be inappropriate. "That's not a good way to do business," said Geoffrey M. Heal, professor of public policy and business responsibility at Columbia University. "They've got a conflict of interest and they're acting against the interests of their customers . . . . You act in the interests of your clients. You don't screw them, to put it bluntly."[122]

75. In addition, a *MarketWatch* article published on November 19, 2009 reported allegations that Goldman was packaging and marketing derivative securities to

---

and was not statistically significant (Finnerty Report, Exhibit 9). According to Dr. Finnerty's model, on November 19, 2009, Goldman's residual stock price movement was -0.28 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on November 19, 2009, Goldman's residual stock price movement was -0.31 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[122] "Firm Urged Hedge Against State Bonds It Helped Sell," *Los Angeles Times*, November 11, 2008.

investors while simultaneously betting against those same products. Specifically, the article states:

> Goldman was packaging and selling toxic derivatives for hundreds of billions of dollars to investors around the world, telling those investors that such derivatives were safe and smart bets. At the same time, Goldman was out at the AIG casino not just hedging their own exposure to the derivatives while they were packaging them, but Goldman was actually betting against those very products. They were literally selling products that they were so confident would fail that they bet tens of billions of their own money at AIG against those products they were telling investors were safe. We want some perpwalks for this obvious fraud.[123]

76. Moreover, the *MarketWatch* article, as with others cited above, directly contradicts Dr. Finnerty's unsupported assertion that the information released to the market prior to the first alleged corrective disclosure on April 16, 2010 pertained only to whether "Goldman may or did not have conflicts of interest" and not to whether Goldman had committed "fraudulent conduct."[124] In fact, the allegation that Goldman misled its CDO investors about potential conflicts of interest, and that this potentially could be construed as fraudulent, was explicitly discussed in public reports as early as 2009.

---

[123] "GS a Short? And Five Reasons We Hate Goldman Sachs," *MarketWatch,* November 19, 2009.

[124] Finnerty Report, ¶73.

3. Dr. Finnerty Fails to Link the Information Released on the Alleged Corrective Dates to the Alleged Misstatements

77. As an initial matter, it is critical to directly link the alleged corrective disclosures to the alleged misstatements, that is, to specify what Goldman allegedly should have disclosed on the alleged misstatement dates and to show that the subsequent revelation of that information specifically caused a loss to Goldman's equity investors. Dr. Finnerty fully attributes the decline in Goldman's stock price that followed news of regulatory actions and investigations concerning CDOs to the correction of the general alleged misstatements. This approach is predicated on the assumptions that (a) Goldman's general statements about firm-wide business principles and management of conflict of interests are value-relevant for investors in a large business organization, and (b) that the news of government enforcement actions or investigations concerning a handful of CDO transactions is economically equivalent to a revelation that the statements were false on a firm-wide basis. Dr. Finnerty contends that "the regulatory enforcement action by the SEC would not have been brought if there had been no evidence of fraudulent conduct with respect to the Abacus 2007-AC1 CDO transaction, which revealed that Goldman had made alleged false and misleading statements and omissions during the Class Period."[125] Even putting aside Dr. Finnerty's questionable presumption that the SEC's filing a legal complaint is tantamount to proof of facts, Dr. Finnerty incorrectly assumes that

---

[125] Finnerty Report, ¶93.

revelations about alleged conflicts of interest in February and June 2007 would have allowed an investor to anticipate the regulatory enforcement actions and investigations announced or rumored in April and June 2010, and their effects on Goldman's stock price. Dr. Finnerty provides no justification for this assumption.

78. Dr. Finnerty's assumption that investors would predict with 100 percent certainty that an SEC enforcement action would occur, and that investors' expectations as to the specifics of that enforcement action would exactly mimic the actual SEC enforcement action that was ultimately announced on April 16, 2010, is contradicted by the evidence in this matter. Specifically, as I discussed in Section V.B.1, when information about alleged conflicts of interest in Goldman's CDO business—including information that it allegedly misled its CDO investors—entered the marketplace on numerous dates prior to the first alleged corrective disclosure date, Goldman's residual stock price movements were not statistically significant. Consistent with my finding that Goldman's stock price did not react when the alleged conflicts of interest were publicly discussed prior to April 16, 2010, Dr. Stephen Choi concludes in his declaration that the SEC enforcement action against Goldman was not inevitable, and indeed was not reasonably foreseeable.[126] In addition, it had several extraordinary characteristics showing an unusually aggressive stance by the SEC which in turn affected Goldman's stock price.[127]

---

[126] Choi Declaration, ¶19.

[127] Choi Declaration, ¶¶39–40.

79. As I show in the remainder of this section, an analysis of the alleged corrective disclosure dates, including the critical distinction between new misstatement-related and non-misstatement-related information, demonstrates that Dr. Finnerty's loss causation analysis fails to establish that Goldman's stock price was inflated due to the alleged misstatements and that Goldman's equity investors experienced losses directly tied to the correction of those alleged misstatements.

4. Dr. Finnerty's Analysis of the Alleged Corrective Disclosure Days Does Not Establish Loss Causation

80. I analyzed the information released on each of the four alleged corrective disclosure dates and examined Goldman's stock price movement on each of these dates. Using my event study, I determined whether Goldman's residual stock price movement was statistically significant and analyzed the new information that was released on each of these dates and whether it related to Goldman's Conflict Management Statements and/or Business Principles Statements. Based on my analysis, I found that on the four alleged corrective disclosure dates, there is no evidence that a corrective disclosure of the Conflict Management Statements and/or Business Principles Statements removed inflation from Goldman's stock price—i.e., that there is no evidence of loss causation. Importantly, this conclusion is also supported by my finding (detailed in Section V.B.1 above) that the release of information similar to the alleged corrective disclosures—prior to the first alleged corrective

disclosure—did not cause a statistically significant residual stock price decline.[128]

81. On April 26, 2010, my analysis (as well as that of Dr. Finnerty) shows that Goldman's residual stock price movement was not statistically significant.[129] Although Goldman's residual stock prices on April 16, 2010, April 30, 2010, and June 10, 2010 were negative and statistically significant, I found that Goldman's stock price was adversely affected by news other than alleged corrections of the Conflict Management Statements or Business Principles Statements.[130] Dr. Finnerty fails to isolate and measure the impact, if any, of corrections of the alleged misstatements (rather than this confounding information) on Goldman's stock price. With regard to April 30, 2010 and June 10, 2010 in particular, Dr. Finnerty fails to identify any new information released on those days that corrected the alleged misstatements or omissions he highlights in paragraphs 44–45 of the Finnerty Report. Rather, Dr. Finnerty merely points to allegations of misconduct that had been known for days and sometimes months prior, and to the announcement of purported investigations which contained no specific information about Goldman's

[128] I note that in a different matter, Dr. Finnerty similarly concluded that an announcement of a "change in accounting" was "not significant and was unlikely to impact [Jennifer Convertibles'] share price" based in part on his conclusion that "the issues behind this accounting change had previously been revealed with no effect on the Company's share price" (Finnerty Deposition Exhibit 4, "Draft Expert Report of John D. Finnerty, Ph.D.," *In Re Jennifer Convertibles Securities Litigation*, filed June 3, 2002, ¶¶11, 29–30).

[129] Finnerty Report, ¶102.

[130] Gompers Declaration, ¶¶12, 62–73, 78–95.

alleged misconduct and therefore cannot be linked to the alleged misstatements and omissions as outlined by Dr. Finnerty. Thus, Dr. Finnerty both fails to establish that Goldman's stock price was inflated during the Class Period and fails to establish loss causation. I will discuss each date in chronological order.

a) April 16, 2010

82. According to Dr. Finnerty:

> [An] SEC Complaint filed on April 16, 2010 revealed that Goldman had been engaged in fraudulent conduct in connection with the Abacus 2007-AC1 CDO transaction, had not adequately disclosed Paulson's involvement in the portfolio selection process, and intentionally misled ACA with respect to the Abacus 2007-AC1 CDO transaction.[131]

83. Goldman's stock price decreased from a closing price of $184.27 on April 15, 2010 to a closing price of $160.70 on April 16, 2010, a decrease of 12.79 percent.[132] After controlling for market and industry movements, Goldman's residual stock price movement was -9.94 percent and was statistically significant.[133]

---

[131] Finnerty Report, ¶76.

[132] Finnerty Report, ¶77.

[133] According to Dr. Finnerty's model, Goldman's residual stock price movement was -9.27 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -9.30 percent and was statistically significant (Finnerty Report, Exhibit 9).

84. On April 16, 2010, the SEC charged Goldman with fraud.[134] The charges included information about Mr. Paulson's role in the transaction, such as that "[o]n January 8, 2007, [Goldman employee Fabrice] Tourre attended a meeting with representatives from Paulson and ACA at Paulson's offices in New York City to discuss the proposed transaction."[135] In addition, the SEC alleged that:

> [Goldman's] marketing materials for ABACUS 2007-AC1 were false and misleading because they represented that ACA selected the reference portfolio while omitting any mention that Paulson, a party with economic interests adverse to CDO investors, played a significant role in the selection of the reference portfolio.[136]

85. The SEC enforcement action itself directly affected Goldman's stock price, caused reputational damage, signaled potential further government actions against Goldman, and caused analysts to downgrade Goldman stock or increase their risk ratings. Market commentary on this date, described below, is consistent with my event study discussed in Section V.B.1, which showed that there was no impact on Goldman's stock price when similar allegations of Goldman's Business Conflicts and/or Mortgage/CDO Conflicts were made in the marketplace.[137]

---

[134] Complaint, *Securities and Exchange Commission v. Goldman Sachs & Co. and Fabrice Tourre*, 10 Civ. 3229 (BJ) (S.D.N.Y.), filed April 16, 2010 ("SEC Complaint").

[135] SEC Complaint, ¶26.

[136] SEC Complaint, ¶36.

[137] Market commentary on this date also discussed other new information unrelated to Plaintiffs' allegations, including news

86. I reviewed public press and analyst reports surrounding the events of April 16, 2010 and found that market participants attributed Goldman's stock price decline to the SEC's announcement of its enforcement action. For example:

- On April 16, 2010, *Dow Jones News Service* reported, "[t]he SEC's civil lawsuit is one of the biggest moves by authorities in response to the financial crisis of 2007-08, and it sent Goldman shares sharply lower. The firm's shares were down about 11% recently."[138]
- A Deutsche Bank analyst noted on that day that "[Deutsche Bank] expect[s] the SEC charges today against [Goldman], possible follow-on, and financial regulatory reform to weigh on the stock and sector in the near term; however, we think the loss of ~$13B in market cap. . .is an over-reaction."[139]

87. Notably, some market participants were more concerned by the SEC's enforcement action than by

---

about Goldman's investments and business. The *Financial Times* reported that Goldman's international real estate fund, Whitehall Street International, had dropped to $30 million in value from an initial $1.8 billion, citing an annual report that was sent by the fund to investors during the previous month ("Goldman Real Estate Fund Down to $30m," *Financial Times*, April 15, 2010). The *Financial Times* also reported that Goldman was hired by Demand Media Inc. to explore a 2010 IPO estimated at $1.5 billion ("Demand Media Enlists Goldman for IPO," *Financial Times*, April 16, 2010).

[138] "4th Update: SEC Charges Goldman Sachs with Defrauding Investors," *Dow Jones News Service*, April 16, 2010.

[139] "SEC Charges GS," Deutsche Bank, April 16, 2010.

Goldman's alleged conduct. For example, an analyst at Oppenheimer stated:

> In our view, the violations alleged in this complaint would normally have been viewed as relatively minor as the counterparties were large, sophisticated institutional parties on both sides of the transaction that had plenty of resources to do due diligence on the instrument that they were buying. Moreover, we suspect that the fact pattern alleged in the complaint was probably widespread in the industry.[140]

88. Similarly, on April 20, the same analyst reiterated that "[i]t is not so much the facts in the complaint that trouble us, [rather] it is the fact that the SEC seems to be pursuing such a limited and marginal case in a sensational and public manner."[141] A Deutsche Bank analyst noted that "given the details of the charge, the institutional nature of the clients, and the challenges of disclosing client information to another client, the findings are rather inconclusive."[142] Additionally, the *Washington Post* also described the SEC's charges as "flimsy,"[143] and an Argus analyst reported that while "most legal experts agree that the SEC's civil fraud case against Goldman is far [from]

---

[140] "SEC Singles Out GS for Fraud ChargeStepping to Sidelines," Oppenheimer, April 16, 2010.

[141] "1Q Review: Life Is Not Fair," Oppenheimer, April 20, 2010. The analyst also characterized "the facts of the SEC complaint as fairly weak and limited" and listed seven reasons why "the complaint seems marginal."

[142] "Solid Quarter Overshadowed by Recent SEC Allegations," Deutsche Bank, April 20, 2010.

[143] "Goldman's Non-Scandal," *Washington Post*, April 20, 2010.

being a slam dunk," the "publicity is clearly embarrassing for Goldman Sachs."[144]

89. As discussed by Dr. Choi in his declaration, the SEC enforcement action against Goldman had several extraordinary characteristics showing an unusually aggressive stance by the SEC which could be expected to affect Goldman's stock price irrespective of the underlying allegations, specifically (a) the SEC did not announce a settlement on the same day the charges were filed; (b) the charges included violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and Section 17(a)(1) of the Securities Act of 1933 ("scienter charges"); and (c) an individual, Fabrice Tourre, was charged along with Goldman.[145] Moreover, the SEC action was unusual because it took place in a tumultuous economic and political environment where there was considerable uncertainty about future regulation and legislation.[146] Dr. Finnerty testified at his deposition that characteristics of the announcement of a regulatory action, such as whether the action is settled at the same time it is announced, can cause different stock price impacts even when the underlying factual allegations are the same.[147]

90. Following the SEC charges against Goldman, market participants commented that there would be increased governmental scrutiny aimed at Goldman specifically. For example:

---

[144] "Analyst's Notes," Argus, April 20, 2010.

[145] Choi Declaration, ¶¶35, 39–40.

[146] Choi Declaration, ¶49.

[147] Finnerty Deposition, 146:24–148:13.

- On April 16, 2010, a Barclays analyst stated, "[t]argeting [Goldman Sachs], given the flurry of anti-Wall Street press that has centered around that firm offers the publicity that the administration needs at this critical juncture."[148]
- On April 19, 2010, a Wells Fargo analyst reported that the SEC action "could embolden other regulators (and investors) to seek legal action against" Goldman. The analyst "expect[ed] [that] lawmakers will use the allegations against [Goldman] as a means to push regulatory reform."[149]
- On April 20, 2010, an Oppenheimer analyst noted that "[i]t is not so much the facts in the complaint that trouble us, it is the fact that the SEC seems to be pursuing a limited and marginal case in a sensational and public manner. No matter how strong the company's financial performance, it is hard to see how the stock outperforms when one of its primary regulators seems intent on this course of action."[150]
- On April 20, 2010, a Credit Suisse analyst wrote, "[w]e acknowledge [that] near-term headline risk remains high and regulatory overhang could keep a cloud over Goldman Sachs and brokerage sector valuations. There's no doubt regulatory/litigation risk now

---

[148] "Administration Steps Up Support for Bill," Barclays Capital, April 16, 2010.

[149] "GS: Reputational Risks Increased, But Valuation Still Attractive," Wells Fargo, April 19, 2010.

[150] "1Q Review: Life Is Not Fair," Oppenheimer, April 20, 2010.

represents a greater risk to our constructive thesis [on Goldman shares]."[151]

- On April 21, 2010, a Societe Generale analyst discussed the political nature of the charges against Goldman and noted that the "current attacks are politically driven in our view ([Goldman] was not the most active player in MBS and synthetic CDO issuance), headlines and legal risk could result in volatility affecting its stock price in the near term."[152]

91. Following the SEC charges, market participants also noted that Goldman could suffer a negative reputational effect due to the stigma associated with being the subject of an SEC enforcement action but did not ascribe the reputational effects to the Conflict Management Statements and/or Business Principles Statements. Equity analysts also downgraded Goldman's stock or changed their risk ratings following the SEC charges. For example:

- On April 16, 2010, an Oppenheimer analyst downgraded Goldman to "perform" from "outperform," noting that "[a]t the moment, it looks as if the SEC is pursuing an agenda aimed specifically at Goldman."[153]

- Also, on April 16, 2010, a Citigroup analyst revised his rating for Goldman to "buy/high

[151] "Strong Fundamentals–No New News on SEC Charge," Credit Suisse, April 20, 2010.

[152] "Blow-Out Quarter Overshadowed by SEC Complaint," Societe Generale, April 21, 2010.

[153] "SEC Singles Out GS for Fraud Charge–Stepping to Sidelines," Oppenheimer, April 16, 2010.

risk" from "buy/medium risk," noting that "these issues will take a while to resolve and will add more headline risk to the story" and that he views "[r]eputation risk [as the] biggest issue."[154]

92. Lastly, I reviewed market commentary surrounding this date and found that none of the commentary attributed Goldman's stock price movement to a revelation that Goldman's Conflict Management Statements or Business Principles Statements were false. Indeed, I did not find any mention of Goldman's Conflict Management Statements or Business Principles Statements at all, in any of the analyst reports around April 16, 2010.

93. As I previously discussed, in conducting my event study I applied an objective and replicable methodology. In the case of public press surrounding the alleged corrective disclosure dates, I searched analyst reports and *Factiva*'s major business publications on the trading day prior to and three trading days after the alleged corrective disclosure day. In the Finnerty Rebuttal Declaration, Dr. Finnerty points to three news articles and incorrectly contends that these articles "showed that the revelation that Goldman had engaged in conflicts of interest and violated is business practices in connection with Abacus . . . had an impact on Goldman's stock price."[155] However, Dr. Finnerty's ad hoc identification of three news articles does not refute my finding (based on a far broader review of more than

154 "Initial Thoughts on SEC Civil Lawsuit," Citigroup, April 16, 2010.

155 Finnerty Rebuttal Declaration, ¶181. Dr. Finnerty does not refer to these articles in the Finnerty Report.

2,000 press articles and 40 analyst reports) that market commentary did not attribute any of the stock price declines at issue to a revelation that Goldman's Conflicts Management or Business Principles Statements were false. In any event, Dr. Finnerty mischaracterizes these articles as supporting his assertion that Goldman's residual stock price decline on April 16, 2010 was caused by a correction of the alleged misstatements:

- *The Wall Street Journal* article dated April 17, 2010 merely mentions the word "conflicts," but does not reference the Conflict Management or Business Principles Statements, let alone attribute any stock price decline to their alleged falsity.[156] Consistent with Dr. Choi's explanation for Goldman's stock price movement, the article states that the lawsuit "represent[s] the government's strongest attack yet on . . . [pre-crisis] Wall Street deal making," that Goldman had "emerged as a lightning-rod," and that "[t]he SEC lawsuit likely strengthens the position of President Obama as he tries to push financial-overhaul legislation through Congress."
- The April 18, 2010 *Associated Press* news article describes Goldman's Business Principles in the context of discussing the potential impact of the SEC enforcement

[156] Finnerty Rebuttal Declaration, ¶181; "U.S. Charges Goldman Sachs with Fraud—SEC Alleges Firm Misled Investors on Securities Linked to Subprime Mortgages; Firm Vows to Fight the Charges," *The Wall Street Journal,* April 17, 2010. I note that Dr. Finnerty appears to cite a different version of this article.

action on Goldman's image.[157] Dr. Finnerty provides no explanation for why this is the only article he has located that mentions the Business Principles Statements or why he has not located any articles that mention the Conflict Management Statements. The article does not attribute any stock price decline to those statements. In fact, the article described other recent "mishaps" that had affected Goldman's "image" and characterized the statement "[o]ur clients' interests always come first" as "a sales pitch that few Wall Street firms always live up to."

- *The Wall Street Journal* column on April 21, 2010, while mentioning reputational harm, does not attribute any stock price decline to any of the statements at issue having been rendered false.[158] The article states that the "SEC faces a tough task in proving" its allegations and, consistent with Dr. Choi's findings, that "[g]iven the public anger at Wall Street, and the criticism of the SEC's failure to regulate more effectively before the financial crisis struck, it's worth considering that Goldman makes an enticing political target, regardless of the merits of the suit."

94. In sum, Goldman's stock price was adversely affected by news other than alleged corrections of the Conflict Management Statements or Business Principles Statements. My conclusion is based on the

---

[157] "Fraud Charge Deals Big Blow to Goldman Sachs' Image," *Associated Press,* April 18, 2010.

[158] "Where's the Goldman That I Used to Know?" *The Wall Street Journal*, April 21, 2010.

totality of my analysis, including my event study analysis explained above and my finding that the release of information mirroring the alleged corrective disclosures earlier in the Class Period did not cause a negative residual stock price movement. Because Dr. Finnerty does not attempt to disentangle the impact of this confounding negative news on April 16, 2010, Dr. Finnerty fails to establish that the alleged corrective disclosure caused a negative reaction in Goldman's stock price and thus fails to establish (a) that Goldman's stock price was inflated during the Class Period, and (b) loss causation.

b) April 26, 2010

95. Dr. Finnerty states that "[o]n Saturday, April 24, 2010, the Senate Subcommittee on Investigations announced the release of four emails, which indicated that Goldman made money betting against the CDOs it had sold to its clients."[159]

96. Goldman's stock price decreased from a closing price of $157.40 on April 23, 2010 to a closing price of $152.03 on April 26, 2010, a decrease of 3.41 percent. After controlling for market and industry movements, Goldman's residual stock price movement was not statistically significant.[160] Dr. Finnerty finds a similar

---

[159] Finnerty Report, ¶95.

[160] Dr. Finnerty also notes that this residual stock price movement is statistically significant only at the 38 percent level and not the 5 percent level (Finnerty Declaration, ¶¶66–67). According to Dr. Finnerty's model, Goldman's residual stock price movement was -1.68 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -1.96 percent and was not statistically significant (Finnerty Report, Exhibit 9).

result and therefore excludes the residual stock price movement on this day from his damages analysis.[161]

97. Dr. Finnerty does not mention that on Sunday, April 25, 2010, elected representatives and government officials publicly voiced their concerns over Goldman's internal e-mails released the previous day, arguing that the e-mails revealed that Goldman's conflicts of interest allowed it to make significant profits to the detriment of its clients. Plaintiffs also state that the April 26, 2010 disclosures provide "new material information"[162] relating to Goldman's "fraudulent conduct"[163] that "further detail[ed] that Goldman made billions by betting against the CDOs it sold to its clients."[164] Plaintiffs similarly stated in their Opposition to Defendants' Motion to Dismiss that on this day "new fraud-related material information that further revealed previously concealed risks. . .caused Company-specific stock declines."[165]

98. Further, *The Wall Street Journal* reported that e-mails were discussed by a panel of commentators on ABC's April 25, 2010 "This Week" program.[166]

- "'The CEO of Goldman is not going to win any popularity contests when, over a period that

[161] Finnerty Report, ¶107.

[162] Complaint, ¶333.

[163] Complaint, ¶317.

[164] Complaint, ¶316.

[165] Lead Plaintiffs' Opposition to Defendants' Motion to Dismiss the Consolidated Complaint, *In re Goldman Sachs Group, Inc. Securities Litigation*, filed November 14, 2011, p. 29.

[166] "White House Official: Goldman CEO 'Not Going to Win Any Popularity Contests,'" *The Wall Street Journal,* April 25, 2010.

ordinary Americans' pensions, houses et cetera were collapsing in value, they were actually making significant money off of it,' Austin Goolsbee, a member of the White House's Council of Economic Advisors, said on the ABC News Program 'This Week' on Sunday."

- "'These emails signify that there are all kinds of conflicts of interest on Wall Street,' said Sherrod Brown, an Ohio Democrat, on 'This Week.'"

99. Thus, according to Plaintiffs, there was important new information concerning Goldman's alleged CDO conflicts of interest released on this day. In fact, this information contrasts with the corrective information allegedly released on April 30, 2010, which had reported a purported DOJ investigation and no new information regarding alleged CDO conflicts. Yet after controlling for market and industry movements, both Dr. Finnerty and I determined that Goldman's residual stock price movement on the associated trading day of April 26, 2010 was not statistically significant.[167] Absent a statistically significant residual stock price movement, one cannot conclude that the new information had any impact on Goldman's stock price. Dr. Finnerty offers no coherent explanation for the lack of a statistically significant residual stock price movement on this date. Dr. Finnerty has previously argued, without providing any support, that the expectation of additional litigation stemming from the SEC's April 16, 2010 enforcement action and some public discussion of the "profitability of the CDO transactions to Goldman,"

---

[167] Finnerty Deposition, 194:14–24; Finnerty Report, ¶11, Exhibit 3.

could have "muted" the market's reaction.[168] Now Dr. Finnerty claims that the market response could have been "muted"[169] by Goldman's public statements about its conduct and the fact that Goldman executives would be testifying in Congress the next day.[170] In any event, Dr. Finnerty provides no support for any of these assertions and in fact, as discussed in Section V.B.1, Dr. Finnerty's "denials" theory is inconsistently applied and lacks any methodological basis. The obvious conclusion is that there was no stock price movement because the market did not pay attention to the alleged misstatements. This is entirely consistent with my finding that there likewise was no price impact on the 34 earlier dates during the Class Period in response to other reports of Goldman conflicts.

100. It is also telling that, on the two subsequent corrective disclosure dates identified by Plaintiffs (April 30, 2010 and June 10, 2010), there were statistically significant residual stock price declines even though, as I discuss in detail below, no new information about Goldman's alleged conflicts of interest was released on either of these dates. Instead, what these two dates have in common is that they both included prominent media reports about potential governmental investigations of Goldman. For instance, Dr. Finnerty notes that on April 30, 2010, "the *Wall Street Journal* reported that US federal prosecutors had opened a criminal investigation into whether Goldman or its employees had committed securities fraud in connection with its mortgage

---

[168] Finnerty Declaration, ¶66.

[169] Finnerty Report, ¶107.

[170] Finnerty Report, ¶103.

trading."[171] Neither Dr. Finnerty nor the article provides any information regarding the substance of the investigation or any allegations being pursued indeed, the article does not mention any specific CDO, no less the four at issue here.[172] Similarly, for June 10, 2010, Dr. Finnerty points to reports of an SEC investigation into the Hudson CDO, but he does not contend that the reports contained any new allegations of Goldman conflicts.[173] Thus, in contrast to April 26—on which there were *new allegations of* Goldman CDO conflicts, *no news of* government enforcement actions, and *no statistically significant residual stock price movement* —April 30 and June 10 had *news of* governmental actions and investigations, *no new reports of* Goldman CDO conflicts, and *statistically significant residual stock price declines*. This finding further corroborates that Goldman's stock declines on those days were a result of news of government enforcement activities, not new allegations of Goldman CDO conflicts.

101. In sum, not only has Dr. Finnerty failed to show that any correction of the alleged misstatements caused economic losses to investors on this date, the lack of a statistically significant residual price movement on the only alleged corrective disclosure date without confounding news of a governmental enforcement action or investigation provides further evidence that the residual stock price declines on the

---

[171] Finnerty Declaration, ¶69.

[172] *See* Gompers Declaration, ¶80.

[173] *See* Finnerty Declaration, ¶77. Although Dr. Finnerty points to e-mails released days earlier, if Dr. Finnerty is correct that the market for Goldman Sachs stock was efficient, any information in those emails would have affected prices days before June 10.

other alleged corrective disclosure dates were not a result of corrections of the alleged misstatements, and, therefore, Dr. Finnerty has no basis to conclude that the alleged misstatements introduced inflation into Goldman's stock price.

c) April 30, 2010

102. According to Dr. Finnerty, "[o]n Thursday, April 29, 2010 after the market closed, *The Wall Street Journal* reported that the Department of Justice (DOJ) had opened a criminal investigation into whether Goldman or its employees had committed securities fraud in connection with Goldman's mortgage trading."[174]

103. Goldman's stock price decreased from a closing price of $160.24 on April 29, 2010 to a closing price of $145.20 on April 30, 2010, a decrease of 9.39 percent. After controlling for market and industry movements, Goldman's residual stock price movement was -8.00 percent and was statistically significant.[175]

104. The information provided in *The Wall Street Journal* article did not include any details about the purported DOJ investigation. The article states that "[t]he investigation is centered on different evidence than the SEC's civil case"[176] but contains no

---

[174] Finnerty Report, ¶108.

[175] According to Dr. Finnerty's model, Goldman's residual stock price movement was -7.75 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -7.65 percent and was statistically significant (Finnerty Report, Exhibit 9).

[176] "Criminal Probe Looks into Goldman Trading," *The Wall Street Journal*, April 30, 2010.

information regarding specific allegations that the DOJ was purportedly pursuing. The article notes that "[i]t couldn't be determined which Goldman deals are being scrutinized in the criminal investigation,"[177] and does not specifically discuss the Conflict Management Statements or Business Principles Statements. Moreover, even Dr. Finnerty points only to general statements associated with the purported DOJ investigation. Dr. Finnerty states in his report that Goldman "failed to disclose that the Company, in fact, had conflicts of interest with its clients in connection with the synthetic CDOs Goldman structured and sold, e.g., Abacus 2007-AC1, Hudson 2006-1, Anderson 2007-1, and Timberwolf 1 CDOs."[178] Dr. Finnerty fails to provide any evidence of specific news items correcting these alleged misstatements. As discussed above, the allegation that Goldman failed to disclose conflicts of interests to its CDO investors—the very information that Dr. Finnerty claims Goldman should have disclosed—was widely discussed as early as December 2009, without impacting Goldman's stock price.

---

[177] "Criminal Probe Looks Into Goldman Trading," *The Wall Street Journal*, April 30, 2010.

[178] Finnerty Report, ¶44. In addition, without specifying whether Goldman should have disclosed such information, Dr. Finnerty adds that "Goldman allegedly structured and sold to clients these synthetic CDOs, which were structured to fail, while the Company took short positions on these CDOs, without disclosing its short positions to Goldman's clients. Moreover, by engaging in the Abacus 2007-AC1 transaction in particular, Goldman allegedly created conflicts of interest by allowing one client, Paulson, to benefit at the expense of other clients and issued misleading marketing and offering materials to other clients" (Finnerty Report, ¶45).

105. Interestingly, Dr. Finnerty analyzes news items that were discussed a few trading days prior to the alleged corrective disclosure of April 30, 2010, but does not provide an economically plausible explanation why stale news (i.e., old news) would affect Goldman's stock price on April 30, 2010. Dr. Finnerty states that "as part of [his] review of the Disclosure Date of April 30, 2010, the first trading date after the disclosure of the DOJ investigation, [he] also reviewed the information that was released into the market on April 27, 2010."[179] According to Dr. Finnerty, on April 27, 2010, a Senate hearing was held in which "Goldman employees were questioned regarding its fraudulent conduct in connection with certain CDOs that Goldman structured and sold."[180] Dr. Finnerty specifically notes that "[i]n highlighting Goldman's fraudulent conduct, Senators referenced the Abacus 2007-AC1, Hudson 2006-1, Timberwolf 1, and Anderson 2007-1 CDO transactions."[181]

106. It is unclear why Dr. Finnerty believes that stale news released on April 27, 2010 would affect Goldman's stock price on April 30, 2010, three trading days later. Dr. Finnerty has previously claimed that Goldman's stock traded in an efficient market during the Class Period.[182] In an efficient market, new information is quickly incorporated into prices.[183] Therefore, any news about Goldman's conduct

---

[179] Finnerty Report, ¶108.

[180] Finnerty Report, ¶108.

[181] Finnerty Report, ¶110.

[182] Finnerty Declaration, ¶11.

[183] Fama, E. F. (1970), "Efficient Capital Markets: A Review of Theory and Empirical Work," *The Journal of Finance,* 25(2), 383–417 at p. 383.

released on April 27, 2010 should have been reflected in Goldman's stock price by the close of that trading day. I note that Dr. Finnerty does not find a statistically significant negative residual stock price movement on April 27, 2010 (in fact, he finds a positive residual stock price movement).[184] Therefore, Dr. Finnerty's own analysis supports my finding that when information about Goldman's alleged misconduct was revealed to the marketplace, absent confounding information of governmental enforcement actions or investigations, it did not affect Goldman's stock price and thus it did not cause any economic losses to Goldman's investors.

107. Market participants attributed Goldman's stock price decline on this day to (and analysts downgraded Goldman's stock based on) the purported DOJ investigation, increased governmental scrutiny against Goldman, and reputational harm—not to any disclosure of the purported falsity of Goldman's Conflict Management Statements and/or Business Principles Statements. Indeed, I did not find any mention of Goldman's Conflict Management Statements and/or Business Principles Statements in my review of the analyst reports on April 30, 2010.

108. I reviewed public press and analyst reports surrounding *The Wall Street Journal* article on April 29, 2010 and found that market participants attributed Goldman's stock price decline to the risks of the purported DOJ investigation. For example:

- *Dow Jones News Service* reported that "[Goldman's] shares continue to decline premarket. . .after yesterday's news broke that

---

[184] Finnerty Report, Exhibit 3.

federal prosecutors are investigating, and looking at criminal charges stemming from the SEC's civil fraud case."[185]

- *Reuters News* also reported that "Goldman shares fell 9.4 percent on Friday after news of a criminal examination surfaced, and after two analysts downgraded the stock."[186]

109. Market commentary indicates that the purported DOJ investigation indicated increased governmental scrutiny toward Goldman. For example:

- A Buckingham Research analyst reported, "[a]s a lightning rod for the industry, [Goldman] is facing significant political pressure. . . . [O]n top of the SEC's civil fraud case, there are now reports of the US Attorney's office beginning a criminal inquiry into [Goldman's] activities and, separately, 61 Congressmen wrote a letter requesting the DOJ investigate [Goldman] as well."[187]

- The *Financial Times* quoted a former prosecutor and SEC enforcement attorney who discussed the political nature of these allegations: "'The release of the existence of a preliminary inquiry amid the firestorm is reckless and grossly irresponsible. The only purpose in doing so was to stoke a political flame. . . . There is not one scintilla of evidence

---

[185] "Market Talk: With Another Probe, Goldman Shares Sliding Premkt," *Dow Jones News Service*, April 30, 2010.

[186] "Buffett May Push, or Be Pushed, on Goldman," *Reuters News,* April 30, 2010.

[187] "Downgrade to Neutral; Litigation/Political Risk Too Difficult to Handicap," Buckingham Research, April 30, 2010.

> in the public domain that suggests there was any criminality here.'"[188]

110. In addition, market participants commented that the purported DOJ investigation would cause reputational harm to Goldman. For example:

- Two days after the report, on May 1, 2010, *The Wall Street Journal* reported that Warren Buffett stated, "'[t]here's no question that the allegation alone causes the company to lose reputation.'"[189]
- On May 2, 2010, a Citigroup analyst stated that "[r]eputational risk could damage Goldman's franchise – While we do not believe at this point Goldman's institutional client base has altered their business practices at this point, Goldman's reputation is one of the firm's greatest assets."[190]
- On May 3, 2010, a Wells Fargo analyst stated that "even the threat of criminal charges against [Goldman] could further tarnish the company's reputation and ability to win client business."[191]

111. Following the news of the purported investigation, several analysts downgraded Goldman's stock and/or reduced their price targets based on

---

[188] "Goldman Faces Rising Pressure to Strike Deal," *Financial Times*, April 30, 2010.

[189] "WSJ Update: Buffett Offers Spirited Defense of Goldman," *Dow Jones News Service*, May 1, 2010.

[190] "Reiterate Buy – Risks Are There, But Still See Significant Upside," Citigroup, May 2, 2010.

[191] "GS: Headline Risk Returns But We See A Way Forward-Affirming OP," Wells Fargo, May 3, 2010.

information regarding the purported DOJ investigation and additional governmental scrutiny and regulation—and did not attribute these downgrades to the alleged falsity of Goldman's Conflict Management Statements and/or Business Principles Statements. For example:

- On April 30, 2010, a Buckingham Research analyst downgraded Goldman, stating, "[r]eluctantly, and despite strong fundamentals and an attractive valuation, we are downgrading [Goldman] shares to Neutral from Buy given the significant uncertainty surrounding multiple and continued government probes of [Goldman]'s mortgage trading & underwriting operations."[192]
- On April 30, 2010, a Bank of America Merrill Lynch analyst commented, "[w]e are lowering our rating on [Goldman] to Neutral from Buy and our price objective to $160 from $220. Our downgrade is prompted by news reports filed Thursday evening by the media including the Wall St. Journal indicating that federal prosecutors have opened an investigation of [Goldman] in connection with its trading activities, raising the possibility of criminal charges. . . . Most such probes end inconclusively, with no charges filed."[193]
- On May 1, 2010, *The Wall Street Journal* reported that a Standard & Poor's Equity Research analyst cut his investment

[192] "Downgrade to Neutral; Litigation/Political Risk Too Difficult to Handicap," Buckingham Research, April 30, 2010.

[193] "Cutting to Neutral: Concerns Over Reports of Federal Probe," Bank of America Merrill Lynch, April 30, 2010.

> recommendation on Goldman shares to "Sell" and lowered his price target price by $40 to $140, stating, "'[t]hough traditionally difficult to prove, we think the risk of a formal securities fraud charge, on top of the SEC fraud charge and pending legislation to reshape the financial industry, further muddies Goldman's outlook.'"[194]

112. I reviewed market commentary surrounding *The Wall Street Journal* news article and found that none of the commentary attributed Goldman's stock price movement on this day to Goldman's Conflict Management Statements and/or Business Principles Statements. Indeed, I did not find any mention of Goldman's Conflict Management Statements and/or Business Principles Statements in my review of the analyst reports on April 30, 2010.

113. In addition, my review did not reveal any public discussion of, or new information regarding, Goldman's conduct on this date beyond the purported investigation itself. I have thus seen no information released on this day demonstrating that the alleged misstatements were false or that previously undisclosed information about Goldman's alleged misconduct was revealed.

114. In sum, I find that Goldman's stock price was adversely affected by news other than the alleged corrections of the Conflict Management Statements or Business Principles Statements on April 30, 2010. This conclusion is supported by my event study analysis explained above and my finding that the release of information mirroring the alleged corrective

---

[194] "U.S. Faces High Stakes in Its Probe of Goldman," *The Wall Street Journal*, May 1, 2010.

disclosures earlier in the Class Period did not affect Goldman's stock value. Because Dr. Finnerty fails to provide any evidence of specific news items correcting the alleged misstatements on this date and he does not attempt to disentangle the impact of non-allegation-related news on April 30, 2010, he fails to establish that any corrective disclosure of the alleged misstatements caused a negative reaction for Goldman's stock price and thus fails to establish (a) that Goldman's stock price was inflated during the Class Period, and (b) loss causation.

d) June 10, 2010

115. Dr. Finnerty states that "[o]n Wednesday, June 9, 2010, after the market closed, it was reported that the Hudson 2006-1 CDO, which was sold in 2006, was also the target of a probe by the SEC in addition to the Abacus 2007-AC1 CDO."[195]

116. Goldman's stock price decreased from a closing price of $136.80 on June 9, 2010 to a closing price of $133.77 on June 10, 2010, a decrease of 2.21 percent. After controlling for market and industry movements, Goldman's residual stock price movement was -4.44 percent and was statistically significant.[196]

117. An article in the *Financial Times* states:

> The US Securities and Exchange Commission has stepped up its inquiries into a complex

---

[195] Finnerty Report, ¶138.

[196] According to Dr. Finnerty's model, Goldman's residual stock price movement was -4.52 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -4.64 percent and was statistically significant (Finnerty Report, Exhibit 9).

> mortgage-backed deal by Goldman Sachs that was not part of the civil fraud charges filed against the bank in April, according to people close to the matter. . . . The inquiry into Hudson Mezzanine is part of a wider investigation into the CDO activities of Wall Street banks. People close to the situation said the probe was preliminary and there was no certainty that it would lead to additional actions against Goldman.[197]

118. The article also references discussions of the Hudson CDO from the April 2010 Senate Subcommittee hearing as well as e-mails released in conjunction with the hearing and e-mails previously released by the Senate Subcommittee, but the article does not contain comments from either Goldman or the SEC. Market participants attributed Goldman's stock price decline on this day to the additional SEC investigation and not to Goldman's Conflict Management Statements and/or Business Principles Statements. Indeed, I did not find any mention of Goldman's Conflict Management Statements and/or

[197] "SEC Probes Second Goldman Security," *Financial Times*, June 9, 2010.

Business Principles Statements in my review of the analyst reports on June 10, 2010.[198, 199]

---

[198] In addition, Dr. Finnerty notes that *Bloomberg News* reported that Basis Yield Alpha Fund would sue Goldman in relation to the Timberwolf deal after the market closed on June 9, 2010 (Finnerty Declaration, ¶76); however, this information was not new as it had already been reported by *Bloomberg News* prior to market closing on this date ("Goldman Sued by Hedge Fund Basis Over Timberwolf CDO (Update 1)," *Bloomberg News*, June 9, 2010), and there was not a statistically significant residual price decline on this date. According to Dr. Finnerty's model, Goldman's residual stock price movement on June 9, 2010 was 0.71 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement on June 9, 2010 was 0.49 percent and was not statistically significant (Finnerty Report, Exhibit 9). In fact, *Dow Jones Business News* reported that Goldman's stock price "showed little reaction after the lawsuit was announced" ("2nd Update: Goldman Being Sued by Hedge Fund over Toxic CDOs," *Dow Jones News Service*, June 9, 2010). Also, on June 10, 2010, during the trading day, *Reuters News* reported that Goldman president Mr. Cohn stated that there were "'no indications'" that Goldman was close to settling fraud charges with the SEC ("Update 2-IOSCO-Goldman Has No Indication of SEC Settlement," *Reuters News*, June 10, 2010).

[199] My event study indicates that there was other news released on that day separate from any potential correction of the alleged misstatements, including news about Goldman's investments and an analyst earnings forecast change and downgrade unrelated to the allegations. *Bloomberg News* reported that Goldman and Bank of America were reportedly trying to sell "as much as $5 billion in debt related to the buyout of Hilton Worldwide" ("Bank of America, Goldman Said to Offer $5 Billion Hilton Debt," *Bloomberg News*, June 10, 2010). This news was previously reported on June 4, 2010 ("BofA, Goldman Seek $5B Hilton Debt Sale (Bloomberg)," *Real Estate Finance and Investment*, June 4, 2010). Atlantic Equities reduced EPS estimates and price targets for Goldman based on lower investment banking revenues due to mergers and acquisitions resulting from deteriorating markets and increasing uncertainty

119. Again, Dr. Finnerty points only to general statements associated with the SEC Hudson action. Dr. Finnerty notes that information related to the specific conduct at issue was released prior to June 10, 2010, but then claims that while "private litigation by investors may have been expected, the second SEC probe into a Goldman CDO transaction provided significant new information regarding the severity of Goldman's conduct" and that the SEC probe "implied that the issue might be beyond an 'ethical issue.'"[200] Dr. Finnerty fails to link the alleged misstatements discussed in his report that Goldman "failed to disclose that the Company, in fact, had conflicts of interest with its clients in connection with the synthetic CDOs Goldman structured and sold, e.g., Abacus 2007-AC1, Hudson 2006-1, Anderson 2007-1 and Timberwolf 1 CDOs" [201]and the alleged corrective news on this day. Presumably, Goldman could not predict, let alone know, whether the SEC would choose to "probe" the Hudson CDO. Nor does Dr. Finnerty define exactly what aspect of the "severity" of its conduct Goldman

in Europe as well as the inclusion of the previously announced UK bonus tax ("Estimates Cut on Weak Trading Revenue & UK Bonus Tax," Atlantic Equities, June 10, 2010).

[200] Finnerty Report, ¶¶139–140.

[201] Finnerty Report, ¶44. In addition, without specifying whether Goldman should have disclosed such information, Dr. Finnerty adds that "Goldman allegedly structured and sold to clients these synthetic CDOs, which were structured to fail, while the Company took short positions on these CDOs, without disclosing its short positions to Goldman's clients. Moreover, by engaging in the Abacus 2007-AC1 transaction in particular, Goldman allegedly created conflicts of interest by allowing one client, Paulson, to benefit at the expense of other clients and issued misleading marketing and offering materials to other clients" (Finnerty Report, ¶45).

allegedly should have disclosed. Moreover, as I have already discussed, the allegation that Goldman failed to disclose conflicts of interests to its CDO investors—the very information that Dr. Finnerty claims Goldman should have disclosed—was widely discussed as early as December 2009, without impacting Goldman's stock price. Therefore, Dr. Finnerty fails to provide any evidence of specific news items correcting these alleged misstatements.

120. Moreover, I reviewed public press and analyst reports surrounding the *Financial Times* article and found that market participants attributed Goldman's stock price decline to the rumors surrounding the second SEC investigation. For example:

- On June 10, 2010, *Dow Jones News Service* reported that Goldman shares were "down 3.1% at $132.60, while the [Dow Jones Industrial Average was] up 200. Traders said there are fresh concerns Goldman might be the target of a second SEC probe into toxic CDOs, and that the case isn't close to being settled."[202]
- On June 10, 2010, *Bloomberg News* reported that "Goldman Sachs's stock fell as much as 4 percent today to its lowest in more than a year after a person familiar with the matter said the SEC is looking into the firm's 2006 sale of a CDO called Hudson Mezzanine."[203]

[202] "Market Talk: Goldman Touches 52-Week Low on Legal Worries," *Dow Jones News Service*, June 10, 2010.

[203] "Goldman Sachs's Cohn Sees 'No Indications' of SEC Resolution," *Bloomberg News*, June 10, 2010.

121. Following the release of the *Financial Times* article,[204] market commentary discussed the negative impact of the purported SEC investigation on Goldman's stock. For example:

- *Reuters News* quoted a Fordham University School of Law professor and former federal prosecutor on the additional pressure from this SEC investigation as saying, "'[y]ou put a number of things together and then it becomes harder to defend against all of them.'" The article also stated that "[t]he myriad investigations, coupled with the Timberwolf [private] litigation, could create a tipping point at which Blankfein and other Goldman executives decide they have no choice but to reach some sort of comprehensive settlement, according to legal experts."[205]

- On June 10, 2010, a Wells Fargo analyt report detailed concerns over Goldman given the SEC's investigations: "Near-term challenges for the stock are likely to persist, but are mitigated by three factors. 1) The possibility of an additional SEC investigation into CDO practices at [Goldman] *was* not an unlikely occurrence, in our view, given the SEC's previous comments related to ongoing investigations of CDO practices across the industry. 2) Increased headline risk resulting from the SEC's additional investigation could cause [Goldman] to think more aggressively of

---

[204] "SEC Probes Second Goldman Security," *Financial Times*, June 9, 2010.

[205] "Analysis-Update 1-SEC Presses Goldman to 'Cry Uncle,'" *Reuters News*, June 10, 2010.

> pursuing a settlement with the SEC. 3) As we have noted previously, we believe the SEC could view a high-profile settlement to be in its the [*sic*] best interest as it would eliminate the possibility of an unsuccessful legal case."[206]

122. I also reviewed market commentary surrounding the *Financial Times* article regarding the additional SEC charges into the Hudson CDO on this date and found that none of the commentary attributed Goldman's stock price movement on this day to Goldman's Conflict Management Statements and/or Business Principles Statements purportedly being rendered false.

123. In addition, my review did not reveal any public discussion of, or new information regarding, Goldman's conduct on this date beyond the investigation itself.

124. In sum, I find that Goldman's stock price was adversely affected by news other than alleged corrections of the Conflict Management Statements or Business Principles Statements. This conclusion is supported through my event study analysis explained above and my finding that the release of information mirroring the alleged corrective disclosures earlier in the Class Period did not change the total mix of relevant information regarding Goldman's stock value. Because Dr. Finnerty fails to provide any evidence of specific news items correcting the alleged misstatements on this date and he does not attempt to disentangle the impact of this confounding negative news on June 10, 2010, Dr. Finnerty fails to establish that the alleged corrective disclosure caused a

[206] "GS: Reiterating Outperform Rating Despite Near-Term Volatility," Wells Fargo, June 10, 2010.

negative reaction for Goldman's stock price and thus has failed to establish (a) that Goldman's stock price was inflated during the Class Period, and (b) loss causation.

VI. Dr. Finnerty's Damages Methodology Is Flawed, Unreliable, and It Overstates Damages

125. For all of the reasons set forth above demonstrating that Dr. Finnerty failed to establish loss causation, I conclude that damages are zero in this case. Putting those issues aside, Dr. Finnerty's proposed methodology for measuring damages—which is based entirely on Goldman's stock price declines on the alleged corrective disclosure dates—is flawed, unreliable, and overstates damages. Dr. Finnerty fails to exclude the impact on Goldman's stock price of non-allegation-related information, which cannot form the basis of a damages calculation. In particular, with regard to April 30, 2010 and June 10, 2010, Dr. Finnerty is unable to point to any new information about Goldman's alleged misconduct. Moreover, Dr. Finnerty's "attribution" of damages associated with the alleged correction on April 30, 2010 across three CDOs is completely arbitrary, unscientific, and without basis. Finally, Dr. Finnerty incorrectly assumes that per-share damages "attributed" to each of the four CDOs are a constant dollar amount throughout the Class Period. Dr. Finnerty's assumption of constant damages is flawed in this matter because the Class Period includes the time period of the financial crisis, an event that would have affected the value (if any) attributable to the alleged misstatements. To the extent the alleged misstatements had any value-relevance to investors (which, as I show above, they did not), their impact on

Goldman's stock price would likely have been different prior to the financial crisis as compared to after.

A. Calculating Damages in a Securities Class Action and Dr. Finnerty's Approach

126. It is my understanding that economic damages for an investor in securities class actions are derived from any "inflation" in the company's stock price caused by the alleged fraud. Inflation at any point in time is the difference between the observed stock price and the hypothetical price (referred to as the "but-for" price) that would have prevailed absent the alleged misstatements. An investor's damages due to the alleged fraud are determined by the difference between the inflation in the stock price at the time of purchase and inflation at the time of sale, subject to certain statutory limits. By definition, inflation reflects only the impact of the alleged fraud and, therefore, cannot include the impact of any subsequent materialization of risks.

127. As discussed above, Dr. Finnerty fails to establish loss causation in this matter—that is, Dr. Finnerty has failed to show that during the Class Period Goldman's stock price was inflated as a result of the alleged misstatements. Nevertheless, I have been asked by counsel to assess Dr. Finnerty's methodology for measuring damages assuming that Plaintiffs were able demonstrate loss causation and show Goldman's stock price was inflated due to the alleged misstatements.

128. In order to measure damages and to accurately measure inflation, Dr. Finnerty must (a) specify what information, if any, Goldman could and should have disclosed to the market instead of the alleged misstatements at each point in time during the Class

Period; and (b) determine how the market would have valued that alternative disclosure throughout the Class Period. Critically, the proper "but-for" stock price is not the stock price absent the alleged fraud on Goldman *CDO investors*, as Dr. Finnerty seems to assume, but rather the stock price absent that alleged fraud on Goldman's *equity investors* (i.e., the stock price that would have prevailed throughout the Class Period had Goldman disclosed the information Plaintiffs claim it should have disclosed on each of the alleged misstatement dates).[207]

129. Instead of a detailed analysis of the alleged inflation in Goldman's stock price during the Class Period, Dr. Finnerty proposes a "constant dollar" damages methodology that measures inflation as a constant amount throughout the Class Period, based on Goldman's residual stock price declines on the three of the four alleged corrective disclosure dates. Specifically, Dr. Finnerty estimates Goldman's residual stock price movements on the three alleged corrective disclosure dates and attributes the full declines on those dates to the removal of inflation.[208] Dr. Finnerty also allocates damages across the four CDOs. Specifically, he attributes the entire residual stock price decline on April 16, 2010 to the Abacus

---

[207] Dr. Finnerty's conflation of the two concepts is evident from his statement that "the regulatory enforcement by the SEC would not have been brought if there had been no evidence of fraudulent conduct with respect to the Abacus 2007-AC1 CDO transaction." (Finnerty Report, ¶93).

[208] Note that Goldman's residual stock price movement on April 26, 2010 is not statistically significant under Dr. Finnerty's model nor my own. Goldman's stock price movement on this date is not included in Dr. Finnerty's calculation of inflation.

CDO,[209] the entire residual stock price decline on April 30, 2010 equally across the Timberwolf, Anderson, and Hudson CDOs,[210] and the entire residual stock price decline on June 10, 2010 to the Hudson CDO.[211] Dr. Finnerty's damages methodology suffers from numerous flaws and fails to accurately calculate damages in this matter. These flaws include (a) the failure to disentangle the effect of confounding non-allegation-related news released on the alleged corrective disclosure dates, (b) the arbitrary and unfounded allocation of damages across the CDOs, and (c) the assumption that damages are a constant per-share dollar amount throughout the entire Class Period.

B. Dr. Finnerty's Damages Methodology Is Flawed and Unreliable

1. Goldman's Residual Stock Price Movement on April 16, 2010, April 30, 2010, and June 10, 2010 Cannot Be Used to Measure Damages Because Dr. Finnerty Fails to Remove the Impact of Non-Allegation- Related Confounding Information

130. While Dr. Finnerty claims that the corrective disclosures revealed to the market the falsity of the alleged misrepresentations, as explained above in Section V.B.4, there was additional confounding information revealed to investors on the alleged

---

[209] Finnerty Report, ¶157.

[210] Finnerty Report, ¶161.

[211] Finnerty Report, ¶163. I note that Plaintiffs state that the CDOs ranged in size from $300 million (Anderson) to $2 billion (Abacus and Hudson), and that the Timberwolf CDO was a $1 billion CDO (Complaint, ¶¶50, 164, 202, 213).

corrective disclosure dates. This information—which is separate from the underlying allegations regarding Goldman's Business Principles Statements and Conflict Management Statements—included the announcement of the SEC enforcement action and the purported DOJ investigation as well as the prospect of increased regulatory scrutiny. Dr. Finnerty's failure to disentangle the impact of these factors on Goldman's stock price in measuring damages renders his analysis unreliable and overstates Plaintiffs' damages in this matter.

131. First, as detailed above, on April 16, 2010, the announcement of the SEC enforcement action against Goldman was released to the market. That enforcement action was unusual because (a) the SEC did not announce a settlement on the same day the charges were filed; (b) the charges included violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and Section 17(a)(1) of the Securities Act of 1933 ("scienter charges"); and (c) an individual, Fabrice Tourre, was charged along with Goldman.[212] As previously noted, at least some securities analysts were more concerned by the SEC's enforcement action than by Goldman's alleged conduct.[213] Even Dr. Finnerty himself acknowledges that the filing of a governmental enforcement action can have an impact on the target company's stock price independent of the specific allegations contained in the filing. For example, he admitted at his deposition that an action can have a greater impact on a stock price if it is not

[212] Choi Declaration, ¶¶39–40.

[213] "SEC Singles Out GS for Fraud Charge--Stepping to Sidelines," Oppenheimer, April 16, 2010.

settled when it is announced.[214] Thus, the effect on Goldman's stock price of the SEC enforcement action, separate and apart from any information that it conveyed about Goldman's Business Principles Statements and/or Conflict Management Statements, must be excluded from any damages calculation. Similarly, any effects on Goldman's stock price of market participants' expectations of increased governmental enforcement action must also be excluded. However, Dr. Finnerty fails to disentangle the impact of the SEC enforcement action on Goldman's stock price on April 16, 2010 and thus his measurement of damages is unreliable and it overstates damages in this matter.

132. Second, on April 30, 2010, rumors that Goldman was the subject of a criminal investigation by the DOJ had a negative price impact on Goldman's stock after *The Wall Street Journal* published an article about the investigation.[215] Though the article notes that "[t]he investigation is centered on different evidence than the SEC's civil case," *The Wall Street Journal* did not include any details about the specific allegations being pursued, or which Goldman deals were being scrutinized in the purported criminal investigation. As discussed above, the news media credited the stock price decline on April 30, 2010 to increased governmental scrutiny, regulatory risks, and potential reputational harm resulting from a potential purported DOJ investigation. My event

---

[214] Finnerty Deposition, 147:16–148:13.

[215] "Criminal Probe Looks into Goldman Trading," *The Wall Street* Journal, April 30, 2010. Note that this article was released after market close on April 29, 2010; hence, stock price movements are analyzed on the subsequent trading day, April 30, 2010.

study found no evidence of new, allegationrelated information or a correction to the alleged misstatements. Thus, the impact on Goldman's stock price of the purported DOJ investigation and its consequences must be excluded from any damages calculation. However, Dr. Finnerty fails to disentangle the impact of the purported DOJ investigation on Goldman's stock price on April 30, 2010 and thus his measurement of damages is unreliable and it overstates damages in this matter.

133. Finally, on June 10, 2010, it was reported that the SEC was expanding its investigation to include the Hudson CDO.[216] As discussed above, market participants attributed Goldman's stock price decline on that day to the rumors surrounding the SEC investigation, including the implications of a possible settlement. My event study found no evidence of new information regarding Goldman's conduct on this date. Thus, the effect on Goldman's stock price of a potential SEC investigation into the Hudson CDO and its consequences must be excluded from any damages calculation. However, Dr. Finnerty fails to disentangle the impact of the investigation on Goldman's stock price on June 10, 2010 and thus his measurement of damages is unreliable and it overstates damages in this matter.

134. With regards to April 30, 2010 and June 10, 2010 in particular, not only does Dr. Finnerty fail to exclude the impact of non-allegation information, he fails to demonstrate that any new information about Goldman's alleged misconduct was released into the marketplace. Indeed, all of the alleged misconduct by Goldman that Dr. Finnerty details in his report was

[216] Complaint, ¶335.

known to market participants by April 27, 2010—that is, subsequent to this date, Dr. Finnerty does not identify any additional specific alleged misconduct by Goldman, and instead can point only to purported regulatory investigations. Dr. Finnerty asserts that the governmental enforcement actions conveyed the "severity" of Goldman's alleged misconduct without specifying what that "severity" refers to or how it could be quantified, or how Goldman could have reasonably have predicted and disclosed it earlier in the Class Period.[217]

135. Again, the "but-for" concept is critical. Dr. Finnerty cannot link any information released on April 30, 2010 and June 10, 2010 to any disclosure he claims Goldman should have made on the alleged misstatement dates. Recall that Dr. Finnerty states that Goldman "failed to disclose that the Company, in fact, had conflicts of interest with its clients in connection with the synthetic CDOs Goldman structured and sold, e.g., Abacus 2007-AC1, Hudson 2006-1, Anderson 2007-1 and Timberwolf 1 CDOs."[218] As I have discussed, allegations that Goldman had conflicts of interest with its CDO investors and allegations that it failed to disclose those conflicts to those investors were publicly discussed as early as 2009. Goldman's residual stock price movements were not statistically significant on any of the days that information was released. Furthermore, Goldman internal e-mails were released on April 26, 2010 and Senate testimony was released on April 27, 2010.[219] According to Dr. Finnerty, the testimony mentioned

---

[217] Finnerty Report, ¶123, 140.

[218] Finnerty Report, ¶44.

[219] Complaint, ¶¶333–334.

alleged misconduct with respect to the Hudson, Anderson, and Timberwolf CDOs specifically, and again Goldman's residual stock price movement was not statistically significant on either of those dates.[220] Dr. Finnerty refers to that information in his discussion of the alleged corrective disclosures on April 30, 2010 and June 10, 2010, but the information about Goldman's conduct by that point was stale and, in an efficient market (as Dr. Finnerty claims the market for Goldman's stock was), should have been fully reflected in the price prior to April 30, 2010. Therefore, Dr. Finnerty has not established that any inflation, and therefore any damages, can be inferred from the residual stock price movements on April 30, 2010 and June 10, 2010.

136. In sum, Dr. Finnerty's damages model does not distinguish between market participants' knowledge of the alleged behavior itself and knowledge of the realization of certain government and regulatory actions—which were discretionary, not inevitable, and which could not possibly have been disclosed by Goldman on the alleged misstatement dates earlier in the Class Period. His damages model is therefore flawed and unreliable.

2. Dr. Finnerty's Allocation of Damages Across the Four CDOs Is Arbitrary, Unscientific, and Without Basis

---

[220] According to Dr. Finnerty's model, on April 27, 2010, Goldman's residual stock price movement was 3.58 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on April 27, 2010, Goldman's residual stock price movement was 3.59 percent and was statistically significant (Finnerty Report, Exhibit 9).

137. Dr. Finnerty attributes the supposed dissipation of inflation on April 30, 2010 in equal parts to revelation of new information about each of the Hudson, Anderson, and Timberwolf CDOs because "that is what a reasonable investor would do given the limited information about the three CDO transactions available at that time."[221] Dr. Finnerty's equal attribution across the three CDOs is arbitrary, unscientific, and without basis, rendering his damages analysis fatally flawed.

138. First, the only information released into the marketplace on April 30, 2010 was that the DOJ was investigating Goldman "in connection with its mortgage trading."[222] Dr. Finnerty provides no conclusive basis for why a reasonable investor would necessarily assume that the investigation pertained to these three specific CDOs, let alone that they would assume the degree to which each purportedly rendered the Business Principles or Conflict Management Statements false was precisely equal.[223] Indeed, none of the press articles or analyst reports cited by Dr. Finnerty on this day identify any CDOs involved in the investigation, or provide any description of any conduct in a CDO.

139. Second, Dr. Finnerty assumes, without basis, that the marginal value-relevance to Goldman's stock price of allegations of misconduct with respect to an additional CDO is constant. In other words, under Dr.

---

[221] Finnerty Report, ¶161.

[222] "WSJ: Federal Criminal Probe Looks into Goldman Trading," *Dow Jones News Service,* April 29, 2010.

[223] Dr. Finnerty's only justification appears to be that the three CDOs were mentioned during Senate testimony on April 27, 2010 (*see* Finnerty Report, ¶¶109–114).

Finnerty's theory, learning that Goldman allegedly engaged in unspecified misconduct with respect to two CDOs has exactly double the value relevance of learning that Goldman engaged in alleged misconduct with respect to one CDO. Dr. Finnerty provides no basis justifying this assumption. In fact, his assumption makes no sense. The statements at issue do not identify any particular CDO and thus, assuming Plaintiffs' theory of the case, would be rendered false upon disclosure of the conflicts in any transaction. Dr. Finnerty's assumption that additional allegations regarding other CDO transactions rendered the alleged misstatements more false at an equal incremental value (and irrespective of differences in the allegations) is illogical and has no methodological grounding.

140. In sum, Dr. Finnerty's methodology for calculating damages is arbitrary, and as a result, to the extent there are any damages at all, may overstate damages during some parts of the Class Period and understate damages during other parts of the Class Period.

3. Dr. Finnerty's Damages Model Is Also Unreliable Because It Incorrectly Assumes Constant Inflation Throughout the Class Period

141. Even if Dr. Finnerty could rely on the stock price declines on the alleged corrective disclosure dates to measure inflation—which he cannot—it is inappropriate to assume that inflation was constant during the Class Period prior to the alleged corrective disclosure dates.

142. As previously discussed, a proper calculation of inflation requires determining (a) what information

Goldman could and should have disclosed instead of making the alleged misstatements at each point in time during the Class Period, and (b) how the market would have valued that alternative disclosure. Such an analysis would find that the value-relevance of any information "correcting" Goldman's alleged statements would have changed over the Class Period, and therefore a constant inflation as a measure of damages is inappropriate in this case.

143. The Class Period—February 5, 2007 through June 10, 2010—included an unprecedented financial crisis and economic recession. This crisis likely changed the value of the alleged misstatements over time. For example, if Goldman had fully disclosed its conduct in connection with the Abacus CDO shortly after the deal closed in early 2007 and before the deal had declined in value, this announcement would likely have been valued very differently than a disclosure at the end of the Class Period "given the flurry of anti-Wall Street press that [had] centered around [Goldman]" at that time.[224] Similarly, Dr. Choi explains that the SEC's enforcement action was unusually severe due to the financial crisis.[225] As a result, the market's response to a hypothetical disclosure of Goldman's conduct in the CDOs before the financial crisis would have likely been much different than the reaction in April and June 2010, even if the SEC had announced an enforcement action and if losses stemming from the SEC action were found to be attributable to the alleged misstatements (which, as I have explained above, they were not). Thus, Dr. Finnerty's assumption "that the amount of

---

[224] "Administration Steps up Support for Bill," Barclays Capital, April 16, 2010.

[225] Choi Declaration, ¶¶19, 31.

the inflation per share is a constant dollar amount" during the Class Period is unsupported and unreliable.[226]

144. Finally, any alleged inflation from the alleged misstatements would have dissipated or been removed over the course of the Class Period by disclosures in the public press of Goldman's alleged conflicts of interest (such as the articles discussed above in Section V.B.1). In other words, even if Dr. Finnerty's theory were correct and investors assigned substantial importance to Goldman's Conflict Management Statements and/or Business Principles Statements, as allegations of Goldman's purported conflicts of interest were revealed to the market throughout the Class Period, the market necessarily would have placed increasingly less weight (or even entirely discounted) those statements over time. By assuming constant dollar inflation, Dr. Finnerty effectively assumes that investors gave equal weight to Goldman's statements before and after similar allegations of Goldman's conduct. To the extent investors placed less weight on Goldman's Conflict Management Statements and/or Business Principles Statements over time, Dr. Finnerty's methodology would overstate inflation in the later portions of the Class Period.

Executed on this 2nd day of July, 2015

____

Paul Gompers

[226] Finnerty Deposition, 263:2–5. In his deposition, Dr. Finnerty testified that inflation could change on the dates of alleged misstatements or corrective disclosures (Finnerty Deposition, 264:6–14). His methodology does not allow inflation to change based on the facts of the case.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 1:10-cv-03461-PAC

ECF Case

In re GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

This Document Relates To: ALL ACTIONS

REPORT OF STEPHEN CHOI, Ph.D.

July 2, 2015

Table of Contents

* * *

IV. SEC Enforcement Actions, in and of Themselves and Independent from the Content of the Underlying Allegations, Can Cause a Decline in a Defendant Company's Stock Price

19. An SEC enforcement action is generally a negative event for a firm. For instance, Karpoff et al. (2008) report an average abnormal return for the defendant company's stock price of -13.1 percent for all announcements of regulatory involvement, including SEC enforcement actions, in financial misrepresentation cases.[15] The precise impact of an SEC enforcement action on the defendant company's stock price is determined by a number of factors, including the specific characteristics of the enforcement action, the anticipated potential costs including resolution costs, management distraction, the uncertainty for employees, clients, and business counterparties, and the regulatory or legislative changes signaled by the enforcement action.

20. An enforcement action's specific characteristics are important determinants of the stock price response to an enforcement action.[16] For instance, the charges brought, the list of defendants, and whether a settlement is announced concurrently can all have implications for the company's ongoing costs which affect its stock price. The academic literature relating to SEC enforcement actions indicates that enforcement actions that are not

---

[15] Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 591.

[16] See the empirical results in Section V.A.

settled, or otherwise resolved, on the filing date of the enforcement action ("enforcement action date") are accompanied by larger negative abnormal stock price reactions. For example, Karpoff et al. (2008) document average abnormal returns of -6.7 percent when the enforcement action is concurrently resolved and -15.0 percent when it is not.[17] Dr. Finnerty recognized during his deposition that enforcement action characteristics such as whether the filing of the enforcement action is accompanied by a concurrent settlement can, in and of themselves, lead to different defendant company stock price reactions.[18]

21. Importantly, such factors are not inevitable consequences stemming from the content of the underlying allegations. Rather, the SEC uses its prosecutorial discretion to determine the specific characteristics of an enforcement action in accordance with the signal it intends to send to the market.[19] The

[17] Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 591.

[18] Deposition of Dr. John D. Finnerty on March 19, 2015 ("Finnerty Deposition"), 147:16-148:13.

[19] "SEC Issues Report of Investigation and Statement Setting Forth Framework for Evaluating Cooperation in Exercising Prosecutorial Discretion," *United States Securities and Exchange Commission*, Press Release 2001-117, October 23, 2001 (http://www.sec.gov/news/headlines/prosdiscretion.htm). In bringing an enforcement action, the SEC often focuses on higher profile targets that it believes have greater potential benefits for its objectives. Former SEC Chairman Harvey Pitt wrote in a co-authored article that the SEC "generally is apt to choose the highly visible target if it wants to achieve the greatest deterrent effect for its enforcement efforts . . . . [T]he SEC and its enforcement staff will often consider the public relations value of a case in deciding whether, when and how to pursue it." See Pitt, H. and K. Shapiro (1990), "Securities Regulation By

characteristics of an enforcement action are not known before the filing of the enforcement action and may be influenced by factors which are independent of the content of the underlying allegations. Consequently, the enforcement action, in and of itself, may cause a decline in the defendant company's stock price.

22. An SEC enforcement action may also provide new information to the market about shifts in the SEC's enforcement priorities and strategies, or signal regulatory or legislative changes. This is particularly true in times of regulatory turmoil when SEC actions are likely to have a feedback effect on the regulatory climate. For example, in the insider trading area, SEC enforcement actions have led to a number of seminal U.S. Supreme Court decisions that have altered the nature of the insider trading prohibition.[20] Cox and Thomas have written that "[t]he SEC, through its path-breaking prosecutions on insider trading, not only established the boundaries of insider trading regulation, but also legitimized regulation of this

---

Enforcement: A Look Ahead at the Next Decade," *Yale Journal on Regulation*, 7, 149-529, p. 184. See also Dooley, M. (1999), "Insider Trading: Comment from an Enforcement Perspective," *Case Western Reserve Law Review*, 50, 319-323, p. 323. ("[P]ublicity and other considerations that appear likely to advance the agency's interests often determine its choice of an enforcement target.") Similarly, Kedia and Rajgopal (2011) find that the SEC is more likely to investigate firms with higher visibility. See Kedia, S. and S. Rajgopal (2011), "Do the SEC's Enforcement Preferences Affect Corporate Misconduct?" *Journal of Accounting and Economics*, 51, 259-278, p. 263.

[20] These cases include, for example, *Dirks v. Securities and Exchange Commission*, 463 U.S. 646, 667 (U.S. Supreme Court, 1983), and *United States v. O'Hagan*, 521 U.S. 642, 678 (U.S. Supreme Court, 1997).

phenomenon in the first place."[21] More recently, after media attention on the issue of high frequency trading, the SEC initiated and settled two high frequency trading related enforcement actions in Fall 2014.[22,23] Concurrent with these enforcement actions was speculation in the market about whether the SEC and/or the U.S. Commodity Futures Trading Commission would move forward[24] with new rulemaking focused on high frequency trading. The settled high frequency trading enforcement actions signaled to the market the importance the SEC placed on addressing high frequency trading and the likelihood of new regulation.[25] Importantly, future

---

[21] Cox, J. and R. Thomas (2003), "SEC Enforcement Heuristics: An Empirical Inquiry," *Duke Law Journal*, 53, 737-779, p. 752.

[22] See Lewis, M. (2014), *Flash Boys: A Wall Street Revolt*, New York, NY: WW Norton & Company.

[23] Order Instituting Administrative and Cease-and-Desist Proceedings, *In the Matter of Latour Trading LLC and Nicolas Niquet*, File No. 3-16128, September 17, 2014; Order Instituting Administrative and Cease-and-Desist Proceeding, *In the Matter of Athena Capital Research, LLC*, File No. 3-16199, October 16, 2014.

[24] "Securities Regulation to Watch in 2015," *Law360*, January 2, 2015 (http://www.law360.com/articles/601495/securities-regulation-to-watch-in-2015). ("Sometime in 2015, the SEC likely will publish new proposals to require high-frequency traders to register with regulators if they haven't already and to put in place risk controls around their trading algorithms to stop potentially market-disrupting errant trades.")

[25] "Legal Update: US SEC Brings First Enforcement Action For Market Manipulation Through High-Frequency Trading," *Mayer Brown*, October 23, 2014 (http://www.mayerbrown.com/US-SEC-Brings-First-Enforcement-Action-For-Market-Manipulation-Through-High-Frequency-Trading-10-23-2014). ("The Athena case is in line with

regulatory and legislative developments may not be the direct consequence of the alleged misconduct.

23. Finally, a regulatory action against a company can generate uncertainty about the possibility of additional regulatory action which can impact the company's relationship with its employees, clients, and business counterparties.[26] For instance, clients and counterparties may become more cautious in their dealings with the company in the presence of regulatory scrutiny, impacting the defendant company's business, and potentially its stock price. This effect is likely more prominent if the enforcement action is highly publicized and signals to the market that a regulator has taken an aggressive stance. Dr. Finnerty recognizes that uncertainty generated by an ongoing enforcement action can impact a company's stock price.[27] Again, the SEC may choose to adopt an aggressive stance, or single out the defendant company, due to factors unrelated to the content of the underlying allegations.[28]

---

the SEC's intensified focus on HFT firms and manipulative trading practices involving HFT. While the SEC has signaled that there is nothing inherently wrong with HFT generally, specific HFT strategies that resemble traditional forms of market manipulation or that cause market disruption may be subject to vigorous enforcement action and increased regulation.")

[26] These costs, and their impact on defendant company stock prices, are recognized in the literature on securities class actions. See Alexander, J. (1994), "The Value of Bad News in Securities Class Actions," *UCLA Law Review*, 41, 1421-1469, p. 1435.

[27] Finnerty Deposition, 148:8-13.

[28] During periods of economic and political turmoil, the SEC has been known to focus its resources by bringing highly visible enforcement actions in a specific area of alleged violations, or against a particular defendant, in order to send a strong signal of

V. The SEC Enforcement Action Against Goldman on April 16, 2010, in and of Itself and Distinct from the Content of the Underlying Allegations, Caused a Decline in Goldman's Stock Price

24. I have assessed the relevance of the factors described above in evaluating the stock price impact of the Goldman Enforcement Action. Based on prior academic findings, my empirical analysis, and my expertise, I find that the filing of the SEC enforcement action against Goldman on April 16, 2010, in and of itself and distinct from the content of the underlying allegations, caused a decline in Goldman's stock price. The Goldman Enforcement Action had unusual and severe characteristics that are associated with stock price declines and became known to the market only after the filing of the enforcement action. These unusual characteristics were within the SEC's discretion but were not an inevitable consequence of the underlying allegations and, thus, were not foreseeable.

25. While Dr. Finnerty asserts that "the regulatory enforcement action by the SEC would not have been brought" but for evidence relating to the Abacus CDO,[29] this is not sufficient to establish that the underlying allegations caused the decline in

---

deterrence to the market. For example, my research shows that during the mid-2000s, after much media coverage of option backdating, the SEC dramatically increased enforcement actions involving option backdating at the expense of enforcement against other forms of accounting violations. See Choi, S., A. Wiechman, and A. Pritchard (2013), "Scandal Enforcement at the SEC: The Arc of the Option Backdating Investigations," *American Law and Economics Review*, 15, 542-577, p. 542.

[29] Finnerty Report, ¶ 93.

Goldman's stock price on April 16, 2010. Knowledge of the underlying allegations about the Abacus CDO prior to April 16, 2010, for example, would not have resulted in the same stock price decline. Indeed, Dr. Gompers finds that allegations made prior to April 16, 2010, which were about conflicts in CDOs or mortgage products specifically and which thus mirrored the corrective disclosures alleged by Plaintiffs, had no effect on Goldman's stock price.[30] Only after the SEC filed the Goldman Enforcement Action on April 16, 2010 did the market learn of that enforcement action, its specific characteristics, and its implications for Goldman. If the SEC had chosen, using its discretion, not to bring an enforcement action or to bring an action with less severe characteristics, the price movement on April 16, 2010 for Goldman would very likely have been different, with possibly a smaller or no price decline.

26. Based on an analysis of all enforcement actions against publicly traded companies from fiscal year 2010 to fiscal year 2014, I find that enforcement actions that share the severe characteristics of the Goldman Enforcement Action are associated with an average statistically significant abnormal return of -8.07 percent. In contrast, enforcement actions that did not share the severe characteristics of the Goldman Enforcement Action are associated with an average abnormal return of 0.37 percent. Moreover, the difference of -8.44 percentage points between the average abnormal return associated with enforcement actions with the Goldman Enforcement Action characteristics and those without is statistically

[30] Expert Report of Paul Gompers, Ph.D., filed on July 2, 2015 ("Gompers Report"), ¶¶ 53-57.

significant. The abnormal return on Goldman's stock of -9.27 percent calculated for April 16, 2010 by Dr. Finnerty is not statistically different from the -8.07 percent average abnormal return associated with enforcement actions that share the severe characteristics of the Goldman Enforcement Action.[31]

27. At least two factors further magnified the stock price impact associated with the filing of the Goldman Enforcement Action beyond that associated with the severe characteristics of the Goldman Enforcement Action. First, the filing of the Goldman Enforcement Action occurred in a tumultuous political and economic environment, and therefore signaled an increased risk of regulatory actions and legislative and regulatory changes that would affect Goldman's business disproportionately. Second, the sensational and aggressive nature of the Goldman Enforcement Action, as noted by equity analysts and market commentators, caused uncertainty about the effect of additional regulatory action which could impact Goldman's relationship with its employees, clients, and business counterparties.

28. Dr. Finnerty asserts that the SEC complaint filed against Goldman on April 16, 2010 contained new information that could have caused a decline in

---

[31] Finnerty Report, ¶ 77.

Goldman's stock price.[32,33] However, Dr. Gompers finds that allegations made prior to April 16, 2010, which were about conflicts in CDOs or mortgage products specifically and which thus mirrored the corrective disclosures alleged by Plaintiffs, including some explicitly discussing the deal at issue in the Goldman Enforcement Action, had no effect on Goldman's stock price.[34]

29. Based on my findings, taken together with Dr. Gompers' conclusion that allegations made prior to

[32] Finnerty Report, ¶ 71. ("In addition, new information was disclosed on April 16, 2010 that the marketing materials and offering documents misled investors by failing to disclose Paulson's role in selecting the reference portfolio of the Abacus 2007-AC1 CDO, and the fact that Goldman had misled ACA by telling ACA that Paulson was a sponsor of the CDO transaction and would have an equity interest in the transaction.")

[33] The SEC alleged that Goldman and Tourre engaged in several misrepresentations: "GS&Co and Tourre knowingly or recklessly misrepresented in the term sheet, flip book and offering memorandum for ABACUS 2007- ACI that the reference portfolio was selected by ACA without disclosing the significant role in the portfolio selection process played by Paulson, a hedge fund with financial interests in the transaction adverse to IKB, ACA Capital and ABN. GS&Co and Tourre also knowingly or recklessly misled ACA into believing that Paulson invested in the equity of ABACUS 2007-ACI and, accordingly, that Paulson's interests in the collateral section process were closely aligned with ACA's when in reality their interests were sharply conflicting." See Complaint, *Securities and Exchange Commission v. Goldman Sachs & Co. and Fabrice Tourre*, filed on April 16, 2010, ¶ 74. Importantly, none of the misrepresentations alleged by the SEC coincided with those at issue in this case, nor did they refer to Goldman's representations regarding its management of conflicts of interest or its business principles.

[34] Gompers Report, ¶¶ 53-57.

April 16, 2010 mirrored the corrective disclosures alleged by Plaintiffs yet had no effect on Goldman's stock price, I conclude that the filing of the Goldman Enforcement Action — independent of the content of the underlying allegations — was consistent with and likely accounted for the full April 16, 2010 -9.27 percent abnormal return calculated by Dr. Finnerty.[35]

A. The Goldman Enforcement Action Had Characteristics that Are Statistically Associated with Significant Stock Price Declines of a Magnitude Consistent with the Decline Observed on April 16, 2010

30. The specific characteristics of an SEC enforcement action are important determinants of the defendant company's stock price decline. The Goldman Enforcement Action included severe characteristics which were made public only at the time of the filing of the SEC enforcement action on April 16, 2010. These characteristics were:

a. No concurrent resolution: Most SEC enforcement actions against publicly traded companies settle concurrently with the filing of charges.[36] The lack of a concurrent resolution to the charges against Goldman implied future expected costs of dealing with the SEC at the time of the announcement, including potentially enhanced resolution costs, management distraction, and

---

[35] Finnerty Report, ¶ 77.

[36] For instance, in my dataset covering all SEC enforcement actions against publicly traded companies during fiscal years 2010-2014, 93 percent of enforcement actions were settled or otherwise resolved on the same date that the enforcement action was announced. See Exhibit 5.

uncertainty among employees, customers, and business counterparties. Furthermore, there was uncertainty about the size and severity of the penalties levied by the SEC, including risk to Goldman's broker-dealer license.[37] The public press noted that the lack of an immediate settlement was an anomaly and had broader implications. For instance, a *Financial Times* article asserted that "[t]he commission underscored its new aggressive stance by filing charges rather than working out a settlement with Goldman."[38] The Goldman Enforcement Action was resolved on July 15, 2010, almost three months after its announcement.[39]

b. Scienter charges: The SEC brought scienter-based charges against Goldman, specifically alleging violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 17(a)(1) of the Securities Act of 1933.[40] Because the

---

[37] Section 15(b)(4)(C)-(D) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a(b)(4)(C)-(D). This risk was noted by the press. See "Denying it Misled, Goldman Fires Back; SEC Not Saying if More Cases Likely," *The Boston Globe*, April 20, 2010. ("For Goldman, the stakes could not be higher. The worst-case scenario would be if it were to lose its license.")

[38] "Effort to Revitalise SEC Starts to Bear Fruit," *Financial Times*, April 16, 2010.

[39] "Goldman Sachs to Pay Record $550 Million to Settle SEC Charges Related to Subprime Mortgage CDO," *United States Securities and Exchange Commission*, Press Release 2010-123, July 15, 2010.

[40] See Complaint, Securities and Exchange Commission v. Goldman Sachs & Co. and Fabrice Tourre, filed on April 16, 2010, ¶ 6.

prosecution of these violations carries a higher burden of proof, it demands that the SEC devote more resources to the case.[41,42] The choice to pursue these scienter-based charges against a company is a signal of a particularly aggressive stance by the SEC. Among other things, these charges open up the possibility of higher penalties. This characteristic of the Goldman Enforcement Action was not known to the market prior to the filing of the action on April 16, 2010.

c. Individual defendant: An individual, Mr. Tourre, was charged along with Goldman.[43] The inclusion of individuals as defendants along with a defendant company may indicate the SEC's desire to make an example not only

---

[41] Other violations require that the SEC only show negligence, such as Sections 17(a)(2) and (3) of the Securities Act of 1933. Still other violations do not require that the SEC demonstrate a particular defendant state of mind, such as Sections 13(b)(2)(A) and (B) of the Securities Exchange Act of 1934.

[42] News reports took note of this characteristic of the Goldman Enforcement Action. The *Financial Times* reported that "[t]he world's most prestigious investment bank has been charged by the Securities and Exchange Commission with *intentionally* deceiving investors." (emphasis added.) ("Goldman Scrambles to Contain Damage," *Financial Times*, April 19, 2010.) Similarly, news reports emphasized the fact that Goldman was being charged with fraud (as opposed to negligence): "shock news emerged that the US Securities and Exchange Commission had charged Goldman Sachs, the US investment bank, with fraud related to subprime mortgages." ("Overview: Goldman Fraud Charges Trigger Sell-Off," *Financial Times*, April 16, 2010.)

[43] Numerous press articles and analyst reports noted the inclusion of Mr. Tourre as a defendant in the Goldman Enforcement Action. See, for instance, "SEC Shines Spotlight on Little-Known Goldman Exec," *Reuters News*, April 16, 2010.

of the corporate defendant but also of its employees. This may also signal that the SEC will take a more aggressive approach in its enforcement, leading to potentially higher penalties. This characteristic of the Goldman Enforcement Action was not known to the market prior to the filing of the action on April 16, 2010.

i. Methodology

31. I have quantified the impact of the three key characteristics — no concurrent resolution, scienter charges, and individual defendant — on defendant companies' stock prices. I used the *Securities Enforcement Empirical Database*, a comprehensive dataset on SEC enforcement actions against publicly traded companies for the period covering October 1, 2009 to September 30, 2014 (fiscal years 2010 to 2014).[44] The data was collected as part of ongoing academic research by the Pollack Center in collaboration with Cornerstone Research, and the collection process was overseen by me. In addition, I supplemented the *Securities Enforcement Empirical Database* with data on enforcement actions brought against subsidiaries of publicly traded companies

[44] The *Securities Enforcement Empirical Database* does not include enforcement actions brought against subsidiaries of publicly traded companies or enforcement actions limited to charges for delinquent filings.

related to the Financial Crisis.[45,46] My data consists of 117 enforcement actions.

32. I have augmented the *Securities Enforcement Empirical Database* with information about returns on defendant company stocks and the broad market during the period leading up to and immediately after each of the 117 enforcement actions.[47] Using this dataset, I performed an event study for each of these enforcement actions.[48] My event study includes all the

---

[45] The information presented in this report includes enforcement actions against companies for which trading data was available from the *Center for Research in Securities Prices* ("*CRSP*") for the enforcement action date, the day after, and the 250 trading days leading up to the enforcement action date. I found only three instances for which both a civil and an administrative action were filed against a defendant company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[46] Financial Crisis related actions are as identified by the SEC as of the filing date of this report. See "SEC Enforcement Actions that Led to or Arose from the Financial Crisis," *United States Securities and Exchange Commission*, September 11, 2014 (http://www.sec.gov/spotlight/enf-actions-fc.shtml). Some of these actions were already included in the *Securities Enforcement Empirical Database* while others were not as they involved charges against a subsidiary of a public company and not the publicly traded company itself. I added these enforcement actions as they were *a priori* a promising source of enforcement actions with the Goldman Enforcement Action characteristics.

[47] Company stock returns are obtained from *CRSP*. Market returns are obtained from *Bloomberg*. All returns are dividend-adjusted.

[48] An event study is a procedure frequently employed by economists to measure the effects of an economic event on the value of firms. See MacKinlay, A. (1997), "Event Studies in

publicly traded companies that faced an SEC enforcement action during fiscal years 2010 to 2014, and all subsidiaries of publicly traded companies that faced an SEC enforcement action related to the Financial Crisis during the same period. In particular, I used a regression analysis, a standard statistical method to estimate the typical relationship between two or more variables.

33. I use a regression analysis to estimate the relationship between movements in a company's stock price and movements in the market as a whole. This procedure allows me to identify the component of the defendant company's stock price movement for each enforcement action date that is attributable to movements in the market as a whole. Because stock prices reflect information relevant to the market as well as information specific to the company in question, one must remove these movements related to the market in order to isolate the change that is attributable to company-specific information.[49] The

---

Economics and Finance," *Journal of Economic Literature*, 35, 13-39, p. 13.

[49] Industry-specific information may also move stock price and it is advisable to account for this in an event study focusing on a single company or class of companies. However, in cross-sectional studies involving many companies in different industries, it is standard practice to account only for movements in the market as a whole because the gains from taking industry movements into account are generally small. "Generally, the gains from employing multifactor models for event studies are limited. The reason for the limited gains is the empirical fact that the marginal explanatory power of additional factors [to] the market factor is small, and hence, there is little reduction in the variance of the abnormal return. The variance reduction will typically be greatest in cases where the sample firms have a common characteristic, for example they are all members of one industry or they are all firms concentrated in one market capitalization

company's stock price movement net of the effect attributable to movements in the market as a whole is referred to as the abnormal return.

34. In my event study, I ran a regression of a defendant company's stock price returns on the returns of the Standard & Poor's ("S&P") 500 Total Return Index, a broad market index, during the 250 trading days leading up to the company's enforcement action date.[50] I used results from this regression to predict each company's stock price movement on its enforcement action date. The difference between the observed stock price return on the enforcement action date and the return predicted by the regression model is the abnormal return on the date associated with the enforcement action. While it is not possible to predict a stock price movement *ex ante*, the event study method provides a range of stock price movements which would be consistent with movements in the overall market in 95 percent of cases. It is only when an observed stock price movement is outside of this range that we say that it is statistically significant and, thus, that we infer that company-specific news affected the company's stock price on that date.

---

group. In these cases the use of a multifactor model warrants consideration." See MacKinlay, A. (1997), "Event Studies in Economics and Finance," *Journal of Economic Literature*, 35, 13-39, p. 18.

[50] The regression model used is known as a "market model" and its use in event studies is standard practice. The 250-day estimation window is also commonly used. See MacKinlay, A. (1997), "Event Studies in Economics and Finance," *Journal of Economic Literature*, 35, 13-39, pp. 17-18. As a sensitivity test, I confirmed that the results of my event study are qualitatively similar for a 120-day estimation window.

ii. Results

35. Exhibit 1 presents summary statistics for the event study analysis. Of the 117 enforcement actions in my dataset, 57 are accompanied by a positive abnormal return for the company's stock price, and 60 are accompanied by negative abnormal returns. The abnormal returns range between -17.09 percent and 7.78 percent.

36. Exhibit 2 presents summary statistics for enforcement actions which were not settled on the same date as their filing, i.e., did not have a concurrent resolution. As shown in the exhibit, these enforcement actions have a statistically significant average abnormal return for the company's stock price of -3.86 percent on the enforcement action date.[51,52] Similarly, the exhibit shows that the average abnormal return of enforcement actions filed with no concurrent resolution is significantly more negative than the average abnormal return for enforcement actions filed with a concurrent resolution. Indeed, four of the six actions in the entire 117 enforcement action dataset

[51] Residual stock price movement is determined to be statistically significant at the 5 percent level if one would expect a result as extreme as that observed less than 1 in 20 times based on random variation in the stock price. In what follows, I will use the term statistically significant to mean statistically significant at the 5 percent level. Statistical significance is measured using a hypothesis test as described in MacKinlay, A. (1997), "Event Studies in Economics and Finance," *Journal of Economic Literature*, 35, 13-39, p. 21.

[52] The finding that enforcement actions which are not resolved concurrently are associated with larger negative average abnormal returns is also reported in Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 591.

with the largest negative abnormal returns were filed without a concurrent resolution.

37. Using my event study, I have calculated the average magnitude of stock price decline for the enforcement actions with the characteristics identified in the Goldman Enforcement Action. Exhibit 3 shows that the magnitude of the average stock price decline for enforcement actions with no concurrent resolution increases where the SEC also brings charges against individual defendants, and where the action includes scienter-based charges. I find that:

a. Enforcement actions which did not have a concurrent resolution have a statistically significant average abnormal return for the company's stock price of -3.86 percent on the enforcement action date.

b. Enforcement actions with no concurrent resolution and charges against an individual defendant are associated with a significant average abnormal stock return for the company's stock price of -6.30 percent.

c. Enforcement actions with no concurrent resolution and scienter-based charges — all of which also had individual defendants — are associated with a statistically significant average abnormal return for the company's stock price of -8.07 percent.

38. Exhibit 4 presents summary statistics for the entire population of enforcement actions which share the three characteristics of the Goldman Enforcement Action: no concurrent resolution, scienter charges, and individual defendants. This subset of four actions that have all three of these key characteristics have a

statistically significant negative average abnormal return for the company's stock price of -8.07 percent. In comparison, the 70 actions in the database that did not have any of the key characteristics had an average abnormal return of 0.37 percent. The difference in average abnormal returns of 8.44 percentage points between those actions with all three characteristics and those with none of the characteristics is statistically significant.

39. While SEC enforcement actions might contain information that could impact stock prices, the mere fact that the SEC files an enforcement action does not establish the validity of the allegations to any market observer. To the extent that the SEC fully litigates cases, it sometimes prevails and sometimes loses.[53] The vast majority of cases are settled, and companies settle with the SEC for multiple and varying reasons that may be unrelated to the merits of the allegations.[54] Indeed, the incentives to settle are heightened when the company is an SEC-regulated broker-dealer and the company requires on-going

[53] From October 2013 to February 2014, the SEC won 55 percent of its trials and hearings, which compared unfavorably to its win rate over the previous three years which was above 75 percent. See "SEC Takes Steps to Stem Courtroom Defeats; Trial Unit Is Restructured as Agency's Win Rate Slips," *The Wall Street Journal*, February 13, 2014.

[54] My dataset of SEC enforcement actions against publicly traded companies covering SEC fiscal years 2010 to 2014 shows that, during this period, 93 percent of enforcement actions were settled or otherwise resolved on the same day that the enforcement action was filed. See Exhibit 5. One reason the SEC pursues settlements is that it frees up its scarce resources to investigate and prosecute other violations. See "Judge Approves SEC Settlement With SAC Capital," *Forbes*, June 19, 2014.

cooperation with the SEC in order to conduct its business.

40. Without any basis, Dr. Finnerty suggests that "[w]hat a review of the 117 SEC enforcement actions reveals is that the stock market impact of the announcement of an SEC enforcement action depends on the nature of the underlying behavior that is the subject of the enforcement action."[55,56] A review of the only four enforcement actions with the Goldman Enforcement Action characteristics shows that lawsuits related to the same events were filed before the SEC action in all four cases, so that the SEC action was not the first instance in which the behavior in

---

[55] Finnerty Rebuttal, ¶ 192. Dr. Finnerty's assertion is partly based on an incorrect interpretation of the results presented in Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 591. Dr. Finnerty cites Karpoff et al. (2008) to support his statement that "[t]he market will react differently according to the nature of the underlying misconduct." See Finnerty Rebuttal, FN 312. However, the empirical results from Karpoff et al. (2008) used by Dr. Finnerty as support are for trigger events and not enforcement actions. As Karpoff et al. (2008) note, trigger events are "conspicuous announcement[s] related to the firm that draws the SEC's scrutiny . . . . Following a trigger event, the SEC gathers information through an informal inquiry that, if warranted, grows to a formal investigation." See Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, pp. 587-588.

[56] As noted by Dr. Finnerty, the Goldman Enforcement Action was accompanied by this drop in Goldman's stock price despite Goldman stating that the "SEC's charges are completely unfounded in law and fact and we will vigorously contest them and defend the firm and its reputation." See Finnerty Report, ¶¶ 77, 86.

question was revealed to the market.[57] Thus, the statistically significant average abnormal returns of -8.07 percentage points associated with these four enforcement actions is attributable to the presence of these severe characteristics.

41. My empirical analysis shows that the Goldman Enforcement Action characteristics, which become known only once an enforcement action is filed, are an important determinant of the stock price response on the trading day of the enforcement action disclosure. Moreover, as discussed above, these characteristics heighten the costs a company must bear as a consequence of the filing of an enforcement action.[58] These heightened costs affect a company's valuation and thus provide a causal link between the characteristics and defendant company stock price declines. Indeed, the evidence in the academic literature is consistent with the existence of a causal link between the costs of resolving an enforcement action and defendant companies' stock price declines.[59] Together, this body of evidence indicates that the presence of the Goldman Enforcement Action

[57] Class Action Complaint, Steve Silverman v. Houston American Energy Corp, et al., filed on April 27, 2012; Class Action Complaint, Joseph C. Hubbard v. BankAtlantic Bancorp, Inc., et al., filed on October 29, 2007; Complaint, Kenosha Unified School District, et al. v. Stifel, Nicolaus & Co., et al., filed on September 29, 2008; Complaint for Violation of the Federal Securities Laws, Selma Stone, et al. v. Life Partners Holdings Inc., et al., filed on February 3, 2011.

[58] See my discussion in Section IV and ¶ 30 of this report.

[59] See especially Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 591, regarding the differential effect on stock price of the filing of enforcement actions with and without a concurrent resolution.

characteristics causes declines in defendant companies' stock prices.

42. The -8.07 percent average abnormal stock price decline associated with enforcement actions with the severe characteristics of the Goldman Enforcement Action is consistent with the observed decline in Goldman's stock price following the Goldman Enforcement Action of -9.27 percent, as reported by Dr. Finnerty, as the difference between these two numbers is not statistically significant.[60] Absent these characteristics, the expected losses to Goldman's stock would be far smaller, as evinced by the average abnormal return on SEC actions containing none of the characteristics (0.37 percent). Importantly, the difference between enforcement actions with the Goldman Enforcement Action characteristics and those without is statistically significant at 8.44 percentage points.

B. The Stock Price Decline Attributable to the Goldman Enforcement Action Was Exacerbated Because It Was Brought in a Tumultuous Economic, Political, and Regulatory Environment

43. Based on my experience analyzing enforcement actions and a review of market commentary, I conclude that the legislative and regulatory changes signaled by the Goldman Enforcement Action had the potential to affect Goldman's business disproportionately and that the

---

[60] The abnormal return on Goldman's stock is reported in Finnerty Report, ¶ 77. The abnormal return of -9.27 percent falls within the 95 percent confidence interval surrounding the -8.07 percent average abnormal return for enforcement actions with the characteristics of the Goldman Enforcement Action.

aggressive stance signaled by the SEC during a tumultuous economic and political environment further magnified the Goldman stock price response to the Goldman Enforcement Action, irrespective of any underlying allegations. The stock price decline caused by such factors aggravated the stock price decline associated with the severe characteristics of the Goldman Enforcement Action.

i. The Goldman Enforcement Action Signaled an Increased Risk of Future Regulatory Actions and Legislative and Regulatory Changes that Would Have a Disproportionate Impact on Goldman's Business, Magnifying the Decline in Goldman's Stock Price

44. The Goldman Enforcement Action occurred in a charged political setting in which there was considerable uncertainty about future regulation and legislation.[61] The heightened concerns investors felt upon the announcement of the Goldman Enforcement Action regarding the tightening regulatory environment were well-founded, since it occurred contemporaneously with many regulatory initiatives that were ultimately incorporated into the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Dodd-Frank was signed into law on July 21, 2010, following a prolonged period of intense debate "ending more than a year of wrangling

---

[61] Changes in securities regulation typically follow financial crises. See Banner, S. (1997), "What Causes New Securities Regulation? 300 Years of Evidence," *Washington University Law Quarterly*, 75, 849-855.

over the shape of the new rules."[62] The massive 1,375 page bill was referred to as "[t]he most far reaching Wall Street reform in history."[63] It created new layers of regulatory oversight including the Consumer Financial Protection Bureau. Dodd-Frank touched many corners of the financial services industry, including new regulation for derivatives, hedge funds, insurance, and debit card interchange fees. According to the *Wall Street Journal*, "[f]inancial titans such as J.P. Morgan Chase & Co., Goldman Sachs Group Inc. and Bank of America Corp. may be forced to make changes in most parts of their business, from debit cards to the ability to invest in hedge funds."[64] Dodd-Frank also included the Volcker Rule, proposed by President Obama on January 21, 2010, which prohibits insured depository institutions from engaging in proprietary trading and from directly participating in hedge funds or private equity funds.[65]

45. In the wake of the Financial Crisis, news of SEC enforcement actions, particularly against a high profile financial institution like Goldman, would

---

[62] "Congress Passes Financial Reform Bill," *The Washington Post*, July 16, 2010.

[63] "Wall Street Reform: The Dodd-Frank Act," *The White House* (http://www.whitehouse.gov/economy/middle-class/dodd-frank-wall-street-reform). See also "Congress Passes Financial Reform Bill," *The Washington Post*, July 16, 2010. ("the most ambitious overhaul of financial regulation in generations.")

[64] "Law Remakes U.S. Financial Landscape," *The Wall Street Journal*, July 16, 2010.

[65] "Volcker Rule," *Federal Reserve System*, 12 CFR Part 225 (http://www.federalreserve.gov/bankinforeg/volcker-rule/default.htm); "The Financial Crisis: A Timeline of Events and Policy Actions," *Federal Reserve Bank of St. Louis* (https://www.stlouisfed.org/financial-crisis/full-timeline).

increase the risk perceived by investors that more aggressive and onerous legislative and regulatory proposals would be pursued. For example, the *Financial Times* reported that "the real action in financial reform started last Friday with the fraud lawsuit filed by the Securities and Exchange Commission against Goldman, Sachs & Co."[66] FBR Capital Markets removed Goldman from its *FBR Top Picks* list, noting that "[w]hile Goldman has indicated that it plans to defend itself against the SEC's accusations, shares will likely feel near-term pressure from the risk of more negative headlines and the implications of the SEC's actions on the direction of the financial regulatory reform in coming weeks."[67] A UBS analyst report quoted by Dr. Finnerty notes that the Goldman Enforcement Action could lead to "an increase in momentum for more stringent regulatory reform, and increased public ire against the financial industry."[68] In fact, Davidoff et al. (2012) attribute the decline in the Goldman stock price to the implications of the impending regulatory changes for investment banks by noting:

> [t]he SEC's complaint is likely to be a watershed event for the investment banking industry. . . . [T]he complaint reflects far-reaching structural changes in investment banks. The changes predate the financial crisis, and they are likely to result in further

[66] "Wall Street Beware: The Lawyers Are Coming," *Financial Times*, April 18, 2010.

[67] "Near-Term Headwinds From SEC Charges – Removing from FBR Top Picks List," FBR Capital Markets, April 19, 2010, p. 1.

[68] "SEC Charges Goldman with Fraud," UBS Investment Research, April 16, 2010, p. 1.

> significant upheavals in the banking industry. The political and regulatory response to this change will affect the path of future upheavals, and, hence, will have a profound impact upon the future evolution of the investment-banking sector. The $10 billion capital market reaction to the SEC's complaint [against Goldman] reflects this impact.[69]

46. The perception that the Goldman Enforcement Action would influence the outcome of the ongoing regulatory overhaul of the financial sector as a whole was also noted by members of Congress. In a letter addressed to SEC Chairman Mary Schapiro, Representative Darrell Issa and seven of his colleagues noted that "[t]he Goldman litigation – filed by the Commission on Friday, April 16, 2010 – has been widely cited by Democrats in support of the financial regulatory legislation currently before the United States Senate."[70] Representative Barney Frank, one of the main sponsors of Dodd-Frank, reacted to news of the Goldman Enforcement Action saying it "reinforces the need for much of what we were doing."[71]

---

[69] Davidoff, S., A. Morrison, and W. Wilhelm (2012), "The SEC v. Goldman Sachs: Reputation, Trust, and Fiduciary Duties in Investment Banking," *The Journal of Corporation Law*, 37, 529-553, p. 531.

[70] "Letter Addressed To SEC Chairman Mary Schapiro," *United States Congress House of Representatives Committee On Oversight & Government Reform*, April 20, 2010 (http://oversight.house.gov/wp-content/uploads/2012/01/4-23-2010issalettertoseciginvestigation.pdf).

[71] "Rep. Frank: Goldman Charges Improve Chances For Regulatory Reform," *TheHill*, April 19, 2010.

47. Consistent with the market recognizing a signal of increased risk of future regulation, analyst reports following the Goldman Enforcement Action showed that the market was expecting legislators and regulators to respond by advancing significant changes in financial regulation that would affect Goldman disproportionately. Specifically, analysts noted that Goldman was particularly vulnerable to possible future regulation of proprietary and derivatives trading. According to Buckingham Research:

> [t]o us, the only negative coming out of this quarter is the remaining uncertainty around the SEC fraud allegations and, more importantly, the negative implications of potentially harsher regulation around derivatives, proprietary trading, etc. This is clearly a bigger issue for GS than its peers, with the highest percentage of revenue from trading among the large banks (60%-70% of revenue).[72]

Similarly, an analyst report from Citigroup noted that "[w]e estimate impact to Goldman from implementation of the Volcker rule could eliminate between ~$3.5-4.0 bil of annual revenue" and "Goldman's revenue mix is more heavily weighted to derivatives than peers."[73] Argus noted that "any new restrictions on proprietary trading could have a bigger impact on Goldman's revenue and earnings than at

[72] "1Q10: Fixed Income & Lower Comp Drive EPS Upside; Raising 2010 EPS," The Buckingham Research Group, April 20, 2010, p. 3.

[73] "Reiterate Buy – Risks Are There, But Still See Significant Upside," Citigroup, May 2, 2010, pp. 3, 6.

more diversified firms."[74] Indeed, *Fortune* magazine asked, "[w]ill the Volcker Rule crush Goldman Sachs?"[75]

48. In addition to the increased risk of legislative and regulatory change, the Goldman Enforcement Action drew attention from other enforcement agencies and private litigators, signaling an increased likelihood of future litigation against Goldman given the prevailing political environment. For example, a Wells Fargo analyst report highlighted the increased regulatory scrutiny arising from the enforcement action by noting:

> [t]he SEC's lawsuit could embolden other regulators (and investors) to seek legal action against GS. We believe the nature of the SEC's lawsuit against GS in the current political environment across the globe could result in additional legal actions being taken against GS by other regulators. Over the weekend, Bloomberg News reported that both the U.K.'s Financial Service Authority (FSA) and Germany's financial regulator [have] both been asked by their respective heads of state to review the SEC's complaint for possible legal action related to this transaction.[76]

An Oppenheimer analyst report highlighted that the Goldman Enforcement Action signaled the importance

---

[74] "Goldman Sachs Group Inc," Argus, April 20, 2010, p. 3.

[75] "Will the Volcker Rule Crush Goldman Sachs?" *Fortune*, December 9, 2013.

[76] "GS: Reputational Risks Increased, But Valuation Still Attractive," Wells Fargo, April 19, 2010, p. 127.

of public sentiment as a driver of future litigation, concluding that "GS is probably vulnerable to more charges and outsized fines."[77] Dr. Finnerty acknowledges that the possibility of future litigation was a relevant factor in explaining the decline in Goldman's stock price, quoting a UBS analyst report saying that "we see the potential for other litigation (shareholder suits, NY AG . . .)."[78] Similarly, the *Financial Times* noted that the Goldman Enforcement Action "opens the litigation floodgates for more suits based on subprime mortgage fraud, and smart investors know it."[79]

49. The uncommon and aggressive nature of the Goldman Enforcement Action increased the risk of future regulations that would have a disproportionate impact on Goldman compared to its peers. Further, in the context of the prevailing political environment, the enforcement action also increased the likelihood of potential regulatory and private litigation against Goldman. These factors caused a decline in Goldman's stock price, in addition to the stock price decline associated with the severe characteristics of the Goldman Enforcement Action.

---

[77] "SEC Singles out GS for Fraud Charge - Stepping to Sidelines," Oppenheimer & Co., April 16, 2010, p. 1.

[78] Finnerty Report, ¶ 83; "SEC Charges Goldman with Fraud," UBS Investment Research, April 16, 2010, p. 1.

[79] "Wall Street Beware: The Lawyers Are Coming," *Financial Times*, April 18, 2010.

ii. The Sensational and Aggressive Nature of the Goldman Enforcement Action, as Noted by Equity Analysts and Market Commentators, Caused Uncertainty About the Effect of Future Regulatory Action, Which Magnified the Decline in Goldman's Stock Price

50. A number of academics and commentators have noted the pressure faced by the SEC to bring highly visible enforcement actions in times of economic and political turmoil. According to Correia (2014):

> [t]he importance of the Securities and Exchange Commission (SEC) is widely recognized by the media, and its enforcement activities are under increased scrutiny following the recent wave of corporate scandals; such as Enron, Global Crossing, Halliburton, Harken, Arthur Andersen, Fannie Mae, Freddie Mac, Providian, and Bernard Madoff Investment Securities, to name just a few.[80]

Similarly, Heese (2014) notes that "[t]he Securities and Exchange Commission's (SEC) enforcement actions have been subject to increased scrutiny" in the wake of the scandals surrounding the frauds committed by Bernard Madoff and Allen Stanford.[81]

---

[80] Correia, M. (2014), "Political Connections and SEC Enforcement," *Journal of Accounting and Economics*, 57, 241-262, p. 241.

[81] Heese, J. (2014), "Government Preferences and SEC Enforcement," Harvard Business School Accounting & Management Unit Working Paper No. 15-054, p. 2.

51. During periods of economic and political turmoil, the SEC has been known to focus its resources by bringing highly visible enforcement actions in a specific area of alleged violations, or against a particular defendant, in order to send a strong signal of deterrence to the market. For example, my research shows that during the mid-2000s, after much media coverage of option backdating, the SEC dramatically increased enforcement actions involving option backdating at the expense of enforcement against other forms of accounting violations.[82]

52. The SEC brought an enforcement action against Goldman in the wake of the Financial Crisis that the *Wall Street Journal* referred to as "one of the biggest moves by authorities in response to the financial crisis of 2007-08."[83] The Goldman Enforcement Action was announced in a well-publicized phone interview and press conference, both held during trading hours. Robert Khuzami, Enforcement Director at the SEC held the phone call with reporters to discuss the SEC's enforcement action against Goldman and, shortly thereafter, gave a press conference at the 22nd annual Corporate Law Institute in New Orleans.[84] The phone call and press conference received widespread coverage in the

---

[82] Choi, S., A. Wiechman, and A. Pritchard (2013), "Scandal Enforcement at the SEC: The Arc of the Option Backdating Investigations," *American Law and Economics Review*, 15, 542-577, pp. 542, 546.

[83] "Goldman Charges Roil Markets," *The Wall Street Journal*, April 16, 2010.

[84] "SEC Khuzami Explains Why Paulson Wasn't Charged," *The Wall Street Journal*, April 16, 2010.

media.[85] Some SEC officials expressed misgivings about the possibility of holding a high profile press conference for the Goldman Enforcement Action, calling it a "double-edged sword" and noting that "we could be accused of hyping it if we did a press conference."[86]

53. Releasing relevant news about a company during trading hours, as was done in the case of the Goldman Enforcement Action, can result in increased volatility of the defendant company's stock.[87] Indeed,

---

[85] The phone call and press conference were cited in numerous press articles from sources such as *The Chicago Tribune*, *Fortune*, *The New York Times*, and *The Wall Street Journal*. The press conference was also covered by television news outlets such as CNN. See "SEC Accuses Goldman Sachs of Fraud in CDO, or 'Toxic Asset,' Case," *The Chicago Tribune*, April 16, 2010 (http://newsblogs.chicagotribune.com/marksjarvis_on_money/2010/04/sec-accuses-goldman-sachs-in-cdo-or-toxic-asset-case.html); "SEC Charges Goldman Sachs With Fraud," *Fortune*, April 16, 2010; "S.E.C. Accuses Goldman of Fraud in Housing Deal," *The New York Times*, April 17, 2010; "SEC Khuzami Explains Why Paulson Wasn't Charged," *The Wall Street Journal*, April 16, 2010; "SEC Director Talks Tough About Goldman," *CNNMoney*, April 16, 2010 (http://money.cnn.com/video/news/2010/04/16/n_Goldman_SEC_lawsuit_Khuzami.cnnmoney/).

[86] "Report of Investigation: Allegations of Improper Coordination Between the SEC and Other Governmental Entities Concerning the SEC's Enforcement Action Against Goldman Sachs & Co.," *United States Securities and Exchange Commission Office of Inspector General*, September 30, 2010 ("OIG Report"), pp. 51-52 (https://www.sec.gov/foia/docs/oig-534.pdf).

[87] French, K. and R. Roll (1986) "Stock Return Variances: The Arrival of Information and the Reaction of Traders," *Journal of Financial Economics*, 17, 5-26; Francis, J., D. Pagach, and J. Stephan (1992) "The Stock Market Response to Earnings Announcements Released during Trading versus Nontrading Periods," *Journal of Accounting Research*, 30, 165-184.

this decision was examined by SEC's Office of the Inspector General ("OIG"), an independent office within the SEC that conducts, supervises, and coordinates audits and investigations of the programs and operations of the SEC.[88,89] The OIG's report noted the concern raised by an employee of the New York Stock Exchange with the intra-day release of the Goldman Enforcement Action and its "volatility effect on the price of Goldman's stock and . . . the broader market impact from an SEC action against a major company in the financial industry."[90] Kenneth Lench, Chief of the Structured and New Products Unit in the Division of Enforcement at the SEC (the "Division"), "testified that, after the SEC filed against Goldman, a senior officer in the Office of Compliance Inspections and Examinations called Lench and 'sensitized' Lench to the issue of filing during trading hours. . . . Lench testified that this senior officer wanted 'consideration to be given in high-profile market-moving types of cases, potentially to file it outside of trading hours because of the impact [the Goldman action] had on the market that day.'"[91]

---

[88] In conducting its investigation of the Goldman Enforcement Action, "[t]he OIG . . . obtained and searched over 3.4 million e-mails . . . . took the sworn testimony of 32 witnesses and interviewed five other individuals with knowledge of facts or circumstances surrounding the SEC's investigation of Goldman, the SEC's filing of its complaint against Goldman, and/or the SEC's settlement with Goldman." See OIG Report, p. 2.

[89] "The Office of Inspector General (OIG)," U.S. Securities and Exchange Commission, accessed June 29, 2015 (http://www.sec.gov/about/offices/inspector_general.shtml).

[90] OIG Report, p. 66.

[91] OIG Report, pp. 5, 68.

54. Market analysts noted the sensational nature of the Goldman Enforcement Action. A Barclays analyst stated, "[t]argeting GS, given the flurry of anti-Wall Street press that has centered around that firm offers the publicity that the administration needs at this critical juncture."[92] A Societe Generale analyst report made a similar point, noting that "current attacks are politically driven in our view (GS was not the most active player in MBS and synthetic CDO issuance)."[93]

55. A number of analysts noted that the SEC enforcement action was disproportionate in relation to the allegations. For example, an Oppenheimer analyst report noted:

> [i]t is not the facts of the case as presented in the SEC's complaint that disturb us so much as the sensational and aggressive language that the SEC used in its complaint . . . . Goldman is singled out. It is almost as if the SEC wanted to embarrass Goldman and make it [a] lightening [*sic*] rod for lawsuits and negative publicity. . . . [I]t is just not a good thing to have one of your primary regulators with an apparent agenda to pursue.[94]

Similarly, according to Keefe, Bruyette & Woods, "[a]s long as the SEC's civil lawsuit lingers, a DOJ criminal probe is underway, and GS remains the lightening

---

[92] "Administration Steps Up Support for Bill," Barclays Capital, April 16, 2010, p. 1.

[93] "Blow-Out Quarter Overshadowed by SEC Complaint," Societe Generale, April 21, 2010, p. 1.

[94] "1Q Review: Life is Not Fair," Oppenheimer & Co., April 20, 2010, pp. 2-3.

[*sic*] rod for populist and congressional anger against Wall Street, it will be difficult for GS's stock to come close to recognizing its inherent value, in our view."[95] Commentators in the public press also noted the disproportionate nature of the Goldman Enforcement Action: "[u]nless the SEC is sitting on more evidence than it has laid out so far, the charge sheet looks flimsy."[96] The *Wall Street Journal* noted that "[g]iven the public anger at Wall Street, and the criticism of the SEC's failure to regulate more effectively before the financial crisis struck, it's worth considering that Goldman makes an enticing political target, regardless of the merits of the suit."[97]

56. A highly visible enforcement action in which a company's primary regulator signals an aggressive stance, as was the case in the Goldman Enforcement Action, can cause uncertainty about the effect of additional regulatory action. This uncertainty can impact a defendant's relationship with its employees, clients, and business counterparties. This can occur even if the allegations in question were previously disclosed, meaning that the impact of the filing of an enforcement action itself, as distinct from the underlying allegations, can cause a stock price decline. This signal, apart from heightening the possibility of increased regulation (as described above), can also increase perceived uncertainty regarding what consequences might follow from increased regulatory

---

[95] "Stepping Aside: Lower GS To Market Perform Until The Storm Clouds Clear," Keefe, Bruyette & Woods, May 3, 2010, p. 1.

[96] "In SEC vs. Goldman, Who's Really At Fault?" *The Washington Post*, April 21, 2010.

[97] "Where's the Goldman That I Used to Know?" *The Wall Street Journal*, April 21, 2010.

attention. The negative effect that the uncertainty generated by legal action can have on a defendant company's shares has been studied in the context of securities class actions. For instance, Alexander (1994) writes that "[t]he existence of a securities class action lawsuit can itself affect the value of the firm's shares."[98] Dr. Finnerty recognizes the impact that uncertainty generated by an ongoing enforcement action can have on a company's stock price.[99] This effect is likely more prominent if the enforcement action brought by the SEC is highly publicized and sends a strong signal to the market, as was the case with the Goldman Enforcement Action. These factors caused a decline in Goldman's stock price, which magnified the stock price decline associated with the severe characteristics of the Goldman Enforcement Action.

VI. The Goldman Enforcement Action and Its Unusual Characteristics Were Not Reasonably Foreseeable

57. SEC enforcement actions are, by their nature, unpredictable. The SEC enjoys wide-ranging prosecutorial discretion, and may use this discretion to determine whether to bring suit, which charges to pursue, and whether to provide the defendant with opportunities to settle. The Goldman Enforcement Action was also brought in the wake of the Financial Crisis, with characteristics which were unusual and unforeseeable to the Defendants and the market. Thus, neither investors nor the Defendants could have reasonably predicted the filing of the Goldman

---

[98] Alexander, J. (1994) "The Value of Bad News in Securities Class Actions," *UCLA Law Review*, 41, 1421-1469, p. 1435.

[99] Finnerty Deposition, 148:8-13.

Enforcement Action, its specific characteristics, and the subsequent decline in Goldman's stock price at any time during the Class Period.

* * *

Moreover, only 15 cases (or 12.82 percent) involved scienter charges. Similarly, individuals were charged only in 40 of these cases (or 34.19 percent). Of the 117 cases, only four cases (or 3.42 percent) have all three key characteristics identified in the Goldman Enforcement Action. [116] These figures, in addition to the response by analysts and market commentators to the SEC's enforcement action, as I discuss in Section V.B.ii, underscore the exceptional and unforeseeable nature of the Goldman Enforcement Action and further support the conclusion that the Defendants and the market could not have reasonably expected that the Goldman Enforcement Action would be filed and could not have predicted the specific characteristics of the Goldman Enforcement Action.

VII. The Report Alleging a DOJ Investigation into Goldman, Which Provided No Information About the Purported Goldman Conduct, Caused a Decline in Goldman's Stock Price on April 30, 2010

66. According to Dr. Finnerty, the abnormal price decline for Goldman's stock on Friday, April 30, 2010 was "-7.75%, which is statistically significant at the 1% level."[117] Furthermore, Dr. Finnerty claims that "the abnormal return of -7.75% on Goldman's common stock on April 30, 2010 is attributable to the corrective

[116] See Exhibit 4.

[117] Finnerty Report, ¶ 124.

information" revealed by the publication of news in the *Wall Street Journal* of a possible DOJ criminal investigation into Goldman.[118]

67. Specifically, the *Wall Street Journal* reported that "[f]ederal prosecutors are conducting a criminal investigation into whether Goldman Sachs Group Inc. or its employees committed securities fraud in connection with its mortgage trading."[119] While the purported investigation "stemmed from a referral from the Securities and Exchange Commission . . . . , [i]t couldn't be determined which Goldman deals are being scrutinized in the criminal investigation."[120] Plaintiffs do not allege that the purported DOJ investigation of Goldman resulted in any charges being filed.

68. As acknowledged by Plaintiffs' expert, the report provided no specifics about the purported investigation.[121] Moreover, it contained no new allegations of undisclosed conflicts. As such, the report could not have revealed any information to the market regarding Goldman's conflicts of interest. Therefore, there is no basis for allocating the stock price decline on this date to inferences made by investors about the existence and severity of Goldman's conflicts of

---

[118] Finnerty Report, ¶ 137.

[119] "Criminal Probe Looks Into Goldman Trading," *The Wall Street Journal*, April 30, 2010. The investigation was not acknowledged by the DOJ or Goldman.

[120] "Criminal Probe Looks Into Goldman Trading," *The Wall Street Journal*, April 30, 2010.

[121] Finnerty Deposition, 244:16-245:3.

interest in the Hudson 2006-1, Timberwolf I, and Anderson 2007-1 CDOs, as Dr. Finnerty has done.[122]

69. As part of his review of the alleged April 30, 2010 disclosure date, Dr. Finnerty reviews information released to the market on April 27, 2010.[123] Specifically, Dr. Finnerty notes that:

> [o]n Tuesday, April 27, 2010, the Senate's Permanent Subcommittee on Investigations held a hearing . . . to examine the role that Goldman played in the credit crisis, particularly in connection with sub-prime mortgage securitization. . . . [T]he Subcommittee claimed that Goldman devised a series of transactions (and not just a single CDO transaction) to profit from the collapse of the home mortgage market.[124]

However, Dr. Finnerty does not provide an explanation for why information disseminated three trading days earlier would have affected Goldman's stock price on April 30, 2010.

70. Criminal prosecutions of corporate defendants by the DOJ can have serious consequences. For instance, the DOJ's successful indictment and conviction of Arthur Andersen in 2002 put one of the nation's "Big 5" accounting firms out of business and resulted in the loss of tens of thousands of jobs.[125] Indeed, the *Wall Street Journal* article underscored the unusual severity of criminal charges in noting that

---

[122] Finnerty Report, Exhibit 7.

[123] Finnerty Report, ¶ 108.

[124] Finnerty Report, ¶ 109.

[125] Debold, D. and K. Barry (2008), "Consistency in NPAs and DPAs," *Federal Sentencing Report*er, 20, 331-333, p. 331.

"in the more than two-century history of the U.S. financial markets, no major financial firm has survived criminal charges."[126] At the time, prosecutions of corporations were rare, as the DOJ often opted for deferred prosecution agreements.[127] Nevertheless, even deferred prosecution agreements can entail significant costs for a company. For example, in February 2009, the Swiss bank UBS AG entered into a deferred prosecution agreement with the DOJ, in which it agreed to pay $780 million in fines, penalties, and interest.[128]

71. Equity analysts and press covering Goldman noted the severe consequences that criminal charges could have for Goldman. A Citigroup analyst report, also cited by Dr. Finnerty, described the substantive risks associated with the purported DOJ investigation against Goldman by noting that "[i]f a securities firm were convicted of criminal fraud, then it could lose its license as a primary treasury dealer; broker dealer licenses to sell securities could also be revoked."[129] In a similar vein, a *Washington Post* article stated that "[t]he Justice Department usually investigates high-profile cases of securities fraud, but the threshold for

---

[126] "Criminal Probe Looks Into Goldman Trading," *The Wall Street Journal*, April 30, 2010.

[127] Greenblum, B. (2005), "What Happens to a Prosecution Deferred? Judicial Oversight of Corporate Deferred Prosecution Agreements," *Columbia Law Review*, 105, 1863-1904, pp. 1863-1864.

[128] Nanda, V. (2010), "Corporate Criminal Liability in the United States: Is a New Approach Warranted?" *The American Journal of Comparative Law*, 58, 605-630, p. 606.

[129] "Reiterate Buy – Risks Are There, But Still See Significant Upside," Citigroup, May 2, 2010, p. 9. Cited in Finnerty Report, ¶ 130.

criminal prosecution is significantly higher than that of civil cases . . . It is rare for the government to indict a company, and even the threat of criminal prosecution can doom a business."[130]

72. An important factor influencing Goldman's stock price decline was the repercussions that the report of a purported DOJ investigation could have on the ongoing political debate regarding the regulation of the financial industry. A Standard & Poor's report, also cited by Dr. Finnerty, underlined the importance of the interaction between the report of an investigation and the current political climate, noting that "the risk of a formal securities fraud charge, on top of the SEC fraud charge and pending legislation to reshape the financial industry, further muddies Goldman's outlook."[131] Similarly, a former SEC enforcement attorney interpreted the report of the purported DOJ investigation in the context of the ongoing political situation, saying that "[t]he release of the existence of a preliminary inquiry amid the firestorm is reckless and grossly irresponsible. The only purpose of doing so was to stoke a political flame."[132]

73. Despite the lack of mention of any new allegations in the report of the purported DOJ investigation, the impact of the alleged criminal investigation and its possible severe repercussions

---

[130] "Goldman Case Sent To Justice; SEC Refers Its Findings Indictment of a Firm Would Be Unusual," *The Washington Post*, April 30, 2010. Cited in Finnerty Report, ¶ 118.

[131] "Goldman Shares Slide on Criminal-probe Concerns," *Bloomberg News*, April 30, 2010. Cited in Finnerty Report, ¶ 127.

[132] "Goldman Faces Rising Pressure To Strike Deal," *Financial Times*, April 30, 2010.

were highlighted by the actions taken by some analysts in lowering their outlook for Goldman's stock. Bank of America Merrill Lynch reported on April 30, 2010:

> [w]e are lowering our rating on GS to Neutral from Buy and our price objective to $160 from $220. Our downgrade is prompted by news reports filed Thursday evening by the media including the Wall St. Journal indicating that federal prosecutors have opened an investigation of GS in connection with its trading activities, raising the possibility of criminal charges.[133]

The Buckingham Research Group explained its downgrade of Goldman stock by stating:

> [r]eluctantly, and despite strong fundamentals and an attractive valuation, we are downgrading GS shares to Neutral from Buy given the significant uncertainty surrounding multiple and continued government probes of GS's mortgage trading & underwriting operations.[134]

74. The report of a purported DOJ investigation had an effect on Goldman's stock price for several reasons. The increase in the perceived likelihood of criminal charges, however small, would have had a negative impact on Goldman's stock price given the

---

[133] "Cutting to Neutral: Concerns Over Reports Of Federal Probe," Bank of America Merrill Lynch, April 30, 2010, p. 1. Cited in Finnerty Report, ¶ 126.

[134] "Downgrade To Neutral; Litigation/Political Risk Too Difficult To Handicap," The Buckingham Research Group, April 30, 2010, p. 1. Cited in Finnerty Report, ¶ 128.

severe potential consequences. Moreover, the purported DOJ investigation signaled wider governmental resolve to target Goldman and an increased risk of shifts in regulation with a disproportionate impact on Goldman's business. Finally, market participants, upon learning of the purported DOJ investigation, would have anticipated a drain on Goldman's resources and a major distraction for its executives.

75. Because the *Wall Street Journal* report on the alleged DOJ investigation provided no information about the purported Goldman conduct, any consequent stock price decline could not have been a result of the revelation of new information about Goldman's alleged conflicts of interest to the market through the *Wall Street Journal* report, as alleged by Plaintiffs. In particular, Dr. Finnerty's attribution of the entire abnormal return to new "corrective information" specific to the Hudson 2006-1, Timberwolf I, and Anderson 2007-1 CDOs is baseless.[135] My review of market commentary together with my analysis of the potential consequences of criminal charges lead me to conclude that the report of a DOJ criminal investigation, in and of itself and irrespective of any underlying allegations, caused Goldman's stock price to decline on April 30, 2010. Moreover, the repercussions that the report of a

---

[135] Finnerty Report, ¶¶ 135-137, Exhibit 7. ("The DOJ's criminal investigation was, in fact, a direct consequence of Goldman's alleged fraudulent conduct in connection with certain CDOs. . . . The news about the DOJ's criminal investigation provided significant new information about the severity of Goldman's conflicts of interest and violations of its business principles in contrast to its false and misleading statements during the Class Period.")

purported DOJ investigation could have on the ongoing political debate regarding the regulation of the financial industry heightened Goldman's stock price decline.

VIII. Reports Alleging an SEC Investigation into Goldman, as Distinct from Any Allegations Regarding Goldman's Conduct, Caused a Decline in Goldman's Stock Price on June 10, 2010

76. According to Dr. Finnerty, "[o]n Thursday, June 10, 2010, Goldman's common stock price *decreased* 2.21% from $136.80 to $133.77. . . . [T]he abnormal return on June 10, 2010 is - 4.52%, which is statistically significant at the 5% level."[136] Furthermore, Dr. Finnerty claims that the reports of an SEC investigation "disclosed to market participants the severity of Goldman's conduct and revealed that Goldman had been engaged in undisclosed conflicts of interest and violated its business principles in direct contrast to the false and misleading statements during the Class Period."[137] However, Dr. Gompers has shown that no new information about Goldman's conduct was revealed to the market on this date.[138] Therefore, there is no basis for attributing the abnormal return on June 10, 2010 to the alleged existence and severity of Goldman's conflicts of interest in the Hudson 2006-1 CDO.

77. As Dr. Finnerty reports, "[o]n Wednesday, June 9, 2010, after the market closed, it was reported that the Hudson 2006-1 CDO, which was sold in 2006,

---

[136] Finnerty Report, ¶ 141.

[137] Finnerty Report, ¶ 147.

[138] Gompers Report, ¶ 123.

was also the target of a probe by the SEC."[139] Specifically, a *Financial Times* article reported:

> [t]he US Securities and Exchange Commission has stepped up its inquiries into a complex mortgage-backed deal by Goldman Sachs that was not part of the civil fraud charges filed against the bank in April. . . . SEC interest in Hudson Mezzanine Funding, a $2bn collaterised debt obligation, comes amid settlement talks with Goldman over accusations that the bank defrauded investors in Abacus, a similar CDO.[140]

Plaintiffs do not allege that the SEC's investigation of the Hudson CDO resulted in an enforcement action.

78. A Wells Fargo analyst report pointed to the reports of a second SEC investigation as the cause of this stock price decline, saying that "[m]edia reports of a second SEC investigation into CDO marketing practices at GS (specifically a 2006 CDO called Hudson Mezzanine) pushed GS shares down as much as 4 percent today."[141] Goldman's stock price would have reacted to the announcement of an additional SEC investigation for reasons already discussed above. Complying with the SEC's demands for cooperation in the investigation and preparing a defense against possible charges consume a company's resources and are a distraction to management. As noted by Karpoff et al. (2008), "[s]hare values can

---

[139] Finnerty Report, ¶ 138.

[140] "SEC Probes Second Goldman Security," *Financial Times*, June 9, 2010.

[141] "GS: Reiterating Outperform Rating Despite Near-Term Volatility," Wells Fargo, June 10, 2010, p. 1.

decrease as investors anticipate that the targeted firm will receive non-monetary sanctions or will have to pay fines, penalties, and court settlements related to the charges."[142] The same authors also note that "the firm can suffer real losses as managers are required to divert resources to the investigation and away from company business."[143] A mutual fund executive speaking about SEC investigations reported that "[w]hen a sweep occurs, you're talking about days or weeks, not minutes. It's a major drain on the resources of the firm."[144]

79. Academic studies show that disclosures of SEC investigations result in a decline in defendant company stock prices. For instance, Feroz et al. (1991) find that disclosures of SEC investigations regarding financial reporting violations are associated with average two-day abnormal returns of -7.5 percent.[145] These same authors attempt to "isolate the investigation effect" by "focus[ing] on the cumulative returns for the 20 firms that had previously disclosed the disputed accounting. The cumulative abnormal return for days { -1, 0} for these 20 firms is - 6.0

---

[142] Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 594.

[143] Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 599.

[144] "Managers Hit by High Cost of SEC Probes," *Pensions & Investments*, October 18, 2004.

[145] Feroz, E., K. Park, and V. Pastena (1991), "The Financial and Market Effects of the SEC's Accounting and Auditing Enforcement Releases," *Journal of Accounting Research*, 29, 107-142, p. 123.

percent."[146] Looking at initial reports of SEC investigations, Choi et al. (2013) report abnormal returns for an event window centered on the event date ranging from -6.5 percent to 0.1 percent, depending on the type of violation involved (accounting or option backdating) and the time period considered.[147]

80. The implications of the reported investigation for future regulatory and legislative activity were likely an important additional contributor to Goldman's stock price decline on this date. The reports of the SEC investigation against Goldman, the first regulatory investigation pertaining to the Hudson CDO, marked the third report of regulatory action against Goldman following the Goldman Enforcement Action and the report of a purported DOJ investigation. Similar to the enforcement action, the SEC investigation signaled additional risk of future regulations which would have a disproportionate impact on Goldman compared to its peers. The investigation of a new CDO transaction implied a wider scope of expected additional civil and regulatory actions against Goldman which would have caused a decline in the Goldman stock price. While this investigation did not lead to an SEC enforcement

---

[146] Feroz, E., K. Park, and V. Pastena (1991), "The Financial and Market Effects of the SEC's Accounting and Auditing Enforcement Releases," *Journal of Accounting Research*, 29, 107-142, p. 124.

[147] The event window spans from the day before the first public disclosure of the SEC investigation to the day after the disclosure. See Choi, S., A. Wiechman, and A. Pritchard (2013), "Scandal Enforcement at the SEC: The Arc of the Option Backdating Investigations," *American Law and Economics Review*, 15, 542-577, pp. 553-554.

action, such enforcement activity can increase the risks and uncertainty that a company faces and which its employees, clients, and business counterparties perceive, and the exposure of the company to potentially severe penalties.

81. Dr. Gompers has shown that reports of an SEC investigation into Goldman on June 10, 2010 contained no new allegations about Goldman's conduct. Therefore, any consequent stock price decline could not have been a result of the revelation of new information about Goldman's alleged conflicts of interest to the market, as alleged by Plaintiffs. Instead, the reports of an SEC investigation, in and of themselves and irrespective of any underlying allegations, caused a decline in Goldman's stock price on June 10, 2010. Furthermore, the implications of the reports of a new SEC investigation for future regulations and litigation heightened the impact on Goldman's stock price. The stock price decline on June 10, 2010 is consistent with the negative impact I would expect from the publication of news of an SEC investigation related to the Hudson CDO and the resulting risks and potential costs that would flow from this regulatory activity.

IX. Conclusions

82. Based on my work on this matter, I have reached the following conclusions:

a. The filing of the Goldman Enforcement Action, in and of itself and distinct from the content of the underlying allegations, caused a decline in the Goldman stock price. The Goldman Enforcement Action had severe characteristics which are associated with price declines. In addition, the Goldman Enforcement Action signaled an increased risk of future regulatory actions and legislative and regulatory changes which would have a disproportionate impact on Goldman compared to its peers. Further, the sensational and aggressive nature of the Goldman Enforcement Action, as noted by equity analysts and market commentators, caused uncertainty about the effect of additional regulatory action which could impact Goldman's relationship with its employees, clients, and business counterparties. These additional factors magnified the stock price decline associated with the severe characteristics of the Goldman Enforcement Action. Based on my findings, and Dr. Gompers' finding that allegations made prior to April 16, 2010 which mirrored the corrective disclosures alleged by Plaintiffs had no effect on Goldman's stock price, I conclude that the Goldman Enforcement Action — independent of the content of the underlying allegations — likely accounted for the full April 16, 2010 -9.27 percent abnormal return calculated by Dr. Finnerty.

b. The Goldman Enforcement Action and its unusual characteristics were not reasonably foreseeable for the Defendants and the market because of the wide discretion the SEC enjoys in deciding whether to bring an enforcement action and in determining its characteristics, and because the presence of the Goldman Enforcement Action characteristics is extraordinary. Thus, neither investors nor the Defendants could have reasonably predicted the filing of the Goldman Enforcement Action, its specific characteristics, and the subsequent decline in Goldman's stock price.

c. The news report alleging a DOJ criminal investigation against Goldman, irrespective of any underlying allegations, caused a decline in Goldman's stock price on April 30, 2010. The report of the alleged DOJ investigation provided no information about the purported Goldman conduct. Therefore, any consequent stock price decline cannot be attributed to the revelation of new information about Goldman's alleged conflicts of interest.

d. The news reports alleging an SEC investigation into Goldman, irrespective of any underlying allegations, caused a decline in Goldman's stock price on June 10, 2010. The reports of the SEC investigation on this date against Goldman — the first regulatory investigation pertaining to the Hudson CDO, but the third report of regulatory action against Goldman within the span of two months — resulted in additional risk of future regulations which would have a disproportionate impact on Goldman compared to its peers. The investigation of a new CDO transaction increased the risks, uncertainty, and exposure of the company to potentially severe penalties resulting in a decline in Goldman's stock price. Furthermore, given that Dr. Gompers has shown that the reports of the SEC investigation into Goldman on June 10, 2010 contained no new allegations about Goldman's conduct, any consequent stock price decline could not have been a result of the revelation of new information about

Goldman's alleged conflicts of interest to the market.

EXHIBIT 1

Summary Statistics for Defendant Company Abnormal Returns [1]
Fiscal Year 2010 – 2014 [2]

Statistic	**Abnormal Returns** [3]
Number of Actions	117
Number of Actions with Negative Abnormal Returns	60
Minimum	-17.09%
Maximum	7.78%
Average [4]	-0.06%

Source: Bloomberg; CRSP; Factiva; http://www.sec.gov; Securities Enforcement Empirical Database

Note:

[1] The dataset includes enforcement actions filed against publicly traded companies for which stock price data covering the enforcement action filing date and the preceding 250 trading days is available from CRSP. Enforcement actions against subsidiaries of publicly traded companies are also included for cases classified by the SEC as arising from the Financial Crisis. The Goldman Sachs Group, Inc. enforcement action filed on April 16, 2010 is excluded. There are three instances in which both a civil and an administrative action were filed against a defendant company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[2] The SEC's fiscal year ends on September 30 (Fiscal Year 2014 ended on September 30, 2014).

[3] Abnormal returns are calculated using an event study methodology based on a one factor market model. The model uses the S&P 500 Total Return Index as the market portfolio and a 250 trading day estimation window, which excludes any trading days on which other enforcement actions against the defendant company were filed. Abnormal returns are calculated for the enforcement action filing date in actions in which the enforcement action was announced before the end of trading hours and for the following trading day in actions in which the announcement came after market close.

[4] The average is not significant at the 5% level.

EXHIBIT 2

Summary Statistics for
Defendant Company Abnormal Returns: [1]
No Concurrent Resolution [2]
Fiscal Year 2010 – 2014 [3]

Statistic	**Abnormal Returns: No Concurrent Resolution** [4]	**Abnormal Returns: Concurrent Resolution** [4]
Number of Actions	8	109
Number of Actions with Negative Abnormal Returns	6	54
Minimum	-17.09%	-8.64%
Maximum	1.36%	7.78%
Average [5]	-3.86%*	0.22%
Difference in Averages [5]	-4.08%*	

Source: Bloomberg; CRSP; Factiva; http://www.sec.gov; Securities Enforcement Empirical Database

Note:

[1] The dataset includes enforcement actions filed against publicly traded companies for which stock price data covering the enforcement action filing date and the preceding 250 trading days is available from CRSP. Enforcement actions against subsidiaries of publicly traded companies are also included for cases classified by the SEC as arising from the Financial

Crisis. The Goldman Sachs Group, Inc. enforcement action filed on April 16, 2010 is excluded. There are three instances in which both a civil and an administrative action were filed against a defendant company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[2] Enforcement actions where the settlement between the SEC and the defendant was not disclosed on the same date that the enforcement action was filed.

[3] The SEC's fiscal year ends on September 30 (Fiscal Year 2014 ended on September 30, 2014).

[4] Abnormal returns are calculated using an event study methodology based on a one factor market model. The model uses the S&P 500 Total Return Index as the market portfolio and a 250 trading day estimation window, which excludes any trading days on which other enforcement actions against the defendant company were filed. Abnormal returns are calculated for the enforcement action filing date in actions in which the enforcement action was announced before the end of trading hours and for the following trading day in actions in which the announcement came after market close.

[5] An asterisk (*) indicates significance at the 5% level.

EXHIBIT 3

Summary Statistics for
Defendant Company Abnormal Returns: [1]
Compounding Impact of Enforcement Action Characteristics
Fiscal Year 2010 – 2014 [2]

Enforcement Action Characteristic		**Additional Enforcement Action Characteristics**		
		Individual Defendants [4]	**Scienter Charges** [5]	**Individual Defendants and Scienter Charges** [4] [5]
No Concurrent Resolution [3]				
Number of Cases	8	5	4	4
Average Abnormal Return [6]	-3.86%	-6.30%	-8.07%	-8.07%

Source: Bloomberg; CRSP; Factiva; http://www.sec.gov; Securities Enforcement Empirical Database

Note:

[1] The dataset includes enforcement actions filed against publicly traded companies for which stock price data covering the enforcement action filing date and the preceding 250 trading days is available from

CRSP. Enforcement actions against subsidiaries of publicly traded companies are also included for cases classified by the SEC as arising from the Financial Crisis. The Goldman Sachs Group, Inc. enforcement action filed on April 16, 2010 is excluded. There are three instances in which both a civil and an administrative action were filed against a defendant company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[2] The SEC's fiscal year ends on September 30 (Fiscal Year 2014 ended on September 30, 2014).

[3] Enforcement actions where the settlement between the SEC and the defendant was not disclosed on the same date that the enforcement action was filed.

[4] Enforcement actions where allegations were also brought against an individual from the defendant company for related conduct on the same date that the enforcement action against the defendant company was filed.

[5] Enforcement actions where charges include violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and/or Section 17(a)(1) of the Securities Act of 1933.

[6] Abnormal returns are calculated using an event study methodology based on a one factor market model. The model uses the S&P 500 Total Return Index as the market portfolio and a 250 trading day estimation window, which excludes any trading days on which other enforcement actions against the defendant company were filed. Abnormal returns are calculated for the enforcement action filing date in

actions in which the enforcement action was announced before the end of trading hours and for the following trading day in actions in which the announcement came after market close. An asterisk (*) indicates significance at the 5% level.

EXHIBIT 4

Summary Statistics for Defendant Company Abnormal Returns: [1]
No Concurrent Resolution, Scienter Charges, and Individual Defendants [2]
Fiscal Year 2010 – 2014 [3]

Statistic	**Abnormal Returns: No Concurrent Resolution, Scienter Charges, and Individual Defendants** [4]	**Abnormal Returns: Concurrent Resolution, No Scienter Charges, and No Individual Defendants** [4] [5]
Number of Actions	4	70
Number of Actions with Negative Abnormal Returns	4	32
Minimum	-17.09%	-8.64%
Maximum	-3.34%	6.67%
Average [6]	-8.07%	0.37%
Difference in Averages [6]	-8.44%	

Source: Bloomberg; CRSP; Factiva ; http://www.sec.gov; Securities Enforcement Empirical Database

Note:

[1] The dataset includes enforcement actions filed against publicly traded companies for which stock

price data covering the enforcement action filing date and the preceding 250 trading days is available from CRSP. Enforcement actions against subsidiaries of publicly traded companies are also included for cases classified by the SEC as arising from the Financial Crisis. The Goldman Sachs Group, Inc. enforcement action filed on April 16, 2010 is excluded. There are three instances in which both a civil and an administrative action were filed against a defendant company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[2] Enforcement actions with no concurrent resolution, scienter charges, and individual defendants. That is, enforcement actions where the settlement between the SEC and the defendant was not disclosed on the same date that the enforcement action was filed, charges include violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and/or Section 17(a)(1) of the Securities Act of 1933, and allegations were also brought against an individual from the defendant company for related conduct on the same date that the enforcement action against the defendant company was filed.

[3] The SEC's fiscal year ends on September 30 (Fiscal Year 2014 ended on September 30, 2014).

[4] Abnormal returns are calculated using an event study methodology based on a one factor market model. The model uses the S&P 500 Total Return Index as the market portfolio and a 250 trading day estimation window, which excludes any trading days on which other enforcement actions against the defendant company were filed. Abnormal returns are

calculated for the enforcement action filing date in actions in which the enforcement action was announced before the end of trading hours and for the following trading day in actions in which the announcement came after market close.

[5] Enforcement actions with concurrent resolutions, no scienter charges, and no individual defendants. That is, enforcement actions where the settlement between the SEC and the defendant was disclosed on the same date that the enforcement action was filed, charges do not include violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and/or Section 17(a)(1) of the Securities Act of 1933, and allegations were not brought against an individual from the defendant company for related conduct on the same date that the enforcement action against the defendant company was filed.

[6] An asterisk (*) indicates significance at the 5% level.

EXHIBIT 5

Distribution of SEC Enforcement Actions By Enforcement Action Characteristic [1] **Fiscal Year 2010 – 2014 [2]**

	Enforcement Actions With Characteristic		**Enforcement Actions Without Characteristic**	
Enforcement Action Characteristic	**Number**	**Percentage of Total Actions**	**Number**	**Percentage of Total Actions**
No Concurrent Resolution [3]	8	6.84%	109	93.16%
Scienter Charges [4]	15	12.82%	102	87.18%
Individual Defendants [5]	40	34.19%	77	65.81%
Any Characteristic	**47**	**40.17%**	**70**	**59.83%**

Source: CRSP; http://www.sec.gov; Securities Enforcement Empirical Database

Note:

[1] The dataset includes enforcement actions filed against publicly traded companies for which stock price data covering the enforcement action filing date and the preceding 250 trading days is available from CRSP. Enforcement actions against subsidiaries of publicly traded companies are also included for cases classified by the SEC as arising from the Financial Crisis. The Goldman Sachs Group, Inc. enforcement action filed on April 16, 2010 is excluded. There are three instances in which both a civil and an administrative action were filed against a defendant

company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[2] The SEC's fiscal year ends on September 30 (Fiscal Year 2014 ended on September 30, 2014).

[3] Enforcement actions where the settlement between the SEC and the defendant was not disclosed on the same date that the enforcement action was filed.

[4] Enforcement actions where charges include violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and/or Section 17(a)(1) of the Securities Act of 1933.

[5] Enforcement actions where allegations were also brought against an individual from the defendant company for related conduct on the same date that the enforcement action against the defendant company was filed.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 1:10-cv-03461-PAC

ECF Case

In re GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

This Document Relates To: ALL ACTIONS

REPORT OF LAURA T. STARKS, Ph.D.

July 2, 2015

Table of Contents

* * *

V. The statements at issue are general statements regarding Goldman's business principles and management of conflicts of interest

27. Plaintiffs allege that Defendants made two categories of misstatements: their statements about business principles ("Business Principles Statements") and their statements about conflict controls ("Conflict Controls Statements").[20]

28. The Business Principles Statements involve statements regarding Goldman's business principles, and statements about the importance of Goldman's reputation and the importance and quality of its client franchise. The statements in this category are predominantly from Goldman's SEC Form 10-K ("Form 10-K") filings, Goldman's annual reports, or public conference calls. Exhibit 4 provides examples of the Business Principles Statements.

29. The Business Principles Statements include certain of Goldman's 14 business principles contained in the firm's annual report to shareholders during the Class Period and provided to Goldman's employees. Specifically, these statements are:

- "Our clients' interests always come first. Our experience shows that if we serve our clients well, our own success will follow."
- "Our assets are our people, capital and reputation. If any of these is ever diminished,

---

[20] *See, e.g.*, Complaint, ¶¶ 13–15, 18, 21–22, 24–25, 27, 116, 120–121, 127, 134–136, 140–141, 154, 271–275, 277, 279–287, 289, 291–297, 299, 301–303, 305, 327. Emphasis omitted.

the last is the most difficult to restore. We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard."

- "Integrity and honesty are at the heart of our business."[21]

30. Statements of a company's business principles communicate to key stakeholders—including customers, employees, and investors—the principles, standards, values, and goals of the organization as aspired to by the company's founders and top management.[22] Such statements are typically widely circulated and discussed, with the goal of having their meaning understood, shared, and internalized by the company's stakeholders, in particular, its employees.[23] These types of aspirational statements are used for a variety of purposes, including creation and promotion of organizational culture, employee motivation, and corporate brand formation.[24] These types of

---

[21] Complaint, ¶¶ 24, 154, 277, 289, 299, 305. Emphasis omitted.

[22] *See, e.g.*, "Mission and Vision Statements," (http://www.bain .com/publications/articles/management-tools-mission-and-vision-statements.aspx).

[23] *See, e.g.*, Bauer, T., M. Carpenter, and B. Erdogan (2010), "Developing Mission, Vision, and Values," in *Management Principles*, pp. 167–170; Collins, J. C., and J. I. Porras (1996), "Building Your Company's Vision," *Harvard Business Review*, September–October, pp. 65–77, at pp. 66–68; "Mission and Vision Statements," (http://www.bain.com/publications/articles/management-tools-mission-and-vision-statements.aspx).

[24] *See, e.g.*, Bauer, T., M. Carpenter, and B. Erdogan (2010), "Developing Mission, Vision, and Values," in *Management*

statements are also commonly used in company communications across a wide range of industries (as I discuss in more detail in Section VI below).

31. As shown in Exhibit 4, these statements were included in Goldman's annual reports to investors during the Class Period. The history of these 14 business principles shows that they were designed specifically to provide employees of Goldman with an understanding of what are considered to be the firm's core values. According to one author, they were first written in the late 1970s, when Goldman Sachs was operated as a private partnership, and they were attached to the company's annual review and sent to every employee's home.[25] I understand that the 14 business principles are generally provided to all Goldman employees during new employee orientation and are included on Goldman's website.[26]

Principles, pp. 167–170; Collins, J. C., and J. I. Porras (1996), "Building Your Company's Vision," *Harvard Business Review*, September–October, pp. 65–77, at pp. 66–77; "Mission and Vision Statements," (http://www.bain.com/publications/articles/management-tools-mission-and-vision-statements.aspx).

[25] Ellis, C. D. (2009), *The Partnership: The Making of Goldman Sachs*, New York, NY: Penguin Books ("Ellis (2009)"), pp. 184–185. According to Ellis (2009), including the principles in the company's annual review is a practice that has continued.

[26] *See, e.g.*, "Why Goldman Sachs? – Training and Orientation," (http://www.goldmansachs.com/careers/why-goldman-sachs/training-and-orientation/training-and-orientation-main-page.html); "Business Principles and Standards – Goldman Sachs Business Principles," (http://www.goldmansachs.com/who-we-are/business-standards/business-principles/index.html). The 14 business principles are the same as the set originally drafted except for minor changes in wording. *See* Ellis (2009), p. 185. *See also* Deposition of Fabrice Tourre, November 13, 2014, 381:2–382:9; Deposition of George Maltezos, October 29, 2014, 247:19–

32. Based on my experience and understanding, due to the aspirational nature of a company's business principles and their prevalence in company communications, investors cannot view these statements as guarantees that all of the company's employees would uphold these principles at all times.

33. The Business Principles Statements also include certain statements in (i) Goldman's Form 10-Ks, (ii) Goldman earnings conference calls and investor conferences, (iii) a January 21, 2010 Goldman press release, and (iv) a November 8, 2009 *Sunday Times* article.[27] These statements include:

- "Our reputation is one of our most important assets."[28]
- "We believe our willingness and ability to take risk to facilitate client transactions distinguishes us from many of our competitors and substantially enhances our client relationships."[29]
- "I am pleased to report record results for the first quarter. . . . Most importantly, our performance reflects the depth of our client franchise and the diversity of our business mix."[30]

248:6; Deposition of Scott Wisenbaker, October 10, 2013, 49:20–50:6.

[27] *See, e.g.*, Exhibit 4.

[28] *See, e.g.*, Complaint, ¶¶ 154, 272, 284. Emphasis omitted.

[29] *See, e.g.*, Complaint, ¶¶ 154, 271, 283, 293, 302. Emphasis omitted.

[30] *See, e.g.*, Complaint, ¶ 279. *See also* Goldman Sachs Q1 2007 Earnings Conference Call Transcript, March 13, 2007.

- "What drove performance was the quality of our client franchise."[31]

34. These types of statements about the importance of a company's reputation, and importance or quality of its clients or client franchise, are so general in nature that they have no substantive content from the perspective of an investor. In fact, company statements about the importance of the company's reputation and clients are truisms and especially so for companies in the services sector and for companies that have well-recognized brand names. Consequently, such statements do not provide information pertinent to a company's valuation or financial performance. In my experience, the notion that companies value their reputations is a given, irrespective of company statements on that topic. I discuss the pervasiveness of these statements among companies in more detail in Section VI below.

35. The second category of misstatements alleged by Plaintiffs involves statements regarding Goldman's management of conflicts of interest or the Conflict Controls Statements.[32] Exhibit 5 provides examples of the Conflict Controls Statements. Almost all of these statements are from the "Risk Factors" section of Goldman's Form 10-Ks and include the following:

- "Conflicts of interest are increasing and a failure to appropriately deal with conflicts of interest could adversely affect our businesses. Our reputation is one of our most important assets. As we have expanded the scope of our

---

[31] *See, e.g.*, Complaint, ¶¶ 154, 281. Emphasis omitted.

[32] *See, e.g.*, Complaint, ¶¶ 18, 25, 134–136, 272, 284, 294, 303. *See also* Exhibit 5.

> businesses and our client base, we increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interests of another client . . . ."
>
> "We have extensive procedures and controls that are designed to address conflicts of interest, including those designed to prevent the improper sharing of information among our businesses. However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and our reputation could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to identify and deal appropriately with conflicts of interest. In addition, potential or perceived conflicts could give rise to litigation or enforcement actions."[33]

36. Financial institutions, which include a variety of business operations from trading to investment banking, can be exposed to a number of business conflicts. For example, investment banks might advise multiple clients in the same sector, or investment banking clients might seek to enter into transactions with other firms with which the investment bank has a relationship. With respect to trading, a bank might act as a middleman between counterparties looking to

---

[33] Complaint, ¶¶ 134–135, 272, 284, 294, 303 (emphasis omitted); The Goldman Sachs Group, Inc. Form 10-K for the fiscal year ended November 30, 2007 ("Goldman 2007 Form 10-K"), p. 28.

trade or might act in a proprietary role. In my experience, the risks that arise from potential conflicts of interest in this industry are well known to investors, having been pointed out and written about for decades.[34]

37. The general statements at issue in this action are statements that Goldman Sachs made about the entirety of its business, and, in my experience, no reasonable investor could read these types of general statements as suggesting that inconsistent behavior within any particular business line or specific transaction within the larger entity would negate these general statements for the larger entity. Goldman Sachs is a large financial services firm with different divisions, sources of revenues, thousands of clients, and thousands of employees. For example, in the fiscal year ended December 2009, Goldman had net revenues of $45.2 billion, with $871 billion in assets under management and over 32,000 employees worldwide.[35] At the end of its fiscal year 2009, Goldman had three principal business segments: Investment Banking, Trading and Principal Investments, and Asset Management and Securities Services.[36] The size and scope of Goldman's activities

---

[34] Wolfson, N. (1976), *Conflicts of Interest: Investment Banking*, New York, NY: The Twentieth Century Fund, Inc.

[35] The Goldman Sachs Group, Inc. Form 10-K for the fiscal year ended December 31, 2009 ("Goldman 2009 Form 10-K"), pp. 3, 12, 14.

[36] Goldman 2009 Form 10-K, pp. 1, 5. In its 2010 Form 10-K, issued in 2011, Goldman started reporting four business segments: Investment Banking, Investing and Lending, Institutional Client Services, and Investment Management. *See* The Goldman Sachs Group, Inc. Form 10-K for the fiscal year ended December 31, 2010, p. 1.

within its Trading and Principal Investments segment—Goldman's largest revenue-generating business segment in fiscal year 2009—are sweeping. For example, in its 2009 Form 10-K, Goldman reported $34.4 billion in net revenues from its Trading and Principal Investments segment—which amounted to approximately 76 percent of Goldman's net revenues in fiscal year 2009—and described the company's activities in this segment as follows:[37]

> "We facilitate client transactions with a diverse group of corporations, financial institutions, investment funds, governments and individuals through market making in, trading of and investing in fixed income and equity products, currencies, commodities and derivatives on these products. We also take proprietary positions on certain of these products. In addition, we engage in market-making activities on equities and options exchanges, and we clear client transactions on major stock, options and futures exchanges worldwide. In connection with our merchant banking and other investing activities, we make principal investments directly and through funds that we raise and manage."[38]

38. In addition, these Conflict Controls Statements are provided in a section titled "Risk Factors" in Goldman's Form 10-Ks filed with the SEC. Statements

---

[37] Goldman 2009 Form 10-K, p. 3. Dividing $34.4 billion of net revenues from the Trading and Principal Investments business segment by Goldman's total net revenues of $45.2 billion yields approximately 76 percent.

[38] Goldman 2009 Form 10-K, p. 55.

in the Risk Factors section of Form 10-Ks are designed to provide "information about the most significant risks that apply to the company or to its securities."[39] As such, these and other statements in the Risk Factors sections of Form 10-Ks are there to warn investors about significant risks that could have an adverse impact on the company and cannot reasonably be interpreted by investors as guarantees that the risks will not occur. Indeed, the statements at issue also include the following language providing further warning to investors:

> "However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and our reputation could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to identify and deal appropriately with conflicts of interest. In addition, potential or perceived conflicts could give rise to litigation or enforcement actions."[40]

39. These types of general statements regarding the risks of conflicts and the company's intended approach to the management of conflicts are commonly found in the Form 10-K filings of financial services companies. I discuss the pervasiveness of these statements in more detail in Section VI below.

---

[39] "How to Read a 10-K," (http://www.sec.gov/answers/reada 10k.htm). The SEC made Risk Factors section a requirement in 2005. *See*, *e.g.*, "Report on Review of Disclosure Requirements in Regulation S-K," (https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf).

[40] Goldman 2007 Form 10-K, p. 28.

40. As I also discuss in more detail below, I am not aware of any type of investor that could reasonably consider these types of statements as containing information that could be pertinent to their investment decision-making process.

VI. General statements in company communications regarding a company's business principles, the importance of its reputation and client franchise, and those regarding a company's management of conflicts of interest do not affect the value of a company's stock, and therefore do not contain information that can be used in investment decision-making

41. Based on my education, academic research on investments, and years of investment management experience, equity investors do not consider general statements included in company communications on broad topics, such as the Business Principles Statements and Conflict Controls Statements at issue in this case, to provide pertinent information for their investment decision-making process. Such general statements do not provide information that bears on a company's future financial performance or value. Statements such as the Business Principles Statements and Conflict Controls Statements are also too general to convey anything precise or meaningful, cannot be viewed by investors as assurances of a particular outcome and, in some cases, are nothing more than truisms. Even one of the Lead Plaintiffs described the statements at issue as "fairly generic."[41]

---

[41] *See*, *e.g.*, Deposition of H. Craig Slaughter, March 12, 2015, 11:2–11:12, 261:18–262:20; Complaint, Introduction.

42. For example, companies are naturally concerned with establishing a good reputation and protecting it. As such, company statements about the importance of reputation—such as "reputation is one of our most important assets"—are truisms for all companies regardless of whether a company publicly makes such general statements in its communications. I would expect that companies other than Goldman would have also made similar statements regarding the importance of their reputations. Indeed, I identified a number of these statements in public communications by companies in a variety of industries. For example:

- American Express Company 2008 Form 10-K: "Our brand and reputation are key assets of our Company."[42]
- The Boeing Company 2009 Annual Report: "Our . . . reputation and experience are among this company's strongest advantages."[43]
- The Coca-Cola Company 2008 Form 10-K: "If we are unable to maintain our brand image and corporate reputation, our business may suffer. Our success depends on our ability to maintain brand image for our existing products and effectively build up brand image for new products and brand extensions."[44]

---

[42] American Express Company Form 10-K for the fiscal year ended December 31, 2008, p. 73.

[43] The Boeing Company Annual Report for the fiscal year ended December 31, 2009, p. 5.

[44] The Coca-Cola Company Form 10-K for the fiscal year ended December 31, 2008, p. 18.

- FedEx Corporation 2009 Form 10-K: "Our businesses depend on our strong reputation and the value of the FedEx brand."[45]
- Morgan Stanley 2006 Form 10-K: "Our reputation is one of our most important assets."[46]
- Target Corporation 2009 Form 10-K: "Our continued success is substantially dependent on . . . the reputation we have built over many years . . .."[47]
- UBS AG 2009 Annual Report: "Our reputation is our most valuable asset . . .."[48]

43. Further, in my experience, investors are aware of companies' general concern regarding harm to their reputation and the impact it could have on their business, regardless of whether the companies have made statements to that effect. Inclusion of a statement about the importance of a company's reputation in an annual report or in an executive's comments on the firm therefore would not convey new or substantive information to which an investor could react. In addition, in my experience, the term "reputational harm" is commonly used by companies and understood by investors to describe potential or actual damage to a corporate brand due to the

---

[45] FedEx Corporation Form 10-K for the fiscal year ended May 31, 2009, p. 82.

[46] Morgan Stanley Form 10-K for the fiscal year ended November 30, 2006, p. 20.

[47] Target Corporation Form 10-K for the fiscal year ended January 30, 2010, p. 4.

[48] UBS AG Annual Report for the fiscal year ended December 31, 2009, p. 11.

corporation's association with a negative event or news story. This term is used irrespective of whether the company has made prior statements about the importance of its reputation.

44. The general statements at issue in this matter are pervasive in company communications, and given their lack of specific information, in my experience, investors do not identify differentiable content in these statements on which to base investment decisions, or rely on them at all during the investment decision-making process. In Exhibits 6 and 7, I present numerous examples of these statements.

45. Specifically, in Exhibit 6, I provide a list of statements similar to the Business Principles Statements made by various companies during the Class Period. To determine how common it is for companies to include these types of statements in company communications, I looked at statements in publicly available documents of the three largest constituent firms in each of the S&P 500 Sector Indices, as well as statements in publicly available documents of the companies in indices analyzed by Dr. Finnerty (i.e., The Bear Stearns Companies, Inc., The Charles Schwab Corporation, Citigroup Inc., E*Trade Financial Corporation, JPMorgan Chase & Co., Lehman Brothers Holdings Inc., Merrill Lynch & Company, Inc., and Morgan Stanley).[49] I found that

---

[49] The sectors covered by the S&P 500 Sector Indices are: Consumer Discretionary, Consumer Staples, Energy, Financials, Health Care, Industrials, Materials, Technology, and Utilities. Dr. Finnerty examines two indices, including the S&P 500 Investment Banking & Brokerage Sub Industry Index and what Dr. Finnerty deems "Goldman's Core Competitors" as identified in Goldman's 2008 proxy statement dated March 7, 2008. *See*

every company I examined made public statements analogous to the Business Principles Statements. For example:

- 3M Company Code of Conduct: "3M's excellent reputation defines who we are as a company. At the same time it strengthens our competitive position in the global marketplace. It is imperative that each of us remains fully committed to upholding and advancing 3M's reputation, in every decision we make, and in every action we take . . . . Our personal integrity, our shared values and our ethical business practices form the basis of 3M's reputation around the world."[50]

- Apple Inc. 2010 Form 10-K: "Apple's success is based on creating innovative, high-quality products and services and on demonstrating integrity in every business interaction. Apple's principles of business conduct define the way we do business worldwide. These principles are:

  - Honesty. Demonstrate honesty and high ethical standards in all business dealings.

  - Respect. Treat customers, suppliers, employees, and others with respect and courtesy.

Declaration of John D. Finnerty, Ph.D., filed January 30, 2015 ("Finnerty Class Cert Declaration"), Appendix C-1.

[50] "Our Code of Conduct: Being 3M," (http://solutions.3m.com/wps/portal/3M/en_US/businessconduct/bcmain/policy/principles/).

  - Confidentiality. Protect the confidentiality of Apple's information and the information of our customers, suppliers and employees.
  - Compliance. Ensure that business decisions comply with all applicable laws and regulations."[51]

- The Dow Chemical Company 2009 Annual Report: "At Dow, we believe our success depends on maintaining the highest ethical and moral standards everywhere we operate. That focus on integrity starts at the top."[52]

- The Walt Disney Company Standards of Business Conduct: "One of our greatest assets is our reputation. We're known for operating with high ethical standards everywhere we do business."[53]

46. In addition, in Exhibit 7, I provide a list of statements similar to the Conflict Controls Statements made by companies in the same sector as Goldman during the Class Period. Specifically, I looked at statements in publicly available documents of companies in indices analyzed by Dr. Finnerty.[54] I found that every company I examined made public statements analogous to the Conflict Controls Statements. For example:

---

[51] Apple Inc. Form 10-K for the fiscal year ended September 25, 2010, Exhibit 14.1.

[52] The Dow Chemical Company Annual Report for the fiscal year ended December 31, 2009, p. 9.

[53] "The Walt Disney Company and Affiliated Companies Standards of Business Conduct," (http://cdn.media.ir.thewaltdisneycompany.com/forms/DIS-SBC-CM.pdf).

[54] *See* Finnerty Class Cert Declaration, Appendix C-1.

- JPMorgan Chase & Co. 2006 Form 10-K: "If JPMorgan Chase does not successfully handle issues that may arise in the conduct of its business and operations, its reputation could be damaged which could in turn negatively affect its business. The Firm's ability to attract and retain customers and transact with its counterparties could be adversely affected to the extent its reputation is damaged. The failure of the Firm to deal, or to appear to fail to deal, with various issues that could give rise to reputational risk could cause harm to the Firm and its business prospects. These include, but are not limited to, appropriately dealing with potential conflicts of interest, legal and regulatory requirements, ethical issues, money-laundering, privacy, record-keeping, sales and trading practices, and the proper identification of the legal, reputational, credit, liquidity and market risks inherent in its products."[55]
- JPMorgan Chase & Co. 2007 Form 10-K: "The Firm could suffer significant reputational harm if the Firm acts when it has, or is thought to have, conflicts of interest. . . . Management of potential conflicts of interest has become increasingly complex as the Firm expands its activities among its numerous transactions, obligations, holdings and clients. Therefore, there can be no assurance that conflicts of

[55] JPMorgan Chase & Co. Form 10-K for the fiscal year ended December 31, 2006, p. 5.

interest will not arise in the future that could cause material harm to the Firm."[56]

- Merrill Lynch & Company, Inc. 2008 Form 10-K: "Our ability to attract and retain clients and employees could be adversely impacted to the extent our reputation is damaged. Our actual or perceived failure to address various issues could give rise to reputational risk that could harm us or our business prospects. These issues include but are not limited to, appropriately addressing potential conflicts of interest; legal and regulatory requirements; ethical issues; money-laundering; privacy; properly maintaining customer and associate personal information; record keeping; sales and trading practices; and the proper identification of the legal, reputational, credit, liquidity and market risks inherent in our products."[57]
- Merrill Lynch & Company, Inc. 2010 Form 10-K: "We could suffer significant reputational harm if we fail to properly identify and manage potential conflicts of interest. Management of potential conflicts of interests has become increasingly complex as we expand our business activities through more numerous transactions, obligations and interests with and among our clients. The failure to adequately address, or the perceived failure to adequately address, conflicts of interest could

---

[56] JPMorgan Chase & Co. Form 10-K for the fiscal year ended December 31, 2007, pp. 5–6.

[57] Merrill Lynch & Company, Inc. Form 10-K for the fiscal year ended December 26, 2008, p. 12.

affect the willingness of clients to deal with us, or give rise to litigation or enforcement actions, which could adversely affect our businesses."[58]

- Morgan Stanley 2007 Form 10-K: "Our reputation is one of our most important assets. As we have expanded the scope of our businesses and our client base, we increasingly have to address potential conflicts of interest. . . . We have procedures and controls that are designed to address various conflicts of interest. However, identifying and managing potential conflicts of interest can be complex and difficult and our reputation could be damaged if we fail, or appear to fail, to deal appropriately with conflicts of interest. . . . [P]otential or perceived conflicts could give rise to litigation or enforcement actions."[59]

47. The statements I identify in Exhibits 6 and 7, like the statements at issue in this case, are general in nature, and, in my experience, do not provide any specific information that an investor—regardless of investor type—could reasonably use in making an investment decision. In addition, the prevalence of these kinds of general statements in company communications is indicative of their lack of information content for investors in determining the future financial performance or value of a company. Based on my knowledge and experience of the investment decision-making process, the Business Principles Statements or Conflict Controls Statements

---

[58] Merrill Lynch & Company, Inc. Form 10-K for the fiscal year ended December 31, 2010, p. 17.

[59] Morgan Stanley Form 10-K for the fiscal year ended November 30, 2007, p. 18.

and analogous statements made by other companies do not contain information pertinent to the investment decision-making process and I would not expect investors to rely on them.

VII. My analysis of analyst reports that included discussions of Goldman Sachs during the Class Period shows that the Business Principles Statements and Conflict Controls Statements were not discussed by analysts, which further reflects that they did not contain information that could be used in an investment decision-making process

48. Equity analysts are widely known as information intermediaries between companies and investors, delivering significant information from the companies to investors as well as expanding on this information. Further, sell-side analysts are paid by investors (either directly or indirectly) to be their information intermediaries. Thus, the content of analysts' reports provides a useful measure of the information that investors would deem most significant to the investment decision-making process. For a company that is broadly followed by analysts, such as Goldman Sachs, important events and statements made by management that analysts (and, by implication, investors) believe to be significant to the future of a firm are usually included in analyst reports. I understand that Dr. Finnerty has similarly recognized that information that is most significant to investors is typically captured in analyst reports.[60] Thus, reviewing analyst reports published during the

[60] Deposition of John D. Finnerty, March 19, 2015, 101:3–102:20.

Class Period allows me to assess the types of information most significant to investors at the time. In particular, a review of analyst reports during the Class Period provides a method to examine whether the Business Principles Statements and Conflict Controls Statements were among the issues that analysts and investors considered significant in this time frame.

49. Based on professional standards and common industry practices, in the process of evaluating a stock and making investment recommendations, analysts are required to engage in rigorous analysis and identify and utilize various sources of information. For instance, in the United States, the Financial Industry Regulatory Authority ("FINRA")—an independent self-regulatory organization—oversees the securities industry, including the activity of equity analysts in brokerage firms.[61] According to FINRA rules, "[a]n associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report" must pass the Series 86/87 Research Analyst Examination and register as a research analyst with FINRA.[62] This

---

[61] "About FINRA," (http://www.finra.org/about); "Self-Regulatory Organization Rulemaking," (http://www.sec.gov/rules/sro.shtml).

[62] "Research Analyst Qualification Exam (Series 86/87) Content Outline," (http://www finra.org/sites/default/files/Industry/p006473.pdf); "Qualifications Frequently Asked Questions (FAQ) – Research Analysts," (http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/Qualifications/faq/p011105). Analysts who have passed the Chartered Financial Analyst Level I and Level II exams may request an exemption from the FINRA Series 86 Research Analyst Exam (Part 1: Analysis). *See* "Qualifications Frequently Asked Questions (FAQ) – Research Analysts," (http://www.finra.org/Industry/Compli

exam covers a wide variety of topics regarding analysts' critical job functions of information gathering and data collection, analysis, modeling and valuation, preparation of research reports, and dissemination of information. In particular, FINRA identifies an important aspect of the analysts' duties as assessing "the relevance and importance of the information gathered to identify the drivers that influence the performance of the industry and/or the subject company."[63]

50. Analysts often hold the Chartered Financial Analyst ("CFA") credential, which refers to a standardized and widely recognized curriculum and testing regimen "connecting academic theory with current practice and ethical and professional standards to provide a strong foundation of advanced investment analysis and real-world portfolio management skills."[64] In addition to the technical and quantitative demands of the CFA credential, analysts with CFA designations are also required to follow the guidelines and best practices identified in the CFA Institute's *Ethical and Professional Standards and*

ance/Registration/QualificationsExams/Qualifications/faq/p011105).

[63] "Research Analyst Qualification Exam (Series 86/87) Content Outline," (http://www finra.org/sites/default/files/Industry/p006473.pdf).

[64] "CFA® Program," (http://www.cfainstitute.org/programs/cfaprogram/Pages/index.aspx). To become a CFA charterholder, one must pass a series of formal, standardized tests—referred to as Level I, Level II, and Level III—as well as have a minimum of four years of "qualified work experience in investment decision making," and "[a]gree to follow the CFA Institute Code of Ethics and Standards of Professional Conduct." *See* "Become a CFA Charterholder," (http://www.cfainstitute.org/programs/cfaprogram/charterholder/Pages/index.aspx).

Quantitative Methods on investment analysis and to support their investment analysis and recommendations by appropriate research and investigation.[65]

51. Academic research into analyst reports has also shown what analysts rely upon and what their reports contain. Previts et al. (1994) conducted a content analysis of analyst reports and found that income statement and performance-related discussions dominated analysts' reports.[66] The authors also examined the nonfinancial information in the analyst reports and found that market share, competitive position, industry and economic conditions, competitors' capabilities, products, the nature and recent history of the company, its products, product pricing, customers, suppliers, industry, the national and international economy, and the company's competitive position were included among the subjects covered in the analyst reports.[67] Further, the authors found that analysts considered and discussed the quality of company management and strategy: "Analysts also extensively disclose and evaluate corporate and management strategy (revenue growth, cost management, marketing strategy, competitive

---

[65] CFA Institute (2007), *Ethical and Professional Standards and Quantitative Methods*, Boston, MA: Pearson Custom Publishing, pp. 79–88.

[66] Previts, G. J., R. J. Bricker, T. R. Robinson, and S. J. Young (1994), "A Content Analysis of Sell-Side Financial Analyst Company Reports," *Accounting Horizons,* Vol. 8, No. 2, pp. 55–70, at p. 59.

[67] Previts, G. J., R. J. Bricker, T. R. Robinson, and S. J. Young (1994), "A Content Analysis of Sell-Side Financial Analyst Company Reports," *Accounting Horizons,* Vol. 8, No. 2, pp. 55–70, at p. 65.

positioning, etc.).”[68] Another content analysis study of analyst reports concluded that the central themes of analyst reports can be categorized as growth, management and strategy, profitability, financial position and market conditions.[69]

52. I undertook an examination of analyst reports during the Class Period to understand the issues of importance to analysts during this period. In doing so, I have used 880 reports on Goldman that were previously employed in connection with the expert report that Charles Porten (“Mr. Porten”) submitted during the class certification stage of this matter.[70] I

---

[68] Previts, G. J., R. J. Bricker, T. R. Robinson, and S. J. Young (1994), “A Content Analysis of Sell-Side Financial Analyst Company Reports,” *Accounting Horizons,* Vol. 8, No. 2, pp. 55–70, at p. 65.

[69] Breton, G., and R. J. Taffler (2001), “Accounting Information and Analyst Stock Recommendation Decisions: A Content Analysis Approach,” *Accounting and Business Research,* Vol. 31, No. 2, pp. 91–101, at p. 95.

[70] Declaration of Charles Porten, CFA, filed on April 6, 2015 (“Porten Declaration”), pp. 9–10. The time frame covered by the analyst reports is the beginning of the Class Period (February 5, 2007) through two weeks after the end of the Class Period (i.e., through and including June 24, 2010). Mr. Porten’s declaration identified 884 reports, rather than 880; however, I identified three reports relating to other companies and another report that was duplicative of a report already included in the set of analyst reports. I excluded these reports, namely: “Q1/08 in Line. Analyzing Potential December Performance Fees,” *RBC Capital Markets*, November 9, 2007, “Union Pacific Corp.: 3Q Earnings – on Track,” *Bank of America Merrill Lynch*, October 22, 2009, “Union Pacific Corp.: 4Q Beats, Volumes Weak But FCF Solid,” *Bank of America Merrill Lynch*, January 21, 2010, and “Goldman Sachs Group: Ceasing Coverage,” *Macquarie*, June 9, 2010. *See* Porten Declaration, Exhibit 3. A complete list of the analyst reports I reviewed is provided in Exhibit 3.

have reviewed and checked the methodology used to identify these reports and find this collection methodology to be reliable.[71]

53. In my examination, I found that, consistent with my experience and with the academic literature, the analyst reports on Goldman during the relevant time period focused on all or parts of the main themes detailed above: growth, management and strategy,

[71] The 880 analyst reports were compiled based on reports that were available through two publicly available databases commonly used by academics and the investment community: *S&P Capital IQ* and *Thomson Reuters*. I also understand that Mr. Porten made a request to Goldman Sachs to provide any additional reports it possessed, and those analyst reports were also included. Contributors that published only a single report during the roughly three-and-a-half-year Class Period as well as the contributors that published quantitative or technical reports (i.e., reports devoid of commentary on company performance or investment recommendations) were excluded. The excluded contributors are: *Abaxbank*, *AIG*, *Ativo Research*, *Black Box Investing, Inc.*, *Bloom*, *Corporate Technology Information Services, Inc.*, *Covalence SA*, *Datamonitor*, *Disclosure Insight, Inc.*, *Dolmen Securities*, *Dnb Markets*, *Fact Set*, *Financiele Diensten Amsterdam*, *Fitch Ratings*, *Ford Equity Research, Inc.*, *Global Markets Direct*, *Globaldata*, *Governancemetrics International*, *Hi Investment & Securities*, *Howe Barnes Hoefer and Arnett Inc.*, *IBISWorld*, *Institutional Shareholder Services*, *Market Edge*, *Marketline*, *Medtrack Research*, *Nab Sydney*, *National Australia Bank Limited*, *New Constructs LLC*, *News Bites Pty Limited*, *Nomura Securities*, *Optionsmart.com*, *Plunkett Research*, *Pricetarget Research, Inc.*, *Rapid Ratings*, *Reese Group LLC*, *RiskMetrics Group*, *S&P Equity Research*, *Sadif-Investment Analytics S.A.*, *Stock Traders Daily*, *Susquehanna Financial Group*, *Tabb Group, Inc.*, *Taurus Investment & Securities Co.*, *Thomson Reuters (Stock Activity Reports and Thomson StreetEvents)*, *Trucost Plc*, *Unicredit Research*, *Validea*, *Valuengine, Inc.*, *W Ratings Corporation*, *Wall Street Strategies*, *Wall Street Transcript*, *Weiss Ratings, Inc.*, and *Zacks Investment Research*. *See* Porten Declaration, pp. 9–10.

profitability, financial position, and market conditions. Beyond examining the information indicated to be important to analysts, I also considered whether the alleged misstatements were included as part of this information. If analysts had found the Business Principles Statements or Conflict Controls Statements important to their analysis of Goldman's stock, I would expect to observe at least some analyst discussion related to these statements during the Class Period.

54. I found that during the Class Period prior to the alleged corrective disclosure dates, the analysts reporting on Goldman's stock did not mention or refer to the statements identified as misstatements by Plaintiffs (i.e., Business Principles Statements or Conflict Controls Statements). This further supports my opinion that these types of statements did not contain pertinent information that could be used in an investment decision-making process when determining Goldman's financial performance or the valuation of its stock.

55. I also found that on or around the time of the four alleged corrective disclosure dates and until the end of the Class Period, analysts again focused on all or part of the major themes, consistent with my experience and academic findings. Further, analysts did not refer to or mention the Business Principles Statements or Conflict Controls Statements. If analysts had found the Business Principles Statements or Conflict Controls Statements to be information that was important to their analysis, and if they had incorporated this information into their evaluations of Goldman's stock, I would have expected to find some analyst discussion related to these statements when the misstatements were allegedly

corrected. However, I found that these analyst reports discussed the SEC enforcement action and other enforcement activities, including their potential outcome and their anticipated effects on Goldman's businesses. The analyst reports did not attribute the enforcement activities to the statements at issue in this litigation, and the statements at issue were not addressed in any of the analyst reports in this time frame. This further supports my opinion that the statements at issue in this matter did not contain information that could be pertinent to an investment decision-making process or to Goldman's future financial performance and value.

A. Analysts did not address the Business Principles Statements or Conflict Controls Statements prior to the alleged corrective disclosure dates

56. The Cornerstone Research team, under my direction, and I reviewed in their entirety 813 analyst reports on Goldman issued between February 7, 2007 and April 15, 2010.[72] If the Business Principles Statements or Conflict Controls Statements were important or pertinent to the analysts' evaluation of Goldman's stock during this time frame, I would have expected to find at least some analyst discussion that mentions these statements. I found none.

[72] Plaintiffs allege that on April 16, 2010, April 26, 2010, April 30, 2010, and June 10, 2010, the Business Principles Statements and Conflict Controls Statements were revealed to be false. *See* Complaint, ¶¶ 2, 5, 6, 147, 333–335. In this section, I discuss the analyst reports on Goldman published from February 5, 2007 through April 15, 2010. I discuss the analyst reports issued on or after April 16, 2010 in Section VII.B.

57. Instead I found that, consistent with the types of information that analysts and equity investors typically consider, when evaluating Goldman's stock, analysts discussed information and matters pertinent to the company's future financial performance and valuation of its stock. That is, consistent with previous academic research and my experience, analysts focused on the themes of growth, management and strategy, profitability, financial position, and market conditions. I found frequent analyst discussion of Goldman's performance in each of these areas. For example, following Goldman's better-than-expected first quarter 2007 earnings results, analysts commented specifically on the company's growth, positioning in sector, profitability, management and strategy, as follows:

- "Results were again better than forecast. Positioning and profitability—ROE [return on equity] and profit margins—are best in class, that's driving double-digit book value growth and supporting our recommendation of the stock."[73] (*Credit Suisse*, March 13, 2007)

- "[Goldman] set another record with its first-quarter results. What's more, it was no single business within [Goldman] that contributed to its outperformance, rather, it was every business that delivered a staggering 38% ROE and $3.2 billion in net income. As if that wasn't enough, [Goldman] increased its market share of global announced M&A deals to 40% up from 33% for most of last year. So [Goldman] is basically in almost 1 out of every 2 deals that

[73] "Goldman Sachs Group, Inc.: First Impressions," *Credit Suisse*, March 13, 2007.

is announced world-wide and CFO David Viniar said that the company's backlog has not been better since 2000, the last record set."[74] (*CIBC World Markets*, March 13, 2007)

- "Qualitatively, we believe [Goldman] deserves a premium multiple versus its broker peers given its: Premier investment banking franchise; Impressive (but underappreciated) asset management and securities services segment; Extremely profitable (and growing) trading and principal investments business; Solid operating leverage; Best positioned global franchise; and Flexibility in capital management (generating a best-in-class ROE)."[75] (*Bear Stearns & Co.,* March 13, 2007)

58. I also found that analysts had widespread discussions of Goldman's competitive positioning and market conditions and their impacts on Goldman's future business prospects. For example:

- "In our mind, these results are, without question, strong and should be a standout relative to peers and reflective of the scale and scope of this global platform across geographies (50% of revenues this quarter were international), businesses and product, and the company can and will weather 'storms'

---

[74] "Goldman Sachs Group: 'Catch Me If You Can': GS 1Q07 Results Sets New Bar for Peers," *CIBC World Markets*, March 13, 2007.

[75] "The Goldman Sachs Group, Inc.: Another Strong Quarter - - 1Q07 Results," *Bear Stearns & Co.*, March 13, 2007.

in relatively good shape."[76] (*Keefe, Bruyette & Woods*, March 14, 2007)

- "[Goldman] remains best positioned among the brokers given its business mix (more of what's growing and less of what's slowing), geographic footprint, backlog of principal investments, and strong risk culture. . . . While the stock is not cheap, we think investors will want to own the best of the breed in broker land in terms of mix and risk mgmt, and Goldman's ROEs should remain at a healthy premium versus the group, so we reiterate our Buy rating."[77] (*UBS Securities*, November 5, 2007)
- "Best-positioned global player in high-margin investment banking businesses, in our view, with a well-diversified mix of businesses (across products and geographies), including size and breadth of fixed income sales and trading businesses. We believe valuation already discounts the company's premium franchise value and the current capital markets environment."[78] (*Bank of America*, September 10, 2008)
- "We reaffirm our Accumulate rating and $170 price target on [Goldman] given our view that

[76] "Goldman Sachs Group, Inc.: GS: Record Revenues and Broad Business Mix Drive GS's Record 1Q EPS," *Keefe, Bruyette & Woods*, March 14, 2007.

[77] "Goldman Sachs: It's Good to Be Goldman," *UBS Securities*, November 5, 2007.

[78] "The Goldman Sachs Group, Inc.: Wash, Rinse, Repeat. Cutting Numbers Again on Cyclical Challenges; Maintain Neutral," *Bank of America*, September 10, 2008.

> the company is the most levered to the improving capital markets environment and is well positioned to gain market share globally across most business lines."[79] (*Buckingham Research Group*, June 19, 2009)

59. In addition, in the Goldman analyst reports, I found that analysts discussed prospects for the financial services industry as a whole, including trends in regulatory oversight on financial services companies. In particular, with the onset of the financial crisis, in 2008 and later, the analysts had extended discussions on the expected impact of the evolving U.S. subprime mortgage crisis on the sector. For example:

- "Bear Stearns, Goldman Sachs, Lehman Brothers and Morgan Stanley are expected to report their Q1 '08 earning results in mid-March. As in H2 '07, Fixed Income Sale & Trading [*sic*] results will be the center of investor concern this quarter. Market conditions remained challenging through February as troubles spread through a variety of areas within the fixed income market. We saw deterioration in the leveraged lending and commercial real estate markets as well as problems in auction rate securities and further SIV [structured investment vehicle] defaults. These setbacks should lead to further writedowns from the group this quarter. . . . We are lowering Q1 '08 EPS estimates for . . .

---

[79] "Securities Brokers: 2Q09 Preview: Capital Markets Trends Positive; Non-Operating Items Negative," *The Buckingham Research Group*, June 19, 2009.

[Goldman] to $3.03 from $5.46 . . . ."[80] (*Bernstein Research*, February 22, 2008)

- "Business in a word has been 'lousy' in the third fiscal quarter (ended August 31). There has been no vitality in the investment banking sector. Trading activity has suffered in virtually every area. Private equity activity has been weak. The credit derivatives market has slowed. Prime brokerage is not doing well. Retail commissions are suffering. Plus, and most importantly for Goldman, the equity markets have done poorly. This hurts every aspect of the business. This is because even though Goldman is a diversified firm, its main business continues to be equity related activities. This includes underwriting, trading, and proprietary investments. While I continue to believe that there is simply no better firm on the street than this one, even this one cannot escape the problems in its key markets."[81] (*Ladenburg Thalmann*, September 9, 2008)

- "We are updating estimates based on trends quarter-to-date for 4Q09 and our recently completed fixed income trading outlook for 2010 . . . . Our analysis points to a substantial decline in FICC [fixed income, currencies, and commodities] trading in 4Q09, and then we are looking for industry fixed income trading to fall 15-20% in 2010. We expect 2011 revenues to also be under pressure due to the impact of

[80] "U.S. Securities Industry: Lowering Q1 2008 EPS Forecasts," *Bernstein Research*, February 22, 2008.

[81] "Goldman Sachs (GS): Tough Times," *Ladenburg Thalmann*, September 9, 2008.

regulatory reform, which we see negatively impacting FICC revenue growth by 5-10% in 2011. . . . We are reducing our 4Q09 estimate for [Goldman] by $0.25 to $5.25 (vs. consensus of $5.34) as more conservative revenue estimates are offset by lower [compensation] expense."[82] (*Citigroup Global Markets*, January 7, 2010)

- "Facing the threat of the 'Volcker Rule,' higher Basel III capital charges, lower leverage, mandated liquidity pools, a new financial responsibility fee and new resolution authorities for the US systemic regulator, many investors are understandably reluctant to invest in capital markets focused banks and bank holding companies. Indeed, the uncertainty associated with these issues has weighed especially on the valuation of shares of Goldman Sachs, which arguably has the most to lose in any regulatory scenario that would materially alter the business model of Wall Street's large institutional firms."[83] (*Bernstein Research*, March 10, 2010)

60. In sum, my analysis of analyst research reports on Goldman's stock prior to the alleged corrective disclosure dates (i.e., from February 5, 2007 through April 15, 2010) shows no indication that analysts considered or relied on the Business Principles Statements or Conflict Controls Statements in their

---

[82] "U.S. Banks: GS, MS, JPM, BAC Estimate Changes," *Citigroup Global Markets*, January 7, 2010.

[83] "Goldman Sachs: Regulation and Its Discontents – Evaluating Fundamentals Under a New Regime," *Bernstein Research*, March 10, 2010.

evaluations of Goldman's stock over this time period. Instead, I found that the analysts considered and relied on the themes consistent with the prior academic research, and did not include any discussions of the Business Principles Statements or Conflict Controls Statements. That analysts did not address these general statements about business principles or conflicts controls further confirms my opinion that these types of statements do not contain information that could be pertinent to an investment decision-making process.

B. Analysts did not address the Business Principles Statements or Conflict Controls Statements on or after the alleged corrective disclosure dates

61. Plaintiffs identify four dates—April 16, 2010, April 26, 2010, April 30, 2010, and June 10, 2010—on which they allege the Business Principles Statements and Conflict Controls Statements were revealed to be false.[84] If the Business Principles Statements or Conflict Controls Statements had been important to analysts in their considerations of Goldman's stock as an investment, I would expect to observe analyst discussions concerning these statements on or shortly after the days the alleged corrections were made. While I will specifically discuss analyst commentary on and one week after each of Plaintiffs' alleged corrective disclosure dates, I found that the statements at issue were not mentioned or referred to in any of the analyst reports issued between April 16, 2010 (i.e., the first alleged corrective disclosure date) and June 24, 2010 (i.e., two weeks after the end of the

[84] Complaint, ¶¶ 2, 5, 6, 147, 333–335.

Class Period).[85] I found that analyst reports discussed the SEC enforcement action and other enforcement activities in this time frame, including their potential outcome and potential effects on Goldman's businesses, but did not attribute the enforcement activities to the statements at issue in this litigation. Analysts' discussion of potential effects of the SEC enforcement action in particular included observations regarding reputational risks to Goldman. However, none of the analysts' comments (including those discussing reputational risks) referenced the statements at issue. Moreover, the analysts' discussions on potential reputational risks stemming from the SEC enforcement action were not based on the alleged misstatements and in fact could have been made regardless of whether the Business Principles Statements and Conflict Controls Statements had even been included in Defendants' public communications. Further, I find no indication that the analysts' discussions on potential reputational risks were linked to the alleged misstatements.

1. April 16, 2010

62. Plaintiffs allege that the filing of securities fraud charges against Goldman by the SEC on April 16, 2010 "revealed that Goldman's [*sic*] had collaborated with a favored client to design a portfolio of securities that would decline in value, and sold this toxic portfolio to other Goldman clients."[86]

---

[85] The Cornerstone Research team, under my direction, and I reviewed in their entirety 67 analyst reports on Goldman issued between April 16, 2010 and June 24, 2010 (two weeks after the end of the Class Period).

[86] Complaint, ¶ 331.

63. In Exhibit 8, I provide selected excerpts that reflect the main issues the analysts discussed in the 39 analyst reports published between April 16, 2010 and April 23, 2010 (i.e., the date of the first alleged corrective disclosure date and one week thereafter). If the analysts related the filing of the SEC fraud charges against Goldman to the alleged falsity of the Business Principles Statements or Conflict Controls Statements, and if the statements at issue were pertinent to an investment decision-making process, I would expect that at a minimum those analysts would have provided even a mention of the Business Principles Statements or Conflict Controls Statements. I found no such mentions or discussions in any of the 39 analyst reports regardless of whether the analysts revised their estimates or recommendations.

64. I found that analysts again focused on the themes research has shown are commonly included in analyst reports: growth, management and strategy, profitability, financial position, and market conditions.[87] The analysts discussed the SEC's securities fraud charges and their implications in the context of these themes. Analysts also approached the SEC's charges from several different perspectives. Some discussed the impact of the SEC enforcement action on Goldman, including its reputation and its business prospects while others discussed the impact

---

[87] *See* ¶ 51 above. *See also* Previts, G. J., R. J. Bricker, T. R. Robinson, and S. J. Young (1994), "A Content Analysis of Sell-Side Financial Analyst Company Reports," *Accounting Horizons*, Vol. 8, No. 2, pp. 55–70; Breton, G., and R. J. Taffler (2001), "Accounting Information and Analyst Stock Recommendation Decisions: A Content Analysis Approach," *Accounting and Business Research*, Vol. 31, No. 2, pp. 91–101.

of the SEC enforcement action on the financial services sector as a whole and commented on what this action could mean regarding the regulation of the sector. Some examples follow:

- "The SEC alleges that Goldman structured a synthetic collateralized debt obligation (CDO) structure that was based on subprime mortgage securities that Goldman marketed as being selected by an independent manager . . . This action is a civil complaint, not a criminal complaint, implying that downside is a large monetary fine . . . Marketing/Disclosure Issue with Limited Read Through . . . This is the first time the SEC has brought a complaint alleging fraud on the part of a broker dealer in marketing investments on subprime mortgages . . . [T]wo key issues for Goldman in our view is [sic] reputational risk, and possible follow on lawsuits related to this action . . . Raising Risk Rating to High, Maintain Buy: On a fundamental basis, we continue to see very strong upside in the stock, but these issues will take a while to resolve and will add more headline risk to the story . . . . We view [Goldman] as a well managed franchise and believe its strong capital base and leading global position in investment banking, capital markets, trading, private equity and asset management offer equity investors a unique opportunity to gain exposure to long-term global economic expansion . . . . Despite the challenges facing the industry, we view Goldman's business model as sound and see the firm winning considerable market share as we exit the current down cycle."[88] (*Citigroup Global Markets*, April 16, 2010)

- "[T]he SEC charges . . . against [Goldman], possible follow-on, and financial regulatory reform [will] weigh on the stock and sector in the near term; however, we think the loss of ~$13B in market cap . . . is an over-reaction, our long-term view remains unchanged, and we maintain our Buy rating, based on what we see as attractive valuation, relative strong positioning, and improving capital markets trends."[89] (*Deutsche Bank Securities*, April 16, 2010)
- "Typically, reputational damage, particularly in the institutional context, is a paper tiger. However, in this case, the response by the media and Washington has been so severe, that we believe management will want their day in court to prove the firm's innocence. As a result, we may not see the typical settlement but a trial. As for the direct financial impact, the worst-case scenario is probably $1.10/sh or 6% of our 2010 estimate."[90] (*Macquarie*, April 19, 2010)
- "We are maintaining our Outperform recommendation on [Goldman] . . . due to: 1) manageable financial impact if [Goldman] loses the case . . . 2) [Goldman's] share price

---

[88] "Goldman Sachs Group, Inc.: Initial Thoughts on SEC Civil Lawsuit," *Citigroup Global Markets*, April 16, 2010.

[89] "Goldman Sachs: SEC Charges GS," *Deutsche Bank Securities*, April 16, 2010.

[90] "Goldman Sachs Group: Our Thoughts on the SEC's Fraud Claim," *Macquarie*, April 19, 2010.

> decline . . . appears outsized relative to the 'likely worst case' financial cost, suggesting attractive return potential vs. its peers, 3) the possibility the case may be settled at a materially lower cost . . . and 4) our belief that [Goldman's] business opportunities will not suffer meaningful detriment from the lawsuit. We have not adjusted our EPS estimates for 2010 or 2011 . . . . [W]e believe those seeking greater regulation of the financial services sector – and the largest most diversified banks in particular – could use the SEC's allegations as a catalyst for more stringent regulation of the banks and capital markets activities. This could have a negative effect on future revenue generation capabilities for these institutions."[91] (*Wells Fargo Securities*, April 19, 2010)

65. The analyst discussion of the SEC's securities fraud charges against Goldman included some references to terms such as "reputation" or the "client franchise."[92] However, I found no indication that these references related to the earlier general statements at issue in this matter (i.e., Business Principles Statements and Conflict Controls Statements). Neither did I find any indication in analysts' discussions that, in relation to the SEC enforcement

---

[91] "The Goldman Sachs Group, Inc.: GS: Reputational Risks Increased, But Valuation Still Attractive," *Wells Fargo Securities*, April 19, 2010.

[92] *See, e.g.*, "Goldman Sachs Group, Inc.: Initial Thoughts on SEC Civil Lawsuit," *Citigroup Global Markets*, April 16, 2010; "Goldman Sachs Group: Our Thoughts on the SEC's Fraud Claim," *Macquarie*, April 19, 2010; "Goldman Sachs: Solid Quarter Overshadowed by Recent SEC Allegations," *Deutsche Bank Securities*, April 20, 2010.

action, analysts concluded that the earlier general statements in this matter had been shown to be false.

66. Analysts also discussed Goldman's strong fundamentals, especially given the company's announcement on April 20, 2010 of its first quarter 2010 earnings, which exceeded analyst forecasts. Some analysts commented that the strong results were overshadowed by the SEC enforcement action. For example:

- "Goldman posted a tremendous quarter. . . . Were it not for the SEC fraud complaint . . . we think the stock would be materially higher . . . ."[93] (*Oppenheimer & Co.*, April 20, 2010)
- "[Goldman] continues to report strong current-period earnings, giving us confidence in 2010 earnings power. On the basis of 2010 ROE (now 17%), the shares are not expensive at 1.3x P/B. That said, we believe that the overhang of the SEC charges and possible further investigations both in the US and abroad are now overhangs."[94] (*Barclays Capital*, April 21, 2010)
- "[Goldman] had a strong Q1, posting $3.3bn net profit on $12.8bn net revenues mainly driven by trading ($10.2bn). The firm had a record quarter in FICC ($7.4bn net revenues i.e. + 90% qoq / + 14% yoy) on strong client flows in credit, rates and forex. . . . The firm achieved a 20% ROE with a 15.0% T1 ratio.

[93] "Goldman Sachs Group: 1Q Review: Life is Not Fair," *Oppenheimer & Co.*, April 20, 2010.

[94] "Goldman Sachs Group Inc.: Strong Revs and Comp Ratio Drive Beat," *Barclays Capital*, April 21, 2010.

> Results were overshadowed by the SEC complaint and FSA [U.K. Financial Services Authority] decision to initiate a formal investigation."[95] (*Societe Generale*, April 21, 2010)

67. In sum, I found no reference to the Business Principles Statements or Conflict Controls Statements in any of these analyst reports. This further confirms that analysts did not view the statements as containing information pertinent to an investment decision-making process or that the statements had any bearing on any movements in Goldman's stock price on or around April 16, 2010. None of the analysts' reports referenced the statements at issue. Moreover, the analysts' discussions on potential reputational risks stemming from the SEC enforcement action could have been stated regardless of whether the Business Principles Statements and Conflict Controls Statements had ever been made. In addition, I found no indication that the analysts' references to terms such as "reputation" or the "client franchise" were in any way references to the earlier general statements, or to any conclusion that the earlier statements had now been rendered false.

2. April 26, 2010

68. Plaintiffs allege that Goldman internal emails released by the Senate Subcommittee on April 26, 2010 revealed "Goldman's practice of betting against the very securities it sold to its clients."[96]

---

[95] "Goldman Sachs: Blow-out Quarter Overshadowed by SEC Complaint," *Societe Generale*, April 21, 2010.

[96] Complaint, ¶ 333.

69. I provide in Exhibit 9 selected excerpts from the analyst reports published between April 26, 2010 and April 29, 2010 that reflect the main issues the analysts discussed.[97] I identified and reviewed two analyst reports (a Bank of America Merrill Lynch report issued on April 26, 2010 and a Deutsche Bank Securities report issued on April 26, 2010), neither of which included revisions to the analysts' recommendations.[98] I found that the Deutsche Bank Securities report, which was an industry report, did not mention the email release at all.[99] I found that the *Bank of America Merrill Lynch* report discussed the Senate Subcommittee release of Goldman internal emails as well as Goldman's own separate release of emails.[100]

70. I found no reference to the Business Principles Statements or Conflict Controls Statements in either of these analyst reports. This further confirms that analysts did not view the statements as containing information pertinent to an investment decision-making process and that the statements had no bearing on any movements in Goldman's stock price on or around April 26, 2010.

---

[97] I limit the period after the April 26, 2010 alleged corrective disclosure date to April 29, 2010 instead of a week after because the next alleged corrective disclosure date is April 30, 2010.

[98] "Goldman Sachs Group: GS Publishes New '07-08 MBS E-mail, Data," *Bank of America Merrill Lynch*, April 26, 2010; "1Q Capital Market Trends: Stacking Up the Brokers and Universal Banks," *Deutsche Bank Securities*, April 26, 2010.

[99] "1Q Capital Market Trends: Stacking Up the Brokers and Universal Banks," *Deutsche Bank Securities*, April 26, 2010.

[100] "Goldman Sachs Group: GS Publishes New '07-08 MBS E-mail, Data," *Bank of America Merrill Lynch*, April 26, 2010.

3. April 30, 2010

71. Plaintiffs identify a *Wall Street Journal* article published on April 30, 2010 that reported Goldman as "the subject of a criminal investigation by the Department of Justice" as "disclosure of . . . new material information."[101]

72. I provide in Exhibit 10 selected excerpts that reflect the main issues the analysts discussed in the 11 analyst reports published between April 30, 2010 and May 7, 2010 (i.e., the date of the April 30, 2010 alleged corrective disclosure and one week thereafter). If the analysts changed their opinions of Goldman's stock based on a potential U.S. Department of Justice ("DOJ") investigation because they realized that the Business Principles Statements and Conflict Controls Statements were false (i.e., if the statements at issue were pertinent to the investment decision-making process), I would expect that at a minimum those analysts would provide discussions about the Business Principles Statements and Conflict Controls Statements or at least make some references to the original statements having been allegedly misleading. I found no such discussion in any of the 11 analyst reports regardless of whether the analysts revised their estimates or recommendations.

73. Again, the analysts focused on the common themes I discussed in paragraph 51 above and considered how a potential DOJ investigation could affect Goldman in the context of these themes. In particular, analysts commented on the reputational and headline risks to Goldman stemming from a potential DOJ investigation and the negative

---

[101] Complaint, ¶ 334.

sentiment against Wall Street, and how these risks could affect Goldman's revenue and profitability prospects, as well as those of the industry. They also discussed the uncertainty about future regulation and civil and criminal litigation against Goldman in light of a potential DOJ investigation and the ongoing SEC enforcement action. Some examples follow:

- "We are lowering our rating on [Goldman] to Neutral from Buy and our price objective to $160 from $220. Our downgrade is prompted by news reports filed Thursday evening by the media including the Wall St. Journal indicating that federal prosecutors have opened an investigation of [Goldman] in connection with its trading activities, raising the possibility of criminal charges. . . . Most such probes end inconclusively, with no charges filed; and we continue to believe that [Goldman] has long-term earnings power beyond what is discounted in the share price. . . . [Goldman] is arguably the most respected inv. bank. . . ."[102] (*Bank of America Merrill Lynch*, April 30, 2010)
- "Reluctantly, and despite strong fundamentals and an attractive valuation, we are downgrading [Goldman] shares to Neutral from Buy given the significant uncertainty surrounding multiple and continued government probes of [Goldman's] mortgage trading & underwriting operations. . . . There is no doubt that [Goldman] has a top tier global

[102] "Goldman Sachs: Cutting to Neutral: Concerns Over Reports of Federal Probe," *Bank of America Merrill Lynch*, April 30, 2010.

investment banking franchise with a history and culture of strong risk management and execution. . . . As a lightning rod for the industry, [Goldman] is facing significant political pressure."[103] (*Buckingham Research*, April 30, 2010)

- "Litigation remains a significant overhang on stock [*sic*], but we continue to believe that [Goldman] has among the most robust risk [management] processes on the street and are assigning a low probability of adverse outcome from lawsuits beyond a monetary fine in our target price. . . . Reputational risk could damage Goldman's franchise – While we do not believe at this point Goldman's institutional client base has altered their business practices at this point, Goldman's reputation is one of the firm's greatest assets. To the extent clients lose faith and either reduce or eliminate their interactions with Goldman, it could have significant detrimental effect across all of the firm's businesses."[104] (*Citigroup Global Markets*, May 2, 2010)
- "Admittedly, Goldman Sachs has incurred reputation damage and may suffer client fallout due to [the SEC action and DOJ investigation concerning the Abacus CDO transaction] - it is arguably difficult for a

[103] "Goldman Sachs (GS): Downgrade to Neutral; Litigation/Political Risk Too Difficult to Handicap," *Buckingham Research*, April 30, 2010.

[104] "Goldman Sachs Group, Inc.: Reiterate Buy – Risks Are There, But Still See Significant Upside," *Citigroup Global Markets*, May 2, 2010.

> portfolio manager to buy or own [Goldman] in an ERISA portfolio, a separately managed account or in a mutual fund due to the current public outrage against the firm. . . . However, Goldman Sachs remains the world's leading M&A house . . ., the second largest equity underwriter . . ., and the leading global fixed income franchise that we believe will continue to book solid trading performance through 2010. . . . There is substantial uncertainty about future regulation, civil litigation and client reputation concerning [Goldman's] stock, but Goldman remains Goldman, the premier investment bank and trading house in the world. We continue to believe the headlines that pressure the stock provides a buying opportunity for investors."[105] (*Bernstein Research*, May 4, 2010)

74. I found no reference to the Business Principles Statements or Conflict Controls Statements being misleading in any of these analyst reports. Where analysts have addressed reputation, it has only been from the perspective of the truism that reputation is important in this industry. The fact that Goldman's Business Principles also include this truism only reflects that Goldman and the analysts recognize that reputation is important in the industry. The lack of discussion about the Business Principles Statements or Conflict Controls Statements further indicates that analysts did not view these statements as containing information pertinent to an investment decision-making process and that the statements had no

[105] "Goldman Sachs: Management Speaks Frankly About the Future of the Firm," *Bernstein Research*, May 4, 2010.

bearing on any movements in Goldman's stock price on or around April 30, 2010.

4. June 10, 2010

75. Plaintiffs identify reports on June 10, 2010 "that the SEC was investigating whether in connection with the Hudson CDO, Goldman profited by ridding itself of mortgage backed securities and related CDO's [*sic*] on Goldman's books that it knew were going to decline by selling these securities to Goldman's clients who suffered billions in losses" as "disclosure of . . .new material information."[106]

76. I provide in Exhibit 11 selected excerpts that reflect the main issues the analysts discussed in the five analyst reports published between June 10, 2010 and June 17, 2010 (i.e., the date of the final alleged corrective disclosure date and one week thereafter).[107] If the analysts were concerned about the additional SEC investigation because they realized that the Business Principles Statements and Conflict Controls Statements were false (i.e., if the statements at issue were pertinent to the investment decision-making process), I would expect that those analysts would provide some type of discussion of the Business Principles Statements and Conflict Controls Statements. I found no such discussion in any of the five analyst reports regardless of whether the analysts revised their estimates or recommendations.

---

[106] Complaint, ¶ 335.

[107] One of these analyst reports was an announcement that the firm was ceasing coverage of Goldman Sachs because the research analyst assigned to cover the company had left the firm. *See* "Goldman Sachs Group: Ceasing Coverage," *Macquarie*, June 10, 2010.

77. Again, the analyst reports during this time period focused on the common themes such as expectations about revenues, profitability, Goldman's competitive position, and overall market conditions, particularly the difficulties for the entire sector.[108] Some analysts mentioned or discussed the headline risks resulting from the additional SEC investigation and its possible impact on those themes. Some discussed the longer-term prospects for Goldman despite near-term volatility, while others commented on the difficult operating environment and the decline in Goldman's revenues. Some examples follow:

- "Estimates cut on weak trading revenue [and] UK bonus tax . . . The Q2 trading environment is looking increasingly difficult. We have cut our estimate of trading revenues . . . Deteriorating markets and increasing uncertainty in Europe have also had a meaningful impact on M&A and underwriting activities."[109] (*Atlantic Equities*, June 10, 2010)
- "Reiterating Outperform Rating Despite Near-Term Volatility . . . Reports of a second SEC investigation caused [Goldman] to set a new 52-week low. . . .[Goldman] appears to have been able to maintain its standing with clients in the major investment banking categories. . . . [Goldman's] reduced competition, minimal consumer exposure, and historically superior risk control are currently overshadowed by legal risks that remain uncertain. Longer-term investors could benefit from the removal of

[108] *See* ¶ 51 above.

[109] "Goldman Sachs: Estimates Cut on Weak Trading Revenue & UK Bonus Tax," *Atlantic Equities*, June 10, 2010.

these risks, thereby resulting in premium share price performance versus peers over time."[110] (*Wells Fargo Securities*, June 10, 2010)

- "Given the continued difficult operating environment, we reduce our second quarter estimate for [Goldman]. The drivers of our estimate reduction are fairly broad-based: weaker trading results, lower investment banking revenues and less in the way of principal investment gains. . . . Best-in-class franchise with solid market positioning across myriad businesses and strong balance sheet . . . All in all, we believe opportunity for market share stability/growth should help sustain earnings and book value growth over the course of the cycle. There's no doubt regulatory/litigation risk now represents a greater risk to our constructive thesis."[111] (*Credit Suisse*, June 17, 2010)

78. Because I found no reference to the Business Principles Statements or Conflict Controls Statements in any of these analyst reports, I further conclude that analysts did not view the statements as containing information pertinent to an investment decision-making process and that the statements had no bearing on any movements in Goldman's stock price on or around June 10, 2010.

---

[110] "The Goldman Sachs Group, Inc.: GS: Reiterating Outperform Rating Despite Near-Term Volatility," *Wells Fargo Securities*, June 10, 2010.

[111] "Goldman Sachs Group, Inc.: Reducing Estimates on Challenging Market Conditions," *Credit Suisse*, June 17, 2010.

79. In sum, I found that the statements at issue were not addressed in any of the analyst reports issued at or around the time of the alleged corrective disclosures. I found that, in this time frame, analyst reports discussed the SEC enforcement action and other enforcement activities, including their potential outcome and potential effects on Goldman's businesses, but did not attribute the enforcement activities as having any connection to the statements at issue in this litigation. None of the analysts referenced or linked their discussions or conclusions to the statements at issue. This further confirms that the Business Principles Statements and Conflict Controls Statements, which were general in nature and typical of statements made by companies in the financial services and other sectors, contained no information that could be utilized in an investment decision-making process.

VIII. Conclusion

80. The statements at issue in this matter are too general to convey anything precise or meaningful, cannot be viewed as assurances of a particular outcome by investors and, in some cases, are nothing more than truisms. Further, general statements of the type at issue in this matter are commonly included in company communications to investors, do not provide information on the company's future financial performance and value, and based on my experience and understanding, are not pertinent to investors in making investment decisions. My analysis of analyst reports on Goldman shows that analysts did not discuss or mention the statements at issue in this matter and there was no analyst discussion that related the accuracy of the statements at issue to the valuation or financial prospects of Goldman during the

Class Period. These findings further support that the statements at issue could not have been utilized for investment decision-making during the Class Period.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 1:10-cv-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

CLASS ACTION
JURY TRIAL DEMANDED
ECF CASE

REBUTTAL EXPERT REPORT OF JOHN D. FINNERTY, Ph.D.

IN SUPPORT OF LOSS CAUSATION AND DAMAGES

Table of Contents

I, John D. Finnerty, declare pursuant to 28 U.S.C. § 1746, as follows:

I. Qualifications and Assignment

1. I previously submitted an expert report in support of loss causation and damages in connection with this matter on May 22, 2015 (the "Finnerty Loss Causation Report").[1] The scope of my assignment, my qualifications, and other details related to my work in this matter are set forth in the Finnerty Loss Causation Report. Attached as Appendix A is an updated copy of my current resume, which lists all publications I have written or co-authored and includes a brief description of my trial and deposition testimony within at least the past four years. AlixPartners continues to be compensated at a rate of $1,020 per hour for my work on this matter. My compensation is not contingent on my findings or on the outcome of this matter. I have been assisted in the preparation of this expert report by AlixPartners's staff working under my direction and supervision.

2. Labaton Sucharow LLP and Robbins Geller Rudman & Dowd LLP, co-counsel for the Plaintiffs in this matter (collectively "Counsel"), have asked me to review and respond to the opinions proffered in the Report of Paul A. Gompers, Ph.D., dated July 2, 2015 (the "Gompers Report"), the Report of Stephen Choi, Ph.D., dated July 2, 2015 (the "Choi Report"), and the

[1] I continue to use the same terms that were defined in the Finnerty Loss Causation Report in this rebuttal report without defining these terms again in the text of this report. I also submitted a rebuttal declaration in support of Lead Plaintiffs' motion for class certification on May 15, 2015 (the "Finnerty Rebuttal Declaration").

Report of Laura T. Starks, Ph.D., dated July 2, 2015 (the "Starks Report").[2]

II. Summary of Opinions

3. I have reached the following opinions, after conducting appropriate studies, the results of which are described in the Finnerty Loss Causation Report and which are augmented in this rebuttal report:

a) The statistically significant abnormal returns on Goldman's common stock on April 16, 2010, April 30, 2010, and June 10, 2010 were not due to any macroeconomic factors, industry-specific factors, or non-fraud-related Goldman news, but were substantially caused by a series of revelations concerning Goldman's alleged fraudulent conduct related to the management of its Conflicts of Interest and its Business Principles;[3]

b) Dr. Gompers incorrectly criticizes that I failed to establish either of the following two

---

[2] I have also reviewed the Defendants' expert declarations previously submitted in connection with Lead Plaintiffs' motion for class certification - Declaration of Paul A. Gompers, Ph.D., dated April 6, 2015 (the "Gompers Declaration"), the Declaration of Stephen Choi, Ph.D., dated April 6, 2015 (the "Choi Declaration"), and the Declaration of Charles Porten, CFA, dated April 6, 2015 (the "Porten Declaration").

[3] The abnormal returns on Goldman's common stock on April 16, 2010, April 30, 2010, and June 10, 2010 are -9.27%, -7.75%, and -4.52%, respectively, which are all statistically significant at the 5% level. Dr. Gompers's regression model he presented in the Gompers Declaration yields similar results, where the abnormal returns on these dates according to his model are -9.94%, -8.00%, and -4.44%, respectively.

conditions in order to establish the presence of inflation in Goldman's stock price during the Class Period: the alleged misstatements must have either (a) caused Goldman's stock price to increase or (b) prevented Goldman's stock price from decreasing until the dates of the alleged corrective disclosure. Dr. Gompers's criticism is baseless because Plaintiffs allege that the misleading statements omitted economically significant information about Goldman's failure to follow its stated Conflicts of Interest management practices and abide by its Business Principles and that when this previously concealed information was properly disclosed to investors, Goldman's common stock price declined causing investors to experience losses. The statistically significant negative market impact of the corrective disclosures of the alleged fraud on the Disclosure Dates and my event study demonstrate that the alleged misstatements and omissions inflated Goldman's stock price by preventing it from declining if the information had been fully disclosed;

c) Dr. Gompers incorrectly asserts that the information disclosed in connection with the SEC regulatory enforcement action announced on April 16, 2010, the DOJ criminal investigation disclosed on April 30, 2010, and the second SEC investigation announced on June 10, 2010 was not related to the allegations in this matter; he attempts to characterize this information simply as "confounding news." However, in this matter, the Plaintiffs allege that Goldman failed to disclose its misconduct, which violated its Conflicts of Interest and Business Principles statements in relation to the four CDOs at issue in this matter, and that the regulatory enforcement actions announced on the Disclosure Dates revealed the scope of Goldman's misconduct and the alleged misstatements and omissions. Therefore, the news concerning the regulatory enforcement actions on the Disclosure Dates cannot be characterized as "confounding news" but, instead, is directly related to the allegations in this matter, as stated in the Complaint;

d) Dr. Gompers concludes that the exact information that was allegedly concealed concerning Goldman's Conflicts of Interest and Business Principles misstatements and omissions was already disclosed to the market prior to the first corrective Disclosure Date. He is incorrect. The information disclosed on the corrective Disclosure Dates was significant new information. The news articles he reviewed that were published on 34 separate dates did not disclose the same information that was disclosed on any of the Disclosure Dates;

e) Dr. Gompers baselessly concludes that Goldman's stock price movements on the corrective Disclosure Dates was due to news other than the news in relation to Goldman's Conflicts of Interest and Business Principles statements and omissions. He fails to show that the significant negative impact on Goldman's stock price on each of the three corrective Disclosure Dates was due to any information unrelated to Goldman's alleged misstatements and omissions;

f) I stand by my conclusion stated in the Finnerty Loss Causation Report that Goldman's common stock price was artificially inflated during the Class Period prior to the first Disclosure Date and also between the succeeding two Disclosure Dates. Goldman's fraudulent conduct and the severity of such conduct in connection with its alleged misstatements and omissions regarding its Conflicts of Interest management and its Business Principles was not revealed to the market until the SEC enforcement was publicly announced on April 16, 2010, the DOJ criminal investigation was publicly announced on April 30, 2010, and the second SEC investigation was publicly announced on June 10, 2010. Therefore, Goldman's stock price declines on April 16, 2010, April 30, 2010, and June 10, 2010 were all proximately caused by the corrective disclosures related to the allegations in this matter;

g) Dr. Gompers concludes that damages are zero in this case without performing any appropriate economic analysis to measure the damages. Thus, his opinion as to the amount of damages is baseless, unscientific, and not supported;

h) I stand by my conclusion stated in the Finnerty Loss Causation Report that the amount of damages suffered by purchasers of shares of Goldman's common stock during the Class Period as a result of the disclosure of the truth about Goldman's fraudulent conduct on April 16, 2010, April 30, 2010, and June 10, 2010 is, in total, up to $35.70 per share, depending on when the shares were bought and sold during the Class Period or sold thereafter;

i) Dr. Choi opines that the SEC enforcement action, the DOJ criminal investigation, and the second SEC investigation each had a market impact independent of the nature of the misconduct that had given rise to the regulatory enforcement actions. However he does not perform any appropriate loss causation analysis. He performed no analysis whatsoever to determine the impact of Goldman's underlying misconduct alleged in the SEC Complaint in connection with the Abacus 2007-AC1 CDO, the DOJ criminal investigation, or the second SEC investigation. He simply relies on Dr. Gompers's unsupported conclusion that the negative market reactions on the corrective Disclosure Dates were unrelated to the alleged fraud because the information "mirroring" the information disclosed on the corrective Disclosure Dates had previously not had a statistically significant impact on Goldman's stock price. Thus, Dr. Choi's opinion is baseless, unscientific, and unsupported;

j) Dr. Choi also bases his erroneous conclusion concerning the stock market impact on April 16, 2010 on a sample of only four enforcement actions in his limited research study. The four enforcement actions in his sample are not comparable to the SEC enforcement action against Goldman, and his sample size is too small to yield any meaningful conclusions. Therefore, the purported results of his flawed study are irrelevant;

k) Dr. Starks opines that corporate statements, such as statements regarding a company's business principles and the importance of its reputation and its client relationships, do not provide information concerning the company's future financial performance and its value and therefore are not the types of statements that investors find to be pertinent when making investment decisions. However, she fails to consider the fact that once investors learn of a company's violation of its business principles or its mismanagement of its conflicts of interest, which has involved engaging in allegedly fraudulent activity, those investors would be likely to utilize this information in making their investment decisions, and, in particular, in assessing the riskiness of investing in the company's securities; and

l) Dr. Starks considers only direct quotations or attributions that *explicitly* referred to Goldman's Conflicts of Interest statements or Business Principles statements in her document search process. She fails to look for references to the same *subject matter* of the alleged misstatements and omissions, or references that paraphrase Defendants' misleading statements. Thus, her analysis of securities analysts' reports is flawed, and the conclusions she draws based on this analysis are unreliable and irrelevant.

4. A list of the materials I have considered in this matter not previously cited in the Finnerty Loss Causation Report nor listed in Appendix B of the Finnerty Loss Causation Report is provided in Appendix B to this report.

III. Background

5. The Complaint alleges that, throughout the Class Period, Defendants made a series of misleading statements and omissions regarding Goldman's management of its conflicts of interest with its clients ("Conflicts of Interest") and behaved in a manner inconsistent with its business principles (including their importance to maintaining Goldman's reputation and its client relationships and to the continued success of its business) ("Business Principles"), which are contained in its financial reports, annual reports to shareholders, investor conference calls, and other public announcements.

* * *

98. While Goldman's common stock was trading between $115.01 and $192.28 during the one-year period before April 16, 2010, the common stocks of the four companies in Dr. Choi's analysis were trading between $2.03 and $5.74, $0.24 and $0.71, $3.25 and $16.32, and $28.60 and $49.60, respectively, during the one-year period before the respective dates when the news about the SEC enforcement actions was announced. I provide the allegations and the stock prices of the four companies in detail in Exhibit 1.

b. Dr. Choi Unscientifically Uses a Simple Average of the Residual Returns on the Four Companies' Stocks and Attempts to Use This Simple Average to Explain Goldman's Residual Return on April 16, 2010

99. First of all, Dr. Choi's use of the results from his event study to explain the abnormal return on Goldman's stock on April 16, 2010 is flawed and unscientific. The methodology that Dr. Choi adopts for his event study is, in fact, inconsistent with Dr. Gompers's event study. Dr. Gompers describes in the Gompers Report how a standard event study utilizes a regression model to "measure the changes in a company's stock price that may be related to company-specific information."[87] Dr. Gompers specifically explains that "[m]arket and industry indices, if properly selected, capture the stock price movements of a broad cross-section of companies in the market as a whole and the industry in which the company operates."[88] While Dr. Gompers selects the NYSE/AMEX/NASDAQ/ArcaEx Composite Index as broad market index and a group of comparable companies as the industry index, Dr. Choi simply uses the Standard & Poor's 500 Total Return Index without any industry adjustment to capture the broad cross-section market movements in his regression analysis.[89]

100. Putting aside Dr. Choi's use of the residual returns from his unreliable regression model, Dr. Choi

---

[87] Gompers Report, ¶ 21.

[88] Gompers Report, ¶ 21.

[89] Gompers Report, ¶ 22 and Choi Report, ¶ 34.

calculates a simple average stock price abnormal return of -8.07% based on the four residual returns, which fall within a wide range from -3.34% to -17.09%. He then conveniently claims that this average -8.07% abnormal stock price return is "consistent" with Goldman's -9.27% abnormal return on April 16, 2010.[90]

101. Dr. Choi's comparison is unscientific because it is based on four SEC enforcement actions that are not comparable to the Goldman's enforcement action and because the companies in these four enforcement actions are not comparable to Goldman in terms of industry, business, or market capitalization.

102. Additionally, the four firms in the sample that Dr. Choi selects that purportedly have enforcement actions similar to Goldman's enforcement action are not only dissimilar from Goldman, but dissimilar to each other. The wildly different sizes of the stock price drops associated with these four enforcement actions (ranging from -3% to -17%), which under Dr. Choi's assumption should be the same given that they all have the same "enforcement features," only demonstrate that the amount of a stock price drop is determined by the nature of the allegations and the specific business and industry of the issuer rather than the "fact" of an enforcement action in the abstract. Thus, Dr. Choi's argument has no basis and is undermined by his own evidence. Furthermore, having only four firms in the sample does not provide a sufficient sample size to lead to a reliable average that can be meaningfully applied to this case, especially given the extreme variance in outcomes.

---

[90] Choi Report, ¶ 42.

103. Moreover, Dr. Choi calculates the stock residual returns based on a regression model that is different from my regression model and lacks any industry adjustment, which reinforces my point that he is not justified in arguing that there is any "consistency" between the abnormal returns from his model and from my model.

104. In sum, Dr. Choi's review of the 117 SEC enforcement actions merely reveals that the impact of the announcement of an SEC enforcement action on a company's stock price depends on the nature of the underlying behavior that is the subject of the enforcement action. Ultimately, the severity of the underlying improper behavior would determine the magnitude of the impact of the announcement of an SEC enforcement action on a company's stock price. Dr. Choi ignores this important effect of regulatory enforcement actions.[91]

ii. Dr. Choi Speculates Without Any Basis that the Economic, Political, and Regulatory Environment Potentially Contributed to Goldman's Stock Price Decline

105. Dr. Choi asserts that the SEC enforcement action against Goldman occurred "in a charged political setting in which there was considerable uncertainty about future regulation and legislation."[92] Dr. Choi continues to argue that the SEC enforcement

---

[91] The market will react differently according to the nature of the underlying misconduct. *See, e.g.*, Jonathan M. Karpoff, D. Scott Lee, and Gerald S. Martin, "The Cost to Firms of Cooking the Books," *Journal of Financial and Quantitative Analysis*, 43, September 2008, Table 5.

[92] Choi Report, ¶ 44.

action against Goldman "would increase the risk perceived by investors that more aggressive and onerous legislative and regulatory proposals would be pursued."[93]

* * *

130. Dr. Starks fails to consider securities analysts' discussions of Goldman's management of Conflicts of Interest and Business Principles unless the discussions related to the alleged misstatements *explicitly* refer to Goldman's management of Conflicts of Interest and Business Principles in the context of the Company's 10-K reports or conference calls.

131. To begin, as set forth in ¶ 22 of this report, the corrective disclosures revealed to the market the details of Goldman's misconduct and the severity of its Conflicts of Interest regardless of whether the actual text of the Conflicts of Interest policies or Business Principles was referenced. Moreover, she ignores contemporaneous market commentary in media sources as widely read and prominent as *The Wall Street Journal* and the *Associated Press*, as well as securities analysts' reports, which showed that the revelation that Goldman had failed to manage its Conflicts of Interest and violated its Business Principles in connection with Abacus, as detailed in the SEC lawsuit, and the resulting reputational harm (therefore affecting its client relationships and its business) that followed that revelation, was important and thus relevant to investors' valuation of Goldman's stock – *i.e.*, it had a statistically significant impact on Goldman's stock price. Examples of such

[93] Choi Report, ¶ 45.

contemporaneous market commentary and securities analysts' comments follow:

- *Associated Press*, "Fraud Charge Deals Big Blow To Goldman's Image," April 18, 2010.

> While Goldman Sachs contends with the government's civil fraud charges, an equally serious problem looms: a damaged reputation that may cost it clients . . . .
>
> ***In its corporate profile, the company says its culture distinguishes it from other firms and "helps to make us a magnet for talent." That culture is summed up in the firm's "14 Business Principles," which preach an almost militant philosophy of putting the client before the firm.***
>
> ***Now, it's that very philosophy that has been questioned by the government***. (Emphasis added.)

- *The Wall Street Journal*, "Common Sense: Where's the Goldman Sachs I Used to Know?," April 21, 2010.

> "Surreal" was the word Goldman Sachs Group's Fabrice Tourre used to describe a meeting in which the firm of hedge-fund billionaire John Paulson discussed with an investor a portfolio of mortgage-backed securities it eventually planned to short. That Goldman Sachs, a name once synonymous with professionalism and integrity, now stands accused by the Securities and Exchange Commission of fraud also might be deemed surreal.

> ***It's hard to imagine the damage that these developments have done already to*** **Goldman** ***Sachs's reputation. The company has always maintained a public position that the business of investment banking depends on trust, integrity and putting clients' interests first***. (Emphasis added.)
>
> Whether those clients remain loyal to Goldman, and whether the firm can attract new ones, remain to be seen. Investors' reaction to the news was swift and negative: Goldman shares closed down 13% Friday after the SEC filed its suit.

- *The Wall Street Journal*, "Goldman Sachs Charged With Fraud – SEC Alleges Firm Misled Investors on Securities Linked to Subprime Mortgages; Major Escalation in Showdown With Wall Street," April 17, 2010.

> Goldman Sachs Group Inc. – one of the few Wall Street titans to thrive during the financial crisis – was charged with deceiving clients by selling them mortgage securities secretly designed by a hedge-fund firm run by John Paulson, who made a killing betting on the housing market's collapse.
>
> "***The product was new and complex, but the deception and conflicts are old and simple***," said Robert Khuzami, the SEC's enforcement chief. (Emphasis added.)

- *CitiQroup Global Markets*, "Goldman Sachs Group, Inc. (GS) Initial Thoughts On SEC Civil Lawsuit," April 16, 2010.

The [SEC] complaint alleges that Goldman failed to disclose to investors that a major hedge fund (Paulson & Co. Inc.) played a role in the portfolio selection process and had taken a short position against the bonds referenced in the CDO . . . . Also, the SEC alleges that Goldman misled ACA into believing that Paulson was investing in the CDO equity and therefore shared a long interest with the CDO investors.

The two key issues for Goldman in our view is reputational risk, and possible follow on lawsuits related to this action. The SEC's complaint refers to only one CDO structure, and the issue is whether this was an isolated incident or not. Reputation risk is biggest issue in our view, and we do not view this as a 'life threatening issue,' but clearly seems like a 'black eye' for Goldman. (Emphasis added.)

- *Bank of America Merrill Lynch*, "Goldman Sachs Group – Sec case seems limited, but reputational fallout worrisome," April 16, 2010.

SEC brings a civil fraud case relating to alleged misrepresentation in a CDO. SEC case alleges a GS Vice Pres. structured a CDO and misrepresented to buyers that the reference collateral had been independently selected, when in fact, it is alleged, it was selected by a hedge fund seeking a way to short subprime.

This is a serious charge, but so far it is a one-off, it is civil rather than criminal, and

> the individual charged is at a relatively low level in the firm . . . ***But there is considerable uncertainty. On the other hand, it's not clear whether there are more such cases; nor whether the SEC might refer the case to the DOJ for criminal charges; nor how serious the reputational effects might be for GS . . . .***
>
> ***[T]he reputational damage could be considerably greater, unless it becomes clear that there are no other such cases against the firm and that no more individuals are charged.*** (Emphasis added.)

- *Macquarie (USA) Equities Research*, "Goldman Sachs Group – Our Thoughts on the SEC's Fraud Claim," April 16, 2010.

> On Friday, the SEC accused Goldman of fraud associated with a synthetic CDO . . . . After reviewing the allegations and Goldman's response, we are not yet willing to assign probabilities on the chance of a conviction. Proof of intent to deceive is key, and we are not convinced that the emails establish this. Also key is what the original long investors knew or didn't know about the selection process . . . .
>
> ***Typically, reputational damage, particularly in the institutional context, is a paper tiger. However, in this case, the response by the media and Washington has been so severe, that we believe management will want their day in court to prove the firm's innocence.*** As a result,

we may not see the typical settlement but a trial . . . ***As for reputation, Goldman clients are "eyes-wide-open.***" (Emphasis added.)

- <u>*Wells Fargo Securities Equity Research*, "The Goldman Sachs Group, Inc. – GS: Reputational Risks Increased, But Valuation Still Attractive," April 19, 2010.</u>

GS has begun to tell its side of the story, possibility reducing the concerns surrounding the SEC's allegations. Following the SEC's filing of its lawsuit, GS has issued public documents detailing its belief that its actions with respect to the ABACUS 2007-AC1 synthetic CDO were 'entirely appropriate', and that it intends to defend itself vigorously. We believe GS' strong stance could be successful in reducing the fear surrounding the SEC's allegations - and also starts to ***rebuild the reputational damage from the recent headlines*** . . . .

GS released a document April 18 stating its position on the SEC's lawsuit, clarifying comments made in the aftermath of the SEC's announcement of the lawsuit. In sum, we believe GS' contentions suggest it is willing to take its chance in court, if necessary, ***to clear its name and attempt to revive its reputation*** . . . .

The SEC's action could lead potential clients seek counterparties and agents other than GS as a means of protesting GS' alleged behavior . . . . We believe that if GS is not implicated in other, similar legal actions the "reputational damage" is manageable. ***Additional legal actions against the company could further harm its reputation and ability to gain business, in our view***. (Emphasis added.)

- *Credit Suisse*, "Goldman Sachs Group, Inc. – Strong Fundamentals—No New News on SEC Charge," April 20, 2010.

On Friday, the Securities and Exchange Commission (SEC) filed securities fraud charges against Goldman and one of its employees for making material misstatements and omissions in connection with a $1 billion synthetic collateralized debt obligation (ABACUS) that Goldman underwrote . . . . ***More worrisome to us is the potential longer-term impact on the firm's client franchise, human capital and reputation.***

We acknowledge near-term headline risk remains high and regulatory overhang could keep a cloud over Goldman Sachs and brokerage sector valuations. ***There's no doubt regulatory/litigation risk now represents a greater risk to our constructive thesis on GS shares.*** (Emphasis added.)

132. I therefore find Dr. Starks's methodology to be deeply flawed and wholly unreliable, because of its unreasonably narrow scope.

133. In sum, Dr. Starks's conclusions are limited to her review of various securities analysts' reports. She disregards the information regarding the reactions of market participants to the corrective

disclosures related to the alleged fraud appearing in other media sources, such as *The Wall Street Journal*. As noted above, these reactions demonstrate that market commentators did understand that the information disclosure in connection with the SEC enforcement action involving Goldman on April 16, 2010, the information disclosure in connection with the pending DOJ criminal investigation of Goldman on April 30, 2010, and the information disclosure in connection with the second SEC investigation concerning Goldman's CDO transaction on June 10, 2010 did constitute corrective disclosures of Goldman's allegedly misleading statements and omissions concerning its Conflicts of Interest misconduct and its Business Principles.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed: August 7, 2015

/s/ John D. Finnerty
John D. Finnerty, Ph.D.

[1] **CONFIDENTIAL **
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File
No 1:10-CV-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

September 9, 2015
10:03 a.m.

Videotaped Deposition of PAUL A. GOMPERS, Ph.D., taken by Plaintiffs, pursuant to Notice, held at the offices of Labaton Sucharow LLP, 140 Broadway, New York, New York, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New York.

---

[2] APPEARANCES

LABATON SUCHAROW LLP
140 Broadway
34th Floor
New York, New York 10005

Attorneys for Plaintiffs

BY: MICHAEL H. ROGERS, ESQ.
mrogers@labaton.com

ROBBINS GELLER RUDMAN & DOWD, LLP
655 West Broadway
Suite 1900
San Diego, California 92101

Attorneys for Plaintiffs

BY: ROBERT R. HENSSLER, JR., ESQ.
bhenssler@rgrdlaw.com

SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498

Attorneys for Defendants

BY: DAVID M.J. REIN, ESQ.
reind@sullcrom.com

ALSO PRESENT:

DEVERELL WRITE: Videographer

[3] THE VIDEOGRAPHER: We are on the record. Please note that the microphones are sensitive and may pick up whispering and private conversations.

My name is Deverell Write representing Veritext Legal Solutions. Today's date is September 9th, 2015. The time on the video monitor is approximately 10:03 a.m.

The caption of this case, In Re Goldman Sachs Group, Inc. Securities Litigation. This case is filed in the U.S. District Court for the Southern District of New York, case number 1:10-CV-03461. The name of the witness is Professor Paul A. Gompers. At this time will counsel please state their appearances.

MR. REIN: David Rein, Sullivan & Cromwell LLP, for defendants and the witness.

MR. ROGERS: Michael Rogers, Labaton Sucharow LLP, for plaintiffs and the class.

MR. HENSSLER: Bobby Henssler [4] from Robbins Geller Rudman & Dowd for the plaintiffs and the class.

* * *

[4] PAUL A. GOMPERS, Ph.D., called as a witness, having been first duly affirmed, was examined and testified as follows:

EXAMINATION BY MR. HENSSLER:

Q. Good morning, Professor Gompers. Please state your full name for the record.

A. Paul Alan Gompers.

Q. And your current home address?

A. 71 Prospect Park, Newton, Massachusetts 02460.

Q. That's your home address?

A. Yes.

Q. Business address?

A. Harvard Business School, Baker Library 263, Boston, Massachusetts 02163.

Q. And you have been deposed before, correct, sir?

A. Yes,

Q. About how many times?

[5] A. Over the last 14 years, 40, 50 I guess, something of that order.

Q. So you understand how a deposition works?

MR. REIN: I object to the form.

A. I've been in depositions and understand the process.

Q. That there is a court reporter typing everything that you and I say and you are agreeing to answer my questions truthfully?

A. Yes.

Q. And you are going to do that, you are going to tell the truth today?

A. I will.

Q. You understand you have just sworn an oath to do that?

MR. REIN: I object to the form.

A. I have affirmed an oath.

Q. You understand you have just affirmed an oath to tell the truth?

A. I do.

* * *

[98] Q. I'm asking a different question, and maybe I wasn't precise. I'm asking not a question about your loss causation, just a question about timing and news disclosure, okay? Do you understand?

A. Okay.

Q. So let me try to ask a more precise question. April 16th, 2010 was the first time that investors learned that Goldman Sachs had intentionally misled ACA into believing that Paulson was long equity?

MR. REIN: I object to the form.

A. It's my understanding that the first time it was revealed to have been alleged that Goldman Sachs misled ACA was in the complaint. So that is my [99] understanding.

So my understanding is that particular piece of information is alleged and for the first time revealed in the complaint.

MR. HENSSLER: It is about 12. If there is a time that you guys need to break for lunch, we never talked about that.

THE WITNESS: I could use a break to go to the bathroom. I don't know when lunch is coming in.

MR. HENSSLER: Let's take a quick break. Off the record.

THE VIDEOGRAPHER: The time on the video monitor is 11:58 a.m. We are off the record. This ends media one.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the record. The time on the video monitor is 12:05 p.m. This starts media number two.

BY MR. HENSSLER:

Q. Welcome back, Professor [100] Gompers. You understand that you are still under oath?

A. I do.

Q. The SEC complaint that we were just looking at, Choi Exhibit 4, it reveals both Goldman's behavior in misleading ACA that Paulson was long, and the fact that Goldman's primary regulator, the SEC, had found that behavior objectionable. correct?

MR. REIN: I object to the form.

A. I understand that this is an adversarial document. It is a complaint that alleges certain behavior and it is an action brought against Goldman Sachs.

In reviewing, you know, the thousands of news stories and the dozens of analyst reports, what's interesting is that many of the market commentators talk about the flimsy nature of the report, that others had more egregious actions than Goldman Sachs, that the SEC might have difficulty in prosecuting this, that these charges were a context of the charged [101] political environment against the financial sector after the financial crisis.

So I understand there's lots of allegations in this complaint. We have talked about them. The important thing to think about is how this — what elements of this are corrective of the general statements, and in particular as well what could Goldman have said that would have been corrected at various points in time.

I talk in my report, it would be impossible for Goldman Sachs in 2007, 2008, 2009, to say the SEC is going to pursue an action against us.

The important part of loss causation, the important part of estimating damages is to understand what information is corrective of the alleged misstatements.

Q. And we've read your report, so we understand that that's your position in your report. I'm trying to ask a different question here. And let me try to rephrase it.

* * *

[1]** CONFIDENTIAL**
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File
No. 1:10-CV-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

September 22, 2015
9:05 a.m.

Videotaped Deposition of LAURA T. STARKS, Ph.D., taken by Plaintiffs, pursuant to Notice, held at the offices of Labaton Sucharow LLP, 140 Broadway, New York, New York, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New York.

* * *

[390] And I still believe that today. It doesn't refer to the conflict of interest statements.

Q. Okay. You can put that aside.

MR. ROGERS: I would like to mark as Starks 5 a Bernstein Research report, May 4th, 2010, titled Goldman Sachs: Management Speaks Frankly About The Future Of The Firm.

(Starks Exhibit 5 marked for identification.)

(Witness perusing document.)

Q. If you could turn to page 79. Do you see that?

And just for context, the first sentence under Investment Conclusion, and a quotation, says "Goldman Sachs shares plummeted on Friday on press reports that the U.S. Justice Department was reviewing Goldman's MBS business in light of allegations made by the SEC concerning the Abacus CDO deal."

Do you see that?

A. I do.

* * *

[393] Q. You remember that there were Senate investigations of certain companies, correct?

A. Yes.

Q. And there were SEC investigations of certain companies?

A. Yes.

Q. Is it your opinion as you sit here today that the public was outraged that the Senate was investigating some banks?

MR. WALKER: Objection to the form.

A. So the public outrage would have been against the underlying actions that were alleged to have happened. I didn't intend to mean that it was just because of the U.S. Justice Department.

Q. So it is the conduct alleged that caused the outrage, correct?

MR. WALKER: Objection to the form.

A. Correct. Assuming there was public outrage.

* * *

[395] Q. And what do you think he is saying?

MR. WALKER: Objection to the form.

A. Well, I think he is saying that Goldman Sachs has incurred reputation damage, and then he is going on to talk about a portfolio manager buying or owning Goldman because of the public outrage. I don't think he is saying the reputation damage is coming from the public outrage.

Q. But the client fallout was caused by public outrage?

MR. WALKER: Objection to the form.

A. Well, it's not exactly clear what he is -- he is talking about a portfolio manager having difficulty buying or owning Goldman in these kind of portfolios due to the current public outrage. I mean, we are just parsing this sentence differently.

Q. And a manager having difficulty [396] buying or owning Goldman, would that have an impact on Goldman's stock price?

MR. WALKER: Objection to the form, foundation.

A. There could be an effect on Goldman's stock price if there's a large selloff.

Q. And that would have a negative impact on their stock price, correct?

MR. WALKER: Objection.

A. It could have a negative, but that's not something I'm here to testify about.

Q. No, you are here to testify on your expertise reading analyst reports.

So I'm just asking you, is it your understanding of this report that the public outrage against Goldman Sachs as you just said could have a negative effect on its stock price?

MR. WALKER: Objection to form, foundation.

* * *

[1]** CONFIDENTIAL **
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File No. 1:10-cv-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

This Document Relates To: ALL ACTIONS

Videotaped Deposition of
JOHN D. FINNERTY, Ph.D.
New York, New York
October 1, 2015

Reported by: Bonnie Pruszynski, RMR, RPR, CLR Job No. 97628

* * *

[166] By June 10th, now we are at the third announcement, and there has been some prior announcement on Hudson, there has been all the disclosure on Abacus, so the incremental effect is less than what the de novo effect would have been if the first disclosure occurred on Hudson prior to the Abacus disclosure.

Q. A couple of minutes ago you listed for me a long list of things about the Hudson CDO that you were saying should have been revealed in order to remove the artificial inflation from the stock. Do you remember that?

A. Yes, I do.

Q. Which of the four corrective disclosure dates revealed all of that information?

MR. HENSSLER: Objection, form, outside the scope.

A. The information was partially revealed April 30th and partially revealed June 10th, 2010, on Hudson.

Q. So, you think all of the [167] information that you just described to me was revealed on April 30th and June 10th, 2010?

MR. HENSSLER: Misstates testimony.

A. With regard to Hudson, but as I have also testified, there was prior information on April 16th about Goldman's failure to manage its conflicts of interest and its failure to abide by its business principles in the Abacus transaction, which was a very similar transaction to Hudson. They were both mortgage-backed synthetic CDOs.

So, the first transaction is more of a surprise than the second, because the first one reveals for the first time that the company is -- that Goldman is failing to manage its conflicts of interest and to abide by its business principles, and that's Abacus. Then you have a series of disclosures around April 26th, April 30th, that in fact there is a greater number of CDOs involved that similarly involve allegations of fraud, perhaps criminal, criminal fraud.

[168] Then you have the details of the Hudson transaction coming out in the June -- June 10th, and in particular, another SEC action that suggests the severity of those. So, some of those -- I guess the Hudson details had probably been out by April 30th, but what investors didn't know prior to June 10th was

the fact that the SEC had reviewed the information and was going to investigate Goldman for that transaction as well for possible fraud.

Q. Did any of the information about Hudson come out before April 16th, 2010, that you described to me?

MR. HENSSLER: Objection, form.

A. It didn't come into the public domain. I think investors in that transaction may have known -- somebody had to alert the SEC. And so, it's possible that prior to April 16th, someone might have alerted the SEC.

But there is no -- I haven't seen any public announcement of the conflict of interest, the lack of alignment of interest, [169] the disclosure of the 2 million short, and the misrepresentation to clients about the sourcing of the assets. I don't believe any of that was disclosed about Hudson prior to April 16th. In fact, I don't think it was disclosed prior to the e-mails that were released by Senator Levin on the evening of the -- April 26th. Those e-mails did contain at least some of that information.

Q. And when was the rest revealed?

A. June 10th.

And also, they just -- you can't -- you can't really separate the conduct from the charge. So, what's really important on June 10th is not just the disclosure of the details, but it's the connection between the -- the charge and the conduct, and what's really at issue, and the important point about the announcement on the 10th is that the SEC, Goldman's primary securities regulator, has found sufficiently troubling aspects of that transaction that it's going to investigate

Goldman, Goldman's behavior in that one also for possible securities fraud.

[170] Q. Did the market know before April 16th, 2010, that Paulson & Co. assisted Goldman Sachs in designing a CDO that Paulson intended to short?

MR. HENSSLER: Objection, form.

A. Yes. I think some people in the market did know that.

Q. Is there some differences for purposes of your analysis whether some people in the market knew it or the market more generally knew this?

A. You could -- I think you could even say the market generally knew it. There were news articles that reported that Paulson had gone short and that he had used various dealers to assist him, Goldman Sachs and Deutsche Bank in particular, but perhaps others, and that he had -- in doing that, had convinced some dealers to help him form the portfolios of underlying assets in a way that would facilitate his short. That was known.

Q. And it was known to the market before April 16th, 2010, that Paulson intended to bet against the CDO?

[171] A. Yes.

MR. HENSSLER: Objection to form.

A. Yes, I believe it was known.

Q. To bet that it would fall in value, that the CDO would fall in value?

MR. HENSSLER: Objection, form.

A. Yes.

Q. Was it also known to the market that Goldman Sachs would sell the CDO to clients who believed the value of the mortgages would hold up? Was that known before April 16th, 2010?

MR. HENSSLER: Objection, form.

A. It was known that Goldman Sachs as a securities dealer would sell a full range of securities to investors, who presumably bought them because they thought they would hold their value or increase in value. So that was just a part of Goldman's normal business, would be to do that, and investors would be aware of that, including CDOs and other mortgage-backed product.

Q. Including with respect to this Paulson CDO in particular?

[172] MR. HENSSLER: Objection, form.

Q. Was that known before April 16th, 2010?

MR. HENSSLER: Objection to form.

A. Yes. I think it was known that if Goldman had created the security, it would act as agent, and it would sell it to people who wanted -- investors who wanted to invest in the product, at the same time that Paulson would go short. Goldman is a middleman, so a securities dealer functions as a middleman, and it was known that Goldman was an important middleman in that market, that as part of its normal market-making function, would be selling to both buyers and sellers. The would set up a balanced book. That was known.

Q. Was it known to the market before April 16th, 2010, that this CDO was a billion dollar wager by Paulson against mortgage debt?

MR. HENSSLER: Objection, form.

A. Before April 16?

[173] Q. Yes.

A. It wouldn't be known generally into the -- I'm sorry. April 16, 2010. Yes, it would be known as of the date the security was issued that it was -- that it was a security of a type where longs -- you would have longs investing who believed it would go up, and you could have shorts -- you would have shorts, presumably, who would believe that the price would go down. In that segment of the market, those CDOs were structured so that it provided the opportunity for certain investors who were long and certain investors who were short to engage in those transactions, and it was understood the dealers would often take one side or the other for their own accounts.

Q. But was it understood before April 16, 2010, that the CDO was a billion dollar wager by Paulson against mortgage debt?

MR. HENSSLER: Objection to form.

* * *

[206] Q. Okay. So, if my count is right -- and again, I'm not asking you to recount my count. But if my count is right, that's 21 of the dates out of the 34 where there is no denial; right?

MR. HENSSLER: Objection, form.

A. Yes, there is no direct denial.

Q. Okay.

A. There could be other information in there that in effect has a similar -- a similar result, but there are only 13 apparently, I will accept your count, where there is an explicit expressed denial in the body of the article.

Q. Did you find any -- and you have used the term "direct denial." Did you find any indirect or other kinds of denials for the remaining 21?

MR. HENSSLER: Objection, form.

A. I would have to review the 23 again. I don't commit all of these things, did not commit all of these to memory. There [207] could be others where they are describing standard procedures or something like -- in some form like that, where in effect it's an indirect denial. I don't remember anywhere that happened, but to give you an absolute answer, I would have to go back and confirm that.

Q. Well, you went through a process of looking for denials, I take it, in preparing this implications list?

A. I did.

MR. HENSSLER: Objection, form.

Q. Did you spot any other denials that you have left out of this?

A. There were no other explicit denials that I have left out.

Q. Did you find any implicit denials that you have not included here?

MR. HENSSLER: Objection, form.

A. I just answered the question. I said if you want me to go back and look, I would be happy to do that.

Q. And I'm asking you —

A. I don't remember any now. I don't [208] remember any now, but as I also testified, I haven't committed all 34 of these to memory. If you would like me to go back and look through the 23, I would be happy to do it.

Q. I'm asking if there is something you recall leaving out.

MR. HENSSLER: David, he has testified —

MR. REIN: You don't need to -- you may object. I don't need your speech.

MR. HENSSLER: I'm doing that. If want to ask him about this, put the articles in front of him. He said he would be happy to do the analysis for you.

MR. REIN: You can state your objection. We don't need a speech.

Q. I'm simply asking, do you remember leaving out any kind of denial?

MR. HENSSLER: Same objection, form.

A. I think this is the third time I have answered the question. I don't recall whether there are any indirect denials. If [209] you would like me to look at the articles, I would be delighted to do so.

Q. I'm simply asking whether you recall.

A. And I answered -- I'm not being argumentative. I have answered the question three times. If you want to put the articles in front of me, I would be happy to look at each of them and give you a more fulsome answer.

* * *

[226] Q. Well, did Dr. Gompers come up with this denial theory?

A. Dr. Gompers ignored the denials. In effect, he is assuming it's zero. So, he ignored a critically important factor, which has biased his study. He should have -- he ignored it, and he should have taken it into account. Absolutely should have.

Q. But he didn't come up with this theory that the denials thwarted the stock price impact, did he? That was you.

MR. HENSSLER: Objection to form.

A. There is no theory involved in it, this is fact. Goldman Sachs issued 13 denials. This is a source of bias in his study. He ignored this factor, and as a result, it renders his study unreliable.

Q. And where are you getting your denial theory from?

A. It's not a denial theory. It's the fact that Goldman Sachs issued these denials. [227] Goldman Sachs pointedly denied the accusations in 13 of these articles. I read the language. I can interpret the language. I can see what the accuser said. I can see what Goldman Sachs said. And I will tell you anybody who thinks that the effect of these is zero is sadly mistaken.

And you don't need a Ph.D. in finance to see that. Any securities analyst will tell you that. And you could read it in the securities analyst reports, where they say -- they will have a quotation or some reference to something, then they say, "Goldman denied it," or "Goldman's spokesman denied it." Clearly, the analysts think that is important. Clearly, they are giving it some weight. I don't know whether it's zero weight, I don't know whether it's 50 percent, I don't know whether it's 100 percent, but they are giving it some weight, and your expert gave it none.

Q. And if the analysts pick up on the denial and give that weight, is that what to you shows that it was important to investors?

[228] MR. HENSSLER: Objection, asked and answered, misstates testimony.

A. It shows that there is an offset which your expert failed to take into account, and it could imply the information was significant. It could very well. If there is a material reaction and then the denial counteracts that, there could in fact be material information that is issued. Nevertheless, the market reaction to the entire body of information shows up as being statistically insignificant because of the offset.

Q. And if the analyst mentioned the denial, is that to you a reflection of its importance to investors?

MR. HENSSLER: Objection, form.

A. It's an indication that investors would regard the denial as significant. Yes, it's meaningful. If they chose to mention it, yes, they recognized its importance.

Q. Okay. Now, you understand that when the SEC filed its complaint on April 16th, 2010, Goldman Sachs issued a [229] denial; right?

A. Yes, they did.

Q. And is it your opinion this denial was ineffective?

A. It was what?

Q. Ineffective.

A. Yes. The market had a net drop, so there may have been some effect, but overall, it was ineffective.

Q. Did it have any effect?

A. It could have had some effect.

Q. Did you do anything to measure that?

A. I'm being conservative in favor of the defendants by assuming it had a zero effect. I'm measuring the effect of the stock price drop net of market industry factors, but I didn't adjust for the possible effect of Goldman's denial.

Q. As an empirical matter, how would one go about doing that if you chose to?

A. I don't know. Since the effect -- since the announcements are occurring simultaneously, I don't think you could do [230] it. You would have to have enough space between the original article and the denial, have the market settle out, so that you could then measure the two -- two separate announcements.

Q. Is the only way to determine whether the denial was effective to look after the fact to see whether or not the stock price moved in a statistically significant manner?

A. That is part of it.

Q. What is the other part of it?

A. Well, you look at whether the -- the circumstance surrounding the announcement, and the nature of the denial. So, if -- if the announcement is being made by a firm's primary securities regulator, and that regulator is saying that the securities firm has engaged in certain forms of improper behavior, and as a result, we, the regulator, are instituting an enforcement action, in that case, I think it's extraordinarily unlikely that anybody -- any security firm's denial is going to be effective enough to [231] thwart that fully. There may be some little, some partial offset, but that will give the -- that will give the disclosure a lot of credibility, which will outweigh whatever impact the denial might have.

Q. So, if it's a regulator making the allegation as opposed to a media article, let's say, does that mean to you that the denial will be ineffective?

A If the regulator -- and I think the market attaches credibility to regulators' enforcement actions, because they believe that regulators don't institute enforcement actions unless they genuinely believe that there is misbehavior or improper actions. That will have a lot more credibility than a newspaper article. So, if the securities firm is denying what's in an enforcements action, I think the effect is going to be less than if they are denying something that happens to be an accusation in a newspaper article, because the regulatory action, that announcement will have a lot more credibility typically than a [232] newspaper article.

Q And what do you base this opinion on?

A I base it on the observed effect of these announcements. When enforcement actions are announced, they are almost always met with a strong negative reaction. On the other hand, if one looks at newspaper articles with some sort of an accusation and it's followed by the company's denial, very often they are not statistically significant. It's the credibility of the source.

Q If a regulator makes an accusation, can a denial ever be effective?

A It depends upon the nature of the accusation, it depends upon the nature of the denial. It's possible.

Q Can a denial ever exacerbate a stock price decrease rather than mitigate it?

A I don't see how.

Q You don't think it ever could?

A I'm not saying I don't think it ever could. I'm having difficulty thinking how that could happen, how your denial [233] could -- I think the denial in all likelihood would just be ignored. It would only be if the denial somehow included information that suggested that the behavior was actually worse than it was. I suppose it's possible it could if it -- it could have a counterproductive effect if the market concluded that in fact there was a lot more credibility associated with the -- with the denial.

Q And how would you go about determining whether that occurred?

A Looking at the nature of the denial.

Q Would you also look at the stock price effect?

A No. I'd base it on the nature of the denial and what the securities analysts said. Are the securities analysts saying that the denial made it worse, or are the securities analysts reflecting -- perhaps reflecting the denial as a factor that would reduce the impact?

* * *

[242] MR. HENSSLER: Please don't interrupt.

A Then there is an incremental effect. So the market is going to react to the content. But if you take the -- and allow for whatever the content of that information is, and then factor in the incremental value of the SEC enforcement action, then that -- that will suggest a more serious behavior. I did a study some years ago looking at settlements and did the same kind of analysis, and when I included enforcement actions as a separate explanatory variable, it was statistically significant. There is an incremental effect from having the government, whether it's DOJ or SEC, institute some sort of government regulatory action. There is an incremental impact because of the seriousness that is signaled by the fact you have that government action.

Q What was the name of that study? Title, I should say.

A I don't remember the title of the [243] article.

Q Where did you publish it?

A I published an article around that time in Hastings Business Law Review, and I am not remembering whether I actually included the regression model in that or not. I know I used the regression model in various presentations. I would have to -- I would have to go back and look and see. But it was in connection with that, with the preparation of that article, and as I say, I don't -- I just don't remember whether I included that regression analysis in the article or not. I think I did, but I have to go back. It was a few years ago, so I would have to go back and refresh my recollection.

Q You mentioned a DOJ investigation, so if -- would a DOJ criminal investigation have more severity than an SEC civil enforcement action?

MR. HENSSLER: Objection, form.

A I would expect that it would. I don't recall whether I tested specifically [244] for that, but I would expect that it would, because generally, criminal, criminal behavior is regarded as more serious, particularly where you have a corporation that is charged -- a criminal charge against a corporation is, is -- would indicate a more serious level of misbehavior.

Q So, had the Abacus lawsuit on April 16th been in the form of a Department of Justice criminal complaint, would you expect a larger stock decline than occurred with an SEC enforcement action?

MR. HENSSLER: Objection, form. Outside the scope of his opinions. You can answer.

A Yes, because I think that would have had a bigger adverse effect on Goldman's business. There are institutions that don't want to do business with you if you are the subject of an enforcement action. There are others that will not do business with you if they think that you are possibly guilty of a crime. It will impair your business. I [245] mean, generally, a criminal investigation will have a bigger impact than a civil suit. I think there is plenty of academic research on that point.

Q Now, we spoke earlier about Goldman Sachs' business principles. Do you recall that?

A Yes.

Q Do any of those business principles refer to CDOs?

A You are referring to the business principles as stated on their website or in their annual report?

Q Yes, I am.

A I don't believe they refer to CDOs specifically.

* * *

[306] Another approach, which probably is an easier approach, is the impact on the -- it's on settlements as opposed to the filings. But there is the study I testified about earlier where one could get a set of data, and look at those cases in which there is an SEC enforcement action or DOJ investigation, and perform an event study with a sample of announcements, some of which involve enforcement actions, some of which involve DOJ investigations, some on of which involve the announcement of an SEC probe, and then use -- you probably would use dummy variables to figure out -- to measure the incremental impact of that announcement, that regulatory announcement.

That would be -- that would be a way of trying to allocate the damages on April 16th, April 30th, or June 10th between the content and the enforcement action, just basically breaking the two components. I think that would be the best that one could do, because in my view, the two are inextricably tied, for the reasons I have [307] testified about.

Q Thus in your report, you have not presented any attempt to measure this incremental impact?

A I have not, because, as I have testified, I believe that they are inextricably tied, because the charge is tied to the content. The charge is based on the content. If Goldman hadn't done what it's alleged to have done, there wouldn't have been an SEC enforcement action, there wouldn't have been a DOJ probe, and there wouldn't have been an SEC probe into Hudson

Q Now, we have talked earlier today about there being two types of challenged statements here, the business principles and the conflicts controls statements.

A Yes.

Q Does your methodology have any way of distinguishing between damages caused by one or the other class of alleged misstatements?

A As I have testified this morning, there is no objective way that I am aware of [308] or that I found from looking at analyst reports, or in the literature, of objectively distinguishing the effect of the two.

The complaint concerns behavior, improper behavior regarding clients, and the improper behavior was both a violation of Goldman's conflicts of interest management statements and a violation of its business principle statements, as a result of -- and every element of that, every one of those misstatements and omissions involves that. As a result, there is no objective way of separating the effect, as you have asked, and when I reviewed the analyst reports, I didn't see a single analyst report where the analyst even tried to do that. They didn't make even an effort. It just doesn't make any sense.

Q They didn't make an effort to do what?

A They didn't make an effort to try to separate the impact of the violations of the management of conflicts of interest statements from the business principle statements.

[309] Q There were analyst reports that said that both sets of statements were violated?

MR. HENSSLER: Objection, form, misstates testimony.

A The analyst reports talked about the behavior, the improper behavior, and the SEC enforcement action, and the consequences of it. They talked about both of the elements.

I don't know that the analysts mentioned business principle statements or conflicts of interest management statements. Certainly, there were articles in the press that did. But they talked about the behavior itself. They talked about the effect of the misbehavior on Goldman's reputational capital. The fact that Goldman had always prided itself on being able to manage conflicts, and here Goldman's got a black eye.

* * *

This page intentionally left blank.

Public Allegations of Goldman Sachs Client Conflicts On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

Date*	Source	Article Excerpt *(Emphasis Added)*
1 MARCH 9 2007	*Forbes*: "Candle Burning at Both Ends"	"When Daniel Loeb's $4 billion New York hedge fund [bought] a 7.2% stake in Pogo Producing Co., it relied on its prime brokerage margin account at Goldman. Loeb then demanded board seats . . . [and] Pogo's board of directors . . . hire[d] Goldman to defend itself from Loeb. Odd coincidence, no doubt—except that it happened before. . . . *Is it kosher for one part of Goldman to help a board fend off advances made by a hedge fund that another part of Goldman is aiding?*"
2 MAY 7 2007	*The New York Times*: "What to Do When Rupert Calls?"	"Has anyone on Wall Street found it odd that Goldman Sachs, which has been a longtime banker to Mr. Murdoch's company, the News Corporation . . . is now representing Dow Jones . . . ? *How hard do you really think Goldman is going to push the News Corporation, considering that if a deal is ever struck, Goldman will want to make Mr. Murdoch's company a client again*?"
3 MAY 17 2007	*The Economist*: "Merchants of Boom"	"[A]cting as a principal has again become a big source of . . . controversy, as banks try to negotiate the blurry line between advising clients, lending to them and pouring their own money into deals. . . . This year Goldman Sachs set itself the task of raising a mammoth $20 billion for its latest private equity venture. . . . *Being one of the world's biggest private-equity funds, as well as one of the biggest advisers to them, could cause serious conflicts of interests*."
4 JUNE 11 2007	*Financial Times*: "Arcelor Minorities Prepare for a Fight"	"[Arcelor] minority investors . . . are threatening legal action . . . . *They argue that the banks that provided the fairness opinion [including Goldman Sachs] have all had advisory and/or financing mandates from either Mittal or Arcelor during the past two years.*"
5 DEC 3 2007	*The New York Times*: "The Long and Short of It at Goldman Sachs"	"*[A]s Goldman was peddling C.M.O.'s, it was also shorting the junk on a titanic scale through index sales—showing . . . how horrible a product it believed it was selling*. . . . [T]he recent unhappiness about mortgages and Goldman's connection with them are not examples of sterling conduct. It is bad enough to have been selling this stuff. It is far worse when the sellers were, in effect, *simultaneously shorting the stuff they were selling, or making similar bets*. . . . Maybe it's time for an investigation of just what Wall Street and Goldman did to make money as they . . . sometimes were seemingly on both sides of the deal."
6 DEC 5 2007	*Financial Times*: "Goldman's Risk Control Offers Right Example of Governance"	"At one end of the spectrum Goldman Sachs sails sublimely on, churning out ever-improving earnings figures while *offsetting losses on its exposure to the subprime market with vast profits on short positions in mortgages*. . . . Yet they offer genuine synergies, albeit with *potential conflicts of interest*."
7 DEC 6 2007	*Financial Times*: "Goldman's Glory May Be Short-Lived"	"David Viniar, Goldman's chief financial officer, gathered a group of trading heads . . . at the end of last year to discuss whether the bank was over-exposed to the weak US housing market. . . . *[Goldman Sach's] leaders astutely decided to hedge its mortgage book*. . . . *Two commentators have now . . . accuse[d] Goldman of behaving unethically and perhaps of breaking the law*. . . . [Goldman Sachs] *often faces accusations of conflicts of interest* over its overlapping roles but it brushes them off by saying that its job is to 'manage conflicts.' . . . *One day, however, this balancing act will blow up in its face*."

* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

A-2953

Public Allegations of Goldman Sachs Client Conflicts
On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

Date*	Source	Article Excerpt *(Emphasis Added)*
8 DEC 11 2007	*Dow Jones Business News*: "13 Reasons Why Bush's Mortgage Bailout Won't Stop a Recession"	"New York Attorney General Andrew Cuomo has already subpoenaed Wall Street. Next: Congress, the SEC and other state regulators will demand answers, such as *why was Goldman shorting the SIVs they were selling, many of which quickly went into default?* What did they fail to disclose? Sounds like a *massive conflict of interest* with major liabilities."
9 DEC 14 2007	*The Wall Street Journal*: "How Goldman Won Big on Mortgage Meltdown"	"Goldman's success at wringing profits out of the subprime fiasco, however, raises questions about *how the firm balances its responsibilities to its shareholders and to its clients*. . . . Why did Goldman continue *to peddle CDOs to customers early this year while its own traders were betting that CDO values would fall?*"
10 DEC 17 2007	*Reuters*: "Goldman Success Brings Unwanted Attention"	"Goldman is expected to report . . . billions of gains from *bets against the subprime mortgage market*. . . . *Goldman will face questions on how it once again profited when everyone else, including clients, suffered*. . . . Goldman . . . *pursu[ed] strategies that can sometimes run contrary to what clients are doing*. . . . Another trouble spot could be how Goldman's underwriters issued collateralized debt obligations . . . . *'One part of the firm's underwriting CDOs and the other is shorting the hell out of them.'*"
11 DEC 24 2007	*The New York Times*: "Tattered Standard of Duty on Wall Street"	"*The biggest of the big names were among the most aggressive in betraying their clients' trust*, as I see it. . . . *Goldman Sachs[] w[as] aggressively shorting the very same sort of [mortgage-related] products they were underwriting*. . . . *[S]elling short the same securities* or very similar ones *that they were peddling to the clients* is extremely hard to reconcile with basic fairness."
12 DEC 27 2007	*Dow Jones Capital Markets Report*: "When It Comes to Goldman, Investors Argue With Success"	"*Goldman Sachs made money underwriting mortgage-based collateralized bond obligations (CDOs), then made more money selling them short*. Bloggers are hotly debating the propriety of *betting against a financial product while simultaneously persuading institutional investors to buy it*."
13 JAN 14 2008	*The Wall Street Journal*: "Trading in Deal Stocks Triggers Look at Banks"	"Take the September 2006 transaction in which Motorola Inc. acquired Symbol Technologies Inc. . . . *Goldman Sachs counseled the big cellular-phone company on the \$3.9 billion deal, filings indicate. Goldman also was a big accumulator of Symbol's stock in the final quarter before the transaction's announcement*. . . . Did Goldman, a longtime adviser to Motorola, know about the talks when it bought the stock? . . . Goldman says it reviewed the trading at the time and found nothing improper."
14 NOV 11 2008	*Los Angeles Times*: "Firm Urged Hedge Against State Bonds It Helped Sell"	"Some experts said [Goldman Sachs'] action, while not illegal, might be inappropriate. 'That's not a good way to do business.' . . . '*They've got a conflict of interest and they're acting against the interests of their customers*. . . . You act in the interests of your clients. You don't screw them, to put it bluntly.'"

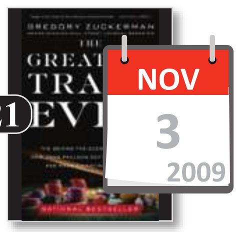
* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

Public Allegations of Goldman Sachs Client Conflicts
On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

	Date*	Source	Article Excerpt *(Emphasis Added)*
15	MAY 13 2009	*The Wall Street Journal*: "Goldman Takes Heat for Conflicts at Whitehall"	"One of *Goldman Sachs Group Inc.'s premier real-estate funds [Whitehall] is in discussions with its lenders to restructure debt* on some of its biggest investments . . . . The wrinkle: *One of the main lenders on those deals is Goldman Sachs. . . . Concessions granted by Whitehall may benefit Goldman, the lender, at the expense of Whitehall investors . . . .*"
16	JUNE 24 2009	*Rolling Stone*: "The Great American Bubble Machine"	"*[E]ven as it was [selling CDOs and mortgage-backed securities], it was taking short positions in the same market, in essence betting against the same crap it was selling.* Even worse, Goldman bragged about it in public. . . . In other words, *the mortgages it was selling were for chumps. The real money was in betting against those same mortgages. . . . 'It's exactly securities fraud,' he says. 'It's the heart of securities fraud.'*"
17	JULY 17 2009	*The New York Times*: "The Joy of Sachs"	"Goldman's role in the financialization of America was similar to that of other players, except for one thing: *Goldman didn't believe its own hype*. Other banks invested heavily in the same toxic waste they were selling to the public at large. *Goldman, famously, made a lot of money selling securities backed by subprime mortgages—then made a lot more money by selling mortgage-backed securities short, just before their value crashed*."
18	AUG 4 2009	*Investor's Business Daily*: "Banking Giant Stands Tall Amid Wreckage of Financial Industry"	"*[Goldman] made money for years issuing and underwriting mortgage-backed securities . . . . Then, it famously made money by selling them short, essentially correctly betting that the market would collapse*."
19	AUG 24 2009	*The Wall Street Journal*: "Goldman's Trading Tips Reward Its Biggest Clients"	"*Every week, Goldman analysts offer stock tips at a gathering the firm calls a 'trading huddle.' But few of the thousands of clients who receive Goldman's written research reports ever hear about the recommendations. . . .* Some of their recommendations differ from ratings printed in Goldman's widely circulated research reports."
20a	NOV 2 2009	*The Wall Street Journal*: "Profiting from the Crash"	"*[Mr. Paulson] met with . . . Goldman Sachs, and other firms to ask if they would create securities—packages of mortgages called collateralized debt obligations, or CDOs—that Paulson & Co. could wager against. . . .* Deutsche Bank and *Goldman Sachs[] didn't see anything wrong with Mr. Paulson's request and agreed to work with his team. . . .* [Senior Bear Stearns trader] Mr. Eichel said he felt it would look improper for his firm. 'On the one hand, *we'd be selling the deals' to investors, without telling them that a bearish hedge fund was the impetus for the transaction*.'"
20b	NOV 2 2009	*McClatchy Washington Bureau*: "How Goldman Secretly Bet on the U.S. Housing Crash"	"In 2006 and 2007, Goldman Sachs Group *peddled more than $40 billion* in securities backed by at least 200,000 risky home mortgages, *but never told the buyers it was secretly betting that a sharp drop in U.S. housing prices would send the value of those securities plummeting. . . .* [A] five-month McClatchy investigation has found that *Goldman's failure to disclose that it made secret, exotic bets on an imminent housing crash may have violated securities laws*."

* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

Public Allegations of Goldman Sachs Client Conflicts
On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

Date*	Source	Article Excerpt *(Emphasis Added)*
21 	*Gregory Zuckerman*: "The Greatest Trade Ever"	"Paulson's team would pick a hundred or so mortgage bonds for the CDOs . . . . [A] senior Bear Stearns trader . . . worried that Paulson would want especially ugly mortgages for the CDOs . . . . *[O]ther bankers, including . . . Goldman Sachs, didn't see anything wrong with Paulson's request and agreed to work with his team. . . . [S]ome investors later would complain that they wouldn't have purchased the CDO investments had they known that some of the collateral behind them was chosen by Paulson and that he would be shorting it*."
22 	*MarketWatch*: "GS a Short? And Five Reasons We Hate Goldman Sachs"	"*Goldman was packaging and selling toxic derivatives for hundreds of billions of dollars to investors around the world*, telling those investors that such derivatives were safe and smart bets. At the same time . . . *Goldman was actually betting against those very products*. They were literally selling products that they were so confident would fail that they bet tens of billions of dollars of their own money . . . against those products they were telling investors were safe. *We want some perpwalks for this obvious fraud*."
23 	*The New York Times*: "Economy's Loss Was One Man's Gain"	"*Mr. Paulson persuaded Goldman Sachs and Deutsche Bank to put together . . . C.D.O.'s [], which were filled with nasty mortgages that he could then short. Of course, nobody told the suckers—er, investors—who bought those C.D.O.'s that they were designed to help a man who wanted the most toxic mortgages imaginable so he could profit when they went sour*."
24a 	*The New York Times*: "Banks Bundled Debt, Bet Against It and Won"	"*Goldman* and other firms eventually used the *C.D.O.'s to place unusually large negative bets* that were not mainly for hedging purposes, and investors and industry experts say that *put the firms at odds with their own clients' interests*." "*Goldman kept a significant amount of the financial bets against securities in Hudson, so it would profit if they failed . . . .* A Goldman salesman involved in Hudson said the deal was one of the earliest in which outside investors raised *questions about Goldman's incentives. 'Here we are selling this, but we think the market is going the other way' . . . .*" "How these disastrously performing securities were devised is now the *subject of scrutiny by . . . Congress [and] the [SEC]* . . . [which] appear to *be looking at whether securities laws or rules of fair dealing were violated by firms that created and sold these mortgage-linked debt instruments and then bet against the clients who purchased them . . . .*"
24b 	*Dow Jones News Service*: "Congress, Regulators Probing Creation, Use of CDOs—NYT"	"*Congress, the [SEC] and [FINRA] . . . are now examining how the CDOs were devised*, and appear to *be looking at whether the firms [including Goldman Sachs] violated securities laws or rules governing fair dealing in any short sales*. One aspect of the investigation centers on *whether the firms purposely help select risky CDOs*."
25 	*The New York Times*: "Betting Against All of Us"	"During the bubble, *Goldman Sachs and other financial firms created complicated mortgage-related investments, sold them to clients and then placed bets that those investments would decline in value. . . .* According to industry experts interviewed, *these bets put the firms' interests clearly at odds with their clients' interests. . . .* Did Goldman and other firms create securities that were bound to fail in order to up the odds that its contrary bets would pay off? Some of the securities were so prone to failure that they soured within months of being created."

* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

A-2956

Public Allegations of Goldman Sachs Client Conflicts
On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

Date*	Source	Article Excerpt *(Emphasis Added)*
26 DEC 30 2009	*McClatchy Washington Bureau*: "Goldman's Offshore Deals Deepened Global Financial Crisis"	"*Goldman's wagers against mortgage securities . . . are now the subject of an inquiry by the [SEC]* . . . . Goldman's Caymans deals were *riddled with potential conflicts of interest*, which Goldman disclosed deep in prospectuses . . . . *Goldman inserted the credit-default swaps into CDO deals 'like a Trojan Horse—secret bets that the same types of bonds that they were selling to their clients would in fact fail.'*"
27 JAN 11 2010	*The New York Times*: "What the Financial Crisis Commission Should Ask"	"Mr. Blankfein, your firm, and others, *created and sold* bundles of mortgages known as *collateralized debt obligations that it simultaneously sold short*, or bet against. *These C.D.O.'s turned out to be bad investments for the people who bought them, but [the] short bets paid off for Goldman Sachs*. . . . Could you explain how *Goldman bet against these C.D.O.'s while simultaneously trying to persuade ratings agencies and investors that they were good investments?*"
28 JAN 12 2010	*The New York Times*: "Goldman Acknowledges Conflicts With Clients"	"A senior Goldman Sachs executive sent an e-mail message to clients on Tuesday disclosing that *the firm's Fundamental Strategies Group may have shared investment ideas with the firm's proprietary trading group or some clients before sharing them with others*. The e-mail . . . demonstrates the various *conflicts that Goldman and other firms face in balancing the interests of its various clients and its own trading operation*. . . . *Goldman and other firms has come under criticism for trading ahead of, or at odds, with its own clients*."
29a JAN 13 2010	*The New York Times*: "At Goldman, E-Mail Message Lays Bare Conflicts in Trading"	"For years, Wall Street whispered that *Goldman Sachs profited handsomely by trading ahead of—or even against—its own clients*. . . . Last month, the [SEC] and Congress began investigating how Goldman and other firms had *created* . . . *C.D.O.'s [] that were sold to investors at the same time that the banks had privately bet against the instruments. Some of these C.D.O.'s later fell in value, creating losses for those clients who bought them—and profits for Goldman*."
29b JAN 13 2010	*Dow Jones News Service*: "Live Blogging the Financial Crisis Inquiry"	"[WSJ commenters] wonder if Blankfein dares touch on Goldman Sachs' sacred business principles. . . . *Angelides [Chairman of the Financial Crisis Inquiry Commission] is talking about how Goldman works both sides of any trade*. Now Blankfein will have to explain what a broker actually does. Too bad 'market-making' won't be understood by most folks watching today's show. He's giving it the college try—but it's hard to love any 'middleman'—especially when the middleman is *originating the product, selling the product and then freely shorting the product*."
30a JAN 14 2010	*Dow Jones Capital Markets Report*: "Goldman Chief Testifies That He Supports Fiduciary Standard"	"*[Financial Crisis Inquiry Committee head Phil Angelides] asked Blankfein whether a practice of betting against some of the subprime mortgage securities Goldman was selling to investors was a conflict of interest*. He replied that Goldman didn't have a legal obligation to disclose when *it was betting against the securities it was selling*."

* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

A-2957

Public Allegations of Goldman Sachs Client Conflicts On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

	Date*	Source	Article Excerpt *(Emphasis Added)*
30b	JAN 14 2010	*Financial Times*: "Wall Street Bankers on Defensive in Grilling Over Financial Crisis"	"[The Financial Crisis Inquiry Committee] accused Mr Blankfein . . . *of a conflict of interest in securitising mortgage-backed securities at the same time as taking a trading position against them*."
31	FEB 3 2010	*Financial Times*: "SEC Asks Paulson Hedge Fund for Information"	"In December, the *SEC sent subpoenas to banks including . . . Goldman Sachs* . . . . The SEC *is examining whether the banks took negative positions on [CDOs] at the same time they marketed them to investors*."
32	FEB 8 2010	*The New York Times*: "Testy Conflict With Goldman Helped Push A.I.G. to Precipice"	"Mr. Egol [of Goldman Sachs] *structured a group of deals—known as Abacus—so that Goldman could benefit from a housing collapse*."
33	FEB 12 2010	*The New York Times*: "Air Products Revises Its Airgas Lawsuit"	"Air Products contends that Airgas's attempt . . . to bar Cravath from advising on the takeover bid is a 'disingenuous' cheap shot. (Airgas has said for months that Cravath . . . has confidential information that it then used to help a rival.) . . . *Air Products contends that a primary Airgas adviser, Goldman Sachs, faces just as much of a problem. Goldman advised Air Products on potential deal-making opportunities and defenses as recently as October 2009* . . . ."
34	MAR 5 2010	*Financial Times*: "Goldman Looking at an Own Goal"	"The Glazer family [owners of Manchester United Football Club] *are considering severing ties with Goldman Sachs after Jim O'Neill, the bank's chief economist, was revealed as a member of a consortium looking to buy the football club*."
35	MAR 10 2010	*The New York Times*: "Calls Increase for Crackdown on Derivatives"	"The criticism of credit-default swaps stems, in part, from the multiple and at times seemingly *conflicted roles that investment banks like Goldman Sachs often play in the markets*. . . . *Goldman and others helped the Greek government legally mask its debts* . . . . *But, just as the true extent of Greece debts began to worry investors, Goldman put on another hat*. . . . [I]t sent clients a 48-page primer on credit-default swaps . . . [which] enable[] investors to . . . bet against certain borrowers. . . . Goldman followed up with its August report, . . . which said . . . *'Buy C.D.S. of developed sovereigns*. . . .'"
36	MAR 17 2010	*The New York Times Magazine*: "Who Needs Wall Street?"	"Asked about *mortgage securities that Goldman both sold to clients and bet against*, Blankfein, while expressing regret for what he admitted was *improper behavior*, added: 'In our market-making function, we are a principal. *We represent the other side of what people want to do*.'"

* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

Plaintiffs' Analysis of Defendants' News Articles on the 36 Dates Purportedly Reporting on Goldman's Conflicts of Interest

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
1[3]	3/9/07	"Candle Burning At Both Ends," *Forbes* (Defs' Ex. 15)[4]	"When Daniel Loeb's $4 billion New York hedge fund [bought] a 7.2% stake in Pogo Producing Co., it relied on its prime brokerage margin account at Goldman. Loeb then demanded board seats ... [and] Pogo's board of directors ... hire[d] Goldman to defend itself from Loeb. Odd coincidence, no doubt—except that it happened before.... *Is it kosher for one part of Goldman to help a board fend off*	"'***There is no conflict***,' snaps Lucas van Praag, Goldman Sachs' chief spokesman. '***The suggestion that there might be a conflict can only be described as an attempt at mischief-making or a fundamental lack of understanding about how this business is conducted***.'"[5]	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	

[1] The dates listed in this chart for each article are those set forth in the expert reports submitted by the parties. *See* 4/6/15 Gompers Decl., ECF No. 144, at Exs. 5 & 6; 5/15/15 Finnerty Decl., ECF No. 154, at Ex. 6; and 7/2/15 Gompers Report, ECF No. 170-1, at Exs. 2 & 3.

[2] Source: Defendants' Exhibit 2 attached to the Declaration of Jacob E. Cohen, ECF No. 193 ("Defs' Ex. 2").

[3] These numbers refer to the numbering of these 36 dates articles by Defendants in Defs' Ex. 2.

[4] "Defs' Ex. __" refer to the Exhibits attached to the Declaration of Jacob E. Cohen, ECF No. 193.

[5] All emphases are added unless otherwise indicated.

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			advances made by a hedge fund that another part of Goldman is aiding?"				
2	5/7/07	"What to Do When Rupert Calls?" *The New York Times* (Defs' Ex. 16)	"Has anyone on Wall Street found it odd that Goldman Sachs, which has been a longtime banker to Mr. Murdoch's company, the News Corporation . . . is now representing Dow Jones . . . ? *How hard do you really think Goldman is going to push the News Corporation, considering that if a deal is ever struck, Goldman will want to make Mr. Murdoch's company a client again?*"		- Article merely raised possibility of conflicts - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
3	5/17/07	"Merchants of Boom," *The Economist* (Defs' Ex. 17)	"[A]cting as a principal has again become a big source of ... controversy, as banks try to negotiate the blurry line between advising clients, lending to them and pouring their own money into deals.... This year Goldman Sachs set itself the task of raising a mammoth $20 billion for its latest private equity venture.... *Being one of the world's biggest private-equity funds, as well as one of the biggest advisers to them, could cause serious conflicts of interests.*"	"Yet investment banks serve so many masters at the same time that sometimes they cannot avoid ruffling feathers. ***Goldman, along with other banks, has appointed senior people to prevent this happening or at least minimise the effects. 'We can't avoid conflicts,' says the firm's Mr. Viniar. 'We have to manage them.'***"	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	✓
4	6/11/07	"Arcelor Minorities Prepare for a	"[Arcelor] minority investors ... are threatening legal	The Arcelor minority investors "want the fairness opinion on the revised exchange ratio redone on	- Article did not relate to the substance of the misrepresentations		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Fight," *Financial Times* (Defs' Ex. 18)	action .... *They argue that the banks that provided the fairness opinion [including Goldman Sachs] have all had advisory and/or financing mandates from either Mittal or Arcelor during the past two years.*"	the grounds that it was not independent," ***as opposed to a conflict of interest***.	alleged by Plaintiffs - Article did not relate to conflicts of interest at all		
5	12/3/07	"The Long and Short of It at Goldman Sachs," *The New York Times* (Defs' Ex. 19)	"*[A]s Goldman was peddling C.M.O.'s, it was also shorting the junk on a titanic scale through index sales—showing . . . how horrible a product it believed it was selling....* [T]he recent unhappiness about mortgages and Goldman's connection with them are not examples of sterling conduct. It is bad enough to have	"The Goldman Sachs spokesman said that the company ***routinely shorts the securities it underwrites and said that this is disclosed***. . . . [Goldman] says [Dr. Hatzius's] paper, like all of its economists' work, was not written to support any larger short-trading strategy."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article indicated that Goldman appropriately managed potential conflicts of interest	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			been selling this stuff. It is far worse when the sellers were, in effect, *simultaneously shorting the stuff they were selling, or making similar bets*.... Maybe it's time for an investigation of just what Wall Street and Goldman did to make money as they ... sometimes were seemingly on both sides of the deal."				
6	12/5/07	"Market Insight: Goldman's Risk Control Offers Right Example of Governance," *Financial Times* (Defs' Ex. 20)	"At one end of the spectrum Goldman Sachs sails sublimely on, churning out ever-improving earnings figures while *offsetting losses on its exposure to the subprime market with vast*	"Until recently, Goldman was a partnership, which is one of the best risk-control mechanisms invented. The culture of partnership, which entails a high degree of mutual surveillance in the common interest, still survives in spite of Goldman's status as a listed company. That is clear from remarks made at a Wharton	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article stated that Goldman appropriately managed conflicts of interest - Article did not relate to the substance of the	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			profits on short positions in mortgages.... Yet they offer genuine synergies, albeit with *potential conflicts of interest*."	finance conference in New York last month by Lloyd Blankfein, Goldman's chairman and chief executive. ***Apart from the discipline of marking to market, he explained, the firm put great emphasis on ensuring that risk concerns were constantly communicated to higher levels of management, getting more fingerprints' on potential problem risks and challenging the notion that a business group leader ought to make independent decisions on risks that affected the entire firm. There was intense accountability through a host of management committees that evaluated all aspects of risk. Most importantly, Goldman ascribes as much status, prestige and pay to people engaged in control functions as to those running businesses.*** It constantly rotates human capital back and forth between risk control and business operations. . . .	misrepresentations alleged by Plaintiffs.		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				In contrast, Mr. Blankfein is accompanied on the board by two other executive directors, together with Stephen Friedman, a former senior partner of the firm. So there is a core group on the board steeped in the disciplines of risk. And Goldman's managing directors include Gerald Corrigan, a former head of the Federal Reserve Bank of New York, who is regarded as the pre-eminent expert on financial plumbing.... With its distinctive model, Goldman offers interesting food for thought."			
7	12/6/07	"Goldman's Glory May be Short-lived," *Financial Times* (Defs' Ex. 21)	"David Viniar, Goldman's chief financial officer, gathered a group of trading heads ... at the end of last year to discuss whether the bank was over-exposed to the weak US housing market.... *[Goldman Sach's]*	"***Goldman bankers say it is impressed upon them that they must tell others of any concerns they have about clients*** or investments: the biggest offence is to keep secrets. . . . After everyone had talked over the bank's overall trading positions, its leaders astutely decided to hedge its mortgage book. . . . ***But there is no evidence that Goldman did***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article conveyed that Goldman did not violate any laws - Article indicated that Goldman acted appropriately - Article did not relate	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			leaders astutely decided to hedge its mortgage book.... Two commentators have now ... accuse[d] Goldman of behaving unethically and perhaps of breaking the law.... [Goldman Sachs] *often faces accusations of conflicts of interest* over its overlapping roles but it brushes them off by saying that its job is to 'manage conflicts.'... *One day, however, this balancing act will blow up in its face*."	***wrong*** by issuing Mr. Hatzius's research or conversing with Mr. [Hank] Paulson about financial conditions, if it actually did the latter. ***I do not believe that Goldman broke insider trading laws***. It would be stupid to risk its reputation in this way and it is anything but stupid."	to the substance of the misrepresentations alleged by Plaintiffs.		
8	12/11/07	"13 Reasons Why Bush's Mortgage Bailout Won't Stop A	"New York Attorney General Andrew Cuomo has already subpoenaed Wall Street. Next:	[Relevant excerpt notes that "Wall Street" as a whole, not Goldman specifically, is the subject of a NY	- Article merely raised possibility of conflicts - Article did not relate to Goldman's policies and procedures to		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Recession," *Dow Jones Business News* (Defs' Ex. 22)	Congress, the SEC and other state regulators will demand answers, such as *why was Goldman shorting the SIVs they were selling, many of which quickly went into default?* What did they fail to disclose? Sounds like a *massive conflict of interest* with major liabilities."	AG's investigation, and suggests the possibility of a investigations by other Congress and other entities, with Goldman as one example of the banks at issue. It poses questions that need to be addressed by these regulators, regarding the potential conflicts of interest, rather than conclusions based on evidence already adduced to date. It then further notes:] "These hearings could drag on a long time . . . ."	prevent conflicts and the true risk to its reputation should they fail. - Article mentioned that "Wall Street" banks, not specifically Goldman, was subpoenaed by NY AG, and only suggested possibility that other regulators may begin investigations. -Article focuses on the problems with government efforts to bail out Wall Street banks after the beginning of the financial crisis; Goldman is mentioned only in passing and only as one example of numerous Wall Street banks that are the subject of the article's critique. - Article indicated that		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
					there were questions as to whether Goldman engaged in any wrongdoing and that the resolution of such questions was still distant.		
9	12/14/07	"How Goldman Won Big On Mortgage Meltdown," *The Wall Street Journal* (Defs' Ex. 23)	"Goldman's success at wringing profits out of the subprime fiasco, however, raises questions about *how the firm balances its responsibilities to its shareholders and to its clients*.... Why did Goldman continue *to peddle CDOs to customers early this year while its own traders were betting that CDO values would fall?*"	"The structured-products trading group that executed the winning trades ***isn't involved in selling CDOs minted by Goldman***, a task handled by others. ***Its principal job is to 'make a market' for Goldman clients*** trading various financial instruments tied to mortgage-backed securities. That is, the group handles clients' buy and sell orders, often stepping in on the other side of trades if no other buyer or seller is available. The group also has another mission: If it spots opportunity, it can trade Goldman's own capital to make a profit. ***And when it does, it doesn't necessarily have to share such information with clients, who may be making***	- Article merely raised possibility of conflicts - Article indicated that Goldman appropriately managed potential conflicts of interest - Article indicated that the relevant trading was done by Goldman as a market maker supplying liquidity for Goldman clients (*i.e.* it was not improper) - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				***opposite bets*.**"			
10	12/17/07	"ANALYSIS-Goldman Success Brings Unwanted Attention," *Reuters News* (Defs' Ex. 24)	"Goldman is expected to report ... billions of gains from *bets against the subprime mortgage market.... Goldman will face questions on how it once again profited when everyone else, including clients, suffered....* Goldman *... pursu[ed] strategies that can sometimes run contrary to what clients are doing....* Another trouble spot could be how Goldman's underwriters issued collateralized debt obligations .... *'One part of the firm's underwriting CDOs and the other is*	"'***People believe they [at Goldman] haven't done anything wrong.***'. . . says Jon Fisher, who helps oversee about $22 billion at Fifth Third Asset Management." "Taking shots at Goldman is hardly new. . . . Goldman declined to respond to the criticism, ***which many market sources and analysts call unfounded***. ***The bank maintains its research and economists are completely independent***. . . . Goldman deserves credit for investing in superior trading data and risk management systems. . . . The Wall Street Journal reported on Friday that Goldman generated $4 million in gains from the subprime trades. ***But a Goldman spokesman said the report 'overstates the profitability of the business'***. … 'You've got two departments not communicating, which are sent out	- Goldman explicitly denied any wrongdoing -Article merely raised possibility of conflicts - Article noted that the public believed Goldman acted appropriately - Article reported that analysts believed Goldman appropriately managed conflicts of interest -Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			shorting the hell out of them.'"	to go make money,' said analyst Richard Bove of Punk Ziegel & Co. …"			
11	12/24/07	"Tattered Standard of Duty On Wall Street," *The New York Times* (Defs' Ex. 25)	"*The biggest of the big names were among the most aggressive in betraying their clients' trust*, as I see it .... *Goldman Sachs[] w[as] aggressively shorting the very same sort of [mortgage-related] products they were underwriting.... [S]elling short the same securities* or very similar ones *that they were peddling to the clients* is extremely hard to reconcile with basic fairness."	"***Goldman asserts that it did nothing wrong in its handling of C.M.O.'s***, saying that most of the entities that bought them were ***highly sophisticated*** and capable of making their own investment decisions. . . . ***Goldman emphatically says its short sales and similar trades were normal hedging operations***. . . . After talking to Goldman, ***I was very impressed with how sure it is of its position***."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article suggested that the relevant trading was normal hedging operations and thus not improper - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
12	12/27/07	"When It Comes To Goldman, Investors Argue With Success," *Dow Jones Capital Markets Report* (Defs' Ex. 26)	"*Goldman Sachs made money underwriting mortgage-based collateralized bond obligations (CDOs), then made more money selling them short*. Bloggers are hotly debating the propriety of *betting against a financial product while simultaneously persuading institutional investors to buy it*."	"The investment bank [Goldman] had the choice of declaring the structured finance vehicles fundamentally flawed and therefore sure to decline in value. That would have cost Goldman Sachs millions in underwriting revenue, but it would not have prevented a single CDO from being created and distributed. Other investment banks gladly would have done the deals, for there was no shortage of willing buyers. Alternatively, Goldman could have underwritten CDOs but refrained from selling them short. Billions of dollars worth of CDOs would have been sold short anyway. The only difference is that other investment banks or hedge funds would have earned the profits, rather than Goldman. ***From the viewpoint of investors, in short, the outcome would have been the same whether Goldman Sachs underwrote CDOs, sold CDOs short, did both, or did neither.***	- Article merely raised possibility of conflicts - Article conveyed that Goldman did not violate any laws or do anything improper - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				Under all scenarios investors would have bought just as many deals and their losses would have been equally large. Why then is it a problem that two different departments within a single firm (mortgage finance and proprietary trading) maximized their profits in exactly the way they would have, had they been corresponding departments at two separate firms? Perhaps the real beef is that a rich and powerful investment bank became even richer and more powerful by being good at what it does." "***No one suggests that Goldman Sachs violated any law by underwriting CDOs while also selling them short***. . . . Goldman's happier outcome was not only a matter of being on the right side of the trade. It is generally conceded that the firm had a better handle on its risk than most other investment banks. . . . That was no accident, but rather the result of heavy investment in			

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				state-of-the-art technology for tracking complex structured finance instruments." "***What Is the Problem, Exactly?*** As a generalization, financial market participants want nothing more than an obscene profit. That goes for issuers, underwriters, traders, and yes, investors. The nature of the market is that they cannot all succeed. . . . It seems like a lot of trouble just to calm somebody's sense of outrage."			
13	1/14/08	"Trading in Deal Stocks Triggers Look at Banks," *The Wall Street Journal* (Defs' Ex. 27)	"Take the September 2006 transaction in which Motorola Inc. acquired Symbol Technologies Inc.... *Goldman Sachs counseled the big cellular-phone company on the $3.9 billion deal, filings indicate. Goldman also was a big accumulator of Symbol's stock in the*	"Mr. Luparello [FINRA official] adds that ***the inquiry may not find any problems***. ***The facts in the study 'can have benign or nefarious explanations,'*** he says. . . . The statistical pattern could be no more than a series of coincidences, reflecting unconnected events in disparate parts of giant investment banks. . . . Andrei Simonov, one of the co-authors, says ***that the data don't prove wrongdoing***. . . . Critics say	- Goldman explicitly denied any wrongdoing - Article conveyed that Goldman may not have violated any laws or done anything improper - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article did not relate to conflicts of interest at all	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			final quarter before the transaction's announcement.... Did Goldman, a longtime adviser to Motorola, know about the talks when it bought the stock? ... Goldman says it reviewed the trading at the time and found nothing improper."	the research is flawed. One issue is that quarterly filings provide an incomplete and sometimes outdated picture of a bank's true holdings. Not included, for example, are certain types of options. Behind the scenes, an investment bank holding stock simultaneously could be using options to hedge its position or to bet that the stock will decline. ***'Given that it is impossible to draw any meaningful conclusions about trading activity from 13F filings, it is inconceivable that anyone with knowledge of the subject would take the work seriously,' says Alan M. Cohen, global head of compliance at Goldman Sachs***. Henry Hu, a corporate and securities-law professor at the University of Texas at Austin, says ***the study's data 'do not necessarily prove anything sinister is going on.***'. . . The researchers acknowledge the limitations of the data. . . . ***Goldman says it reviewed the***			

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				***trading at the time and found nothing improper*.**"			
14	11/11/08	"Firm Urged Hedge Against State Bonds It Helped Sell," *The Los Angeles Times* (Defs' Ex. 28) Note: Article not introduced until merits stage	"Some experts said [Goldman Sachs'] action, while not illegal, might be inappropriate. 'That's not a good way to do business.' …'*They've got a conflict of interest and they're acting against the interests of their customers*.... You act in the interests of your clients. You don't screw them, to put it bluntly.'"	"Under the law, the solution is for the parts of the firm dealing with either side to be isolated from each other so that information does not improperly flow between them to benefit one set of clients more than another. ***There is no evidence that the wall was breached in this case*.**" Article cited the California Treasurer office as stating that claims of ***Goldman's improper conduct were "unfounded*.**"	- Article merely raised possibility of conflicts - Article denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs.		✓
15	5/13/09	"Goldman Takes Heat for Conflicts at Whitehall," *The Wall Street Journal* (Defs' Ex. 29)	"One of *Goldman Sachs Group Inc.'s premier real-estate funds [Whitehall] is in discussions with its lenders to restructure debt* on some of its biggest investments	"Goldman said that ***its interests are aligned with those of Whitehall's investors*** because the bank and its employees together own a 33% stake in the fund. . . . 'Goldman Sachs is the largest investor in the fund,' said a spokeswoman, Andrea Raphael.	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing and conveyed that its interests are aligned with its clients - Article did not relate	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			.... The wrinkle: *One of the main lenders on those deals is Goldman Sachs.... Concessions granted by Whitehall may benefit Goldman, the lender, at the expense of Whitehall investors* ...."	She added that employees who work in Whitehall weren't permitted to sell their stakes, and that Goldman employees – unlike other investors – don't have the option of selling their stakes on the secondary market. . . . Ms. Raphael, the Goldman spokeswoman, said Whitehall 'formed an independent investment advisory committee comprised of significant outside investors who are asked to approve certain transactions that involve other parts of the firm.' '***Goldman warned in a 2006 memorandum to potential investors of many possible conflicts*** and said 'there can be no assurance that Goldman Sachs will be able to resolve conflicts in a manner that is favorable to the Partnerships.'"	to the substance of the misrepresentations alleged by Plaintiffs.		
16	6/24/09	"The Great American Bubble Machine,"	"*[E]ven as it was [selling CDOs and mortgage-backed securities], it was*	"It [Goldman] also, oddly enough, had a reputation for relatively solid ethics and a patient approach to investment that shunned the fast	- Article noted that Goldman had denied wrongdoing - Article does not relate	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Rolling Stone (Defs' Ex. 30)	*taking short positions in the same market, in essence betting against the same crap it was selling.* Even worse, Goldman bragged about it in public.... In other words, *the mortgages it was selling were for chumps. The real money was in betting against those same mortgages. . . . 'It's exactly securities fraud,' he says. 'It's the heart of securities fraud.'"*	buck; its executives were trained to adopt the firm's mantra 'long-term greedy.'One former Goldman Banker who left the firm in the early Nineties recalls seeing his superiors give up a very profitable deal on the grounds that it was a long-term loser. 'We gave back money to 'grown-up' corporate clients who had made bad deals with us,' he says. 'Everything we did was legal and fair – but 'long-term greedy' said we didn't want to make sure a profit at the clients' collective expense that we spoiled the marketplace.'" "Goldman has denied that it changed its underwriting standards during the Internet years…" "Goldman[] has denied wrongdoing in all of these cases it has settled …."	to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article is merely an opinion piece that repeated information already available		
17	7/17/09	"The Joy Of Sachs," *The New York*	"Goldman's role in the financialization of America was similar	"***All of [Goldman's subprime-related conduct] was perfectly legal***. . . ."	- Article conveyed that Goldman did not violate any laws		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Times (Defs' Ex. 31)	to that of other players, except for one thing: *Goldman didn't believe its own hype*. Other banks invested heavily in the same toxic waste they were selling to the public at large. *Goldman, famously, made a lot of money selling securities backed by subprime mortgages—then made a lot more money by selling mortgage-backed securities short, just before their value crashed.*"		- Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article is merely an opinion piece that repeated information already available		
18	8/4/09	"Banking Giant Stands Tall Amid Wreckage Of Financial Industry," *Investor's*	"*[Goldman] made money for years issuing and underwriting mortgage-backed securities .... Then, it famously made*	"'***You would be hard-pressed to find a company of any size that has done a better job of managing risk than Goldman Sachs***,' said Mark Lane, a William Blair equities analyst. And, Lane notes, much of	- Article indicated that Goldman acted appropriately - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Business Daily (Defs' Ex. 32)	*money by selling them short, essentially correctly betting that the market would collapse.*"	Goldman's profits came from processing customers' orders, rather than inherently risky activities. . . . Wells Fargo Securities analyst Matthew Burnell thinks that [Goldman's mortgage activities] ***shows one of Goldman's strengths***. It seems to share information and insight across its various trading desks better than competitors."	- Article did not relate to conflicts of interest at all - Article acknowledged that it merely repeated information already available		
19	8/24/09	"Goldman's Trading Tips Reward Its Biggest Clients," *The Wall Street Journal* (Defs' Ex. 33)	"*Every week, Goldman analysts offer stock tips at a gathering the firm calls a 'trading huddle.' But few of the thousands of clients who receive Goldman's written research reports ever hear about the recommendations....* Some of their recommendations differ from ratings	"Steven Strongin, Goldman's stock research chief, says ***no one gains an unfair advantage from its trading huddles***, and that the short-term-trading ideas are not contrary to the long-term stock forecasts in its written research." "Goldman spokesman Edward Canaday says the tips are 'market color' and 'always consistent with the fundamental analysis' in published research reports. . . . ***Goldman's published research reports include a disclosure that "salespeople, traders and other***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			printed in Goldman's widely circulated research reports."	***professionals" may take positions that are contrary to the opinions expressed in reports*.** . . . Goldman doesn't want to overload other clients with information that isn't relevant to them, he says. 'We are not in the business of serving thousands of retail customers,' he says." "The 2003 case involved allegations that Wall Street firms were issuing overly optimistic stock research in order to win more lucrative investment-banking business. The settlement, in which Goldman and the other firms ***didn't admit or deny wrongdoing***, ***erected walls between research and investment banking***." "Laura Conigliaro, Goldman's co-head of research in the Americas region" stated that "'Issuing a short-term buy recommendation ***wasn't necessarily at odds with*** a lukewarm 'neutral' rating for the long run. . . .'" "***Compliance officers sit in on almost all the meetings***, Goldman			

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				says. . . . Goldman says its in-house traders are prohibited from trading on the tips until after they've been relayed to clients. "Typically, traders who wager firm capital are ***walled off*** from those handling customer orders so that they don't take advantage of information about client trading, which securities regulations forbid. Goldman ***says its franchise risk managers don't trade on client information*** and must first share trading-huddle tips with clients before acting on the tips themselves." "Goldman says that in both these cases the analysts' views were consistent with the published research. . . ."			
20a	11/2/09	"Profiting From the Crash," *The Wall Street Journal* (Defs' Ex. 34)	*"[Mr. Paulson] met with ... Goldman Sachs, and other firms to ask if they would create securities—packages of mortgages called*	"Soon, Josh Birnbaum, a top Goldman Sachs trader, began calling and asked to come by his office. Sitting across from Mr. Paulson, Mr. Pellegrini, and his top trader, Brad Rosenberg, Mr. Birnbaum got to the point.	- Article conveyed that Goldman denied any wrongdoing -Article focused on Paulson, not Goldman, and contains no discussion of the	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		(article by the same author as the *The Greatest Trade Ever* below and is adapted from the book, which was published later)	*collateralized debt obligations, or CDOs—that Paulson & Co. could wager against....* Deutsche Bank and *Goldman Sachs[] didn't see anything wrong with Mr. Paulson's request and agreed to work with his team....* [Senior Bear Stearns trader] Mr. Eichel said he felt it would look improper for his firm. 'On the one hand, *we'd be selling the deals' to investors, without telling them that a bearish hedge fund was the impetus for the transaction.'"*	***Not only were Mr. Birnbaum's clients eager to buy some of the mortgages that Paulson &Co. was betting against, but Mr. Birnbaum was, too. Mr. Birnbaum and his clients expected the mortgages, packaged as securities, to hold their value. 'We've done the work and we don't see them taking losses,' Mr. Birnbaum said."*** "Other bankers, including those at Deutsche Bank ***and Goldman Sachs, didn't see anything wrong with Mr. Paulson's request*** and agreed to work with his team." "At the time, though, ***Mr. Paulson still wasn't sure his trade would work***. He simply was buying protection, he said. '***We didn't create any securities, we never sold the securities to investors,' Mr. Paulson said***." "*Adapted from 'The Greatest Trade Ever' by Gregory Zuckerman . . .* "	structuring of Abacus and what was disclosed to Abacus investors - Article indicated that Goldman appropriately managed potential conflicts of interest - Article suggested that the relevant trading was done by Goldman based on client demand - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article acknowledged that it merely repeated information already available - Article conveyed that others (Paulson and other investment bankers in addition to Goldman) believed the conduct was not improper or illegal.		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
20b	11/2/09	"How Goldman Secretly Bet on the U.S. Housing Crash," *McClatchy Washington Bureau* (Defs' Ex. 35)	"In 2006 and 2007, Goldman Sachs Group *peddled more than $40 billion* in securities backed by at least 200,000 risky home mortgages, *but never told the buyers it was secretly betting that a sharp drop in U.S. housing prices would send the value of those securities plummeting*.... [A] five-month McClatchy investigation has found that *Goldman's failure to disclose that it made secret, exotic bets on an imminent housing crash may have violated securities laws*."	"A Goldman spokesman, Michael DuVally, said that the firm decided in December 2006 to reduce its mortgage risks and did so by selling off subprime-related securities and making myriad insurance-like bets, called credit-default swaps, ***to 'hedge' against a housing downturn***. . . . DuVally told McClatchy that ***Goldman 'had no obligation to disclose how it was managing its risk, nor would investors have expected us to do so*** . . . other market participants had access to the same information we did.' . . . DuVally said that at the time [December 2006], ***Goldman executives 'had no way of knowing how difficult housing or financial market conditions would become***.'. . . Asked whether Goldman's bond sellers knew about the contrary bets, spokesman DuVally said the company's mortgage business ***'has extensive barriers designed to keep information within its proper***	- Goldman explicitly denied any wrongdoing - Article merely raised possibility of conflicts - Article conveyed that Goldman may not have violated any laws based on legal experts' statements - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				confines.' . . . The Securities Act of 1933 imposes a special disclosure burden on principal underwriters of securities, which was Goldman's role when it sold about $39 billion of its own risky mortgage-backed securities from March 2006 to February 2007. ***The firm maintains that the requirement doesn't apply in this case.*** DuVally said the firm sold virtually all its subprime-related securities to Qualified Institutional Buyers, a class of sophisticated investors that are afforded fewer protections than small investors are under federal securities laws. ***He said Goldman made all the required disclosures about risks***. ***Whether*** companies are obliged to inform investors about such contrary trades, or 'hedges,' is 'a very hot issue,' in cases winding through the courts, said Frank Partnoy, a University of Sand			

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				Diego law professor who specializes in securities. ***One issue is how specific companies must be in disclosing potential risks to investors***, he said. Coffee, the Columbia University law professor, said that ***any potential violations of securities laws would depend on what Goldman executives knew about the risks ahead***."			
21	11/3/09	Zuckerman, G. (2009), THE GREATEST TRADE EVER. New York: Crown Publishing Group (Defs' Ex. 36)	"Paulson's team would pick a hundred or so mortgage bonds for the CDOs .... [A] senior Bear Stearns trader ... worried that Paulson would want especially ugly mortgages for the CDOs .... *[O]ther bankers, including ... Goldman Sachs, didn't see anything wrong with Paulson's request and agreed to*	"For his part, Paulson says that investment banks like Bear Stearns didn't need to worry about including only risky debt for the CDOs because '***it was a negotiation; we threw out some names, they threw out some names, but the bankers ultimately picked the collateral***. We didn't create any securities, we never sold the securities to investors. . . . We always thought they were bad loans.' Besides, every time he bought subprime-mortgage protection,	- Author conveyed that Goldman denied any wrongdoing - Author conveyed statements by others (Paulson and other bankers) denying conduct involved any wrongdoing -Book excerpt focused on Paulson, not Goldman, and contains no discussion of the structuring of Abacus and what was disclosed	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			work with his team.... [S]ome investors later would complain that they wouldn't have purchased the CDO investments had they known that some of the collateral behind them was chosen by Paulson and that he would be shorting it."	someone had to be found to sell it to him, Paulson notes, so these big CDOs were no different." "***[O]ther bankers, including those at Deutsche Bank and Goldman Sachs, didn't see anything wrong with Paulson's request*** and agreed to work with his team." "Paulson didn't sell any of these products to investors. ***Some investors were even consulted as the mortgage debt was picked for the CDOs to make sure it would appeal to them. And these deals were among the easiest for an investor to analyze***, if they so chose, because they were 'unmanaged' CDOs, or those in which the collateral was chosen at the outset and not adjusted later on like other CDOs. ***It wasn't his fault that others were willing to roll the dice.***" "A few other hedge funds also worked with banks to create CDOs of their own that these funds could short—***so Paulson wasn't doing anything new***. Nor did Paulson's	to Abacus investors - Book excerpt suggested that the relevant trading was done by Goldman as a market maker supplying liquidity for Goldman clients - Book excerpt did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Book excerpt portrayed Paulson as a hero, conveying that none of the conduct at issue was improper - Book excerpt repeated similar information as was in Zuckerman's related article adapted from the book ("Profiting From the Crash," *The Wall Street Journal*, above), which		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				moves create more troubled mortgages or saddle borrowers with additional losses—the deals were CDOs composed of CDS contracts, rather than actual mortgage bonds. 'We provided the collateral' for the CDOs, Paulson acknowledges. '***But the deals weren't created for us, we just facilitated it***, we proposed recent vintages of mortgages' to the banks.'"	was published earlier		
22	11/19/09	"GS a Short? And Five Reasons We Hate Goldman Sachs," *MarketWatch* (Defs' Ex. 37) **Note**: Article not introduced until merits stage	"*Goldman was packaging and selling toxic derivatives for hundreds of billions of dollars to investors around the world*, telling those investors that such derivatives were safe and smart bets. At the same time ... *Goldman was actually betting against those very products*. They were	"Goldman says 'We were just smart and ***have done nothing wrong***.'"	- Goldman explicitly denied any wrongdoing - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article is merely an opinion piece that repeated information already available	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			literally selling products that they were so confident would fail that they bet tens of billions of dollars of their own money ... against those products they were telling investors were safe. *We want some perpwalks for this obvious fraud*."				
23	12/7/09	"Economy's Loss Was One Man's Gain," *The New York Times* (Defs' Ex. 38) (Book review of *The Greatest Trade Ever* cited above)	"*Mr. Paulson persuaded Goldman Sachs and Deutsche Bank to put together ... C.D.O.'s [], which were filled with nasty mortgages that he could then short. Of course, nobody told the suckers—er, investors—who bought those C.D.O.'s that they were designed to help a man who wanted*	"Mr. Zuckerman [the author of the book reviewed] ***depicts Mr. Paulson as a hero***…" "… Mr. Zuckerman bends over backwards to present Mr. Paulson in a favorable light…" "The author clearly considers Mr. Paulson morally superior to the leaders of investment banks like Bear Stearns and Lehman Brothers and subprime mortgage lenders like Countrywide Financial and New Century [*i.e.*, mortgage	- Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail - Article focused on Paulson, not Goldman, and contains no discussion of the structuring of Abacus and what was disclosed to Abacus investors - Article notes that		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			the most toxic mortgages imaginable so he could profit when they went sour."	originators], all of whom are vilified." Article focused on Paulson's activities in the mortgage market, and includes only a passing reference to Goldman, indicating that "Mr. Paulson persuaded Goldman Sachs and Deutsche Bank to put together securitized collateralized debt obligations…"	book author praised Paulson, suggesting that none of Paulson's shorting activities were improper - Article is merely a book review that repeated information already available		
24a	12/24/09	"Banks Bundled Bad Debt, Bet Against It and Won," *The New York Times* (Defs' Ex. 39)	"*Goldman* and other firms eventually used the *C.D.O.'s to place unusually large negative bets* that were not mainly for hedging purposes, and investors and industry experts say that *put the firms at odds with their own clients' interests*." "*Goldman kept a significant amount of the financial bets*	"While ***the investigations are in the early phases***, authorities appear to be looking at whether securities laws or rules of fair-dealing were violated by firms that created and sold these mortgage-linked debt instruments and then bet against the clients who purchased them, people briefed on the matter say. One focus of the inquiry is whether the firms creating the securities purposefully helped to select especially risky mortgage-linked assets that would be most likely to crater . . ." "***Goldman and other Wall Street***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing, including specifically for the Hudson CDO - Article indicated that Goldman appropriately managed potential conflicts of interest - Article suggested that the relevant trading was done by Goldman as a market maker supplying liquidity for	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			against securities in Hudson, so it would profit if they failed . . . . . A Goldman salesman involved in Hudson said the deal was one of the earliest in which outside investors raised *questions about Goldman's incentives. 'Here we are selling this, but we think the market is going the other way'* . . . ." "How these disastrously performing securities were devised is now the *subject of scrutiny by ... Congress [and] the [SEC]* . . . [which] appear to *be looking at whether securities laws or rules of fair*	***firms maintain there is nothing improper about synthetic C.D.O.'s, saying that they typically employ many trading techniques to hedge investments and protect against losses***. They add that ***many prudent investors often do the same***. Goldman used these securities initially to offset any potential losses stemming from its positive bets on mortgage securities. . . . Mr. DuVally said ***many of the C.D.O.'s created by Wall Street were made to satisfy client demand for such products***, which the clients thought would produce profits because they had an optimistic view of the housing market. In addition, ***he said that clients knew Goldman might be betting against mortgages linked to the securities***, and that the buyers of synthetic mortgage C.D.O.'s were ***large, sophisticated investors***, he said." "[A] spokesman said investors could have rejected the C.D.O. if	Goldman clients and as normal hedging operations - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article's passing mention of "Abacus" refers only to a Goldman banker's creation of a series of CDOs called Abacus from 2004-2007; but there was no mention of Paulson's involvement nor related conflicts at issue in the Abacus CDO. - In addition to Goldman's numerous denials in the article itself, in response to this article Goldman also issued a separate press release on the same day with many similar, false denials		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			dealing were violated by firms that created and sold these mortgage-linked debt instruments and then bet against the clients who purchased them . . . ."	they did not like the assets." "The Goldman salesman said that ***[Hudson] C.D.O. buyers were not misled because they were advised that Goldman was placing large bets against the securities***. '***We were very open with all the risks that we thought we sold.*** When you're facing a tidal wave of people who want to invest, it's hard to stop them,' he said. The salesman added that investors could have placed bets against Abacus and similar C.D.O.'s if they had wanted to.'"	(*e.g.*, that such CDOs "***were the result of demand from investing clients seeking long exposure***" and that it "***fully disclosed*** … to investors" its short positions. ECF No. 196 at 11.		
24b	12/24/09	"Congress, Regulators Probing Creation, Use Of CDOs - NYT," *Dow Jones News Service* (Defs' Ex. 40)	"*Congress, the [SEC] and [FINRA] ... are now examining how the CDOs were devised*, and appear to *be looking at whether the firms [including Goldman Sachs] violated securities laws or rules governing fair dealing in any short*	"Congress, the Securities and Exchange Commission and the Financial Industry Regulatory Authority . . . are now examining how the CDOs were devised, and appear to be looking at whether the firms violated securities laws or rules governing fair dealing in any short sales." "A Goldman spokesman said ***client demand fueled the creation of many of the CDO products,***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article suggested that the relevant trading was done by Goldman as a market maker based on	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			sales. One aspect of the investigation centers on *whether the firms purposely help select risky CDOs*."	***and that those clients knew that Goldman might bet against mortgages linked to the securities***. Additionally, the spokesman said buyers of the CDO products were ***large, sophisticated investors***."	client demand - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs.		
25	12/29/09	"Betting Against All of Us," *The New York Times* (Defs' Ex. 41)	"During the bubble, *Goldman Sachs and other financial firms created complicated mortgage-related investments, sold them to clients and then placed bets that those investments would decline in value*.... According to industry experts interviewed, *these bets put the firms' interests clearly at odds with their clients' interests*... . Did Goldman and other firms create securities that were bound to fail in order	"***It may turn out that some or all of the products and practices were not illegal***. . . . The way the wizards explain it, betting against one's clients is one of many techniques to prudently guard against loss." "Goldman says that ***its clients knew that it might place contrary bets***."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article conveyed that some or all of Goldman's products and practices were not illegal - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			to up the odds that its contrary bets would pay off? Some of the securities were so prone to failure that they soured within months of being created."				
26	12/30/09	"Goldman's Offshore Deals Deepened Global Financial Crisis," *McClatchy Washington Bureau* (Defs' Ex. 42)	"*Goldman's wagers against mortgage securities ... are now the subject of an inquiry by the [SEC]* .... Goldman's Caymans deals were *riddled with potential conflicts of interest*, which Goldman disclosed deep in prospectuses .... *Goldman inserted the credit-default swaps into CDO deals 'like a Trojan Horse—secret bets that the same types of bonds that they were selling*	"Goldman said ***those investors were fully informed of the risks they were taking***. . . . At the time, Goldman's chief spokesman, Lucas van Praag, ***dismissed as 'untrue' any suggestion that the firm had misled the pension funds, insurers, foreign banks and other investors that bought those bonds***." "Goldman's defenders argue that the legendary firm's relatively unscathed escape from the housing collapse is ***further evidence that it's smarter and quicker than its competitors***." "Goldman's Caymans deals were riddled with potential conflicts of interest, which ***Goldman disclosed***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article conveyed that Goldman may not have done anything illegal or improper - Article indicated that Goldman appropriately managed potential conflicts of interest - Article suggested that the relevant trading was normal hedging operations - Article and does not relate to the substance of the	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			to their clients would in fact fail.'"	deep in prospectuses that typically ran 200 pages or more." "Goldman's chief financial officer, David Viniar, has said that the firm purchased the AIG swaps only as an 'intermediary' on behalf of its clients, first writing protection on their securities, and then buying its own protection to eliminate those risks. . . . In a Dec. 24 letter to McClatchy, ***Goldman said it sold those products only to sophisticated investors and fully informed them of which securities would be the basis of any swap bets***. The investors, it said, 'could simply decide not to participate if they did not like some or all the securities.' . . . ***It called those hedges 'the cornerstone of prudent risk management***.'" "***Whether Goldman deceived investors with its secret bets depends partly on whether the courts or investigators conclude that disclosing the swaps would have dissuaded potential buyers from purchasing its registered***	misrepresentations alleged by Plaintiffs		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				mortgage securities, the experts said. Separate questions of disclosure could apply to clients who invested in the Caymans deals."			
27	1/11/10	"What the Financial Crisis Commission Should Ask," *The New York Times* (Defs' Ex. 43)	"Mr. Blankfein, your firm, and others, *created and sold* bundles of mortgages known as *collateralized debt obligations that it simultaneously sold short*, or bet against. *These C.D.O.'s turned out to be bad investments for the people who bought them, but [the] short bets paid off for Goldman Sachs....* Could you explain how *Goldman bet against these C.D.O.'s while simultaneously trying to persuade ratings*	Article lists a series of "questions" that the FCIC should ask of Blankfein and several other CEOs at its upcoming "first hearing of the Financial Crisis Inquiry Commission" in connection with its inquiry against multiple banks related to the financial crisis.	- Article merely raised possibility of conflicts - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail - Article merely asks for information in the form of a question and does not purport to be disclosing news		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			agencies and investors that they were good investments?"				
28	1/12/10	"Goldman Acknowledges Conflicts With Clients," *The New York Times* (Defs' Ex. 44)	"A senior Goldman Sachs executive sent an e-mail message to clients on Tuesday disclosing that *the firm's Fundamental Strategies Group may have shared investment ideas with the firm's proprietary trading group or some clients before sharing them with others*. The e-mail ... demonstrates the various *conflicts that Goldman and other firms face in balancing the interests of its various clients and its own trading operation....*	"A senior Goldman Sachs executive sent an email message to clients. . . . '***As part of our commitment to managing conflicts of interest appropriately***, this message is to explain how the Fundamental Strategies Group interacts with other parts of our organisation and how that impacts on the Trading Ideas.'" Article also includes the remainder of the Goldman email that reinforces Goldman's purported conflicts of intest policies, which suggests that Goldman has appropriate procedures in place to control for and manage such conflicts.	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			Goldman and other firms has come under criticism for trading ahead of, or at odds, with its own clients."				
29a	1/13/10	"At Goldman, E- Mail Message Lays Bare Conflicts in Trading," *The New York Times* (Defs' Ex. 45)	"For years, Wall Street whispered that *Goldman Sachs profited handsomely by trading ahead of—or even against—its own clients*.... Last month, the [SEC] and Congress began investigating how Goldman and other firms had *created … C.D.O.'s [] that were sold to investors at the same time that the banks had privately bet against the instruments. Some of these C.D.O.'s later fell in value, creating losses for those clients who bought*	"The e-mail message is a blunt acknowledgement of what often appeared in the fine print of Goldman's marketing materials. Lucas van Praag, a Goldman spokesman, said in a statement: 'We have been providing this disclosure, which we think is best practice, for a number of years and there is nothing new in the disclosure you were sent.'" "***Goldman insists that its trading business is done on behalf of its clients***. . . . ***Mr. Mazarakis's [Goldman executive's] e-mail statement was clearly meant to reinforce Goldman's conflict-of-interest policy and head off any legal liability.*** '***As part of our commitment to managing conflicts of interest appropriately***,	- Article merely raised possibility of conflicts - Article conveyed that Goldman denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail - Article acknowledged that it merely repeated information already available	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			them—and profits for Goldman."	this message is to explain how the Fundamental Strategies Group interacts with other parts of our organization and how that impacts on the Trading Ideas,' Mr. Mazarakis wrote. Mr. van Praag said the language in the message had been vetted by the Financial Services Authority in Britain."			
29b	1/13/10	"Live Blogging The Financial Crisis Inquiry," *Dow Jones News Service* (Defs' Ex. 46)	"[WSJ commenters] wonder if Blankfein dares touch on Goldman Sachs' sacred business principles.... *Angelides [Chairman of the Financial Crisis Inquiry Commission] is talking about how Goldman works both sides of any trade.* Now Blankfein will have to explain what a broker actually does. Too bad 'market-making'	"9:49 a.m. . . . Angelides: Were any of your activities 'negligent' Blankfein: They were 'typical'. . ." "9:50 a.m. . . ***Blankfein: We are 'market makers'*** . . . and we are 'sorry' people lost money" "10:01 a.m. . . He [Angelides] asked Blankfein point blank if he was telling buyers of those CDOs if Goldman disclosed that it was shorting them. Blankfein didn't answer the question. . . ." "11:58 a.m. . . Blankfein: Over-the-counter derivative market functioned pretty well...but people make bad credit decisions embedded in those derivatives. . . ."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article suggested that the relevant trading was done by Goldman as a market maker based on client demand - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article is merely an opinion piece that	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			won't be understood by most folks watching today's show. He's giving it the college try—but it's hard to love any 'middleman'—especially when the middleman is *originating the product, selling the product and then freely shorting the product.*"	"11:59 a.m. . . Blankfein: Everything was just hunky dory in the OTC derivatives market. In fairness to him, the CDS market never blew up the way everyone was expecting." "12:14 p.m. . . ***Blankfein: We sold to sophisticated investors."*** "12:15 p.m. ***Blankfein: We sold what people wanted. Kids want candy, you sell them candy. They should know what it does to their teeth***." In addition to Blankfein's denials quoted in this article, he made numerous other denials at this public FCIC hearing: "Well, the way it's—let me—the short answer is [selling and shorting the same securities] ***is the practice of a market maker***. And I would like to explain this.... I just want to explain—and this is a very important—and I appreciate the opportunity to do this because there's so much press swirling around this that I really want—I	repeated information already available - In addition to the denials in this article, Blankfein made numerous other denials at this same public FCIC hearing		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				really need to explain. ***In our market-making function, we are a principal. We represent the other side of what people want to do. We are not a fiduciary. We are not an agent.*** Of course, we have an obligation to fully disclose what an instrument is and to be honest in our dealings, but we are not managing somebody else's money. When we sell something as a principal—which is what we are as a market maker—the next minute, that item will have gone up—in which case we'll wish we hadn't sold it that minute—or it will go down—in which case, we'll actually be glad we did for our own P&L and sorry for the person who bought it. ***But we are market makers in that.*** In most of these cases, the person who came to us came to us for the exposure that they wanted to have."* *Note: First Public Hearing of the Financial Crisis Inquiry Commission, January 13, 2010			

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
30a	1/14/10	"Goldman Chief Testifies That He Supports Fiduciary Standard," *Dow Jones Capital Markets Report* (Defs' Ex. 47)	"*[Financial Crisis Inquiry Committee head Phil Angelides] asked Blankfein whether a practice of betting against some of the subprime mortgage securities Goldman was selling to investors was a conflict of interest.* He replied that Goldman didn't have a legal obligation to disclose when *it was betting against the securities it was selling*."	"'The fiduciary standard puts the interest of the client first.' ..." "Angelides, at one point, asked Blankfein whether a practice of betting against some of the subprime mortgage securities Goldman was selling to investors was a conflict of interest. [Blankfein] replied that ***Goldman didn't have a legal obligation to disclose when it was betting against the securities it was selling.*** ***'We are not a fiduciary,'*** he said. Fiduciary advocates said they were surprised by Blankfein's public support for applying the standard to certain brokers. 'It's absolutely refreshing and hopeful that the face of Wall Street has gone out of his way to make this statement,' said Knut Rostad, a regulatory compliance officer for Rembert Pendleton Jackson, a registered investment advisor in Falls Church, Va., and chairman of The Committee for the Fiduciary Standard, an advocacy group."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article acknowledged that it merely repeated information already available In addition to the denials contained in this article, Goldman also issued a press release on the same day making further, similar denials, including: "***Mr. Blankfein does not believe … that Goldman Sachs had behaved improperly in any way***. In fact, his answer … explained	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
					the market making function and how our practices were ***entirely appropriate***." Pls. Ex. __ (Blankfein Ex. 7) hereto.		
30b	1/14/10	"Wall Street Bankers on Defensive in Grilling Over Financial Crisis," *Financial Times* (Defs' Ex. 48)	"[The Financial Crisis Inquiry Committee] accused Mr Blankfein *...of a conflict of interest in securitising mortgage-backed securities at the same time as taking a trading position against them.*"	"'We are after the truth . . . the hard facts . . . we'll use our subpoena power as needed. ***And if we find wrongdoing***, we'll refer it to the proper authorities,' said Phil Angelides [FCIC chairman]…." "Wall Street's top executives were grilled by a new commission yesterday on whether their pay, risk management and trading were responsible for a financial crisis that put millions out of work." "Mr. Blankfein stressed ***that Goldman traded with institutional investors in securitised assets who were responsible for their own actions***. . . ."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article conveyed that FCIC's inquiry against multiple banks had just begun and that it may find no wrongdoing - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article acknowledged that it merely repeated information already available	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
31	2/3/10	"SEC Asks Paulson Hedge Fund for Information," *Financial Times* (Defs' Ex. 49)	"In December, the *SEC sent subpoenas to banks including ... Goldman Sachs ....* The SEC *is examining whether the banks took negative positions on [CDOs] at the same time they marketed them to investors*."	"Paulson & Co., a hedge fund that made billions of dollars betting against subprime mortgages has received a request for information from the [SEC] in connection with an investigation into complex securities at the heard of hte financial crisis…" "Mary Schapiro, SEC Chairman, told a congressional commission on January 14 that her agency was 'reviewing the practices ***of investment banks*** and others that purchased and securitized pools of subprime mortgages. ***We are seeking to determine*** whether investors were misled in some manner.'" "The people familiar with the matter said they believed that Paulson & Co was not a target of any investigation." "In December, the SEC sent subpoenas ***to banks including Bank of America/Merrill Lynch, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman***	- Article focused on subpoena to Paulson in connection with its general strategy of shorting the subprime market, not any specific CDO; no mention of Abacus, nor Goldman's role in structuring any CDO with Paulson. - Article notes that SEC is investigating numerous banks, not just Goldman, and indicates that investigation had just begun (in December 2009), suggesting that any potential liability is far from clear. - Article merely raised possibility of conflicts - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				Sachs, Morgan Stanley and UBS seeking information about the sale and marketing of such CDOs. The SEC is examining ***whether*** the banks took negative positions on these securities at the same time they marketed them to investors."	fail - Article acknowledged that it merely repeated information already available		
32	2/8/10	"Testy Conflict With Goldman Helped Push A.I.G. to Precipice," *The New York Times* (Defs' Ex. 50)	"Mr. Egol [of Goldman Sachs] *structured a group of deals—known as Abacus—so that Goldman could benefit from a housing collapse.*"	"Goldman is proud of its reputation for aggressively protecting itself and its shareholders from losses as it did in the dispute with A.I.G. . . . In March 2009, David A. Viniar, Goldman's chief financial officer, discussed his firm's dispute with A.I.G. in a conference call with reporters. 'We believed that the value of these positions was lower than they believed,' he said." "Asked by a reporter whether his bank's persistent payment demands had contributed to A.I.G.'s woes, ***Mr. Viniar said that Goldman had done nothing wrong*** and that the firm was merely seeking to enforce its insurance policy with A.I.G. ***'I***	- Goldman explicitly denied any wrongdoing - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article did not relate to conflicts of interest at all - Article included statements by others (former Goldman partners) indicating conduct was not illegal nor improper - Article's passing reference to "Abacus" was only to Goldman's series of CDOs with that name; it did not	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				don't think there is any guilt whatsoever,' he concluded. Lucas van Praag, a Goldman spokesman, ***reiterated that position.*** 'We requested the collateral we were entitled to under the terms of our agreements,' he said in a written statement, '***and the idea that A.I.G. collapsed because of our marks is ridiculous.***'. . . ***Several former Goldman partners said it was not surprising that Goldman sought such tough terms, given the firm's longstanding focus on risk management.***" "Mr. Lucas van Praag, the Goldman spokesman, said Goldman did not push other firms to demand payments from A.I.G."	mention Paulson, nor any related, relevant information regarding the structuring of the Abacus CDO at issue in this case. - Article acknowledged that it merely repeated information already available		
33	2/12/10	"Air Products Revises Its Airgas Lawsuit," *The New York Times*	"Air Products contends that Airgas's attempt ... to bar Cravath from advising on the takeover bid is a	"***But Air Products contends that it is taking the high road by not arguing that [Goldman's services] constitutes a conflict***, given the increasingly conflicted nature of merger advisory, when banks and	- Article merely raised possibility of conflicts - Article reported that client believed Goldman appropriately managed conflicts of		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		(Defs' Ex. 51)	'disingenuous' cheap shot. (Airgas has said for months that Cravath ... has confidential information that it then used to help a rival.) ... *Air Products contends that a primary Airgas adviser, Goldman Sachs, faces just as much of a problem. Goldman advised Air Products on potential deal-making opportunities and defenses as recently as October 2009* ....."	law firms frequently switch sides. 'Air Products recognizes the frequency with which such overlaps occur in the M.&A. context...' Air Products argues in its court filing."	interest - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article acknowledged that it merely repeated information already available		
34	3/5/10	"Goldman Looking at an Own Goal," *Financial Times* (Defs' Ex. 52)	"The Glazer family [owners of Manchester United Football Club] *are considering severing ties with Goldman Sachs after Jim O'Neill, the bank's*	"Goldman insists that Mr. O'Neill ***[Goldman executive] is working in a personal capacity [i.e. such that there was no conflict]*** . . . . Those episodes [four years prior] prompted Hank Paulson, Goldman's then chairman and chief executive, ***to warn its***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			chief economist, was revealed as a member of a consortium looking to buy the football club."	***bankers not to use its principal investment funds in hostile situations***. . . . The potential for conflicts of interest for banks has intensified in recent years in tandem with the rapid development of new financial products. . . . ***Banks have so-called Chinese Walls***, which are supposed to limit the flow of information between different businesses, such as proprietary trading and investment banking."	(*e.g.*, by changing its policies after a prior incident of conflicts) - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs		
35	3/10/10	"Calls Increase for Crackdown on Derivatives," *The New York Times* (Defs' Ex. 53)	"The criticism of credit-default swaps stems, in part, from the multiple and at times seemingly *conflicted roles that investment banks like Goldman Sachs often play in the markets.... Goldman and others helped the Greek government legally mask its debts .... But,*	"Germany's financial services regulator, known as BaFin, said Tuesday that despite all the hand-wringing ***it had found no evidence that speculators were using [credit default] swaps to bet aggressively against Greece.*** Instead, BaFin said, the evidence suggested that most investors were trying to use the instruments to hedge their risks . . . . " "The [Goldman] report [recommending credit default	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article included statements by others indicating Goldman had done nothing improper - Article indicated that Goldman appropriately managed potential conflicts of interest	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			just as the true extent of Greece debts began to worry investors, Goldman put on another hat.... [I]t sent clients a 48-page primer on credit-default swaps ... [which] enable[] investors to ... bet against certain borrowers.... Goldman followed up with its August report, ... which said ... *'Buy C.D.S. of developed sovereigns. ...'"*	swaps] made no mention of Greece. Goldman followed up with its August report. . . . Again, no countries were singled out." "***Goldman, in a statement, said its reports merely outlined a variety of trading strategies. The bank said it saw no conflicts in its various roles.*** '***It is not a conflict to sell new products on behalf of clients while suggesting to other clients, who may have different opinions and objectives, that they may want to buy insurance to protect themselves,' Goldman said.*** Andrew Ang, a finance and economics professor at Columbia Business School, said banks typically tried to maximize their profits across a range of businesses, ***and that he saw no conflict in Goldman Sachs's approach.***"	- Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail.		
36	3/17/10	"Who Needs Wall Street?" *The New York*	"Asked about *mortgage securities that Goldman both*	"[T]he ***potential*** for conflict was rife. ***No firm better resisted the temptations than Goldman,***	- Article merely raised possibility of conflicts - Goldman explicitly	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Times (Defs' Ex. 54)	*sold to clients and bet against*, Blankfein, while expressing regret for what he admitted was *improper behavior*, added: 'In our market-making function, we are a principal. *We represent the other side of what people want to do.*'"	which, from its founding in 1869 through recent decades, epitomized, with only rare slip-ups, the best of American finance. ***Serving the client was its lodestar, and its bankers were pillars of society***, more conversant in literature than in the vagaries of, say, mortgage securities. . . ." Defendants admit that the article even acknowledges: "Asked about mortgage securities that Goldman both sold to clients and bet against, Blankfein, while expressing regret for what he admitted was improper behavior, added: '***In our market-making function, we are a principal. We represent the other side of what people want to do.***'"	denied any wrongdoing - Article suggested that the relevant trading was done by Goldman as a market maker based on client demand - Article conveyed that Goldman had historically managed conflicts well and avoided any wrongdoing - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article acknowledged that it merely repeated information already available		

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

10 Civ. 03461 PAC

IN RE: GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION,

Plaintiffs,

v.

GOLDMAN SACHS GROUP, INC.,

Defendants.

July 25, 2018
10:00 a.m.

Before:

HON. PAUL A. CROTTY,
District Judge

APPEARANCES

LABATON SUCHAROW, LLP

Attorneys for plaintiffs

BY: THOMAS A. DUBBS, Esq.
JAMES W. JOHNSON, Esq.
LAWRENCE A. SUCHAROW, Esq.
JEFFREY A. DUBBIN

- and -

ROBBINS GELLER RUDMAN & DOWD, LLP
(San Diego)

BY: ROBERT R. HENSSLER, JR.
JONAH H. GOLDSTEIN
SPENCER A. BURKHOLZ, Esq.
Of counsel

SULLIVAN & CROMWELL, LLP (NYC)

Attorneys for defendants

BY: ROBERT J. GIUFFRA, JR., Esq.
RICHARD H. KLAPPER, Esq.
DAVID MAXWELL REIN, Esq.
JACOB E. COHEN, Esq.
BENJAMIN R. WALKER, Esq.
JULIA A. MALKINA, Esq.

* * *

[154] THE COURT: Dr. Finnerty.

MR. HENSSLER: For the record, Bobby Henssler from Robbins Geller.

JOHN D. FINNERTY, called as a witness by the plaintiffs, having been duly sworn, testified as follows:

THE COURT: Go ahead, Mr. Henssler.

DIRECT EXAMINATION BY MR. HENSSLER:

Q. Dr. Finnerty, there should be a copy of what has been marked as Exhibit 113 in front of you. Do you have that?

A. I do.

MR. HENSSLER: I have also given a copy to the court and defense counsel.

BY MR. HENSSLER:

Q. What is Exhibit 113, Dr. Finnerty?

A. 113 is a set of Power Point demonstratives that I have prepared to assist the court in following my testimony this afternoon.

Q. Could you please tell the court about your educational background.

A. I have undergraduate degrees in mathematics and economics, and I have a master's degree in economics from Cambridge University in the United Kingdom. I also have a Ph.D in operations research from the Naval Postgraduate School.

[155] Q. Would you also tell the court about your professional experience.

A. Yes. There are really two strands, and I will start with the business experience.

When I finished my doctorate, I joined Morgan Stanley as an associate in its corporate finance department. I worked for 20 years either in investment banking or with an affiliate of an investment bank. So after Morgan Stanley I went to Lazard.

I then joined — I formed a thrift called College Savings Bank which invented a product which I co-invented to help people save for their college education, and I designed the inflation hedging strategy for that product.

I then went back to investment banking. I worked for McFarland Dewey and then Houlihan Lokey Howard & Zukin.

In 1997 I joined PricewaterhouseCoopers in their financial advisory services practice, where I worked primarily in litigation support.

I left in 2001 when the accounting firms got out of the consulting businesses and joined Analysis Group.

In 2003, I form my own consulting firm, which I sold to Alix Partners in 2013 and became a managing director. I retired at the very end of 2016 as a managing director, and today I am an academic affiliate with Alix Partners.

In addition, starting in 1987, I began teaching at [156] Fordham University. I joined the full-time faculty in 1989. I received tenure in 1991. And for three years in the — within the last decade or so, I was the founding director of the Masters of Science in Quantitative Finance Program. So today I am an academic affiliate at Alix Partners, doing primarily litigation and valuation work, and also a full professor at Fordham University, teaching finance.

Q. Are you currently teaching?

A. Yes. I am on faculty. The school year is over, and I'm on sabbatical until the fall of 2019, but I'm on the faculty.

Q. Dr. Finnerty, have you previously been retained as a expert witness in financial economics?

A. Yes.

Q. About how many times?

A. More than 300.

Q. And about how many times have you offered expert testimony in the area of financial economics?

A. Oh, between 175 and 200 times.

Q. Let's get right to your analysis.

Dr. Finnerty, did you review Dr. Gompers' reports?

A. Yes.

Q. And starting with this next slide, slide 8, does this summarize your analysis of Dr. Gompers's opinions?

A. Yes.

Q. What did your analysis of Dr. Gompers's articles and [157] opinions show?

A. My opinion is that none of Dr. Gompers's 34 dates — I realize there are two other dates as a result of defendants' counsel giving Professor Gompers some additional news, so his testimony talked about 36 dates, which is the reason why there appears to be a discrepancy between my slide 8 and his testimony. But whether it is 34 dates or 36 dates, my conclusion, after analyzing each of them carefully and looking at all of the information surrounding those, as well as within those news announcements, is that they were not corrected disclosures. Most of the articles only raised the possibility of conflicts of interest. Dr. Gompers failed to consider confounding information.

Q. Can I stop you right there? What is confounding information?

A. Confounding information is additional information that would be material or significant to investors that is different from the critical information that one is analyzing.

Q. What else did your analysis of Dr. Gompers' articles find?

A. Almost all of the articles contained denials by Goldman. I know there was some testimony that one of my reports identified 13 denials. There were 13 direct denials, but there are — actually 35 of the 40 articles have denials either by Goldman or someone speaking on behalf of Goldman or a writer of the article. So it's really 35 out of 40, which is 88 percent of [158] the articles, and the other five really had nothing to do with the conflicts of interest that are at issue in this case.

I find also that almost all of the articles contained market commentary that Goldman's conduct was legal and/or appropriate.

And finally I, after analyzing the April 16 SEC enforcement action, concluded that the SEC lawsuit and the subsequent investigations that are at issue did reveal new information that Goldman violated its business principles and conflict policies as alleged in the complaint.

Q. And when you were asked at your deposition about the number of denials, you explained to defense counsel that there is a difference between an indirect denial and a direct denial. Can you explain for the court what you mean by that?

A. Yes. The direct denials were articles such as one that contained a comment by Louis van Praag — I think it is Louis van Praag — that was cited in the opening by Mr. Goldstein where he says, There were no conflicts, so it is a direct denial. There are many, many articles in which representatives of Goldman or other parties say things like, We shorted securities as part of our normal underwriting. We bought and sold CDOs because we were providing liquidity to the market. We were buying and selling these securities because we were acting as market-maker. There are comments like David Viniar's comment that they can't avoid conflicts of interest; they have [159] to manage them.

So Goldman in many cases were making statements to the effect they had done nothing wrong; and, in my mind, if you tell the world you have done nothing wrong, you are in effect denying that you have in fact done something wrong. And so when you include those, as well as the denials by other parties, 35 of the 40 articles have denials in them.

Q. Directing your attention to slide 9, what are you showing the court with slide 9?

A. Slide 9 is the first of a series of six slides in which I provide my opinion with regard to six specific articles that are at issue in this case in which I highlight in the box towards the top of the slide at least part of what Professor Gompers highlights as the corrective disclosure, and below that I have a series of bullet points that explain why I believe that they were not corrective disclosure, and if I found a particularly appropriate quotation, I then would highlight — did highlight it at the bottom of the slide in its own box.

Q. So these next six slides are examples of your analysis of Dr. Gompers' articles?

A. That's correct.

Q. What does your analysis of this December 6, 2007, *Financial Times* article show?

A. This article, my analysis leads me to conclude that, first [160] of all, the article did not disclose the fact that Goldman had failed to manage its conflicts of interest effectively and had violated its business principles, risking damage to its reputation.

Secondly, the article raised the possibility of conflicts of interest but didn't describe an actual conflict like those in the CDOs that are at issue in this case. In the article Goldman explicitly denied wrongdoing, and the author also stated that he did not believe that Goldman had done anything wrong, and I cited this quotation in particular, a quote, "But there is no evidence that Goldman did wrong by issues Mr. Hatzius's research or conversing with Mr. Paulson about financial conditions, if it actually did the latter. I do not believe that Goldman broke insider trading laws. It would be stupid to risk its reputation in this way, and it is anything but stupid."

Q. Let's look at your next example, Dr. Finnerty. Directing your attention to the next slide, which is slide 10. Is this another example of an article that you analyzed from Dr. Gompers?

A. Yes.

Q. What did your analysis of this show?

A. The article did not disclose the fact that Goldman had failed to manage its conflicts of interest and it violated its business principles, risking damage to its reputation. It [161] again raised the possibility of conflicts.

And I note also that Goldman had previously explicitly denied any wrongdoing in its sale of CDOs in articles published December 3, 2007 in the *New York Times*; December 5, 2007, in the *Financial Times*; and December 6, 2007, in the *Financial Times*. And certainly an efficient market would be fully aware of those denials and would take those into account in interpreting this additional article and assessing whether it involved significant new information.

Q. And you highlighted the words "sounds like" here, right?

A. That is correct. "Sounds like a massive conflict of interest." It's a possibility of a conflict.

Q. And let's look at your next slide, Dr. Finnerty, which is slide 11, for the record. This is a December 14, 2007 *Wall Street Journal* article I think Dr. Gompers testified about earlier.

What does your analysis of this article show, Dr. Finnerty?

A. This article shows that Goldman, again, did not disclose the fact that it had failed to manage its conflicts of interest, and it violated its business principles, risking damage to its reputation. The article, for example, talks about raising questions about certain behavior, talks about the structured products group executing winning trades, and it also points out that when Goldman is trading for its own account it [162] doesn't necessarily have to share that information with others. The article merely raises the possibility of conflicts of interest, indicated that Goldman appropriately managed its conflicts of interest, which is a theme that runs through many of the 40 articles that are cited by the defendants and, as with the previous slide, Goldman's prior denials that they disclosed everything and managed any potential conflicts and done nothing wrong were already in the marketplace.

Q. And why is that important in your analysis, Dr. Finnerty, that the prior denials were already in the marketplace?

A. It is important because in an efficient market, any investor, any reader of the article is going to have that information available, and he or she will use that information or bear that in mind when assessing the significance of what's in the article. And if someone is repeatedly saying they did everything right and why they did it right by hedging their risks, providing liquidity to investors, managing its conflicts of interest and so on, it is going to make it more difficult for someone to question whether that entity has misbehaved, unless there is very specific evidence as to what the misbehavior was.

Q. Directing your attention to the next slide, Dr. Finnerty, which is slide 12, November 2, 2009, I think this is *The Greatest Trade Ever* book that Dr. Finnerty (sic) testified about earlier.

[163] Did you analyze that book?

A. I did. I read the excerpt that pertains to Mr. Paulson, which part of which is cited here.

Q. What did your analysis show, Dr. Finnerty?

A. The book did not disclose the fact that Goldman had failed to manage its conflicts of interest and it violated its business principles, risking damage to its reputation. The book contained a mix of information, including Paulson's denials. Paulson is quoted as saying, "We didn't create any securities. It was negotiation. We threw out some names. They threw out some. But the bankers ultimately picked the collateral." It appears as though Mr. Paulson certainly had a hand in that. The author of the book conveyed that Goldman denied any wrongdoing, and there were two articles that were published the very same day, one entitled "Profiting from the Crash in the *Wall Street Journal*. The other entitled "How Goldman Secretly Bet on the U.S. Housing Crash," that was published by the McClatchy Washington Bureau in which Goldman Sachs explicitly denied any wrongdoing for the very same sort of behavior which is described in this excerpt from *The Greatest Trade Ever*. The excerpt in fact really suggested that all of the relevant trading that was done by Goldman was really done in their role as a market-maker supplying liquidity to the marketplace. That's a very favorable activity. There was just an article yesterday in the *Wall Street Journal* about declining [164] liquidity in the bond market. If a broker-dealer is providing liquidity, that is something that is viewed very much as a positive in the marketplace.

Q. Let's go to your next example, Dr. Finnerty, slide 13, which is the December 5, 2009, *New York Times* book review of *The Greatest Trade* Ever. Did you analyze the *Times* book review?

A. I did.

Q. What did your analysis show?

A. First of all, I just comment on the quotation. Both Goldman Sachs and Deutsche Bank are quoted or cited as firms that had approved of what Mr. Paulson wanted to do. So it is indicating pretty clearly by name there is at least one other major broker-dealer that had approved a similar strategy or the same strategy. I find that the article did not disclose the fact that Goldman had failed to manage its conflicts of interest and had violated its business principles, risking damage to its reputation. The news in the article was really old news. It is a book review of *The Greatest Trade Ever*.

Q. Why is that relevant now, Dr. Finnerty, whether the news was old news?

A. In an efficient market, the market will not react to a statistically significant degree to old news. It will already be fully incorporated into the share price.

And lastly, the article focused on Paulson, rather [165] than Goldman, and it doesn't contain any discussion of the structure of ABACUS, which is really what is at issue in the conflict of interest, the fact that the ABACUS CDO was structured in a way that benefited Paulson at the expense of ACA and the two main investors, IKB and ABN Amro.

Q. Directing your attention to slide 14, Dr. Finnerty, I think it is the last of your examples. This is the December 24, 2009, *New York Times* article that we have heard a bunch about already today from defendants' experts. Did you analyze this article?

A. I did.

Q. What did your analysis of the Christmas Eve '09 *New York Times* article show?

A. The article talks about authorities appear to be looking at whether securities laws were broken. So this article, again, may really raise the possibility of conflicts of interest or other sorts of misbehavior. The article did not disclose the fact that Goldman had failed to manage its conflicts of interest and it violated its business principles, risking damage to its reputation. The article, like many others, indicated that Goldman had appropriately managed its potential conflicts of interest, and the article included direct denial by Goldman.

I cite down below a relevant quotation to support that. "Goldman and other Wall Street firms maintain there is [166] nothing improper about synthetic CDOs. Mr. DuVally," who was a Goldman spokesman, "said many of the CDOs created by Wall Street were made to satisfy client demand," again indicating there is nothing wrong with it, with the fact they were created in response to client demand to benefit the clients. And it states that "clients knew Goldman might be betting against mortgages linked to the securities." This is also a theme that comes out in many of the disclosures Goldman saying or Goldman reps saying investors were alerted and warned that Goldman Sachs would trick a trade against them, and said that they were advised that Goldman was placing large bets against these particular securities.

Q. Dr. Finnerty, we just went through six examples of your analysis of Dr. Gompers' articles and the defendants' additional articles. Did you analyze all of their articles?

A. Yes, I did.

Q. Did any of the either Dr. Gompers' articles or the defense counsel's additional articles, did any of those disclose that Goldman had in fact failed to manage its conflicts and it violated its business principles policies?

A. No, they did not.

Q. Okay. Directing your attention to the next slide, Dr. Finnerty, we are up to 15.

Dr. Finnerty, what are you showing the court with slide 15?

[167] A. Slide 15 shows examples of market commentary confirming that Dr. Gompers' 34 dates evidence did not disclose Goldman severe conflicts and did not have an impact on Goldman's reputation. These really indicate that the investors and securities analysts in the marketplace had in fact read what

Goldman had written in its 10-Ks and annual reports about its conflict of interest policies and its adherence to its business principles and the value of its reputation, and that those repeated 18 affirmative statements and the repeated denials are in fact reflective of — the benefit of those to Goldman here are reflected in these comments, these very favorable comments from securities analysts, and I have just given three of what would be many possible examples of that.

Q. Could you tell us about the one in the middle, the Merrill Lynch analyst report from March 13, 2007? The heading of the article is "Conflict Management Skill Maximizes Franchise Value." What is franchise value?

A. Franchise value is the value of the equity, the value of the company. And the argument in — that the analyst from Merrill Lynch is making in this particular analyst report is that Goldman Sachs's skill in managing conflicts is something that has contributed to the value of Goldman Sachs's enterprise. There is value — and that value is being perceived in the marketplace. That ties back directly to the allegations in this case because the conflict of interest [168] management was in fact very important in the minds of investors. It was part of the overall risk management. Goldman at the time was really perceived in the market as a firm that was skilled at managing all of its risks, including the risk of a conflict violation. And the article says, you will note, "consistency with this conflict management with which the" — "the consistency with which the firm has avoided crossing the line and damaging its reputation is such that it must be doing something right. The conflict management process is clearly taken extremely seriously . . . It is viewed as not just a by-product, but a key pillar of the firm's franchise business." This ties directly to the business principle statements, that clients come first and the conflict of management statements that they can't avoid these conflicts, they manage them.

It goes on to say, "The process is highly structured and rigorous. 20 percent of the conflicts end up at the top of the firm," which is actually pretty incredible, and it would signal to the market this is so important that the CEO, CFO, and COO are going to be involved in 20 percent of these conflict management decisions.

And then it concludes by saying "Goldman manages conflicts, rather than simply avoiding them," which also ties to statements Goldman made in its 10-Ks and annual reports and statements made a number of times by David Viniar, and it does [169] so in order to maximize the value of its franchise." This activity enhanced the value of Goldman Sachs in the marketplace.

Q. In your analysis of these reports, and you said there were others like this, did these analyst reports show that the market believed the Goldman Sachs denials that you were talking about earlier?

A. Yes.

Q. Just one more question on this slide. The Merrill Lynch report from July 28, 2008, so now it is over a year later than the last one you talked about, the last section you bolded states "the absence of major conflicts problems."

Why did you bold that passage, Dr. Finnerty?

A. I bolded that because the four CDO transactions that are at issue in this case had all closed, so all the selling activity and alleged conflicts had already occurred. Hudson closed in December of '06, ABACUS closed in April of '07, and Timberwolf and Anderson closed in March of '06. So all four of those transactions had all closed more than a year prior to the statement, and yet the Merrill Lynch analyst is saying that there is an absence of any major conflicts.

Q. I want to move on to the next slide, Dr. Finnerty. This is slide 16, for the record.

Can you explain for the court the difference between an effective denial and an ineffective denial?

[170] A. Yes. The basic difference is whether the denial is credible or not, and I have highlighted what I mean by that in the body of the text.

Goldman's denials prior to April 16, 2010, and its denial on April 16, 2010, about which there was testimony a few moments ago, they are fundamentally different. Before the SEC lawsuit, when Goldman issued its denials and testified in the 40 news articles cited by Professor Gompers, 35 of them are accompanied by denials. Those denials, coupled with the 18 affirmative statements about the conflicts of interest management policies, the adherence to business principles, and the importance of Goldman's reputation, all of which are alleged in the complaint, before the SEC lawsuit is filed, when Goldman issued its denials, those denials were credible because there was no evidence that Goldman had really done anything wrong.

Once the SEC complaint was filed, now you had SEC, the major regulator of Goldman Sachs, laying out in a very detailed, 22-page complaint exactly what it had found wrong. And included in there were new information about the nature of the misrepresentations to ACA about Paulson's supposed long position which in fact was a very large short position. There were more than a dozen e-mails. It made very clear that what Goldman was saying and people were saying internally was very different from what they were telling IKB, ABN Amro, and ACA. [171] And the complaint also makes clear, really for the first time, that at the time the ABACUS transaction closed, Goldman had in fact misrepresented to IKB and ACA Holding, the parent of ACA, that took a 909-million-dollar long position in CDSs on that transaction, that Goldman had misrepresented Paulson's role and, as a result, had defrauded them, allegedly defrauded them.

[172] BY MR. HENSSLER:

Q. One more question before we move on to your analysis of Dr. Choi's opinions.

Are you familiar with what has previously been marked as the Johnson Declaration Exhibit 15 to plaintiff's April 27, 2018 briefs? And, for the record and for the Court, that's Exhibit 73 to today's Plaintiff's Exhibits.

Are you familiar with that exhibit?

A. Yes.

Q. And did you review what's been referred to as Johnson Exhibit 15?

A. Yes.

Q. And what's your opinion of Johnson Exhibit 15?

A. Johnson Exhibit 15 is consistent with the analysis I did, but Mr. Johnson has a much more detailed analysis of the articles and has a different way of identifying the set of reasons why those various articles were not corrected disclosures and, in particular, Johnson Exhibit 15 distinguishes, very clearly, between Goldman denials, whether they're direct or indirect denials on the one hand, and denials by third-parties on the other. And, it also has a more detailed discussion of possible conflicts as opposed to real conflicts and it is a different way of looking at those articles and classifying the reasons why they're not corrective disclosures. And, quite frankly, he did a more thorough and [173] better job than I did. His results are more consistent with mine but his analysis is better.

Q. A couple more questions about Dr. Gompers, actually.

After having analyzed Dr. Gompers' reports and the additional articles that defense counsel submitted in this case, do you have an opinion regarding whether defendants have demonstrated a lack of price impact?

A. I do.

Q. And what is your opinion?

A. My opinion is that the defendants have not demonstrated the lack of price impact.

Q. Did you review Dr. Choi's reports?

A. I did.

Q. And does this section of Exhibit 113 summarize your analysis of Dr. Choi's opinions?

A. Yes.

Q. Can you explain for the Court what you are summarizing on Slide 18?

A. My opinion is that the statistically significant stock price declines in Goldman stock following the announcements of the SEC ABACUS fraud lawsuit on April 16, 2010, the DOJ criminal investigation on April 29th, 2010, and the SEC Hudson investigation on June 9th, 2010, do demonstrate stock price impact from the misrepresentations that are pled in the complaint.

[174] Dr. Choi and Dr. Gompers mischaracterize the SEC complaint in the DOJ and SEC investigations as confounding information. They're not confounding information, those are disclosure documents. They disclose, and in the case of the SEC enforcement action on April 16th, 2010, they disclose, in remarkable detail, exactly what Goldman did wrong. It is very much part of the corrective disclosure. So, it is not confounding news, it is corrective disclosure.

My analysis demonstrates that the description of Goldman's conduct embodied in those three regulatory actions is inextricably tied to the actions themselves. To put it at a very simple level, if you were telling my students what the take-away is, is you can't have a fraud charge without the fraud — without the behavior — and particularly, the SEC enforcement action does lay out the behavior that is the basis for the fraud charge.

And, in fact, again with particular reference to the April 16th, SEC enforcement action, that document describes the precise conduct, that is the subject of the alleged misstatements and omissions regarding Goldman's conflicts of interest and business principles that are laid out in the complaint in this matter.

And, lastly, the news concerning the regulatory enforcement actions just can't be characterized as confounding news because it is — the information in those actions is [175] directly related to the allegations in this matter.

Q. Based on your analysis, should there be any disaggregation analysis in this case?

A. One could do a disaggregation analysis. I don't think there should be because the enforcement actions, themselves, are, as I said, the announcement of those is inextricably tied to the information and vice versa. One could do a disaggregation. For example, as Professor Choi mentioned, there is literature, the Karpov, et al., paper is quite good that describes methodology for characterizing and quantifying the fines and penalties and direct legal costs. Karpov, et al., also have some additional analysis of the effect, for example, of when you have contemporaneous settlement with the enforcement action. So, one could do that analysis.

Secondly, as I testified in my deposition or one of my depositions, one could also look at those SEC enforcement actions, identify those that are really pretty sparse, and I think Professor Choi found he found six out of 70 that really didn't have any detail, or I guess it was no new news I think is what he testified. So, one could disaggregate. As I say, I don't — it is my opinion that I don't think one should, but if the Court wants me to do that, I'm going do it.

Q. And why should you not here?

A. I think it is because the enforcement action is, as I have testified, those announcements are themselves part of the [176] corrective disclosure.

Q. Thank you. We have got about 10 minutes left, let's summarize slide 19 for the Court.

A. Slide 19 has my assessment of the flaws in Dr. Choi's analysis. As I pointed out in two of my reports, the sample size of four is too small to draw any meaningful conclusions, and if one looks at the abnormal returns you can see that they're widely dispersed. Dr. Choi didn't look at the substance of each of those four to try to figure out how much of those returns was attributable to the information that was disclosed but it just defies logic that this kind of variation, from 3 percent to 17 percent, is random noise. It's not random noise. There are fundamental differences. Three of these actions involved accounting issues. The Stifel Nicolaus case involved suitability, those are different from Goldman. I was the SEC's economist in the Stifel case and looked at the other three I can tell you that they're very different.

Next, Professor Choi's two-sample t-test is improper. He doesn't have two samples. He has one sample and he has a discrete item that is specific, minus 9.27 percent, which is specific to this case. You can't run a two-sample t-test when you don't have two samples.

Also, because the data are highly skewed — you can see that in the table — you can't assume the normal distribution so you can't run a standard t-test either. And [177] the federal manual on statistical evidence makes clear you can't run a t-test on a small sample if you don't have normal data. So, you can't run a standard t-test either.

Dr. Choi ignored his own prior research recognizing that the announcement of enforcement action inherently conveys information about the underlying conduct so it is a disclosure document.

And, lastly, he ignored market commentary linking the SEC fraud lawsuit to the alleged false statements about conflicts of interest and business principles.

Q. To sum it up, in analyzing Dr. Choi's reports, do you have an opinion regarding whether defendants, through Dr. Choi, have demonstrated the lack of price impact?

A. I do.

Q. What is your opinion?

A. That they have not.

Q. Let's skip ahead, one more about Dr. Choi, actually. Could you quickly summarize slide 20?

A. Dr. Choi has some qualitative analysis on the April 16th date. Just common sense would tell you if you have got a minus 9.27 percent drop and the average for the others is minus 8, you have to do something to try to explain why the actual minus 9.27 percent drop is typical of the 8, and he has some qualitative analysis to try to explain why, even though it is 9 and bigger than the average, it is really no different [178] economically.

He also has some qualitative analysis for the April 30th and June 10th dates but does not have any statistical analysis, and as a result he doesn't prove economically that it's more likely than not that the entire drop was due to these regulatory actions. And under his assumption that if you assume, as he did, apparently that returns are normally distributed, in fact you will never get there. You can't come to that conclusion. There is no way that a minus 9.27 percent drop would be consistent with those data.

Q. Okay. Let's go to Slide 22 and you have got the heading: Event study and economic analysis demonstrate price impact on three corrective disclosure dates here; is that right?

A. Yes.

Q. And what are you showing the Court with slide 22?

A. The first point is the defendants' misstatements and omissions on the first day of the class period inflated Goldman's stock price, that is, kept the stock trading at a higher price than the price at which it would have traded if Goldman had disclosed the failure to manage its conflict of interest and its failure to adhere to its business principles in connection with the — particularly with the Hudson transaction.

So, the Goldman had made these statements many, many times before so they're not new statements. And in contrast to [179] what Professor Gompers said about my opinion, it is not that not making these statements would have caused the stock price to fall. The issue is the management of Goldman's conflict and failure of Goldman, as pled in the complaint, that disclose that it had not managed its conflict of interest, it has not in fact placed its clients' interests first and adhered to business principles, if Goldman had disclosed that information which was omitted, it is my opinion that the stock price would have dropped on April 16th, 2010.

And my conclusion, in the next, second bullet: The statistically significant stock price declines on the three corrective disclosure dates does establish price impact.

And, finally, when one looks at the market commentary which is summarized in the next several slides, one can see very clearly that the statistically significant stock price declines are in fact related to the alleged misrepresentations concerning the conflicts of interest management, the business principles, and Goldman's reputation.

Q. Let's look at slides 23 and 24. Is this a summary of your event study and economic analysis on the three corrective disclosure dates?

A. Yes.

Q. Can you summarize for the Court what your analysis found?

A. The decision of the April 16th date shows, first of all, if you go to the right-hand side, I calculated an abnormal return [180] of minus 9.27 percent which is statistically significant at the 1 percent level which is what the three asterisks indicate.

The information that was disclosed was contained in a is detailed, 22 page complaint. I have already testified about that. There was new information, again which I have testified about, in that document. The new information, in particular, revealed that Goldman had misled ACA, that ACA and Paulson's interests were aligned.

The fraud charge also provided new information regarding the severity of Goldman's conduct. This wasn't just somebody out in the marketplace alleging that Goldman had done something wrong. This is their primary regulator putting together a 22-page complaint in which it described, in detail, how Goldman had structured transactions or helped someone do that to favor the interests of one client over another and the SEC was saying, as in the Stifel case I worked on, the SEC was saying this is bad behavior which we don't want to see.

Q. And, could you talk about April 26, 2010, Dr. Finnerty? What does your analysis of that date show?

A. April 26 was originally pled as a corrective disclosure. When I analyzed it, I found that in addition to the four e-mails that were issued by the Senate Subcommittee on Investigations on April 24th, there was a 12-page Goldman memo that went up on its website the same day that explained why it hadn't done anything wrong.

[181] When the market opened April 26 and traded, one finds that an efficient market is going to take all of that information into account and the price of Goldman stock did in fact drop, it dropped by almost three and a half percent.

The abnormal return was minus 1.68 percent so it is consistent with what one would expect but it was not statistically significant even at the 10 percent level. So, if I were doing a damages analysis, I would exclude the April 26th date.

Q. Does your analysis, of April 26, 2010, impact your price impact analysis for the other dates?

A. No.

Q. Why not?

A. I analyzed each date separately.

Q. Okay. And let's quickly go to 24. Could you, very briefly, explain your analysis for April 30th and June 10th, for the Court?

A. April 30th was the day that the market reacted to the announcement of April 29th in the Wall Street Journal that there was a DOJ investigation. That, followed by that two days, the Senate investigation in which four e-mails were highlighted — or e-mails regarding four CDOs were highlighted very prominently.

The Wall Street Journal article didn't identify the CDOs by name, but it did have a very memorable quote by Tom [182] Montag, who was the head of fixed-income trading, I believe, at Goldman on the Timberwolf I transaction: *This Timberwolf was one — blank — deal*.

So, investors, in my opinion, could easily infer, since the Journal article also talked about the SEC having referred the case, the evidence was more expansive than the SEC case, it was similar and it related to mortgage trading. What the April 29th announcement revealed was that the misbehavior by Goldman extended beyond ABACUS, it extended to at least one other deal and at least as many as three other deals, and it also indicated the severity of the Goldman's conflicts of interest and violations of its business principles because a DOJ investigation is a pretty serious event.

Q. And what about June 10th?

A. June 10th, the market reacted to a Bloomberg report on June 9th regarding the Hudson 2006-1 CDO. What was new in that complaint was the revelation that at the time that transaction was done, Goldman had misrepresented to investors that it was long because it bought the equity tranche. What it did not disclose to investors who purchased the Hudson CDO was that they had purchased protection, in other words gone short on the entire $2 billion CDO and so that was new news. And the other aspect of the new news was the severity.

So, now you had not only a criminal investigation regarding CDOs in general, you now had another SEC [183] investigation and this one was focused on the Hudson CDO which was different from the ABACUS CDO and, again, it indicated, really, a broadening of the range of misbehavior by Goldman in violation of its conflicts of interest policies.

THE COURT: Mr. Henssler, do you want to bring this to conclusion?

MR. HENSSLER: Two more questions if I could, your Honor. We won't do the rest of the slides.

BY MR. HENSSLER:

Q. Dr. Finnerty, are slides 25 through the end your summary of relevant market commentary following the corrective disclosures?

A. Yes.

Q. And the Court has that.

Dr. Finnerty, after doing your study in economic analysis, do you have an opinion about whether the alleged misrepresentations in this case impacted Goldman's stock price?

A. Yes.

Q. What's that?

A. My opinion is that the three corrective disclosures did adversely impact Goldman's stock price and it led directly to the statistically significant drops that I have quantified in my reports and in this presentation.

Q. Even considering defendants' evidence and their experts, is it your opinion that plaintiffs have demonstrated price impact [184] in this case?

A. Yes.

MR. HENSSLER: Okay. No more questions. Thanks, your Honor.

THE COURT: Mr. Giuffra?

MR. GIUFFRA: Your Honor, just give me a second to set up here?

THE COURT: Yes. Certainly.

MR. GIUFFRA: Your Honor, to speed things up, this is the document I will be using.

CROSS EXAMINATION

BY MR. GIUFFRA:

Q. Good afternoon, Dr. Finnerty.

Would you put up Exhibit A?

Dr. Finnerty, this is a list of challenged statements from your expert report. Do you see that? These are 18 days when plaintiffs challenged the truthfulness of the Goldman Sachs' statement.

It is right there on the screen. Do you see it?

A. I find it easier to look at this screen but they're the same.

Q. Okay.

* * *

[187] Q. Pages 25 and 26.

A. 25 and 26? There you go.

MR. HENSSLER: Counsel, there is numbers at the top and bottom. Are you on the top?

MR. GIUFFRA: I am looking at pages 25 and 26 of the K.

THE WITNESS: I am now, too. Thank you.

THE COURT: Conflicts of interest are increasing and the failure to deal with and so forth?

MR. GIUFFRA: Yes, that's it, your Honor.

BY MR. GIUFFRA:

Q. So, you agree that this was not a guarantee that Goldman Sachs would not have any client conflicts, right?

A. I agree.

Q. And you would agree that the investment banking business inherently involves potential conflicts with clients?

A. Yes, I would agree.

Q. And you would agree that the Goldman Sachs conflict warning was not limited to any business?

A. Yes, I would agree.

Q. And applies to all the firm's businesses, right?

A. Potentially all the firm's business, yes. There is no limitation that I can see.

Q. And it didn't reference CDOs in particular, right?

A. No, it did not.

[188] Q. And, in the course of your work, you didn't do any analysis to see whether Goldman Sachs made

any disclosures about the risk of conflicts with clients before February 6, 2007, right?

A. I saw that they made these same statements before. I didn't specifically do a separate analysis because that predated the class period. But, they certainly made the statements before.

Q. You didn't do any work to assess whether any inflation entered Goldman Sachs' stock price prior to the start of the class period on February 6, 2007, right?

A. I did not. I was asked to assume the allegations in the complaint, which is what I did, so I did not do that analysis.

Q. Okay, then let's turn back to your chart, your Exhibit A. Am I correct that plaintiff's --

A. Hang on. Let me go back to Exhibit A. Okay, now I am back to Exhibit A.

Q. Am I correct that plaintiff's first claim that Goldman Sachs did not truthfully disclose its business principles in the firm's annual report issued on February 21st, 2007, right?

A. No, that's not what's in the complaint. It is not about disclosing your principles.

Q. Well, if you look at the document Chart A from your report, the first time you reference the business principles is on February 21st, 2007, right?

[189] A. Yes. And my Exhibit 8 says this is the first date there were false and misleading statements and omissions. That's what it says, but the case isn't about whether it talked about the principles or whether it talks about conflicts of interest.

Q. Just bear with my questions. Yes or no; the first time it gets raised as a claim in this case is as of February 21, 2007, right?

A. The first false and misleading misstatement and omission date is February 6, 2007.

Q. And then the first time that there is an alleged false and misleading statement with respect to the business principles, according to your document, is February 21st, 2007, right?

A. With regard to the business principles --

Q. Yes.

A. -- or conflicts of interest management, or the value of its reputation. The first time that is alleged in the complaint to have occurred is February 6, 2007.

Q. Okay.

And then would you agree that Goldman Sachs had previously published these business principles, right?

A. There had been prior 10Ks that had contained substantially similar or the same statements regarding the conflicts of interest, management, and the business principles.

Q. And your testimony is that the first time that the business principles caused inflation in Goldman Sachs' stock price was [190] on February 21st, 2007?

A. No. That's not what is pled in the complaint.

Q. But if you look at Exhibit A, am I not correct the first time that the business principles get referenced as a source for inflation of the stock price of Goldman Sachs is February 21, 2007?

A. No. The first date is February 6th and you have got the date -- well, you didn't get the date right in the last question, you got it right in the prior question. February 6th is the first date but you got it wrong in the complaint. This is an omissions case.

Q. Even though we are trying to get basic --

A. It is an omissions case. And you are asking me about -- it is an omissions case.

Q. Were the business principles limited to any line of business?

A. The business principles apply across the firm.

Q. Now, would you agree that the business principles were not a guarantee that Goldman Sachs would never experience conflicts with its clients?

A. Yes, there is no guarantee.

Q. And there is not a guarantee of ethical behavior by all 30,000 Goldman Sachs employees at all times, right?

A. I don't see it as a guarantee of ethical behavior by everybody.

[191] Q. And, would you agree that other companies in the securities business issued, publicized similar business principles, correct?

A. I have seen something similar from Morgan Stanley. I don't know about anybody else.

Q. Are you aware of any academic research indicating that investors relied on a company's publication of its business principles?

A. No, but I am aware of academic research indicating that investors place a higher value in companies that they believe behave ethically.

Q. Now, let's take a look at Exhibit F, which is from your merits expert report.

A. I am sorry. Which one?

Q. The piece of paper --

A. Oh, the piece of paper.

Q. You would agree that there was no statistically significant increase in Goldman Sachs' stock price when the conflict risk factor statement was first made during the putative class period on February 6, 2007, correct?

A. That's -- yes, I agree.

Q. And you agree that there was no statistically significant increase in Goldman Sachs' stock price when the first business principle statement was made during the putative class period on February 21st, 2007, right?

[192] A. I agree.

Q. And you would agree there was no statistically significant increase in Goldman Sachs' stock price on any of the 18 dates when the challenged statements were made?

A. Yes, I agree. I say that in the report and I stand by that.

Q. Okay. Now, Exhibit F, which I have on the board in front of you, that reflects your calculation of inflation in Goldman Sachs' stock during the putative class period, correct?

A. Yes.

Q. And you would agree that the Hudson CDO closed on December 5, 2006?

A. Somewhere around there. I'm not sure of the exact date. It was certainly December 2006.

Q. And, you would agree with me that February 6, 2007, is the date of the Goldman Sachs 10K containing the first conflict risk disclosure during the class period, right?

A. It is the first one following -- yes. The first date in the class period that had the challenge dates.

Q. And Goldman Sachs put out its risk statement following the closing of the Hudson CDO, right?

A. Yes. It was the first time that statement appeared following the closing of the Hudson CDO.

* * *

[196] A. I can't see it. We are having continuing technological difficulties. It is like my classroom, it doesn't work.

Q. I will represent to you that the statement that plaintiffs challenge on June 14, 2007 is the statement that, during the earnings call, that Mr. Viniar made when he said: *Most importantly, the basic reason for our success is our extraordinary focus on our clients*.

Do you see that?

A. Yes.

Q. That's a statement, at least according to Exhibit 8 which is up in front of you, caused, according to you, a $25.38 increase in inflation in the stock price of Goldman Sachs?

A. No. It was a failure to disclose the conflicts of interest and the failure to manage those conflicts of interest, the failure to adhere to the business principles and the failure to disclose the risk to Goldman's reputation associated with not managing its conflicts of interest. The first time it had a public disclosure and it was this earnings call it was the failure to disclose that information in the marketplace and if that had been disclosed, it is my opinion that the stock price would, in fact, have dropped by that amount.

Q. So, your position is that by saying to the marketplace that Goldman Sachs' basic reason for our success is our extraordinary focus on our clients and not disclosing the supposed conflict in connection with Timberwolf, Anderson, and [197] ABACUS, Goldman Sachs added $25.38 of inflation to its stock price.

Is that your position?

A. No. No, that's not my position. My position — would you like me to answer your question or do you just want to yell at me?

My position is I have just testified —

THE COURT: Doctor, let him ask the questions, you answer the questions. Mr. Henssler will have an opportunity to bring out other information.

THE WITNESS: Okay.

THE COURT: Just answer the question.

BY MR. GIUFFRA:

Q. Dr. Finnerty, if you look at your Exhibit 8, which I think you have in front of you, it says: Inflation due to ABACUS, Anderson and Timberwolf: $25.38.

Do you see that?

A. Yes.

Q. And the date that inflation supposedly enters the stock price, according to your analysis, is on 6/14/2007; right?

A. Yes.

Q. And on 6/14/2007 the supposed misstatement made by Goldman Sachs is Mr. Viniar's statement that the basic reason for our success is our extraordinary focus on our clients; correct?

[198] A. Mr. Viniar made that statement. The reason the stock price would have lost the inflation was because of the omissions. It is not the misstatement, it is omissions.

Q. Okay, but your position is that Mr. Viniar, once he made the point that a basic reason for our success is our extraordinary focus on our clients must have had to have disclosed to the market that the company had conflicts in connection with ABACUS, Anderson, and Timberwolf.

Is that your position?

A. No, that's not my position.

Q. Is it your position, though, is that this statement itself caused the infliction?

A. No, it is not.

Q. Okay, so it is your position that it is the failure of Goldman Sachs, as of this date, to make a disclosure about conflicts in connection with these three CDOs, caused a $25.38 inflation in the stock price?

A. Yes. That's correct.

Q. Okay.

Now, am I correct, if I just look at Exhibit 8, that the $10.32 of inflation that you identify between February

6, 2007 and 6/14/2007, plus the additional inflation of $25.38 which totals $35.70, that inflation lasts almost three years until April 16, 2010 when the SEC files the ABACUS complaint; is that correct?

[199] A. Yes. Under the constant dollar method, that's correct. It lasts that Long.

Q. You would agree that plaintiff alleges that Goldman Sachs made 14 of the challenged statements between June 14, 2007 and April 16, 2010, correct?

A. Correct.

Q. And it is your position that these 14 statements maintained the $35.70 per share inflation in Goldman's stock price?

A. Yes. They maintain the price inflation.

Q. And, if Goldman had not made these 14 statements, your position is that the firm's stock price would have fallen by $35.70?

A. No.

Q. Well, your document here says that — this is your own supposed inflation ribbon during the damage period, has a constant amount of $35.70, and as I understand your testimony, it's that by making these statements about business principles or the conflicts risk factor, Goldman Sachs maintained this inflation in the stock price.

Is that correct?

A. No. The misstatements are the omissions. It was the omission of information which, if it had been disclosed, would have caused the inflation to come out of stock sooner than it did.

* * *

[202] So, let's suppose if Goldman Sachs had not made the statements that you claim maintained the stock price between June 2007 and April 2007, would the stock price have fallen?

A. I am assuming liability. Goldman made those statements.

Q. If Goldman had not made the statements, would the stock price have fallen?

A. I think that's irrelevant. I don't know. Goldman made the statements. And in my opinion it had nothing to do with affirmative misstatements. They are misstatements because they contain omissions and the opinion is the inflation came into the stock because Goldman lied about its conflicts of interests management and its business principles and the stock would fall when that truth was revealed.

Q. Let's now, I will represent to you that Goldman Sachs' stock price, on November 20, 2008, was $52 a share. Is it your position that Goldman Sachs had disclosed the fact that it had conflicts in connection with these four CDOs, the stock price would have fallen by 70 percent?

A. Yes.

Q. Now, am I correct that April 16, 2010, we have established that's the date of the ABACUS complaint and your claim that the filing of that ABACUS complaint removed $17.09 of the $35.70 of inflation that you find in the stock price, correct?

A. Correct.

Q. And you would agree with me that the ABACUS complaint [203] didn't mention Goldman Sachs' conflicts risk factor statements from its 10K, right?

A. It didn't mention it by name but it described the behavior that clearly -- that clearly violated it.

Q. There was no mention, yes or no, of the actual 10K disclosure, correct?

A. It did not mention the 10-k disclosure.

Q. And there was no mention of the business principles, correct?

A. Again, it didn't mention the principles by name but described the payor.

Q. As far as you know the SEC never charged Goldman with making false statements about its conflict risk disclosure, correct?

A. Not that I'm aware of.

Q. Or its business principles, correct?

A. Not that I'm aware.

Q. And you would agree that, before April 16, 2010, the market knew that Paulson had assisted Goldman in designing a CDO that Paulson intended to short?

A. Yes, I think that's true.

Q. And you would agree that before April 16, 2010, the market knew that Paulson intended to bet against that CDO?

A. It knew that Paulson was betting against CDOs in general and, yes, that probably that one too, but certainly that [204] Paulson had taken a negative on this.

Q. And the next corrective disclosure date identified on your chart is April 26th -- let me restate that. You would agree that, on April 26, the permanent

Senate subcommittee released a series of e-mails about Goldman Sachs betting against CDOs, right?

A. No. It was on the 24th.

Q. 24th; but there was no statistically significant drop in the stock price of Goldman Sachs on that Monday after the weekend e-mails had been released, correct?

A. That's correct. There was a drop but it was not statistically significant.

Q. And you would agree that on April 29, after the market closed, the Wall Street Journal and some other publications recorded a criminal investigation of Goldman Sachs, right?

A. Yes.

Q. And that's one of your -- and on the 30th, that's one of your corrective disclosure dates, right?

A. Yes.

Q. And you would agree that no specific transactions, as being under investigation, were identified in that Wall Street Journal article, right?

A. Yes.

Q. And there is no mention of CDOs in that article, right?

A. They mention mortgages but not CDOs.

[205] Q. And you would agree that your testimony is that that article, that single article removed $12.43 of inflation from the stock price of Goldman Sachs, right?

A. Yes.

Q. And you basically went and, in your analysis, you attributed that dissipation of $12.43 to investors supposedly learning about conflicts in connection with Hudson, Anderson, and Timberwolf, correct?

A. Correct.

Q. And in a report you allocated one third of the $12.43 drop to each of those CDO transactions, right?

A. Yes.

Q. And you would agree that the press reports about the supposed criminal investigation didn't reference any of those CDOs, right?

A. The press reports did not. The information had been disclosed previously but it wasn't in those reports.

MR. HENSSLER: Your Honor, subject to the agreement in your stipulation, it has been 30 minutes for counsel's cross.

MR. GIUFFRA: I don't think we have. We have two more minutes left.

THE COURT: I think with have to add some time for the technical difficulties we had. Mr. Giuffra has another five minutes.

MR. GIUFFRA: Thank you, your Honor.

* * *

[207] Q. Are you aware of any SEC enforcement action with regards to the Hudson CDO?

A. No.

Q. Are you aware of one with respect to the Anderson CDO?

A. No.

Q. Timberwolf CDO?

A. No.

Q. Now, would you agree with me that there is no accepted test in financial economics for measuring severity?

A. I would agree with that.

Q. And would you agree that government investigations may conclude without a finding of wrongdoing?

A. Yes.

Q. And you would agree with me that a company stock price declines typically greater if an enforcement complaint is filed with no concurrent resolution, as opposed to filed with a settlement?

A. Yes.

Q. And you would agree that specific characteristics of the government enforcement action, whether it is a criminal or civil, can affect the impact on the stock price, right?

A. I'm sorry. Can you give me that one again?

Q. You would agree that the specific characteristics of a government enforcement action, civil versus criminal, can [208] impact the stock price reaction?

A. Yes. I testified to that effect in my direct.

Q. Did you do an economic analysis of the impact of the denials on the market reaction to the press articles on conflicts that were set out in Dr. Gompers' report?

A. I evaluated each of the denials. My conclusion is the denials were strong enough --

Q. Did you do an economic analysis?

A. Yes, I did. I looked at every single one of them.

Q. Did you do an event study?

A. I did an event study of each date. Yes, I did.

Q. Did you do an event study in analyzing the denials?

A. The denials occurred simultaneously with the supposed disclosure that Professor Gompers had cited, so I analyzed the combined effect and my opinion is that they were offsetting. So, I did use an event study in my analysis to show that there was an offset.

Q. Are you aware of any economic analysis study and the difference between effective and ineffective denials?

A. That is just common English. I don't know that that is an economic term.

Q. You would agree that -- you didn't identify any analyst reports that specifically referenced the Goldman Sachs risk factor from the 10K?

A. There were analyst reports that explained conflicts of [209] interest management and business principles and I believe I cited those in -- cited some of those in my report.

Q. Okay. Are you aware of any analyst report speaking specifically about the business principles?

A. Yes. I am.

Q. Okay, we will talk about that.

Your Honor, because I know I am out of time, I have one more bit and I am done, I will take one minute. Now, are you aware that Professor Gompers identified -- let's put up modified Exhibit F. Are you aware that Professor Gompers identified 36 dates during the class period with press reports of Goldman Sachs' client conflicts, right?

A. Yes.

Q. And it is your testimony that the inflation in Goldman Sachs' stock price remained constant during the two periods that are identified in your Exhibit 8, that would be the period from February 2007 to June 2007, and then the second period is June 2007 up to the filing of the ABACUS complaint?

A. Under the constant dollar method, yes, I do have that opinion.

Q. And, it is your position that Goldman Sachs' stock price did not respond to a single one of those press reports that are identified by Dr. Gompers showing Goldman Sachs' conflicts?

A. There was no significant change with regard to any of them. [210] He showed that and I showed that. As a result of no significant change the inflation didn't change.

Q. You agree with Dr. Gompers that there was no statistical impact from any of those press stories prior to the ABACUS complaint on April 16, 2007, right?

A. There was no impact from any of those 36.

MR. GIUFFRA: Thank you.

THE COURT: Mr. Henssler?

MR. HENSSLER: No further questions, your Honor. Thanks, Dr. Finnerty.

THE COURT: Thank you, Doctor.

THE WITNESS: Thank you, your Honor.

THE COURT: You are excused. Thank you for your help.

(witness excused)

* * *

[1] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

10 Civ. 03461 PAC

IN RE: GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION,

Plaintiffs,

v.

GOLDMAN SACHS GROUP, INC.,

Defendants.

July 25, 2018
10:00 a.m.

Before:

HON. PAUL A. CROTTY,
District Judge

APPEARANCES

LABATON SUCHAROW, LLP

Attorneys for plaintiffs

BY: THOMAS A. DUBBS, Esq.
JAMES W. JOHNSON, Esq.
LAWRENCE A. SUCHAROW, ESQ.
JEFFREY A. DUBBIN

- and –

ROBBINS GELLER RUDMAN & DOWD, LLP
(San Diego)

BY: ROBERT R. HENSSLER, JR.
JONAH H. GOLDSTEIN
SPENCER A. BURKHOLZ, Esq.
Of counsel

SULLIVAN & CROMWELL, LLP (NYC)

Attorneys for defendants

BY: ROBERT J. GIUFFRA, JR., Esq.
RICHARD H. KLAPPER, Esq.
DAVID MAXWELL REIN, Esq.
JACOB E. COHEN, Esq.
BENJAMIN R. WALKER, Esq.
JULIA A. MALKINA, Esq.

[79] But what I am saying, as well, is that it was known, and a number of the articles that formed the 36 that I use in my event study analysis, include discussions of [80] Goldman Sachs not telling its investors of Paulson's role in selecting the collateral assets or the fact that Paulson was going to be shorting them.

So, generally, it was known that investors had been misled.

MR. BURKHOLZ: Can you bring up, Larry, clip 1?

Sir, I am going to show you your deposition.

(deposition played)

BY MR. BURKHOLZ:

Q. And you were being truthful in that deposition, correct?

A. Yes, I was.

Q. Okay.

Can we bring up paragraph 4 of the SEC complaint?

Sir, that's tab 5 of your binder, if you want to look at it, Plaintiff's Exhibit 2.

THE COURT: What paragraph?

MR. BURKHOLZ: Paragraph 4 of the SEC complaint.

Q. Do you see where it says, Mr. Tourre was principally responsible for ABACUS 2007 AC 1?

A. Yes.

Q. And can we look at paragraph 18 on page 7, flip to that? This is an e-mail from Mr. Tourre on January 23rd, 2007, where he says: More and more leverage in the system, the whole building is about to collapse now.

Sir, this e-mail, Goldman e-mail from the person [81] principally responsible for ABACUS, this was never public until the SEC complaint; isn't that true, sir? This e-mail was never public? Simple yes or no.

A. I am unaware of this e-mail having been made public prior to the April 16th complaint.

Q. Okay. Let's look at the second e-mail in the same paragraph. Similarly, it shows an e-mail on February 11th to Mr. Tourre from the head of Goldman structured product correlation trading desk that stated in part, "the CDO business is dead, we don't have a lot of time left."

Same question: This e-mail never out in the public until the complaint. Isn't that true, sir?

A. Again, I'm unaware of this e-mail being made public prior to the SEC complaint.

Q. Let's look at one more, because we don't have a lot of time here; paragraph 32. This is an e-mail that Mr. Tourre sent to another Goldman employee regarding a meeting that he was at with Mr. Paulson and ACA in which he said: I am at this ACA/Paulson meeting. This is surreal.

Again, same question, that e-mail, internal e-mail, never out in the public until this SEC complaint; isn't that true, sir?

A. Again, I am unaware of this e-mail being public before. I am not sure what the meeting being surreal actually would mean, but I am unaware of this e-mail being made public prior to the [82] ABACUS complaint.

Q. Okay. In fact, none of the e-mails — you read the SEC complaint, there was over a dozen e-mails in that complaint — none of them were ever public until the SEC Complaint was filed; isn't that true, sir?

A. I am unaware of any of those e-mails being public prior to the publication or the filing of the SEC complaint.

Q. Right; and you actually read a lot of what was out in the media and in your 38 articles, none of these e-mails are in those articles, are they?

A. I think I have stated that I am unaware of these e-mails being public prior to the SEC complaint.

Q. And in the book, "Greatest Trade Ever," none of these e-mails are in that book, are they, discussing the ABACUS transaction?

A. No.

Q. It is a simple question. Are the e-mails in the book?

A. Again, it is my understanding that the e-mails were not in the book having looked at the book, but the general principle that Paulson was involved in selecting the collateral assets and that investors had been misled about Paulson shorting them was known. So, these e-mails were not known but the conflicts that were embedded in the ABACUS complaint were known through a variety of news publications and the book which you just mentioned.

[83] THE COURT: Doctor, you would do a lot better if you would just answer his question.

MR. BURKHOLZ: Yes.

THE WITNESS: Okay.

MR. BURKHOLZ: Thank you, your Honor.

BY MR. BURKHOLZ:

Q. You talk about the Goldman denial on April 16th in your direct testimony. Do you remember that?

A. Yes.

Q. Okay. That occurred after the internal e-mails in this complaint were released, right?

A. Yes.

Q. Okay. And the denials before April 16th, including the e-mail we just looked at, standing in the middle of these monstrosities, and the CDO business is dead; those e-mails weren't out in the public when Goldman was making its denials, were they?

A. That's my understanding.

Q. Thank you. Let's talk a little bit about Goldman's denials. Sir, you agree with me, don't you, that positive news can blunt negative news when information comes out about Goldman?

[84] A. Yes. As a theoretical matter, positive news can offset negative news. Any day that you have confounding news, you have to try an ascertain what each component is doing to the stock price.

Q. In fact, positive news can cancel out negative news, right?

A. It would be a knife edge situation in which the positive news would exactly offset the negative news but, hypothetically, if two identical pieces of news with the identical but opposite cash flow implications came to the market, they would exactly offset and you would have no stock price movement.

Q. In the denials by Goldman throughout the class period in the articles, they issued their own denials and press releases after Mr. Blankfein's testimony. That was positive news, right? You are not saying it was negative news, are you?

A. They denied wrongdoing. They denied what they did was illegal. They didn't deny the facts of the conflict but that what they said was that what we did was not illegal.

Q. It was positive news for Goldman shareholders. They're seeing this criticism and they have denials about the company; that's positive news for Goldman's stock price, right?

A. What they're saying is that they believe what they did was not illegal.

Q. Positive news, right? Is it positive or negative?

A. It is certainly not negative news. I am not sure [85] necessarily whether it would be of a positive magnitude but it is certainly not negative news.

Q. I want to take a look at your, it is Defendant's Exhibit B, I marked it as, I think it is tab — it is your 4/16 report, I think it is the second —

A. Tab 2.

Q. Yes, tab 2; that's your April 16, 2015 report?

A. It is, sir.

Q. Okay.

Can you turn to Exhibit 5? So, on Exhibit 5 I have highlighted what you title: Public discussion of the Goldman Sachs business conflict of interest during the class period and prior to April 16, 2010. I have highlighted one of the articles on March 9, 2007 and this is from your Exhibit 5, correct?

A. Yes.

Q. And in the description of the public discussion of Goldman Sachs' business conflict of interest let me show you what you left out of that description. It is tab 6 of your binder, it is the article, Plaintiff's Exhibit 3, this is what you left out: "'There is no conflict,' snaps Lucas van Praag, Goldman Sachs' chief spokesman. 'The suggestion that there might be a conflict can only be described as an attempt at mischief-making or a fundamental lack of understanding about how this business is conducted.'"

[86] That denial is not in your Exhibit 5, is it? It is not there? It is a simple question, is it there?

A. I don't tabulate where Goldman Sachs alleged no wrongdoing. So —

Q. When you gave the Judge the description of the important information in the public discussion regarding the conflict from the article you left out the denial, didn't you? It is not in there.

A. The denial — this portion of the article is not there. Certainly the article, in its entirety, speaks for itself.

Q. Right, but you didn't include the denial in the provision in your report that you gave to the Judge, did you?

A. I did not include this section in the excerpt in my Exhibit 5.

Q. Okay. Let's move on to Exhibit 6.

So, Exhibit 6, if you can turn to page 4. So, on this day you have the article regarding the book and the next day the book comes out, and you also included an article that came out at the same time McClatchy, and in that description of the public discussion of Goldman Sachs' mortgage and CDO conflicts of interest during the class period prior to April 16, 2010, you provided this excerpt for the Judge about Goldman had only $40 billion in securities. Let me show you what you left out for the Judge. From the article it is Plaintiff's Exhibit 23, tab 26 to your binder, it is on the sixth page, this is what [87] you left out. *DuVally said that investors were fully informed of all known risks.*

A. What tab was that again, sir?

Q. I believe it is tab 26.

A. Okay.

THE COURT: What page?

MR. BURKHOLZ: Page 6 of the article.

THE COURT: DuVally said that investors were fully informed of all known risks?

MR. BURKHOLZ: Yes.

Q. You left that out of your description in exhibit 6, didn't you?

A. This is not included in what I excerpted in Exhibit 6.

Q. Let's move on to — I only have two more to do, so let's look at same exhibit, no. 15. This is the December 24, 2009 article, New York Times article, that you say had a public discussion of Goldman's mortgage and CDO conflicts of interest.

A. Excuse me, sir. Which one? No. 15 on page 5?

Q. No. 15, page 5.

A. Thank you.

Q. So, you have a description of what you say is the public discussion of their conflicts. Let me show you what you left out, and the article is at tab 30, Plaintiff's Exhibit 27, and let me show you all four, go through them.

So, let me show you a few of the denials in the [88] article. On your direct you didn't point out — it is actually on Defendant's slide 10 in your direct had some of the information but it didn't have the denials and neither did your Exhibit 6 so let me show them to you. Here is one of them: Goldman and other Wall Street firms maintain there is nothing improper about synthetic CDOs.

Let's go to page 5. This is when they're having a discussion of Hudson: The Goldman salesman said that CDO buyers were not misled.

Let's go to the next two, and on page 2 carrying on to 3: Mr. DuVally, the Goldman spokesman, says products were created satisfy client demand and, in addition, he said that everyone knew they were betting against the mortgages.

None of those denials that I show you are in your Exhibit 6, are they? They're not in there?

A. The portions which you just highlighted are not in what I excerpted in Exhibit 6.

Q. Right.

Let me show you, take a look at tab 48, it is Plaintiff's Exhibit 45. So, on the same date you are aware on the same day the New York Times article came out that Goldman issued a denial, right?

A. Yes.

Q. Right. And back in Exhibit 6 you have the New York Times article but you didn't include Goldman's denial in Exhibit 6, [89] did you, of the public discussion of their conflicts?

A. I'm not sure that Business Insider is included in the Factiva major publications database so it wouldn't have come up.

Q. Right, but the fact that Goldman issued a denial that same day, I am sure you were looking for those kinds of information when you were doing your search, weren't you?

A. No. What I was looking for and the way I employed the search, sir, was to do exactly what people do when they do event studies. I wanted to find days upon which there was discussion of conflicts of interest at Goldman Sachs, both conflicts in other areas of Goldman Sachs, as well as conflicts in the mortgage and the CDO business. That's the search, and I did it in the Factiva major publications database, and what I got out is exactly what I put in my report.

Q. So, the fact that Goldman had a denial on that day, you weren't aware of that when you issued your report?

A. I certainly looked, and in the articles there is often a discussion of Goldman's denials. When there is a discussion of the Goldman's denials in the articles which are the product of that objective replicable search, I saw that Goldman had denied in those articles.

Q. Let's look at no. 20 of your Exhibit 6. Do you see here you have two articles regarding Mr. Blankfein's testimony in front of the FCIC? It is on page 6.

[90] A. No, it is on page 8.

Q. Okay. Do you see it in your Exhibit 6?

A. Yes.

Q. The two articles?

Let me show you what you left out on that day for the Judge regarding the public discussion. It's Goldman's response that day, to Mr. Blankfein's testimony; it is tab 50 to your binder, Plaintiff's Exhibit 47. It says — this is a Goldman Sachs press release saying that Mr. Blankfein's statements had been erroneously reported by the media and about him saying that, he made an admission that there were practices with respect to mortgage-related securities that were improper. Here is Goldman saying they did no such thing and Mr. Blankfein believes that they behaved or didn't say that they behaved improperly in any way.

This denial is not in your Exhibit 6, is it?

A. This press release wouldn't have been picked up by that Factiva search.

Q. When you issued your report in this case were you aware that Goldman had issued denials on the day of the New York Times article and on the day after Mr. Blankfein testified?

A. So, if it's discussed in the articles which get picked up by the search that I do in the Factiva database, then I will see in those that there is a mention of a denial by Goldman Sachs. If it is not picked up, then I wouldn't have [91] looked at it.

THE COURT: Do you recall on this particular document whether it is so?

THE WITNESS: I would have to go back and read the entire article or any of the articles that came out of that search, sir, to know whether or not there was a mention of this particular denial, but the press release wouldn't be picked up by that search.

THE COURT: Okay.

BY MR. BURKHOLZ:

Q. You agree with me, don't you, that the two denials I just showed you, that was relevant information to investors regarding Goldman's denial of accusations being made against them?

A. So, it is relevant about whether or not the investors thought that the actions were legal but the nature of the conflict itself was not denied. The fact that Goldman Sachs had put together these CDOs and shorted them, that was known and it wasn't denied that they had actually shorted those securities.

Q. What about Mr. van Praag's statement there is no conflict, that I showed you earlier? Not relevant? Not a denial?

A. Again, I mean to the extent that is in the article it's in one of the 13 as opposed to the other 23.

* * *

This page intentionally left blank.

No. 20-222

In the Supreme Court of the United States

GOLDMAN SACHS GROUP, INC., ET AL., PETITIONERS

v.

ARKANSAS TEACHER RETIREMENT SYSTEM, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUPPLEMENTAL JOINT APPENDIX
(VOLUME 3; PAGES 805-998)

KANNON K. SHANMUGAM
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

Counsel of Record for Petitioners

THOMAS C. GOLDSTEIN
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Avenue
Suite 850
Bethesda, MD 20814
(202) 362-0636
tg@goldsteinrussell.com

Counsel of Record for Respondents

PETITION FOR A WRIT OF CERTIORARI FILED: AUGUST 21, 2020
CERTIORARI GRANTED: DECEMBER 11, 2020

TABLE OF CONTENTS

Page

VOLUME 1

Page

Page

Page

The following opinions and orders have been omitted in printing the joint appendix because they appear as appendices to the petition for certiorari as follows:

Appendix A:	Court of appeals opinion, April 7, 2020
Appendix B:	District court opinion, August 14, 2018
Appendix C:	Court of appeals opinion, January 12, 2018
Appendix D:	District court opinion, September 24, 2015
Appendix E:	Court of appeals order denying rehearing, June 15, 2020

CIBC
CIBC World Markets

Equity Research
Earnings Update

January 29, 2007

Brokers/Large-Cap Brokers

Goldman Sachs Group

Highlights from Meeting with Goldman Sachs CFO David Viniar

Stock Rating:
Sector Outperformer

Sector Weighting:
Overweight

12-18 mo. Price Target	$250.00
GS-NYSE (1/29/07)	$211.04

Key Indices: S&P 500, BarraVal, NYSE, S&P 100

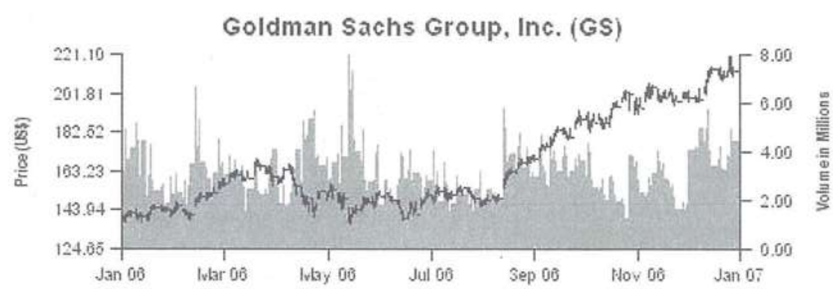
3-5-Yr. EPS Gr. Rate (E)	25.0%
52-week Range	$136.90-$220.51
Shares Outstanding	471.0M
Float	379.6M Shrs
Avg. Daily Trading Vol.	5,144,350
Market Capitalization	$99,399.8M
Dividend/Div Yield	$1.40 / 0.7%
Fiscal Year Ends	November
Book Value	$72.62 per Shr
2007 ROE (E)	27.2%
LT Debt	$129.3B
Preferred	$3,100.00M
Common Equity	$35.8B
Convertible Available	No

Earnings per Share	Prev	Current
2006		$19.69A
2007	$23.00E	$22.60E
2008		$26.25E
P/E		
2006		10.7x
2007	9.2x	9.3x
2008		8.0x

EXHIBIT
PENGAD 800-631-6989
Porten 9
5/1/15 TD

- We met with David Viniar, CFO of Goldman Sachs, almost a year after he made the now famous pronouncement that he'd never seen a better operating environment in 25 years. Our takeaway from yesterday's meeting is that his sentiment now has extended into 26 years.
- Liquidity is rich and deals are increasingly more global in nature. China continues to be GS's key growth market, but alternative energy and infrastructure look robust. Asset and wealth management will also be prime areas of growth and focus.
- We are slightly trimming our well above consensus first-quarter estimates due to lower expected incentive fees in asset management ($0.10-$0.15 per share by our estimates) and what now looks like our admittedly too high trading revenues (remember very tough 1Q06 comparison).
- Our outlook on GS is as bullish today as it was a year ago. GS is involved in 1 in 3 deals globally, a fact that few could boast of in any industry, let alone a fast-growing industry. Further, GS is simply the fastest growing in the fastest growth businesses within global capital markets.

Stock Price Performance



Source: Reuters
All figures in US dollars, unless otherwise stated.
07-71039 © 2007

Company Description
Goldman Sachs Group, Inc. and its subsidiaries provide investment banking, securities, and investment management services worldwide.

www.gs.com

CIBC World Markets does and seeks to do business with companies covered in its research reports. As a result, investors should be aware that the firm may have a conflict of interest that could affect the objectivity of this report.

Investors should consider this report as only a single factor in making their investment decision.

See "Important Disclosures" section at the end of this report for important required disclosures, including potential conflicts of interest.

See "Price Target Calculation" and "Key Risks to Price Target" sections at the end of this report, where applicable.

Meredith Whitney
(212) 667-6897
Meredith.Whitney@us.cibc.com

Gary Lee
(212) 667-7128
Gary.Lee@us.cibc.com

We met with Goldman Sachs CFO David Viniar, almost a year after he made the now famous pronouncement that he'd never seen a better operating environment in 25 years. Our takeaway from yesterday's meeting is that his sentiment now extends into 26 years. Overall, Viniar remained optimistic that the global environment today is good as economic growth continues to be strong, capital is plentiful, and activity levels are high. Notably, he emphasized that Goldman's biggest growth opportunities are in China, in the infrastructure business, and in alternative energy investments.

Our outlook on Goldman Sachs is as bullish today as it was a year ago, even in the face of its impressive stock price rise over the same time period. Goldman is not only the dominant force in the global M&A market, which grew to its highest level in history and 2007, is poised even higher; GS is literally in ONE OF EVERY THREE deals. There are few, if any, companies worldwide that can boast of similar market share dominance in any industry, let alone in a growing industry. Further, Goldman is growing the fastest in the fastest-growing markets. With roughly 50% of revenues coming from outside the US, Goldman is growing the most in China, Japan, and Europe.

We continue to rate GS Sector Outperformer with a $250 price target, as we remain bullish on the continued robust growth of the capital markets and on GS's consistent ability to grow its EPS with a solid ROE. The firm generates the highest revenue growth vs. its peers, possesses dominant market share in the highest margin businesses, has an impressive presence in Japan/China, and in our opinion will continue to record earnings upside from its private investment gains.

Several key takeaways from our meeting:

- **China represents Goldman's biggest growth opportunity.** Goldman is singly the best-positioned foreign investment bank within China. Last year, the company got the highly coveted role of investor/advisor to ICBC as well as underwrote the Bank of China deal. Goldman has had a presence in China for a long time and seems to have a very good reputation, hence resulting in the firm doing most of the biggest China deals. Furthermore, Viniar emphasized that Goldman and UBS were the only two major brokers that had securities licenses in China and in this capacity China was the only region where Goldman did not have to compete with the rest of the world. In fact, China was no longer offering these licenses for the time being. With this license, Goldman is allowed to underwrite 'A' shares and participate in domestic M&A, bond underwriting, and wealth management. We believe Goldman's competitive lead is vast in China as well as in greater Asia. In its "statesmanship commitment" to the development of capital markets, we believe GS employees go above and beyond the typical role of investment bank to provide guidance and counseling to soon to be public and public companies as to best practices in dealing with public investors. Goldman continues to advise ICBC on a myriad of on going capital markets issues.

- **The infrastructure business will be a major area of investment and advisory focus.** Viniar believes that the infrastructure business will become very large in the US as municipalities will see the clear benefit of leveraging currently unlevered assets, freeing up capital, and perhaps ultimately delivering best execution for its municipal services. He thinks that the volumes within the US will be in the multi-billions and will be a major source of deal flow over the coming years.

- **Commodities remain a solid growth revenue source.** Active in commodities since 1981, commodities trading and operation have been a cornerstone to the GS trading platform long before the recent "multi-year bull market in commodities." When questioned whether GS had a more difficult time generating outsized profits in a declining oil and gas price trending market, Viniar cited its recent success in the rates and currency markets in the face of 17 rate hikes and reasonable volatility. Provided there is somewhat of a trend and client activity remains high, profits should remain solid.

- **The trading business is a significant part of the GS franchise and will continue to grow.** Viniar indicated that the firm had very stringent risk controls and noted that the biggest risk to trading was not necessarily the incurred trading losses but rather a general slowdown in business. Furthermore, while trading revenues are very volatile quarterly, on an annual basis it's a consistently growing business.

- **Viniar's top 3 fears of what will hinder economic growth are:** 1. *Credit*—credit spreads may widen and lead to defaults. However, Viniar did note that GM was downgraded but only negatively impacted credit markets for one month. 2. *Protectionism*—anything that hinders the free flow of capital around the world and hence globalization. 3. *Inflation*.

Other Odds and Ends From the Meeting

- **The pool for buyers of everything, including risk, is so far broader today, which may mean the emergence of a different market than US-centric and demand-concentrated markets of the past.** Specifically, according to Viniar, derivatives have been very good for the financial markets as they allow risk to be sliced and redistributed to those who want it.

- **Overall, opportunities in the mortgage business are strong; the weak link is subprime.** Viniar noted that the mortgage business should be viewed in two separate ways, commercial and residential. According to him, the commercial mortgage business is terrific (i.e. Equity Office Properties Trust), as there exists a lot of money for financing while the residential mortgage business is solid but less buoyant. Within residential mortgages, the weak link is subprime. Viniar believes that the subprime lending business will worsen before it gets better as the market normalizes, forcing more subprime lenders to exit this business.

- **One of Goldman's main advantages is its ability to offer a comprehensive package of services and products, which allows it to consistently participate in the largest deals.** According to Viniar, the firm is capable of participating in all facets of a deal including capital, advice, hedging, etc., which provides it with a significant advantage and breadth in securing the most notable and complex global deals.

- **An extremely high percentage of deals for principal investing originate from internal referrals.** Goldman's consistently ability to actively invest in and harvest its principal investments stems from the fact that many of the firm's other segments constantly refer deals to the principal investing segment. According to Viniar, Goldman is very careful about the conflicts or perceived conflicts that emerge, and actually has a full time partner monitoring these conflicts.

- **Goldman's global investments have begun to bear significant fruit and are one of its main near-term growth drivers.** Viniar noted that while Japan is now an earnings contributor it used to be a breakeven business for 13 years. He stated that Goldman's leading global footprint vs. its peers will allow it to profit from the fastest growing economies, particularly in the BRIC (Brazil, Russia, India, and China) countries.

Exhibit 1. Goldman Sachs Revenues Per Employee Are Greater Than 2X Its Closest Peers

Revenues/Employee ($ in Thousands)

Company Name	2002	2003	2004	2005	2006	4-Year CAGR
Bear Stearns	$485	$569	$622	$626	$680	-
YoY % Change	*3.3%*	*17.4%*	*9.2%*	*0.7%*	*8.7%*	8.8%
Goldman Sachs	$709	$823	$992	$1,050	$1,406	-
YoY % Change	*1.6%*	*16.1%*	*20.5%*	*5.9%*	*33.9%*	18.7%
Lehman Brothers	$499	$534	$591	$638	$678	-
YoY % Change	-3.1%	7.1%	10.7%	8.0%	6.2%	8.0%
Merrill Lynch	$360	$414	$435	$476	$617	-
YoY % Change	*-5.2%*	*15.0%*	*5.2%*	*9.4%*	*29.5%*	14.4%
Morgan Stanley	$366	$426	$445	$503	$612	-
YoY % Change	*-3.1%*	*16.4%*	*4.5%*	*13.0%*	*21.6%*	13.7%
Average	*-1.3%*	*14.4%*	*10.0%*	*7.4%*	*20.0%*	*12.7%*

Source: Company reports and CIBC World Markets Corp.

From a year ago, Goldman Sachs has grown its revenues per employee by 33.9%, which was the highest YoY growth rate amongst its key US peers, to $1.4 million, which is greater than 2x its closest peers. Following was Merrill Lynch with 29.5% and Morgan Stanley with 21.6%. Overall, Goldman Sachs' 4-year CAGR was 18.7%, which was significantly above those of its key peers.

Earnings Outlook

We are trimming our well above consensus 1Q07 estimate due to lower expected incentive fees in asset management ($0.10-$0.15 per share by our estimates) and what now looks like our admittedly too high trading revenues (remember very tough 1Q06 comparisons). Our 1Q07 and 2007 estimates are now $5.60 (from $6.00) and $22.60 (from $23.00), respectively.

Exhibit 2. Our Estimates for 1Q07 and 2007 Are On Average 19% Above the Consensus Mean

EPS Estimates (CIBC vs. Consensus)

Source	1Q07	2007
CIBC	**$5.60**	**$22.60**
% diff. from mean	18.9%	18.5%
% diff. from low	39.3%	37.0%
% diff. from high	0%	0%
Consensus		
Mean	$4.71	$19.07
Low	$4.02	$16.50
High	$5.60	$22.60

Source: Company reports and CIBC World Markets Corp.

Our 1Q07 estimate of $5.60 is the highest estimate on the Street, 19% above the mean and 39% above the lowest estimate. Our 2007 estimate of $22.60 is also the highest estimate on the Street, 19% above the mean and 37% above the lowest estimate.

Price Target Calculation

Our price target on Goldman Sachs is $250 based upon a 2.7X multiple of our projected 12-month forward book value estimate of about $94 per share. Since going public in 1999, Goldman has traded in a range of 2.0X to 3.6X book value; therefore, we believe our 2.7X multiple is reasonable. Admittedly, since 2002 Goldman has traded more towards the low end of the range along with its brokerage group peers; however, if we are correct on our thesis that 2006 will be a barnburner year within global capital markets, we believe the group at large will experience multiple expansion. For the past three years, Goldman has grown earnings by over 25% per annum despite a flattening yield curve and unfavorable equity markets. We believe the wind is truly at Goldman's back this year and that 2006 will mark the company's fourth year of 25% plus earnings per share growth.

Key Risks to Price Target

Market Risk: Brokerage earnings are highly correlated to strength/weakness in the overall capital markets.

Credit Risk: Brokerage earnings may be vulnerable to losses from their credit exposure related to trading, lending, and other business activities.

Liquidity Risk: An extended interruption in liquidity will have a materially adverse impact on earnings.

Litigation Risk: Legal proceedings could adversely affect brokerage earnings, capital levels, and potentially impact credit ratings.

Regulatory Risk: Most brokerage businesses are highly regulated and could be materially impacted by regulatory and/or legislative initiatives globally.

Exhibit 3. Income Statement

CIBC Large-Cap Brokers
GOLDMAN SACHS
Income Statement

$ in Millions, Except Per Share Data	2005A	2006A	2007E	2008E	1Q05	2Q05	3Q05	4Q05	1Q06A	2Q06A	3Q06A	4Q06A	1Q07E	2Q07E	3Q07E	4Q07E
					2005A				2006				2007			
Diluted Core EPS	$11.21	$19.69	$22.60	$26.25	$2.94	$1.71	$3.25	$3.35	$5.08	$4.78	$3.26	$6.59	$5.60	$5.76	$5.00	$6.25
Annual EPS Growth	*25.7%*	*75.5%*	*14.8%*	*16.2%*	*17.4%*	*-26.1%*	*86.9%*	*41.9%*	*72.9%*	*179.7%*	*0.1%*	*97.0%*	*10.3%*	*20.4%*	*53.6%*	*-5.3%*
OPERATING RATIOS																
As a X of Trading and Principal Investments																
Interest Income	1.4	1.5	1.6	1.5	1.0	1.9	1.2	1.7	1.1	1.2	2.1	1.6	1.6	1.6	1.6	1.6
Interest Expense as % of Interest Income	85%	90%	89%	90%	83%	83%	86%	89%	90%	91%	90%	89%	89%	89%	89%	89%
As a % of Assets Under Supervision																
Asset Management and Securities	0.63%	0.74%	0.60%	0.73%	0.66%	0.60%	0.61%	0.62%	1.13%	0.70%	0.64%	0.60%	0.70%	0.66%	0.60%	0.60%
As a % of Net Revenues																
Compensation and Benefits Expense	47%	44%	47%	47%	50%	50%	50%	39%	51%	50%	47%	27%	51%	50%	49%	39%
Non-Comp. Expense	19%	17%	16%	18%	17%	24%	17%	22%	13%	15%	21%	20%	13%	15%	17%	20%
Pre-Tax Margin	33%	39%	36%	35%	33%	26%	33%	39%	36%	35%	32%	54%	36%	35%	34%	41%
Profit Margin	23%	25%	24%	23%	24%	18%	22%	26%	24%	23%	21%	33%	24%	23%	22%	27%
Tax Rate	32%	34%	33%	33%	30%	30%	33%	34%	33%	34%	33%	37%	33%	33%	33%	33%
INCOME STATEMENT																
REVENUES																
Interest Income	21,250	35,186	46,031	51,292	4,176	4,867	5,721	6,486	7,535	8,544	9,351	9,756	11,513	12,462	10,922	11,134
Interest Expense	18,153	31,688	41,013	46,163	3,449	4,022	4,940	5,742	6,813	7,761	8,395	8,719	10,281	11,092	9,732	9,909
Net Interest Income (NII)	3,097	3,498	5,018	5,129	727	845	781	744	722	783	956	1,037	1,232	1,371	1,191	1,225
Trading and Principal Investments	15,452	24,027	28,765	34,195	4,141	2,562	4,842	3,907	6,687	6,921	4,368	6,051	7,196	7,741	6,826	7,002
NII + Trading and Principal Investments	18,549	27,525	33,783	39,324	4,868	3,407	5,623	4,651	7,409	7,704	5,324	7,088	8,428	9,112	8,017	8,227
Investment Banking	3,599	5,613	6,158	7,407	873	796	998	932	1,470	1,521	1,285	1,337	1,568	1,557	1,490	1,543
Asset Management and Securities	3,090	4,527	4,618	7,071	774	724	772	820	1,554	1,016	975	982	1,191	1,152	1,100	1,175
Other	(456)	(461)	(400)	(400)	(110)	(121)	(108)	(117)	(98)	(144)	(121)	(98)	(100)	(100)	(100)	(100)
Total Net Revenues	**24,782**	**37,204**	**44,159**	**53,402**	**6,405**	**4,806**	**7,285**	**6,286**	**10,335**	**10,097**	**7,463**	**9,309**	**11,087**	**11,721**	**10,506**	**10,845**

Source: Company reports and CIBC World Markets Corp.

Exhibit 4. Income Statement

CIBC Large-Cap Brokers
GOLDMAN SACHS
Income Statement

$ in Millions, Except Per Share Data	2005A	2006A	2007E	2008E	2005A 1Q05	2Q05	3Q05	4Q05	2006 1Q06A	2Q06A	3Q06A	4Q06A	2007 1Q07E	2Q07E	3Q07E	4Q07E
Diluted Core EPS	$11.21	$19.69	$22.60	$26.25	$2.94	$1.71	$3.25	$3.35	$5.08	$4.78	$3.26	$6.59	$5.60	$5.76	$5.00	$6.25
Annual EPS Growth	*25.7%*	*75.5%*	*14.8%*	*16.2%*	*17.4%*	*-26.1%*	*86.9%*	*41.9%*	*72.9%*	*179.7%*	*0.1%*	*97.0%*	*10.3%*	*20.4%*	*53.6%*	*-5.3%*
EXPENSES																
Operating Expenses																
Brokerage, Clearing and Exchange	1,109	1,779			252	274	271	312	351	403	454	571				
Market Development	378	492			82	94	92	110	100	121	117	154				
Communications and Technology	490	544			118	123	124	125	124	131	141	148				
Depreciation and Amortization	501	521			118	128	125	130	125	127	126	143				
Occupancy	728	850			148	186	200	194	193	199	221	237				
Goodwill/Intangibles Amortization	124	173			31	31	31	31	34	44	50	45				
Professional Services and Other	1,491	1,883			308	323	395	465	418	462	482	521				
Employee IPO and Acq Award	-	-			-	-	-	-	-	-	-					
Non-Compensation Operating Expenses	**4,821**	**6,242**	**7,154**	**9,602**	**1,057**	**1,159**	**1,238**	**1,367**	**1,345**	**1,487**	**1,591**	**1,819**	**1,441**	**1,758**	**1,786**	**2,169**
Operating Income Before Compensation Expenses	19,961	30,962	37,004	43,801	5,348	3,647	6,047	4,919	8,990	8,610	5,872	7,490	9,646	9,963	8,720	8,676
Compensation and Benefits	11,688	16,402	20,892	25,099	3,203	2,403	3,642	2,440	5,301	5,086	3,510	2,505	5,654	5,860	5,148	4,229
Income before Taxes	8,273	14,560	16,112	18,702	2,145	1,244	2,405	2,479	3,689	3,524	2,362	4,985	3,991	4,102	3,572	4,446
Provision for Taxes	2,647	5,023	5,317	6,171	633	379	788	847	1,210	1,212	768	1,833	1,317	1,354	1,179	1,467
Net Operating Income	5,626	9,537	10,795	12,530	1,512	865	1,617	1,632	2,479	2,312	1,594	3,152	2,674	2,748	2,393	2,979
Preferred Stock Dividend	17	139	156	120	-	-	9	8	26	26	39	48	39	39	39	39
Adjustments	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Income	**5,609**	**9,398**	**10,639**	**12,410**	**1,512**	**865**	**1,608**	**1,624**	**2,453**	**2,286**	**1,555**	**3,104**	**2,635**	**2,709**	**2,354**	**2,940**
Basic Shares Outstanding	490	449	440	435	494	485	473	459	457	450	449	440	440	440	440	440
Diluted Shares Outstanding	500	477	471	473	515	506	494	485	483	478	477	471	471	471	471	471
EOP Shares Outstanding																
Dilution	88	114	124	93	21	21	21	26	26	29	28	31	31	31	31	31
Dividend	$1.00	$1.30	$1.40	$1.50	$0.25	$0.25	$0.25	$0.25	$0.25	$0.35	$0.35	$0.35	$0.35	$0.35	$0.35	$0.35
Book Value	$57.02	$72.62	$93.82	$118.58	$53.15	$53.46	$55.39	$57.02	$60.42	$64.92	$67.87	$72.62	$77.87	$83.27	$87.93	$93.82
Avg. Book Value	$53.90	$64.82	$83.22	$106.20	$50.62	$53.31	$54.43	$56.21	$58.72	$62.67	$66.40	$70.25	$75.24	$80.57	$85.60	$90.87
Total Equity																
ROE - Calculated	20.8%	30.4%	27.2%	24.7%	23.0%	12.7%	23.7%	23.6%	35.1%	30.9%	19.5%	37.2%	29.5%	28.3%	23.2%	27.3%
ROE - Reported	21.8%	32.8%			23.5%	13.4%	25.1%	25.2%	36.4%	32.5%	20.9%	41.5%				
ROTE - Reported	27.6%	39.8%			29.6%	18.5%	32.0%	31.7%	44.0%	39.0%	24.9%	50.0%				
Days per Quarter					90	92	92	91	90	92	92	91	90	92	92	91
Number of Employees	23,623	26,467			21,606	21,800	23,195	23,623	23,641	24,013	25,647	26,467				
Pretax Margin	33.4%	39.1%	36.5%	35.0%	33.5%	25.9%	33.0%	39.4%	35.7%	34.9%	31.6%	53.6%	36.0%	35.0%	34.0%	41.0%
Cost Income Ratio	66.6%	60.9%	63.5%	65.0%	66.5%	74.1%	67.0%	60.6%	64.3%	65.1%	68.4%	46.4%	64.0%			

Source: Company reports and CIBC World Markets Corp.

Our EPS estimates are shown below:

	1 Qtr.	2 Qtr.	3 Qtr.	4 Qtr.	Yearly
2006 Current	$5.08A	$4.78A	$3.26A	$6.59A	$19.69A
2007 Prior	$6.00E	$5.91E	$4.86E	$6.23E	$23.00E
2007 Current	$5.60E	$5.76E	$5.00E	$6.25E	$22.60E
2008 Current	--	--	--	--	$26.25E

IMPORTANT DISCLOSURES:

Analyst Certification: Each CIBC World Markets research analyst named on the front page of this research report, or at the beginning of any subsection hereof, hereby certifies that (i) the recommendations and opinions expressed herein accurately reflect such research analyst's personal views about the company and securities that are the subject of this report and all other companies and securities mentioned in this report that are covered by such research analyst and (ii) no part of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by such research analyst in this report.

Potential Conflicts of Interest: Equity research analysts employed by CIBC World Markets are compensated from revenues generated by various CIBC World Markets businesses, including the CIBC World Markets Investment Banking Department within the Corporate and Leveraged Finance Division. Research analysts do not receive compensation based upon revenues from specific investment banking transactions. CIBC World Markets generally prohibits any research analyst and any member of his or her household from executing trades in the securities of a company that such research analyst covers. Additionally, CIBC World Markets generally prohibits any research analyst from serving as an officer, director or advisory board member of a company that such analyst covers.

In addition to 1% ownership positions in covered companies that are required to be specifically disclosed in this report, CIBC World Markets may have a long position of less than 1% or a short position or deal as principal in the securities discussed herein, related securities or in options, futures or other derivative instruments based thereon.

Recipients of this report are advised that any or all of the foregoing arrangements, as well as more specific disclosures set forth below, may at times give rise to potential conflicts of interest.

Important Disclosure Footnotes for Goldman Sachs Group, Inc. (GS)

2a Goldman Sachs Group, Inc. is a client for which a CIBC World Markets company has performed investment banking services in the past 12 months.

2e CIBC World Markets Inc. has received compensation for investment banking services from Goldman Sachs Group, Inc. in the past 12 months.

3a Goldman Sachs Group, Inc. is a client for which a CIBC World Markets company has performed non-investment banking, securities-related services in the past 12 months.

3b CIBC World Markets Corp. has received compensation for non-investment banking, securities-related services from Goldman Sachs Group, Inc. in the past 12 months.

Important Disclosure Footnotes for Companies Mentioned in this Report that Are Covered by CIBC World Markets:

Stock Prices as of 01/29/2007:
Bear Stearns Companies (3a, 3b) (BSC-NYSE, $162.05, Sector Outperformer)
Lehman Brothers Holdings Inc. (3a, 3b, 5a) (LEH-NYSE, $80.68, Sector Outperformer)
Merrill Lynch & Co. (3a, 3b) (MER-NYSE, $92.39, Sector Performer)
Morgan Stanley (3a, 3b) (MS-NYSE, $81.12, Sector Outperformer)
UBS AG (3a, 3b) (UBS-NYSE, $61.64, Sector Outperformer)

Companies Mentioned in this Report that Are Not Covered by CIBC World Markets:

Stock Prices as of 01/29/2007:
Bank of China (3988-HK, [HKD]3.90, Not Rated)

Important disclosure footnotes that correspond to the footnotes in this table may be found in the "Key to Important Disclosure Footnotes" section of this report.

Key to Important Disclosure Footnotes:

1 CIBC World Markets Corp. makes a market in the securities of this company.

2a This company is a client for which a CIBC World Markets company has performed investment banking services in the past 12 months.

2b CIBC World Markets Corp. has managed or co-managed a public offering of securities for this company in the past 12 months.

2c CIBC World Markets Inc. has managed or co-managed a public offering of securities for this company in the past 12 months.

2d CIBC World Markets Corp. has received compensation for investment banking services from this company in the past 12 months.

2e CIBC World Markets Inc. has received compensation for investment banking services from this company in the past 12 months.

2f CIBC World Markets Corp. expects to receive or intends to seek compensation for investment banking services from this company in the next 3 months.

2g CIBC World Markets Inc. expects to receive or intends to seek compensation for investment banking services from this company in the next 3 months.

3a This company is a client for which a CIBC World Markets company has performed non-investment banking, securities-related services in the past 12 months.

3b CIBC World Markets Corp. has received compensation for non-investment banking, securities-related services from this company in the past 12 months.

3c CIBC World Markets Inc. has received compensation for non-investment banking, securities-related services from this company in the past 12 months.

4a This company is a client for which a CIBC World Markets company has performed non-investment banking, non-securities-related services in the past 12 months.

4b CIBC World Markets Corp. has received compensation for non-investment banking, non-securities-related services from this company in the past 12 months.

4c CIBC World Markets Inc. has received compensation for non-investment banking, non-securities-related services from this company in the past 12 months.

5a The CIBC World Markets Corp. analyst(s) who covers this company also has a long position in its common equity securities.

5b A member of the household of a CIBC World Markets Corp. research analyst who covers this company has a long position in the common equity securities of this company.

6a The CIBC World Markets Inc. fundamental analyst(s) who covers this company also has a long position in its common equity securities.

6b A member of the household of a CIBC World Markets Inc. fundamental research analyst who covers this company has a long position in the common equity securities of this company.

7 CIBC World Markets Corp., CIBC World Markets Inc., and their affiliates, in the aggregate, beneficially own 1% or more of a class of equity securities issued by this company.

8 A partner, director or officer of CIBC World Markets Inc. or any analyst involved in the preparation of this research report has provided services to this company for remuneration in the past 12 months.

9 A senior executive member or director of Canadian Imperial Bank of Commerce ("CIBC"), the parent company to CIBC World Markets Inc. and CIBC World Markets Corp., or a member of his/her household is an officer, director or advisory board member of this company or one of its subsidiaries.

10 Canadian Imperial Bank of Commerce ("CIBC"), the parent company to CIBC World Markets Inc. and CIBC World Markets Corp., has a significant credit relationship with this company.

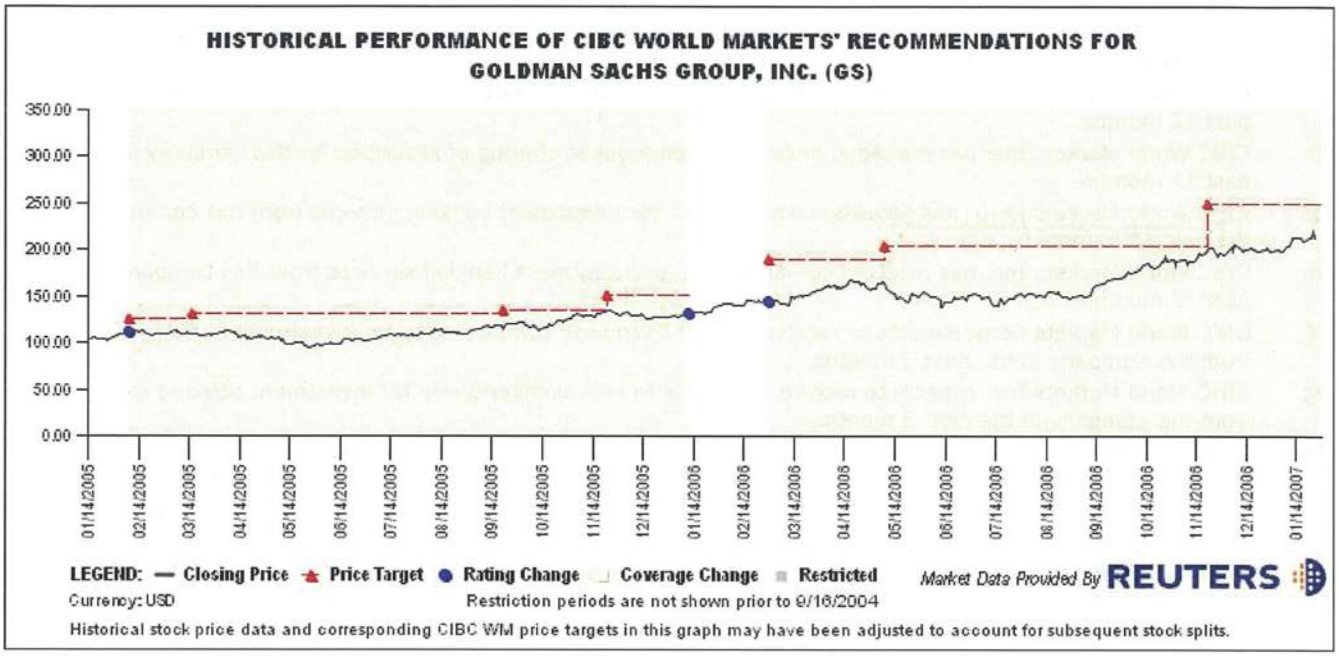
11 The equity securities of this company are restricted voting shares.

12 The equity securities of this company are subordinate voting shares.

13 The equity securities of this company are non-voting shares.

14 The equity securities of this company are limited voting shares.

CIBC World Markets Price Chart



HISTORICAL PERFORMANCE OF CIBC WORLD MARKETS' RECOMMENDATIONS FOR GOLDMAN SACHS GROUP, INC. (GS)

Date	Change Type	Closing Price	Rating	Price Target	Coverage
02/08/2005		111.55	SO	126.00	Ken Worthington, CFA
03/17/2005		110.04	SO	131.00	Ken Worthington, CFA
09/20/2005		118.05	SO	135.00	Ken Worthington, CFA
11/22/2005		132.60	SO	151.00	Ken Worthington, CFA
01/10/2006		132.03	NR	None	CIBC World Markets Corp.
03/01/2006		143.15	SO	190.00	Meredith Whitney
05/09/2006		165.75	SO	205.00	Meredith Whitney
11/20/2006		197.45	SO	250.00	Meredith Whitney

CIBC World Markets' Stock Rating System

Abbreviation	Rating	Description
Stock Ratings		
SO	Sector Outperformer	Stock is expected to outperform the sector during the next 12-18 months.
SP	Sector Performer	Stock is expected to perform in line with the sector during the next 12-18 months.
SU	Sector Underperformer	Stock is expected to underperform the sector during the next 12-18 months.
NR	Not Rated	CIBC World Markets does not maintain an investment recommendation on the stock.
R	Restricted	CIBC World Markets is restricted*** from rating the stock.
Sector Weightings**		
O	Overweight	Sector is expected to outperform the broader market averages.
M	Market Weight	Sector is expected to equal the performance of the broader market averages.
U	Underweight	Sector is expected to underperform the broader market averages.
NA	None	Sector rating is not applicable.

**Broader market averages refer to the S&P 500 in the U.S. and the S&P/TSX Composite in Canada.
"Speculative" indicates that an investment in this security involves a high amount of risk due to volatility and/or liquidity issues.
***Restricted due to a potential conflict of interest.

Ratings Distribution*: CIBC World Markets' Coverage Universe

(as of 29 Jan 2007)	Count	Percent	Inv. Banking Relationships	Count	Percent
Sector Outperformer (Buy)	328	38.8%	Sector Outperformer (Buy)	174	53.0%
Sector Performer (Hold/Neutral)	415	49.1%	Sector Performer (Hold/Neutral)	214	51.6%
Sector Underperformer (Sell)	72	8.5%	Sector Underperformer (Sell)	35	48.6%
Restricted	18	2.1%	Restricted	18	100.0%

Ratings Distribution: Brokers Coverage Universe

(as of 29 Jan 2007)	Count	Percent	Inv. Banking Relationships	Count	Percent
Sector Outperformer (Buy)	5	83.3%	Sector Outperformer (Buy)	1	20.0%
Sector Performer (Hold/Neutral)	1	16.7%	Sector Performer (Hold/Neutral)	0	0.0%
Sector Underperformer (Sell)	0	0.0%	Sector Underperformer (Sell)	0	0.0%
Restricted	0	0.0%	Restricted	0	0.0%

Brokers Sector includes the following tickers: BSC, GS, LEH, MER, MS, UBS.

*Although the investment recommendations within the three-tiered, relative stock rating system utilized by CIBC World Markets do not correlate to buy, hold and sell recommendations, for the purposes of complying with NYSE and NASD rules, CIBC World Markets has assigned buy ratings to securities rated Sector Outperformer, hold ratings to securities rated Sector Performer, and sell ratings to securities rated Sector Underperformer without taking into consideration the analyst's sector weighting.

Legal Disclaimer

This report is issued and approved for distribution by (i) in the United States, CIBC World Markets Corp., a member of the New York Stock Exchange ("NYSE"), NASD and SIPC, (ii) in Canada, CIBC World Markets Inc., a member of the Investment Dealers Association ("IDA"), the Toronto Stock Exchange, the TSX Venture Exchange and CIPF, (iii) in the United Kingdom, CIBC World Markets plc, which is regulated by the Financial Services Authority ("FSA"), and (iv) in Australia, CIBC World Markets Australia Limited, a member of the Australian Stock Exchange and regulated by the ASIC (collectively, "CIBC World Markets"). This report is provided, for informational purposes only, to institutional investor clients of CIBC World Markets in the United States and Canada and retail clients of CIBC World Markets in Canada, and does not constitute an offer or solicitation to buy or sell any securities discussed herein in any jurisdiction where such offer or solicitation would be prohibited. This document and any of the products and information contained herein are not intended for the use of private investors in the United Kingdom. Such investors will not be able to enter into agreements or purchase products mentioned herein from CIBC World Markets plc. The comments and views expressed in this document are meant for the general interests of clients of CIBC World Markets Australia Limited.

The securities mentioned in this report may not be suitable for all types of investors. This report does not take into account the investment objectives, financial situation or specific needs of any particular client of CIBC World Markets. Recipients should consider this report as only a single factor in making an investment decision and should not rely solely on investment recommendations contained herein, if any, as a substitution for the exercise of independent judgment of the merits and risks of investments. The analyst writing the report is not a person or company with actual, implied or apparent authority to act on behalf of any issuer mentioned in the report. Before making an investment decision with respect to any security recommended in this report, the recipient should consider whether such recommendation is appropriate given the recipient's particular investment needs, objectives and financial circumstances. CIBC World Markets suggests that, prior to acting on any of the recommendations herein, Canadian retail clients of CIBC World Markets contact one of our client advisers in your jurisdiction to discuss your particular circumstances. Non-client recipients of this report who are not institutional investor clients of CIBC World Markets should consult with an independent financial advisor prior to making any investment decision based on this report or for any necessary explanation of its contents. CIBC World Markets will not treat non-client recipients as its clients solely by virtue of their receiving this report.

Past performance is not a guarantee of future results, and no representation or warranty, express or implied, is made regarding future performance of any security mentioned in this report. The price of the securities mentioned in this report and the income they produce may fluctuate and/or be adversely affected by exchange rates, and investors may realize losses on investments in such securities, including the loss of investment principal. CIBC World Markets accepts no liability for any loss arising from the use of information contained in this report, except to the extent that liability may arise under specific statutes or regulations applicable to CIBC World Markets.

Information, opinions and statistical data contained in this report were obtained or derived from sources believed to be reliable, but CIBC World Markets does not represent that any such information, opinion or statistical data is accurate or complete (with the exception of information contained in the Important Disclosures section of this report provided by CIBC World Markets or individual research analysts), and they should not be relied upon as such. All estimates, opinions and recommendations expressed herein constitute judgments as of the date of this report and are subject to change without notice.

Nothing in this report constitutes legal, accounting or tax advice. Since the levels and bases of taxation can change, any reference in this report to the impact of taxation should not be construed as offering tax advice on the tax consequences of investments. As with any investment having potential tax implications, clients should consult with their own independent tax adviser.

This report may provide addresses of, or contain hyperlinks to, Internet web sites. CIBC World Markets has not reviewed the linked Internet web site of any third party and takes no responsibility for the contents thereof. Each such address or hyperlink is provided solely for the recipient's convenience and information, and the content of linked third-party web sites is not in any way incorporated into this document. Recipients who choose to access such third-party web sites or follow such hyperlinks do so at their own risk.

Although each company issuing this report is a wholly owned subsidiary of Canadian Imperial Bank of Commerce ("CIBC"), each is solely responsible for its contractual obligations and commitments, and any securities products offered or recommended to or purchased or sold in any client accounts (i) will not be insured by the Federal Deposit Insurance Corporation ("FDIC"), the Canada Deposit Insurance Corporation or other similar deposit insurance, (ii) will not be deposits or other obligations of CIBC, (iii) will not be endorsed or guaranteed by CIBC, and (iv) will be subject to investment risks, including possible loss of the principal invested. The CIBC trademark is used under license.

Goldman Sachs Group

Management meetings: ever more confident

Company Update **NEUTRAL**

Equity | United States | Securities Broker/Dealer
13 March 2007

Merrill Lynch

Guy Moszkowski, CFA +1 212 449 7800
Research Analyst
MLPF&S
guy_moszkowski@ml.com

M. Patrick Davitt +1 212 449 1216
Research Analyst
MLPF&S
mpatrick_davitt@ml.com

Maureen Chang +1 212 449 6274
Research Analyst
MLPF&S
maureen_chang@ml.com

We met with GS Pres. and co-COO Jon Winkelried, CFO David Viniar, and Peter Kraus, co-head of Asset Mgmt.

Sub-prime small for GS, and maybe an opportunity

Management noted that sub-prime is not a large enough business for GS to pose any significant threat to earnings. However, breaking with previous caution, the firm is building a small origination effort. Recent turmoil will likely present distressed-mortgage opportunities for GS, we think.

GS comfortable with risk; sees less potential for relative revenue decline

The Co. has managed credit exposures carefully, so exposure is largely that of a credit trading revenue fall-off. GS' economically sensitive business mix has historically led to relatively steep declines in earnings from peak-to-trough, but management seems more confident than in the past that GS can out-earn peers throughout the cycle.

Focus is global, especially Emerging Markets

Unique positioning in China just beginning to gain traction and expected to drive meaningful revenue near-term; Russia franchise build on-track; India, Brazil seen as longer-term opportunities. Other Int'l opportunities seen in Middle East (flush with liquidity, and GS has considerable brand power) and Japan (activity picking up).

Franchise solid across-the-board; expansion continues

GS franchise remains the market leader with top market share in key businesses. Mgmt. believes GS can still improve positioning in markets like equity derivatives, structured products via better "connectivity" with the IB. Management anticipates most future growth will come organically.

Estimates (Nov)

(US$)	2005A	2006A	2007E	2008E	2009E
EPS	11.21	19.69	17.98	18.28	20.39
GAAP EPS	11.21	19.69	17.98	18.28	20.39
EPS Change (YoY)	25.7%	75.6%	-8.7%	1.7%	11.5%
Consensus EPS (First Call: 08-mar-2007)			19.25	20.52	NA
Dividend Rate	1.30	1.30	1.40	1.40	1.40

Valuation (Nov)

	2005A	2006A	2007E	2008E	2009E
P/E	18.1x	10.3x	11.3x	11.1x	9.9x
GAAP P/E	18.1x	10.3x	11.3x	11.1x	9.9x
Dividend Yield	0.5%	0.6%	0.7%	0.7%	0.7%

Stock Data

Price	US$202.60
Investment Opinion	B-2-7
Volatility Risk	MEDIUM
52-Week Range	US$136.79-222.75
Mrkt Val / Shares Out (mn)	US$89,103 / 439.8
ML Symbol / Exchange	GS / NYS
Bloomberg / Reuters	GS US / GS.N
ROE (2007E)	20.1%
Leverage (2006A)	85.8%
Est. 5-Yr EPS / DPS Growth	10.0% / 0%

Quarterly Earnings Estimates

	2006	2007
Q1	5.08A	5.07E
Q2	4.78A	4.39E
Q3	3.26A	3.51E
Q4	6.59A	5.01E

Refer to important disclosures on page 15 to 16. Analyst Certification on page 14.
11595456

EXHIBIT
PENGAD 800-631-6989
Porten 7
5/1/15 TD

Merrill Lynch Goldman Sachs Group

13 March 2007

iQprofile℠ Goldman Sachs Group

Income Statement Data (Nov)

(US$ Millions)	2005A	2006A	2007E	2008E	2009E
Net Revenues	25,238	37,681	37,212	37,815	40,597
Compensation & Benefits	(11,758)	(15,620)	(16,353)	(16,714)	(17,863)
% of Net Revenue	46.6	42.0	43.9	44.2	44.0
Non-Compensation Expenses	(4,821)	(6,879)	(7,405)	(7,722)	(8,054)
Net Income to Ordinary Shareholders	5,995	9,820	8,736	8,701	9,554
Adjusted Net Income (Operating)	5,995	9,820	8,736	8,701	9,554

Balance Sheet Data (Nov)

(US$ Millions)	2005A	2006A	2007E	2008E	2009E
Total Assets	706,804	838,201	955,937	1,099,328	1,209,261
Total Shareholders' Equity	28,002	35,786	51,198	45,550	51,198
Net Assets	534,447	631,972	NA	NA	NA
Tangible Shareholders' Equity	NA	NA	NA	NA	NA
BVPS (Stated Equity)	57.02	72.62	83.93	96.22	109.16
% growth	12.3	27.4	15.6	14.6	13.5

Trading (Nov)

(US$ Millions)	2005A	2006A	2007E	2008E	2009E
Net Trading Rev (Princ Trans+Net Int)	12,935	19,830	21,362	21,580	23,548
% growth	18.8	53.3	7.7	1.0	9.1
ROA (Net Trad Rev/Ave Bal Sht Assts)	2.07%	2.47%	2.36%	2.10%	2.04%
Value-at-Risk	70	101	NA	NA	NA
VaR as a % of Total Equity	0.25%	0.28%	NA	NA	NA

Investment Banking (Nov)

(US$ Millions)	2005A	2006A	2007E	2008E	2009E
Financial Advisory Revenues	1,905	2,580	2,865	1,553	1,608
Equity Underwriting Revenues	704	1,365	1,320	1,826	1,917
Debt Underwriting Revenues	1,062	1,684	1,825	2,050	2,193
Total Investment Banking Revenue	3,671	5,629	6,010	5,428	5,718
% growth	8.8	53.3	6.8	-9.7	5.3

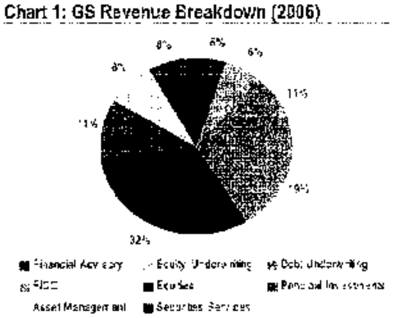
Performance Metrics (Nov)

(US$ Millions)	2005A	2006A	2007E	2008E	2009E
ROE (Stated Equity)	22.6%	30.8%	20.1%	16.3%	19.7%
Operating Margin	34.3%	39.8%	36.2%	35.4%	36.2%
Pre-Tax Profit Margin	34.3%	39.8%	36.2%	35.4%	36.2%
Net Profit Margin	23.8%	26.1%	23.5%	23.0%	23.5%
Comp Expense/Revenue	46.6%	42.0%	43.9%	44.2%	44.0%
Non-Comp Expense / Revenue	19.1%	18.3%	19.9%	20.4%	19.8%
Net Revenue Growth	20.5%	49.3%	-1.2%	1.5%	7.4%
Operating Expense Growth	19.2%	36.9%	4.7%	2.3%	6.1%
Operating Income / Average Assets	4.0%	4.7%	4.1%	3.7%	3.5%
Trading-Related Revenue / Net Revenue	51.3%	52.6%	57.4%	57.1%	58.0%
Asset Management & Fee Rev / Net Rev	12.6%	11.4%	12.2%	14.2%	14.0%
Total Employees (Actual)	23,623	26,467	NA	NA	NA

Company Description

Goldman Sachs is a consistent top-tier global player in key high-margin lines of business such as Equity Underwriting and M&A. It is one of two dominant Prime Brokers to the fast-growing hedge fund industry. The asset mgmt unit has been among the industry's fastest growing. Much of recent growth has been in trading revenues, which are considered less predictable, but which have generated around 2% or more of avg. balance sheet assets each year.

Chart 1: GS Revenue Breakdown (2006)



Source: Company reports and Merrill Lynch

Stock Data

Average Daily Volume	7,386,715
Brokers Covered (FirstCall)	19

New Management Team

The new management team

It has now been about 9 months since the new senior management team coalesced around Chairman and CEO Lloyd Blankfein following the departure of Hank Paulson to become US Secretary of the Treasury. with Jon Winkelried and Gary Cohn, named as Presidents and COO's. Winkelried, who spent much of his career managing aspects of Goldman's FICC businesses before moving into the Investment Bank, spends most of his time now with the IB and the Private Equity/ Merchant banking businesses, while Cohn oversees Sales & Trading and Asset Management. While it is clear that all three of the senior-most members of the management team have their roots primarily in the markets businesses, Winkelried's "embeddedness" in the IB, along with Goldman's collaborative culture of low silo barriers, ensures that the units continue to work together as seamlessly as anywhere in the industry, and probably more so.

Consistent record of innovation

The firm has been at the forefront of recognizing industry change and navigating through it. Examples include

- the successful restructuring of the Equities business in the face of declining commissions;
- the decision to maintain strength in Commodities over many years, and then to build on it in a timely way ahead of the recent boom; and
- the anticipation of credit disintermediation, employing "disruptive technology" to create a large business in an area that had largely been the purview of the banks.

Goldman was not alone in each of these moves, but we think it's fair to say it was an early mover in each and the only firm in our coverage to get all of them about right (among other things).

Opportunity seen in sub-prime assets

Sub-prime: good business over cycle, though relatively small for GS

Mortgages generally are a much smaller part of GS' business than at some other firms such as Lehman and Bear Stearns, but are nonetheless an important asset class in which the firm actively participates. Sub prime is a part of the mortgage business which, while experiencing a meaningful downturn in part because of a 2006 collapse in lending standards, is nonetheless quite attractive over the full cycle.

Building small origination effort

Interestingly, while GS has previously expressed concern over potential reputation issues in this arena, Viniar noted that the firm is cautiously building a small origination effort. While exposure is not at this point meaningful for GS, the fact that the firm is dipping a toe in sends a positive signal about recovery potential, in our view, though it is only a small effort and Viniar (like others) believes the mess could worsen near-term.

We would not rule out a small acquisition at a fire-sale price. GS' warehouse and other exposures in and Alt-A are very small and manageable, and while the firm is certainly observing distress in the sector, assets are still trading, and pre-'06 vintages are in good shape. Warehouse exposures are being treated like securities lending: careful and timely risk management via mark-to-market, margin calls, position close-outs, etc. The firm also believes it will have distressed-mortgage opportunities ahead.

Risk Management: comfortable with market risk

GS keeps "dry powder" to exploit market dislocation

Given the degree to which many markets have been priced for perfection, the question arose as to when, over the past few years, has the firm taken risk levels down materially. Viniar said that, in the post-2002 period, it really only happened in 3Q06, as the firm saw fewer opportunities in a period of heightened uncertainty. This was the collective result of many individual decisions around the firm, rather than a top-down choice. The general philosophy is to increase "dry powder" as markets become choppier/less certain so as to have the ability to take advantage of valuation opportunities, but again this is cultural, rather than by edict. (We should note that this was shortly before the recent pickup in market volatility). The firm has proven itself, we think, exceptionally nimble in navigating the financial cross-currents and being positioned not just to deal with risk but to profit from managing its own, and its clients' risks.

In order to mitigate "long-tail", multiple-standard-deviation risks, the firm spends a considerable amount of "insurance" money on protective positions such as deep-out-of-the-money puts, CDS indices, etc., even though to date, these have mostly been useless. The firm also keeps enormous amounts of liquid, unencumbered assets, to ease its passage through any periods of illiquidity that could arise.

Careful on Credit; exposure mainly to a flow-business revenue decline

While credit risk as a percentage of the total balance sheet, or total VaR, has grown, the firm is still more comfortable with market risk than credit risk, so the credit exposures are managed exceptionally carefully. Therefore, the company feels that it is more exposed to the risk of a simple decline in revenue from credit trading than to default risk. While it accepts that bridge commitments are today a key part of the "franchise" M&A business, Goldman believes that mitigation of these risks is best achieved through rapid sale of the exposure, and approaches every transaction in this way, even though credit derivatives may be used to an extent. Since it views lending on a stand-alone basis as a relatively low-return business, the emphasis is definitely on quick turnover. However, knowing that some deals will get "hung" on the balance sheet, Goldman is stringent on its credit analysis and on its insistence on the quality of the companies it lends to.

GS expects to out-earn rivals across the cycle... and at the bottom

Given its business mix and willingness to be somewhat more aggressive in risk-taking than its peers, we have generally thought of GS as likely to out-earn its peer group in ROE terms at the top of the cycle and over the full cycle; but this implies the possibility of a greater peak-to-trough decline in ROE than the peer group. Winkelried believes "strongly" that this is not the case today (though we'd point out it has been in the past), and that the company can out-earn peers at each point in the cycle. The implication is that between better risk management, the capital management exercise of the past couple of years that has taken out excess capital, and the richer business mix, GS has achieved a consistently higher-earning franchise; Winkelried believes that the gap between Goldman and its competitors has widened "dramatically" since the 2000-2002 slump. Other elements include the highly diversified business mix, and the build-out of what are expected to be counter-cyclical businesses such as distressed assets and restructuring. Clearly only time will tell, but the fact that a top-management executive would state this so confidently is at least worth noting. Also, the materially higher P/B ratio that GS commands in the stock market would indicate at least in part that the market believes this is the case.

Capital management

Viniar expects capital management to proceed as it has over the past couple of years: striking a balance between producing ample book value growth, and keeping capital levels at a level upon which an acceptable ROE can be produced without taking excessive risk. This of course implies that fairly robust buybacks can be expected if the environment remains anything like it has been, helping GS produce ROEs well in excess of 20%.

International business increasingly important

GS continues to view growth as likely to be faster outside the US, and thus that its non-US business will continue to grow as a share of the total; this remains a principal building block of the firm's strategy. In 2006, Americas pretax earnings were 52% of total, down from nearly 60% in 2004; net revenues were 54% Americas, vs. 59% 2 years earlier. Over this period, the most significant contributor to growth of revenues and earnings, regionally, has been Asia, whose revenue contribution rose from 17% to 21% and whose pretax earnings contribution rose from 25% to 28%. This indicates that not only is Asia's margin considerably higher than the others, but that it is improving.

Table 1: Net revenue and pre-tax earnings by region

	2004	2005	2006
Net Revenues			
Americas	12,312	14,839	20,361
EMEA	5,107	5,863	9,354
Asia	3,532	4,536	7,950
Total Net Revenues	20,951	25,238	37,665
Pre-tax earnings			
Americas	3,976	4,977	7,515
EMEA	1,212	1,457	3,075
Asia	1,672	1,876	4,015
Corporate	(184)	(37)	(45)
Total pre-tax earnings	6,676	8,273	14,560

Source: Company reports and Merrill Lynch

Chart 2: Pre-tax margin by region

Source: Company reports and Merrill Lynch

PE gain contribution to global revenue drives noticeably higher margin

This said, it's important to note that over the past several years, Private Equity gains (notably Sumitomo over the whole period, ICBC and Accordia last year) have contributed heavily to Asia earnings, and we believe the margin associated with these revenues is higher than the average. If the PE contribution to Asian (and overall global) revenue declines materially, it could have a noticeable margin impact, we believe.

Emerging mkts. expansion continues: BRIC and Beyond

Brazil, Russia, India and China will be focus of GS int'l investment

Still, with the company just beginning to exploit its particularly advantageous China positioning (only UBS has been granted comparable licensing/control over its local-markets China business), prospects in that country look exceptional. Goldman is working on its first domestic deal, for Ping An insurance (one of its own former Private Equity portfolio companies). Considerable privatization activity still lies ahead, and Chinese companies are increasingly looking beyond their borders at mergers and other opportunities. Meanwhile, the Chinese securities authority (CSRC) is now requiring that companies seeking a foreign listing (i.e., Hong Kong) also have a domestic listing. Given the current state of licensing, only GS and UBS are positioned to handle both transactions for these Chinese corporates. The firm believes that China will be a meaningful revenue market in the very near future, across numerous key product lines – Equity underwriting, Private Equity, and others. Notwithstanding the recent bout of stock-market volatility, the market has performed well, and with a significant buildup of liquid wealth in China, people are interested in becoming investors. Not too many years ago, most China talk from financial companies was on the order of "big long-term payoff but many years away", so this is a decidedly different take. Indeed, though some opportunities may emerge faster than others, there are no important regions at this point that are not profitable for Goldman, and the development of global capital markets has been so rapid in recent years that revenue opportunities are emerging sooner than might have been expected. After the Europe buildout was begun in the 80's, it took 15 years for London to become profitable; China reached profitability much faster.

In Russia, the firm is cautious because of potential reputational issues and concerns over property rights, so business selection issues are crucial; but given the growing importance of the market and its companies, and with the expectation that some of the world's largest deals will be there in the near future, GS is proceeding with its franchise build. Large Russian companies are increasingly outward-focused, trying to establish global footholds in industries as diverse as mining, forest products, steel, and automotive. In addition to serving Russian clients, Goldman needs to understand the dynamics to the extent that they also will affect the firm's other clients globally. As with China, GS anticipates significant revenue to emerge from this market in relatively short order.

India and Brazil opportunity more long-term

India's fast-growing economy is also one where there is considerable IB and markets opportunity, although it is more competitive than China, and Goldman in particular does not have the degree of early-mover advantage it has in China. Nonetheless, GS continues to grow its investment in the market and as has been previously reported, dissolved a longstanding joint venture in order to have full control of its India business. The view on this market is that it will take somewhat longer to develop into a meaningful contributor.

Brazil is a market where Goldman was unable to make an acquisition that it sought at what it felt was the right price (the property, Banco Pactual, ultimately went to UBS), but GS has the licenses it needs now and will proceed on its own. As with India, this is seen as a relatively longer-term opportunity.

Middle East and Japan present significant opportunities, as well

The Middle East is flush with liquidity that is seeking global opportunities, and the Goldman brand franchise is very strong there. Goldman's initial strategy in many regions has often been to joint-venture, and in February, it signed a Memo of Understanding to form a venture with National Commercial Bank of Saudi Arabia, in addition to having established new offices in the Emirates last year.

Goldman is continuing to see considerable activity in Japan, across a number of product sets: equities, debt underwriting, and a relatively new phenomenon for the market, hostile takeovers.

Private Equity market strong

GS generates attractive economics by distributing 3rd party funds...

Overall conditions in the Private equity market remain very strong, Winkelried observed, with no recent changes in the pace of investment. He continues to see an upswing though in the number of opportunities, and the ability to execute on them, outside the US. Demand to invest in funds remains reasonably strong. One new dynamic is the degree to which Goldman is involved in raising funds for private pools (in contrast to IPOs of Private Equity general partners or of specific funds, an activity in which GS has also participated recently). Given the reach of its ultra-high-net-worth private client group, GS has been able to raise meaningful amounts of capital for some of these firms with longer-than-normal lockups, which of course the sponsors find very appealing. What is particularly notable is that the perceived value-added of GS' efforts, and of its imprimatur, is significant enough that Goldman appears to be able, in some cases, to share significantly in the GP's fee structure on the funds raised – i.e., it can receive what we believe is a substantial portion of both the management fee and the carried interest.

... while raising its own new mega-fund

Meanwhile, GS is in the process of raising its latest general fund, which according to press reports is in the range of $19bn, nearly double its original target (and a number which we believe is substantially correct). We estimate about 30% of this will be subscribed internally, by GS for its own account and by employees; and that the remainder will be taken up by a combination of high-net-worth and institutional clients. Winkelried indicated, responding to a question about the degree to which opportunities still exist given how much private equity money is now out chasing deals, that there is already a backlog of ideas for the new fund that could use about ¼ of its capital.

Fund focus has turned to big-ticket transactions, allowing GS to make smaller on-balance-sheet investments

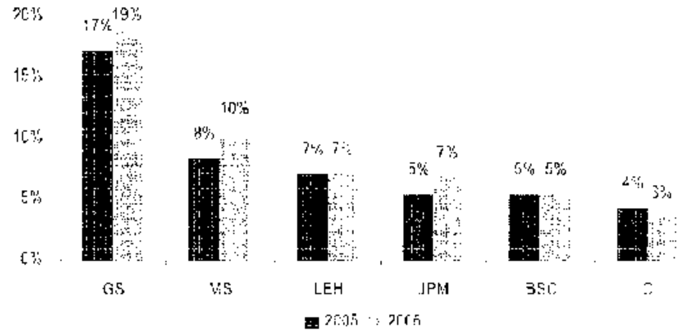
With the firm's funds now very large, their focus is on very big-ticket transactions; transactions under $100mn are generally not on their radar screen. This creates an opportunity for the firm to invest its own assets in $25 -100 million transactions, and given the IB's expanded scope into more middle-market clientele, there may be considerable opportunity here as well. Current policy requires that any deal of $180 million + be shown to the new fund, GS VI; the range of transaction targets for the firm's own account may therefore be expanded to $25-180 million.

Infrastructure, as the firm has alluded to in every meeting with us over the past year, is quickly becoming a major private-equity focus for Goldman (and others) because of the scale of the opportunity, as public sector entities look to free up capital and long-term investors seek opportunities to match investments with their long-tail liabilities like pensions.

The firm has had an important Real Estate private equity effort for many years, but Winkelried sees increasing convergence between this area and corporate Private Equity. The resources in place are being reassessed, and it appears that, in conjunction with the IB, a financing capability akin to corporate Leveraged Finance will be put in place.

Overall, GS has produced more PE-related revenue (fund management, carried interests, gains, and related IB revenues) than peers. We have attempted to quantify this by identifying revenue from all the above though admittedly we may have missed some elements. Even so, the analysis indicates significantly stronger PE-related revenues as a percentage of Net Revenues, when compared to the peer group (see Chart 3).

Chart 3: Percentage of Private Equity Revenue Contribution to Net Revenues



Source: Company reports and Merrill Lynch

Conflict Management skill maximizes franchise value

As always, discussion of Private Equity gives rise to concerns over conflicts, and there are always plenty of complaints that Goldman walks a very fine line between its clients' interests and its own. But the consistency with which the firm has avoided crossing the line and damaging its reputation is such that it must be doing something right. The conflict management process is clearly taken extremely seriously at the firm, since it is viewed as not just a by-product but a key pillar of the firm's franchise business. Though the process is highly structured and rigorous, 20% of the conflicts end up at the top of the firm.

Goldman manages conflicts, rather than simply avoiding them, in order to maximize the value of its franchise, and as an institution, it sees far more principal investing opportunities as a result of that franchise than it would without it. The ICBC investment in China is a great example.

Market's risk appetite remains healthy

GS believes market risk appetite remains healthy

We have recently been concerned about a global "attitude adjustment" that may be developing with respect to risk tolerance and risk pricing. Our meeting was held just prior to the recent market turmoil, but at that time, at least, GS was not seeing any meaningful shift, with the financing markets robust and liquid; and indeed, recently, Texas Pacific and TXU were able, for example, to line up considerable financing for their deal, including substantial "equity bridges" from Wall St. Still, Winkelried is clearly aware that one of the most significant potential negative changes would be if this liquidity dried up. And of course, to the extent that Wall Street firms are increasingly providing bridges, the risk of being caught with "hung deals", if liquidity contracts, is rising.

Where does the firm see issues that could result in a cyclical break? Winkelried expressed some concern that the housing finance woes could bleed into other areas of the markets, such as Alt-A (indeed there is evidence that this is happening), prime mortgages, other consumer finance, and/or commercial real estate. He noted, although the housing-finance issues seem quite contained now, and investor liquidity is massive, that events and perceptions can turn quickly. If a highly visible buyout were to fall apart due to an inability to arrange financing, Winkelried observed this might trigger a re-evaluation of credit spreads and deal activity in the M&A and equity markets. Finally, the markets have put geopolitical risk concerns on the back burner for the past few years, but they are clearly still there.

Franchise competitive position solid

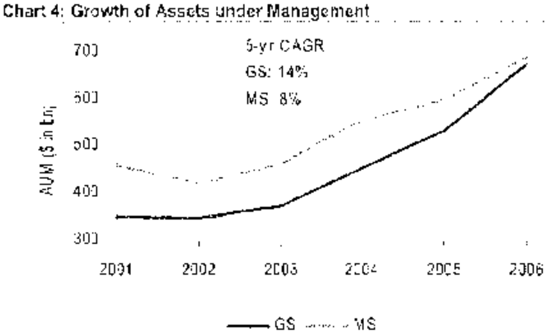
As always, Goldman believes strongly that, notwithstanding opinions to the contrary, its "franchise" customer businesses, such as Investment Banking/ Advisory, are highly interconnected with its principal investing activities, such as Private Equity. As has long been the case, the company remained #1 in M&A globally last year, and management believes this is important on many levels. This said, it's clear that numerous other players covet this standing, and Goldman is nothing if not rational. The implication is that if one or another firm feels it is worth "buying" league table position via uneconomic devices such as writing free fairness opinions, so be it, and advisory fess are generally under some pressure, as has been the case for some time. In any one quarter, a combination of events, such as GS finding itself "conflicted out" of large deals, plus unusual competitiveness via ancillary assignments such as fairness opinions and financing, could certainly take GS out of the top position. Also, the geographical mix of activity can affect the firm's relative position in any one period, notwithstanding that GS seems to lead in all major regions during most periods. Still, based on first quarter IB results, Winkelried seemed very pleased with the firm's position, and unconcerned that GS would fall below its traditional leading position in generating actual M&A fee dollars. And he did not seem to feel that any one firm posed an immediate threat to GS' #1 status in M&A.

Beyond M&A, the firm is working on continuing to build better product capability in markets areas like derivatives, believing for example that Equity derivatives should be twice the size for GS that it actually is; and Structured Products. It is also continuing to improve "connectivity" between these product areas and the IB, even though GS is arguably better at this already than most of its competitors.

GSAM momentum continues

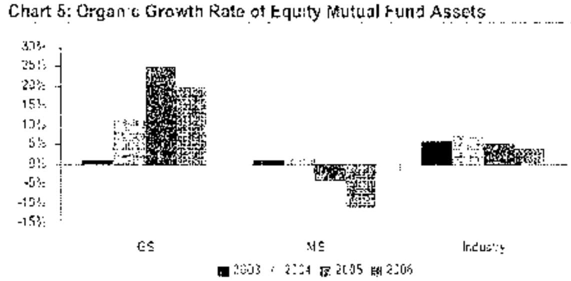
GSAM has posted industry-leading total and organic growth rates of total Assets under Management for several years (organic growth is defined as that coming from net new inflows of customer assets, net of any growth via market returns).

Chart 4: Growth of Assets under Management



Source: Company reports and Merrill Lynch

Chart 5: Organic Growth Rate of Equity Mutual Fund Assets



Source: Simfund

CONFIDENTIAL PORTEN-00012290

Focus on alternative products has helped GSAM create a modern asset management brand

We believe one driver has been the fact that, with GS really only beginning its focused buildout in the business around 1995, it has been able to create an investment management business in the modern image (i.e. serious attention to Alternatives, and to international distribution). This said, Alternative assets only accounted, as of year-end, for 21% of AUM, so clearly there's more to it than that.

Kraus believes that the firm's rapid growth comes from a combination of:

- product breadth,
- having the right products for the market, and
- effective distribution and global product and market reach.

In terms of alternatives, GS is very large where others aren't; an example is quant products, rather than long/short or credit-oriented funds (where his comment seemed to imply Goldman sees overcapacity and commoditization in the market). He also noted the firm's large presence in the Fund-of-Funds marketplace, stemming from the acquisition in the 90s of Commodity Corp., and now encompassing externally-managed Hedge, Private Equity, and more traditional long-only products.

He also attributes the rapid growth in recent years to the fact that, in numerous key product areas, the firm has put together good, saleable track records, yet is still quite small relative to key competitors: in Fixed Income, for example, GSAM is 1/3 the size of Blackrock, and just 1/4 the size of Pimco. In Quantitative Equity, GSAM is considerably smaller than BGI (Barclays), and most of its active-equity products are still smaller than major competitors. This said, it should be borne in mind that GSAM, in aggregate, is now of world-class size, with nearly $700 billion in AUM as of 11/06, so it's not quite the fast-growing upstart it once was.

GSAM has also done portfolio-team lift-outs to bring in fund-management talent and customer assets.

Distribution strength across key global markets is also one of the hallmarks Kraus mentioned as key. The firm has invested heavily over the past decade to build distribution in Europe, Asia, and Latin America in addition to North America, across customer types: institutional, high-net-worth, and third-party. The ultra-HNW channel in particular is one in which Goldman has a differentiated franchise and which has been particularly active in distribution of high-margin alternative, fund-of-funds, and structured products. Goldman is also generally recognized as working the linkages among its various businesses more seamlessly to "blanket" clients than any other firm on Wall Street, and we think this very much applies with respect to GSAM Private Client and its co-operation with Investment Banking. When IB is present at a wealth-creating event for a corporate management team, the bankers have done, in our view, a good job making sure that GSAM is there to pitch its wealth management capabilities.

Internationally, GSAM has a significant position across a number of segments in Japan, and has started a business in China, where it is licensed as a Qualified Foreign Investor (QFII) and benefits strongly, we believe, from Goldman's highly advantaged position in terms of its brokerage and banking licenses. GSAM began to focus on developing a presence in China around 3-4 years ago, after many years of firm franchise-building efforts and as it became clear the opportunity was beginning to ripen. The QFII license meant that a research capability could be developed on the ground in Shanghai, that investors could be solicited outside China for a China product, and that a track record in China equities could begin to be developed. In the intervening period, that track record has, fortunately, developed well, with a solid mid-cap core equity product with 10 percentage points of alpha (vs an index that is admittedly not very efficient). Eventually, it may become possible to sell the China products within the market, to domestic buyers.

GSAM has also assembled a portfolio management team in India, and expects both China and India to become very meaningful over time. As with other country-focused teams, they also support the broader Global and Emerging Markets businesses.

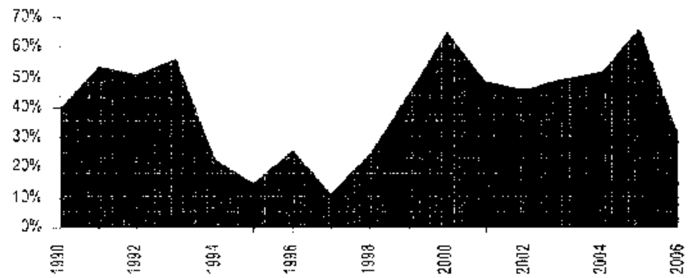
Positive operating leverage emerging, but aggressive investment continues to hold back margins, we think.

From an overall profitability point of view, Kraus noted that, after 12 years of steady re-investment, GSAM is now starting to see some of the benefits of its scale in positive operating leverage. This said, it's clear that a great deal of investment in growth is still taking place in Emerging Markets, and that these markets are thus unlikely to become "cash cows" for a long time to come. The overall margin level for the combined "Asset Management and Securities Services" business segment has been 35%-plus in recent years (38% in 2006) but the segment definition is too broad to be really useful in assessing GSAM; Securities Services (fundamentally, prime brokerage & clearing) is quite a large business for GS and very different from GSAM. We believe GSAM at this point produces an industry-like margin (around 30%), or perhaps still slightly below due to significant reinvestment. Because he expects continued rapid growth of the firm's other businesses, Kraus does not anticipate that Asset Management revenues will grow quickly as a percent of GS' total going forward. Businesses such as FICC risk meaningful amounts of the firm's capital, do well over time and thus generate more capital, which they will largely re-invest if opportunities permit, perpetuating their growth in a way that's different from less capital-intensive businesses such as GSAM.

Relative performance of Institutional products is hard to track

Rapid growth as we have seen at GSAM is generally also at least in good measure a response to strong performance. This said, GS is primarily an institutional and high-net-worth player, with only 20% of AUM in US mutual funds, whose performance can be easily tracked (10% of GS fixed-income AUM, and 15% of its equity AUM are in US mutuals). Thus it is hard to gauge how performance is tracking and when a significant reversal in relative performance may have occurred. So, though the long-term growth record should make one cautious about betting against GSAM's ability to continue growing quickly, the risk of a slowdown can't be ruled out, and if it happens, it will be hard to see coming from the outside. Kraus did allow that GSAM's Active Equity products were somewhat challenged in 2006, with most products "average" performers, in line with what we saw happening in the industry general – it became much harder than it has been for most active managers to beat the index.

Chart 6: % of Equity Mutual Fund Managers Outperforming the S&P



Source: SimFund

Actually, though, despite the apparent difficulty in beating US benchmarks, Kraus indicated that the most difficult area has been non-US developed-markets equity, where he is clearly dissatisfied with performance and thus with the size of the business, and where new leadership has thus recently been brought in. This product area will now, it appears, become more research/ analytically driven. In contrast, Emerging Markets equity products have done well, with "billions of dollars" of net asset inflows.

Alternatives still growing; Global Alpha revenue fall-off will be offset

Considerable publicity has surrounded the apparent underperformance last year of the multi-billion-dollar "Global Alpha" hedge fund, and the consequent decline in performance fees to be expected in 1Q07 vs. year-ago. Kraus conceded that HF product's performance has been less strong than desired but believes there are no fundamental issues with product design or investment strategy; no significant changes in management are being made. In terms of the decline in fees, we'd note that GSAM asset growth overall has been so strong that the rise in standard management fees vs. year-ago should go a long way toward offsetting what we estimate as about a $400+ million decline in incentive fees. Goldman views performance fees as an option and is trying to develop a broad portfolio of them, which should stabilize revenue – not all that different, in a sense, from the approach (and reality) of the firm's trading businesses, e.g. FICC.

As to the eternal question of whether too many funds are chasing the available opportunities in both Hedge Funds and Private Equity, Kraus's view is that this depends on the specific asset class, but overall he believes that, even if returns are less than they have been in previous years, they will still be adequate and that the diversifying effect on overall portfolios will keep investors involved. In general, it is clear that he is very happy with GSAM's position in Alternatives (the Private Equity funds as well as the Hedge Fund products are carried within GSAM) and that he far prefers GS' history of largely organic growth to the risks of cobbling together a business by buying stakes in the general partners managing the funds.

Private client expanding into slightly lower "high-net-worth" tiers, and internationally

While GS has historically been associated, on the private-client side, with the "Ultra-HNW" segment, the firm is developing a suite of services for the next tier down, to include a number of quantitative strategies, third-party-distributed products, and more of an outreach to emerging-wealth markets such as India, China, and Korea. Both proprietary fund management products and funds of funds/manager of managers products are featured in the Emerging Markets.

Beyond Emerging Markets, GSAM is also expanding its high net worth/Private banking footprint in developed markets of Europe, seeing opportunity in France, Scandinavia, Germany, and Italy; and is building a Middle-East focused offshore private banking business, encompassing 20 or more professionals in London and GS' Swiss private bank.

This initiative will probably drive continued growth in the number of private bankers at GSAM, now around 500-600 globally, we believe; though clearly finding, recruiting, and retaining quality personnel is challenging (an issue across many businesses within the emerging markets). Overall, though, the firm expects to accelerate its private-client sales-force growth from high-single-digits to 10-12%; the expense impact will continue to hold back margins for some time from what they could be but the investment is clearly viewed as worth being patient about. While acquisitions can be attractive, and GS is clearly very pleased with its Ayco acquisition a few years ago, there is very little available, so most growth will be organic.

Table 2: GS Income Statement ($ in mn)

	1Q06 end 2/06	2Q06 end 5/06	3Q06 end 8/06	4Q06 end 11/06	1Q07E end 2/07	2005 end 11/05	2006 end 11/06	2007E end 11/07	2008E end 11/08
REVENUES									
Commissions	842	936	844	896	941	2,975	3,518	3,861	4,078
Net Interest	721	778	953	1,030	1,550	3,025	3,496	4,500	4,500
Trading	5,150	5,692	3,094	3,756	5,545	10,249	17,692	16,862	17,080
Investments/Private Equity/Merchant Bank	695	293	430	1,399	295	2,228	2,817	1,045	1,000
Principal Transactions	5,845	5,985	3,524	5,155	5,840	12,477	20,509	17,907	18,080
Financial Advisory	736	608	609	627	775	1,905	2,580	2,865	1,553
Underwriting	735	918	679	717	805	1,766	3,049	3,145	3,875
Investment Banking	1,471	1,526	1,288	1,344	1,580	3,671	5,629	6,010	5,428
Asset Management & Fees	1,489	954	918	933	1,265	3,178	4,294	4,551	5,368
Other Revenues	65	62	57	49	90	(88)	233	360	360
Net Revenues	**10,433**	**10,241**	**7,584**	**9,407**	**10,766**	**25,238**	**37,665**	**37,212**	**37,815**
Net Trading Revenues	*5,871*	*5,626*	*4,047*	*4,286*	*6,595*	*12,935*	*19,890*	*21,362*	*21,580*
EXPENSES									
Comp/Net Revenues	*48.7%*	*48.5%*	*44.8%*	*25.3%*	*47.5%*	*46.6%*	*42.0%*	*43.9%*	*44.2%*
Compensation & Benefits	5,077	4,970	3,397	2,376	5,114	11,758	15,820	16,353	16,714
Amortization of IPO Awards/123R Charges	237	138	133	129	NA	NA	637	NA	NA
Communications/ Technology	124	131	141	148	150	490	544	615	633
Office/ Equip./ Depr./ Amort.	318	326	347	380	375	1,229	1,371	1,515	1,576
Professional Services (1)	418	462	413	521	500	1,400	1,814	1,990	2,090
Advertising/ Business Development	100	121	117	154	170	378	492	675	689
Brokerage, Clearing & Exchange Fees	351	403	523	571	600	1,202	1,848	2,430	2,552
Cost of Power Generation	65	122	101	98	100	NA	406	400	400
Intangibles Amortization	34	44	50	45	45	124	173	180	184
Non-Compensation Expense	*1,430*	*1,609*	*1,692*	*1,917*	*1,940*	*5,207*	*6,648*	*7,805*	*8,122*
Total Operating Expenses	**6,744**	**6,717**	**5,222**	**4,422**	**7,054**	**16,965**	**23,105**	**24,158**	**24,837**
Income (Loss) Before Inc. Taxes & Other	3,689	3,524	2,362	4,985	3,712	8,273	14,560	13,055	12,979
Income Taxes (Benefit)	1,210	1,212	768	1,833	1,295	2,647	5,023	4,519	4,478
Tax Rate	*32.8%*	*34.4%*	*32.5%*	*36.8%*	*34.9%*	*32.0%*	*34.5%*	*34.6%*	*34.5%*
NET INCOME (LOSS)	2,479	2,312	1,594	3,152	2,416	5,626	9,537	8,536	8,501
INCOME FOR COMMON	2,453	2,266	1,555	3,104	2,366	5,609	9,398	8,336	8,301
Average Shares									
Basic	457.3	449.7	449.4	439.8	445.0	478.1	451.7	437.8	428.3
Diluted	483.3	478.3	477.4	470.7	466.5	500.2	477.4	463.5	454.0
EARNINGS PER SHARE									
Basic	$5.36	$5.08	$3.46	$7.06	$5.32	$11.73	$20.81	$19.04	$19.38
Diluted	$5.06	$4.78	$3.26	$6.59	$5.07	$11.21	$19.63	$17.98	$18.28

Source: Company reports and Merrill Lynch

Analyst Certification

I, Guy Moszkowski, CFA, hereby certify that the views expressed in this research report accurately reflect my personal views about the subject securities and issuers. I also certify that no part of my compensation was, is, or will be, directly or indirectly, related to the specific recommendations or view expressed in this research report.

iQmethod℠ Measures Definitions

Business Performance	Numerator	Denominator
Return On Capital Employed	NOPAT = (EBIT + Interest Income) * (1 - Tax Rate) + Goodwill Amortization	Total Assets – Current Liabilities + ST Debt + Accumulated Goodwill Amortization
Return On Equity	Net Income	Shareholders' Equity
Operating Margin	Operating Profit	Sales
Earnings Growth	Expected 5-Year CAGR From Latest Actual	N/A
Free Cash Flow	Cash Flow From Operations – Total Capex	N/A
Quality of Earnings		
Cash Realization Ratio	Cash Flow From Operations	Net Income
Asset Replacement Ratio	Capex	Depreciation
Tax Rate	Tax Charge	Pre-Tax Income
Net Debt-To-Equity Ratio	Net Debt = Total Debt, Less Cash & Equivalents	Total Equity
Interest Cover	EBIT	Interest Expense
Valuation Toolkit		
Price / Earnings Ratio	Current Share Price	Diluted Earnings Per Share (Basis As Specified)
Price / Book Value	Current Share Price	Shareholders' Equity / Current Basic Shares
Dividend Yield	Annualised Declared Cash Dividend	Current Share Price
Free Cash Flow Yield	Cash Flow From Operations – Total Capex	Market Cap. = Current Share Price * Current Basic Shares
Enterprise Value / Sales	EV = Current Share Price * Current Shares + Minority Equity + Net Debt + Other LT Liabilities	Sales
EV / EBITDA	Enterprise Value	Basic EBIT + Depreciation + Amortization

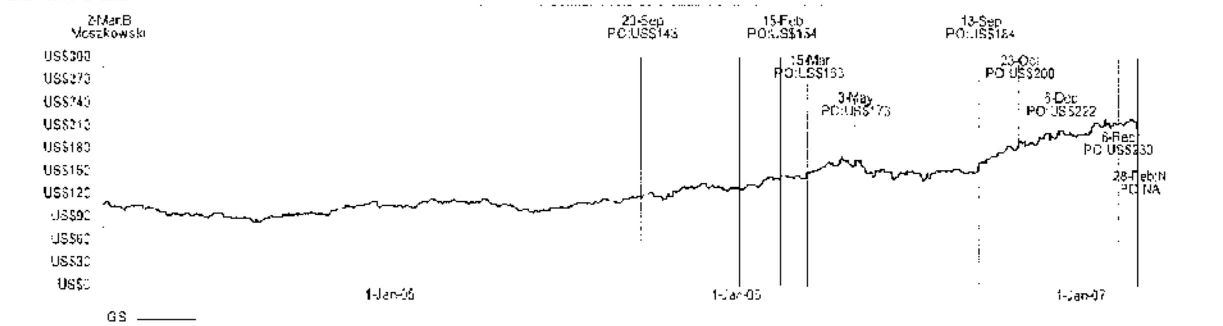
iQmethod℠ is the set of Merrill Lynch standard measures that serve to maintain global consistency under three broad headings: Business Performance, Quality of Earnings, and validations. The key features of iQmethod are: A consistently structured, detailed, and transparent methodology. Guidelines to maximize the effectiveness of the comparative valuation process, and to identify some common pitfalls.

iQdatabase® is our real-time global research database that is sourced directly from our equity analysts' earnings models and includes forecasted as well as historical data for income statements, balance sheets, and cash flow statements for companies covered by Merrill Lynch.

iQprofile℠, *iQmethod*℠ are service marks of Merrill Lynch & Co., Inc. *iQdatabase*® is a registered service mark of Merrill Lynch & Co., Inc.

Important Disclosures

GS Price Chart



B : Buy, N : Neutral, S : Sell, PO : Price objective, NA : No longer valid

The Investment Opinion System is contained at the end of the report under the heading "Fundamental Equity Opinion Key". Dark Grey shading indicates the security is restricted with the opinion suspended. Light Grey shading indicates the security is under review with the opinion withdrawn. Chart current as of February 25, 2007 or such later date as indicated.

Investment Rating Distribution: Financial Services Group (as of 31 Dec 2006)

Coverage Universe	Count	Percent	Inv. Banking Relationships*	Count	Percent
Buy	93	38.11%	Buy	47	50.54%
Neutral	140	57.38%	Neutral	69	49.29%
Sell	11	4.51%	Sell	4	36.36%

Investment Rating Distribution: Global Group (as of 31 Dec 2006)

Coverage Universe	Count	Percent	Inv. Banking Relationships*	Count	Percent
Buy	1306	42.74%	Buy	406	31.09%
Neutral	1509	49.38%	Neutral	446	29.56%
Sell	241	7.89%	Sell	53	21.99%

* Companies in respect of which MLPF&S or an affiliate has received compensation for investment banking services within the past 12 months.

FUNDAMENTAL EQUITY OPINION KEY: Opinions include a Volatility Risk Rating, an Investment Rating and an Income Rating. VOLATILITY RISK RATINGS, indicators of potential price fluctuation, are: A - Low, B - Medium, and C - High. INVESTMENT RATINGS, indicators of expected total return (price appreciation plus yield) within the 12-month period from the date of the initial rating, are: 1 - Buy (10% or more for Low and Medium Volatility Risk Securities - 20% or more for High Volatility Risk securities); 2 - Neutral (0-10% for Low and Medium Volatility Risk securities - 0-20% for High Volatility Risk securities); 3 - Sell (negative return); and 6 - No Rating. INCOME RATINGS, indicators of potential cash dividends, are: 7 - same/higher (dividend considered to be secure); 8 - same/lower (dividend not considered to be secure); and 9 - pays no cash dividend.

MLPF&S or one of its affiliates acts as a market maker for the securities recommended in the report: Goldman Sachs.

The company is or was, within the last 12 months, an investment banking client of MLPF&S and/or one or more of its affiliates: Goldman Sachs.

MLPF&S or an affiliate has received compensation from the company for non-investment banking services or products within the past 12 months: Goldman Sachs.

The company is or was, within the last 12 months, a non-securities business client of MLPF&S and/or one or more of its affiliates: Goldman Sachs.

MLPF&S or an affiliate has received compensation for investment banking services from this company within the past 12 months: Goldman Sachs.

MLPF&S or an affiliate expects to receive or intends to seek compensation for investment banking services from this company within the next three months: Goldman Sachs.

MLPF&S or one of its affiliates is willing to sell to, or buy from, clients the common equity of the company on a principal basis: Goldman Sachs.

The company is or was, within the last 12 months, a securities business client (non-investment banking) of MLPF&S and/or one or more of its affiliates: Goldman Sachs.

The analyst(s) responsible for covering the securities in this report receive compensation based upon, among other factors, the overall profitability of Merrill Lynch, including profits derived from investment banking revenues.

Other Important Disclosures

UK readers: MLPF&S or an affiliate is a liquidity provider for the securities discussed in this report.

MLPF&S or one of its affiliates has a significant financial interest in the fixed income instruments of the issuer. If this report was issued on or after the 10th day of a month, it reflects a significant financial interest on the last day of the previous month. Reports issued before the 10th day of a month reflect a significant financial interest at the end of the second month preceding the date of the report: Goldman Sachs.

Information relating to Non-U.S. affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S):

MLPF&S distributes research reports of the following non-US affiliates in the US (short name: legal name): Merrill Lynch (France): Merrill Lynch Capital Markets (France) SAS; Merrill Lynch (Frankfurt): Merrill Lynch International Bank Ltd, Frankfurt Branch; Merrill Lynch (South Africa): Merrill Lynch South Africa (Pty) Ltd; Merrill Lynch (Milan): Merrill Lynch International Bank Limited; MLPF&S (UK): Merrill Lynch, Pierce, Fenner & Smith Limited; Merrill Lynch (Australia): Merrill Lynch Equities (Australia) Limited; Merrill Lynch (Hong Kong): Merrill Lynch (Asia Pacific) Limited; Merrill Lynch (Singapore): Merrill Lynch (Singapore) Pte Ltd; Merrill Lynch (Canada): Merrill Lynch Canada Inc; Merrill Lynch (Mexico): Merrill Lynch Mexico, SA de CV, Casa de Bolsa; Merrill Lynch (Argentina): Merrill Lynch Argentina SA; Merrill Lynch (Japan): Merrill Lynch Japan Securities Co. Ltd; Merrill Lynch (Seoul): Merrill Lynch International Incorporated (Seoul Branch); Merrill Lynch (Taiwan): Merrill Lynch Global (Taiwan) Limited; DSP Merrill Lynch (India): DSP Merrill Lynch Limited; PT Merrill Lynch (Indonesia): PT Merrill Lynch Indonesia; Merrill Lynch (KL) Sdn. Bhd.: Merrill Lynch (Malaysia): Merrill Lynch (Israel): Merrill Lynch Israel Limited; Merrill Lynch (Russia): Merrill Lynch CIS Limited, Moscow.

This research report has been prepared and issued by MLPF&S and/or one or more of its non-U.S. affiliates. MLPF&S is the distributor of this research report in the U.S. and accepts full responsibility for research reports of its non-U.S. affiliates distributed in the U.S. Any U.S. person receiving this research report and wishing to effect any transaction in any security discussed in the report should do so through MLPF&S and not such foreign affiliates.

This research report has been approved for publication in the United Kingdom by Merrill Lynch, Pierce, Fenner & Smith Limited, which is authorized and regulated by the Financial Services Authority; has been considered and distributed in Japan by Merrill Lynch Japan Securities Co. Ltd, a registered securities dealer under the Securities and Exchange Law in Japan; is distributed in Hong Kong by Merrill Lynch (Asia Pacific) Limited, which is regulated by the Hong Kong SFC; is issued and distributed in Taiwan by Merrill Lynch Global (Taiwan) Ltd or Merrill Lynch, Pierce, Fenner & Smith Limited (Taiwan Branch); is issued and distributed in Malaysia by Merrill Lynch (KL) Sdn. Bhd., a licensed investment adviser regulated by the Malaysian Securities Commission; and is issued and distributed in Singapore by Merrill Lynch International Bank Limited (Merchant Bank) and Merrill Lynch (Singapore) Pte Ltd (Company Registration No.'s F 06872E and 198602883D respectively). Merrill Lynch International Bank Limited (Merchant Bank) and Merrill Lynch (Singapore) Pte Ltd. are regulated by the Monetary Authority of Singapore. Merrill Lynch Equities (Australia) Limited, (ABN 65 006 276 795), AFS License 235132, provides this report in Australia. No approval is required for publication or distribution of this report in Brazil.

Merrill Lynch (Frankfurt) distributes this report in Germany. Merrill Lynch (Frankfurt) is regulated by BaFin.

Copyright, User Agreement and other general information related to this report:

 This research report is prepared for the use of Merrill Lynch clients and may not be redistributed, retransmitted or disclosed, in whole or in part, or in any form or manner, without the express written consent of Merrill Lynch. Merrill Lynch research reports are distributed simultaneously to internal and client websites eligible to receive such research prior to any public dissemination by Merrill Lynch of the research report or information or opinion contained therein. Any unauthorized use or disclosure is prohibited. Receipt and review of this research report constitutes your agreement not to redistribute, retransmit, or disclose to others the contents, opinions, conclusion, or information contained in this report (including any investment recommendations, estimates or price targets) prior to Merrill Lynch's public disclosure of such information. The information herein (other than disclosure information relating to Merrill Lynch and its affiliates) was obtained from various sources and we do not guarantee its accuracy. Merrill Lynch makes no representations or warranties whatsoever as to the data and information provided in any third party referenced website and shall have no liability or responsibility arising out of or in connection with any such referenced website.

This research report provides general information only. Neither the information nor any opinion expressed constitutes an offer or an invitation to make an offer, to buy or sell any securities or other investment or any options, futures or derivatives related to such securities or investments. It is not intended to provide personal investment advice and it does not take into account the specific investment objectives, financial situation and the particular needs of any specific person who may receive this report. Investors should seek financial advice regarding the appropriateness of investing in any securities, other investment or investment strategies discussed or recommended in this report and should understand that statements regarding future prospects may not be realized. Investors should note that income from such securities or other investments, if any, may fluctuate and that price or value of such securities and investments may rise or fall. Accordingly, investors may receive back less than originally invested. Past performance is not necessarily a guide to future performance. Any information relating to the tax status of financial instruments discussed herein is not intended to provide tax advice or to be used by anyone to provide tax advice. Investors are urged to seek tax advice based on their particular circumstances from an independent tax professional.

Foreign currency rates of exchange may adversely affect the value, price or income of any security or related investment mentioned in this report. In addition, investors in securities such as ADRs, whose values are influenced by the currency of the underlying security, effectively assume currency risk.

Officers of MLPF&S or one or more of its affiliates (other than research analysts) may have a financial interest in securities of the issuer(s) or in related investments.

Merrill Lynch Research policies relating to conflicts of interest are described at http://www.ml.com/media/43347.pdf.

iQmethod, iQmethod 2.0, iQprofile, iQtoolkit, iQworks are service marks of Merrill Lynch & Co., Inc. iQanalytics®, iQcustom®, iQdatabase® are registered service marks of Merrill Lynch & Co., Inc.

Fundamental equity reports are produced on a regular basis as necessary to keep the investment recommendation current.

THE BUCKINGHAM RESEARCH GROUP

EQUITY RESEARCH

Important disclosure information (relative to NASD Rule 2711) about The Buckingham Research Group's rating system, risks, and potential conflicts of interest appear at the end of this material (or contact your investment representative). This report should be used as only a single factor in making investment decisions.

GOLDMAN SACHS (GS) — STRONG BUY

2Q08: Another Strong Quarter; Bumping Up '08 Estimate — *June 17, 2008*

James Mitchell 212-922-5534 — *jmitchell@buckresearch.com*
John Grassano 212-922-2019 — *jgrassano@buckresearch.com*

- *GS reported 2Q08 EPS of $4.58, well ahead of consensus of $3.42 and our estimate of $3.43. Book value grew more than 5% sequentially and the company's ROE was 20.4%. These results also include $750m ($0.54 per share) in write-downs/hedging losses related to leveraged loans, as well as a lower than expected tax rate (adding $0.35 per share vs. our forecast).*
- *The majority of the upside was driven by better than expected revenues in investment banking, private equity, and prime brokerage (trading revenues were basically in line). In fact, total revenues were 10% above our forecast. Also contributing to the upside was solid expense discipline, with non-comp expenses falling 6% sequentially vs. our expectation of flat expenses.*
- *Raising 2008 EPS to $16.20 from $16.00 to partially reflect the sizable "beat" this quarter. We believe the estimate is conservative given the continued evidence of stabilizing credit markets over the past three months and the potential for market share gains as many peers "retrench."*
- *In terms of the stock, while GS trades at a substantial premium to its peers, we believe it is warranted given its diversified franchise, strong brand, higher ROE profile, and peerless risk management. And at 1.9x current book value and 1.7x '08E book value, the stock trades well below fair value when considering a 20% ROE profile. Consequently, we reaffirm our Strong Buy rating, although we continue to see more upside in the likes of MS at 1.3x book.*

Target	$250.00
Price (06/17/2008)	$179.44
52-Week Price Range	$251-$140
Shares Out. (mil.)	427.9
Market Capitalization (mil.)	$76,782.4
Float	349.5
Avg. Daily Vol. (mil.)	12.0
Dividend/Yield	$1.40/0.7%
Book Value (05/31/2008)	$97.49
Debt/Capital (05/31/2008)	78.6%
2 Yr. Growth Rate	NM
ROE (2008E)	17.9%

EARNINGS PER SHARE ESTIMATES

FYE Nov	Q1	Q2	Q3	Q4	Fiscal Yr	FY P/E
2007E	$6.67A	$4.93A	$6.13A	$7.01A	$24.73A	7.3x
2008E	$3.23A	$4.58A	$3.60E	$4.79E	$16.20E	11.1x
prior	--	--	*$3.76E*	*$5.58E*	*$16.00E*	
2009E	--	--	--	--	$21.00E	8.5x

Company Description - Growth Drivers - Risks: *Goldman Sachs is a leading global investment bank engaged in three principal segments: Investment Banking (16% of revenue in 2007); Trading & Principal Investments (68% of revenue) and Asset Management & Securities Services (16% of revenue). Growth drivers: increased client activity associated with stronger economic and market performance; broadening client relationships; and international expansion. Risk factors: Market, economic, and competitive risks.*

INVESTMENT SUMMARY

Goldman Sachs reported 2Q08 EPS of $4.58, well ahead of consensus of $3.42 and our estimate of $3.43. Book value grew 5% sequentially and the company's ROE was 20.4%. These results also include $750m ($0.54 per share) in write-downs/hedging losses related to leveraged loans. While a lower than expected tax rate contributed to the upside (adding $0.35 per share vs. our forecast), the majority of the upside was driven by better than expected revenues in investment banking, private equity, and prime brokerage (trading revenues were basically in line). In fact, total revenues were 10% above our forecast. Also contributing to the upside was solid expense discipline, with non-comp expenses falling 6% sequentially vs. our expectation of flat expenses.

In terms our EPS estimates, given the sizable "beat" this quarter, we are increasing our FY08 EPS estimate to $16.20 from $16.00. While this increase is meaningfully less than the 2Q08 upside (implying a reduction in 2H08 EPS estimates), this simply reflects a more conservative forecast for both private equity and fixed income trading given the still uncertain macro environment. That said, we are certainly biased to the upside on our estimates given the continued evidence of stabilizing credit markets over the past three months. Moreover, the potential for market share gains across many of its businesses (which was particularly evident in prime brokerage this quarter) as many of its competitors "retrench" also gives us a positive bias to our EPS estimates going forward.

In terms of the stock, while GS trades at a substantial premium to its peers, we believe it is warranted given its diversified franchise, its strong brand (which enables market share gains during challenging market environments), higher ROE profile, and peerless risk management. More specifically, GS trades at 1.87x 2Q08 book value, a 34% premium to the 1.4x average for MS and MER. However, considering GS's faster book value growth from its higher ROE, that premium falls to 30% based on end of year book value and falls to 25% when looking at 2009 book value estimates. But that said, given this premium, we do see more upside in names like MS and LEH. However, on an absolute basis, its current book value multiple seems low given a 20%+ ROE profile, which historically has translated into a P/B multiple well north of 2.0x. Consequently, we reaffirm our Strong Buy rating and $250 price target.

2Q08 Highlights:

- **Investment banking revenues exceeded our forecast by 23%.** While debt underwriting revenues were below our forecast, we saw upside in both advisory revenues and equity underwriting. In advisory fees, revenues rose 21% sequentially and 13% YOY, helped by non M&A related advisory assignments (i.e. advising on capital structure issues). Equity underwriting revenue was the biggest surprise, up more than threefold sequentially and the highest quarter in 8 years, reflecting market share gains, its top role in the Visa IPO, and a large number of recapitalizations of financial institutions. Looking ahead, management noted that the pipeline was down somewhat sequentially, with an increased pipeline in equity underwriting partially offsetting a decline in the M&A pipeline.

- **FICC revenues were slightly below our forecast, down 25% sequentially.** Included in FICC this quarter was $750 million in losses related to leveraged loans -- $500 million of which were losses on hedges. FICC also included approximately $200 million in negative marks related to its liabilities. Normalizing for these items, we calculate that FICC revenues were basically flat YOY – not a bad result considering the weak trading environment in March. That said, run rate revenues were down meaningfully on a sequential basis, reflecting again the weak results in March and fewer higher margin structured derivatives trades given the more volatile market environment. Looking ahead, we expect write-downs to continue to diminish given sizable reductions in risky assets. For instance,

James Mitchell 212-922-5534
John Grassano 212-922-2019

"legacy" leveraged loan positions are down to $11bn (combined with $8bn of "new" leveraged loans, brings GS's total leveraged loan exposure to $19bn). On the mortgage side, residential mortgage exposure fell to $15bn from $19bn, while commercial real estate exposure fell to $17bn from $19bn. GS had immaterial losses on these positions in the quarter, and we would expect limited write-downs in future quarters. Consequently, with exposures down and credit markets improving, we could see FICC revenues start to show some improvement in coming quarters.

- **Equities trading was modestly above our forecast and essentially flat YOY.** Commissions were flat sequentially and up 14% YOY, reflecting solid YOY volume growth globally. On the principal side, strong results in cash equities and derivatives were offset by very weak results in GS's proprietary trading business. Looking ahead, we don't expect to see a material ramp up in its proprietary business given the volatile and uncertain environment – which will keep GS from putting large amounts of capital to work. However, the cash and derivatives business should continue to grow solidly given global growth and market share gains.

- **Private equity also was well ahead of our forecast,** with revenues of $725m vs. our forecast of $200m. While gains on ICBC shares were essentially in line with our forecast of $200m, GS was able to generate additional investment gains outside of this holding, reflecting the positive move in global equity markets during the quarter (with most of the gains unrealized and related to market appreciation). This revenue line is certainly volatile and the gains here need to be discounted to some extent, but longer term, this business should drive solid returns. However, given the still volatile equity markets, we did reduce our forecast for private equity gains for the remainder of this year.

- **Prime brokerage revenues rose 30% YOY** and were 10% above our forecast. The upside was driven by market share gains and improved pricing power in the industry. Given the strength this quarter and expectations of further pricing power and market share gains, we did increase our forecast for revenues in 2H08 and into 2009.

- **In terms of expenses,** the compensation ratio was in line with expectations at 48%. However, non-comp expenses fell nearly 6% sequentially given lower volume related expenses and a continued focus on reigning in expenses given the environment. In fact, GS is still less than halfway through its target of generating $500m of annualized cost savings in non comp expenses. Consequently, we would expect non comp expenses to be flat to down from 2Q08 levels (excluding the impact from volume related expenses such as clearing).

- **Book value grew to $97.49 per share, up 5% sequentially and ahead of our forecast of $95.34.** The stronger than expected earnings drove the upside, with book value rising 20% YOY.

- **Management noted that GS's Tier 1 ratio is 10.8% in 2Q08,** well above minimum requirements of 6.0% and most commercial banks that are at 8%. In terms of leverage, management noted that its balance sheet declined from $1.2 trillion in 1Q08 to closer to $1.1 trillion in 2Q08. Along with strong growth in common equity via retained earnings (common equity grew 5.5% sequentially and book value per share rose 20% YOY), this pushed gross leverage down to 24.3x from 27.9x in 1Q08 and net leverage down to 14.7x from 18.6x in 1Q08. Given GS's high ROE profile, we expect to see continued strong growth in equity (given limited buybacks in this environment). Combined with more limited balance sheet growth, we would expect leverage to continue to fall.

Goldman Sachs -- Earnings Results and Forecasts FYE-November

($ in millions, except share and per share amount	FY 2007	% Chg	1Q08	% Chg	2Q08	% Chg	3Q08E	% Chg	4Q08E	% Chg	FY 2008E	% Chg	FY 2009E	% Chg
Revenues														
Investment banking	$ 7,555	34.6%	$ 1,166	-32.1%	$ 1,685	-2.0%	$ 1,124	-47.6%	$ 1,325	-32.9%	$ 5,301	-29.8%	$ 5,380	1.5%
Trading and principal investments	29,714	23.7%	4,877	-46.2%	5,239	-16.1%	4,965	-34.5%	5,439	-20.3%	20,520	-30.9%	25,720	25.3%
Asset management and securities services	4,731	4.5%	1,341	18.4%	1,221	10.3%	1,371	7.8%	1,355	11.2%	5,288	11.8%	6,325	19.6%
Net interest income	3,987	14.0%	951	17.7%	1,277	14.7%	1,052	-21.6%	1,053	45.2%	4,333	8.7%	4,400	1.5%
Net revenues	45,987	22.1%	8,335	-34.5%	9,422	-7.5%	8,512	-31.0%	9,173	-14.6%	35,442	-22.9%	41,825	18.0%
Cash expenses														
Comp and benefits, excluding employee ipo awa	20,190	22.7%	4,001	-34.5%	4,522	-7.5%	4,085	-31.0%	3,853	17.7%	16,461	-18.5%	19,030	15.6%
Brokerage, clearing and exch fees	2,758	38.9%	790	43.4%	741	16.1%	755	-5.0%	785	1.4%	3,071	11.3%	3,390	10.4%
Marketing development	601	22.2%	144	9.1%	126	-12.5%	140	-5.4%	175	-1.1%	585	-2.7%	635	8.5%
Communications and technology	665	22.2%	187	23.8%	192	19.3%	195	15.4%	205	11.4%	779	17.1%	825	5.9%
Occupancy and equipment	975	14.7%	236	15.7%	234	11.4%	237	8.7%	245	-28.6%	952	-2.4%	990	4.0%
Professional fees	714	31.0%	178	10.6%	185	14.9%	190	1.1%	202	-1.0%	755	5.7%	800	6.0%
Other	1,326	17.1%	402	36.7%	370	32.6%	395	12.5%	460	14.4%	1,627	22.7%	1,715	5.4%
Total non-compensation expenses	7,374	23.8%	1,937	22.8%	1,848	10.4%	1,912	-2.3%	2,072	-4.3%	7,769	5.4%	8,355	7.5%
Total cash expenses	27,564	23.0%	5,938	-22.8%	6,370	-2.9%	5,997	-23.9%	5,925	8.9%	24,230	-12.1%	27,385	13.0%
Non-cash expenses														
Depreciation and amortization	624	19.9%	170	28.8%	183	30.7%	190	31.0%	195	-5.8%	738	18.3%	738	0.0%
Amortization of intangibles	195	13.0%	84	64.7%	37	-26.0%	40	-24.5%	40	-2.4%	201	3.1%	201	0.0%
Total expenses	28,383	22.8%	6,192	-21.3%	6,590	-2.4%	6,227	-22.9%	6,160	8.3%	25,169	-11.3%	28,324	12.5%
Net income before taxes	17,604	20.9%	2,143	-55.9%	2,832	-17.5%	2,285	-46.4%	3,013	-40.4%	10,273	-41.6%	13,501	31.4%
Effective tax rate	34%		29%		26%		28%		28%		28%		31%	
Provision/(benefit) for taxes	6,005	19.6%	632	-62.0%	745	-32.1%	640	-54.5%	847	-54.0%	2,863	-52.3%	4,118	43.8%
Net income	$ 11,599	21.6%	$ 1,511	-52.7%	$ 2,087	-10.5%	$ 1,645	-42.4%	$ 2,167	-32.6%	$ 7,410	-36.1%	$ 9,383	26.6%
Preferred dividends	192	38.1%	44	-10.2%	36	-21.7%	36	-25.0%	36	-26.5%	152	-20.8%	144	-5.3%
Net income avail to common	**$ 11,407**	21.4%	**$ 1,467**	-53.4%	**$ 2,051**	-10.3%	**$ 1,609**	-42.7%	**$ 2,131**	-32.7%	**$ 7,258**	-36.4%	**$ 9,239**	27.3%
Per-Share Amounts														
Net income, diluted	$ 24.71	25.5%	$ 3.23	-51.5%	$ 4.58	-7.0%	$ 3.60	-41.2%	$ 4.79	-31.7%	$ 16.20	-34.4%	$ 21.00	29.7%
Operating earnings, diluted	**24.73**	25.6%	**3.23**	-51.5%	**4.58**	-7.0%	**3.60**	-41.2%	**4.79**	-31.7%	**16.20**	-34.5%	**21.00**	29.7%
Common dividend	1.40	7.7%	0.35	0.0%	0.35	0.0%	0.35	0.0%	0.35	0.0%	1.40	0.0%	1.52	8.6%
Book value	90.43	24.5%	92.44	19.9%	97.49	19.9%	100.43	18.6%	107.84	19.2%	107.84	19.2%	124.58	15.5%
Tangible book value	78.88	28.3%	80.28	22.1%	85.16	21.7%	88.10	20.5%	95.61	21.2%	95.61	21.2%	112.53	17.7%
Avg. shares outstanding (diluted)	461.3	-3.4%	453.5	-3.9%	447.4	-3.6%	446.4	-2.4%	444.9	-1.5%	448.1	-2.9%	439.9	-1.8%
Avg. shares outstanding (basic)	433.1	-3.6%	432.8	-2.6%	427.5	-1.9%	426.4	-0.6%	424.9	0.5%	427.9	-1.2%	409.9	-4.2%
Period end shares outstanding	439.0	-2.5%	427.6	-2.4%	427.9	-1.6%	424.9	-0.1%	424.9	-3.2%	424.9	-3.2%	414.9	-2.4%
Return Statistics (Operating)														
Return on average assets	1.26%		0.58%		0.80%		0.60%		0.76%		0.64%		0.79%	
Return on common equity	33.7%		15.7%		20.9%		15.8%		19.9%		17.9%		19.4%	
Return on tangible equity	38.5%		18.6%		24.9%		19.0%		23.0%		19.3%		21.2%	
Productivity Statistics														
Expenses to net revenues	61%		73%		70%		73%		67%		70%		67%	
Compensation and benefits to net revenues	43.9%		48.0%		48.0%		48.0%		42.0%		46.4%		45.5%	
Non-int expense ex comp & bnfts to net revs	17%		25%		22%		25%		25%		24%		22%	
Pre-tax operating margin	38%		26%		30%		27%		33%		29%		32%	
Employees	30,522	15.3%	31,874	18.2%	31,495	12.4%	31,750	6.2%	31,750	4.0%	31,750	4.0%	33,000	3.9%
Net revenues per employee	$ 1.51	5.9%	$ 1.05	-44.6%	$ 1.20	-17.7%	$ 1.07	-35.0%	$ 1.16	-17.9%	$ 1.12	-25.9%	$ 1.27	13.5%
Cash expenses per employee	$ 0.90	6.7%	$ 0.75	-34.7%	$ 0.81	-13.6%	$ 0.76	-28.3%	$ 0.75	4.7%	$ 0.76	-15.5%	$ 0.83	8.7%
Contribution as % of net revenues														
Financial advisory	9.2%		8.0%		8.5%		7.1%		7.1%		7.7%		5.9%	
Equity underwriting	3.0%		2.1%		6.5%		3.2%		3.8%		4.0%		3.6%	
Debt underwriting	4.2%		4.0%		2.9%		3.5%		4.1%		3.6%		3.9%	
Investment banking	**16.4%**		**14.1%**		**17.9%**		**13.8%**		**15.0%**		**15.3%**		**13.4%**	
FICC	35.2%		37.7%		25.2%		31.7%		30.5%		31.1%		33.5%	
Equities	24.6%		30.2%		26.4%		26.7%		28.6%		27.9%		27.3%	
Principal investments	8.2%		-6.4%		7.7%		2.3%		2.5%		1.7%		2.9%	
Trading and principal investments	**67.9%**		**61.5%**		**59.3%**		**60.8%**		**61.6%**		**60.8%**		**63.6%**	
Wealth management	9.8%		15.8%		12.3%		14.6%		14.4%		14.2%		13.7%	
Securites services	5.9%		8.7%		10.5%		10.8%		8.9%		9.7%		9.3%	
Asset mgmt. and securities services	**15.7%**		**24.5%**		**22.8%**		**25.4%**		**23.4%**		**24.0%**		**23.0%**	

Source: Company reports and Buckingham Research estimates.

James Mitchell 212-922-5534
John Grassano 212-922-2019

IMPORTANT DISCLOSURES

ANALYST CERTIFICATION

The above-named analyst hereby certifies that the views expressed in this research report accurately reflect his/her personal views about the subject company and its securities. The analyst also certifies that he/she has not been, does not, and will not be receiving direct or indirect compensation in exchange for expressing the specific recommendation in this report.

Company	Disclosure
Goldman Sachs	

RESEARCH DISCLOSURE LEGEND

1) The Buckingham Research Group makes a market in the securities of the subject company.
2) The Buckingham Research Group or associated companies own 1% or more of any class of common equity securities, warrants or options of the subject company.
3) Analyst, associate or a member of household have a financial interest in any class of common equity securities, warrants or options of the subject company.
4) Analyst, associate or a member of household is an officer, director, or advisory board member of the subject company.
5) Other.

Neither the Buckingham Research Group nor its employees perform investment banking services for stocks under coverage.

RATINGS of Stocks Under Coverage at The Buckingham Research Group: Buys 46%; Neutral 52%; Underperform/Not Rated 2%.
The Buckingham Research Group's rating categories are as follows
STRONG BUY -- We expect the stock to appreciate 25% or more within the next 6-12 months. There is good visibility and nearer-term earnings or events catalysts are expected.
ACCUMULATE -- We expect 15% or more appreciation over the next 6-12 months and the stock is attractively valued; however, near-term catalysts are lacking.
NEUTRAL -- The stock's current price reflects our intermediate-term price objectives, and positions may be reduced.
UNDERPERFORM -- There appears to be more risk than reward in this stock at current levels. We expect the stock to underperform over the next 6-12 months.
NOT RATED -- We are not carrying a rating on this stock for the time being. Rating & estimates under review.

STATEMENT OF RISK: Risks associated with attaining the target set for this stock include, but are not limited to, traditional economic and competitive pressures, effective execution of corporate strategies and stock market volatility. Additionally, the company may be subject to government regulation as well as corporate litigation, patent litigation and expirations.

COMPENSATION: Analysts' compensation is based upon activities and services intended to benefit the clients of The Buckingham Research Group and its affiliates ("the firm"). Like all firm employees, analysts receive performance-based compensation that is impacted by the individual analyst's contribution and overall firm profitability, which includes revenues from institutional equities sales and the money management subsidiary. The analysts may also have funds managed by this subsidiary and make recommendations to this unit consistent with their public recommendations.

This report is based upon information available to the public. No representation is made that it is accurate or complete. The Buckingham Research Group and its subsidiaries may have positions in, and may effect transactions in securities of the companies mentioned herein independently of and not necessarily in accordance with the recommendation. The disclosures contained in this report are accurate as of the date of this report.

PRICE CHARTS

James Mitchell 212-922-5534
John Grassano 212-922-2019

Goldman Sachs Group

Positioned for opportunity amidst chaos

Company Update **BUY**

Equity | United States | Securities Broker/Dealer
28 July 2008

Merrill Lynch

Guy Moszkowski, CFA +1 212 449 7800
Research Analyst
MLPF&S
guy_moszkowski@ml.com

M. Patrick Davitt +1 212 449 1216
Research Analyst
MLPF&S
mpatrick_davitt@ml.com

Senior mgt cautious, but seeing investment, mkt share opportunities from crisis

Still cautious, but GS seeing solid activity in customer franchise businesses, strong market share gains. Relatively unscathed by credit debacle, GS is more outwardly focused than peers, able to commit balance sheet flexibly as needed. Clearly GS is one of less than a handful of relative winners from the crunch.

Cyclical-bottom ROE prospects better now than in'02

GS believes it can out-earn ROE produced at bottom of last cycle (11% in '02) due to greater global diversity of its revenues, rising returns available as many peers pull back, and growing market share as above. GS feeling less pressure to de-leverage than peers, but does hold more capital than it believes is ideal at this point (10.8% Tier-1 vs. "normal" seen as 9.5-10%). If proposed consolidation of securitized balances goes forward, though, the current capital could be needed.

Liquidity is job one: Likelihood rising that GS buys a bank

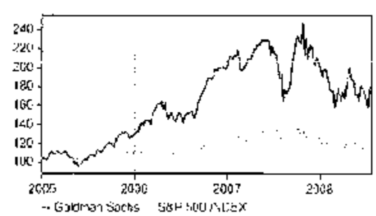
Key lesson of current crisis is one GS has always known: importance of liquidity and availability of "sticky" funding. We believe GS would not look entirely askance at prospect of buying a depository, a significant change. We still would not ascribe very high probability, but if a bank with excess deposits were available at right price, with no need for GS to exit existing businesses, we'd no longer rule it out.

Big distressed-mortgage opportunity seen, but maybe not just yet

GS' largest single revenue opportunity over the next couple of years: mortgages. To prepare, GS bought Litton (sub-prime servicer) earlier this year, and strengthened its team with a key hire from the late Bear Stearns. Timing unclear because many assets still hard to price given falling house prices, rising delinquencies, but opportunity expected to be large.

Stock Data

Price	US$178.66
Price Objective	US$212.00
Date Established	18-Jun-2008
Investment Opinion	C-1-7
Volatility Risk	HIGH
52-Week Range	US$140.27-250.70
Mrkt Val / Shares Out (mn)	US$76,377 / 427.5
ML Symbol / Exchange	GS / NYS
Bloomberg / Reuters	GS US / GS N
ROE (2008E)	18.8%
Leverage (2007A)	91.4%
Est. 5-Yr EPS / DPS Growth	10.0% / 0%



Quarterly Earnings Estimates

	2007	2008
Q1	6.67A	3.23A
Q2	4.93A	4.58A
Q3	6.13A	4.28E
Q4	7.01A	5.61E

Estimates (Nov)

(US$)	2006A	2007A	2008E	2009E	2010E
EPS	19.72	24.73	17.71	20.92	25.66
GAAP EPS	19.72	24.73	17.71	20.92	25.66
EPS Change (YoY)	75.9%	25.4%	-28.4%	18.1%	22.7%
Consensus EPS (Bloomberg)			16.93	19.83	21.55
Dividend Rate	1.30	1.40	1.40	1.40	1.40

Valuation (Nov)

	2006A	2007A	2008E	2009E	2010E
P/E	9.1x	7.2x	10.1x	8.5x	7.0x
GAAP P/E	9.1x	7.2x	10.1x	8.5x	7.0x
Dividend Yield	0.7%	0.8%	0.8%	0.8%	0.8%

Refer to important disclosures on page 11 to 12. Analyst Certification on Page 9. Price Objective Basis/Risk on page 8. 10750552

EXHIBIT
Porten 8
5/1/15 TD
PENGAD 800-631-6989

iQprofile℠ Goldman Sachs Group

Income Statement Data (Nov)

(US$ Millions)	2006A	2007A	2008E	2009E	2010E
Net Revenues	37,681	45,987	37,173	43,563	50,204
Compensation & Benefits	(15,820)	(20,190)	(17,049)	(19,603)	(22,592)
% of Net Revenue	42.0	43.9	45.9	45.0	45.0
Non-Compensation Expenses	(7,285)	(8,193)	(8,574)	(8,952)	(9,352)
Net Income to Ordinary Shareholders	9,414	11,407	8,042	9,694	11,761
Adjusted Net Income (Operating)	9,414	11,407	8,042	9,694	11,761

Balance Sheet Data (Nov)

(US$ Millions)	2006A	2007A	2008E	2009E	2010E
Total Assets	838,201	1,119,796	1,143,530	1,315,060	1,512,319
Total Shareholders' Equity	35,786	42,800	49,037	56,759	64,461
Net Assets	631,972	NA	NA	NA	NA
Tangible Shareholders' Equity	NA	NA	NA	NA	NA
BVPS (Stated Equity)	72.62	90.43	107.45	123.30	146.79
% growth	27.4	24.5	18.8	14.7	19.0

Trading (Nov)

(US$ Millions)	2006A	2007A	2008E	2009E	2010E
Net Trading Rev (Princ Trans+Net Int)	19,840	25,364	20,781	26,799	31,808
% growth	53.4	27.8	-18.1	29.0	18.7
ROA (Net Trad Rev/Ave Bal Sht Asts)	2.54%	2.55%	1.84%	2.13%	2.25%
Value-at-Risk	101	138	NA	NA	NA
VaR as a % of Total Equity	0.28%	0.32%	NA	NA	NA

Investment Banking (Nov)

(US$ Millions)	2006A	2007A	2008E	2009E	2010E
Financial Advisory Revenues	2,580	4,222	2,838	2,161	2,594
Equity Underwriting Revenues	1,365	1,382	1,498	1,188	1,425
Debt Underwriting Revenues	1,684	1,951	1,261	1,399	1,679
Total Investment Banking Revenue	5,629	7,555	5,597	4,748	5,698
% growth	53.3	34.2	-25.9	-15.2	20.0

Performance Metrics (Nov)

(US$ Millions)	2006A	2007A	2008E	2009E	2010E
ROE (Stated Equity)	32.8%	32.7%	18.8%	19.5%	20.1%
Operating Margin	38.7%	38.3%	31.1%	34.4%	35.4%
Pre-Tax Profit Margin	38.7%	38.3%	31.1%	34.4%	36.4%
Net Profit Margin	25.0%	24.8%	21.6%	22.3%	23.4%
Comp Expense/Revenue	42.0%	43.9%	45.9%	45.0%	45.0%
Non-Comp Expense / Revenue	19.3%	17.8%	23.1%	20.6%	18.6%
Net Revenue Growth	49.3%	22.0%	-19.2%	17.2%	15.2%
Operating Expense Growth	36.2%	22.8%	-9.7%	11.5%	11.6%
Operating Income / Average Assets	4.8%	4.6%	3.3%	3.5%	3.6%
Trading-Related Revenue / Net Revenue	52.7%	55.2%	55.9%	61.5%	63.4%
Asset Management & Fee Rev / Net Rev	11.4%	9.8%	13.6%	13.8%	12.3%
Total Employees (Actual)	26,467	30,522	NA	NA	NA

Company Description

Goldman Sachs is a consistent top-tier global player in key high-margin lines of business such as Equity Underwriting and M&A. It is one of two dominant Prime Brokers to the fast-growing hedge fund industry. The asset mgmt unit has been among the industry's fastest growing. Much of recent growth has been in trading revenues, which are considered less predictable, but which have generated around 2% or more of avg. balance sheet assets each year.

Investment Thesis

GS is arguably the most well-respected inv. bank, especially after deftly navigating the 07 credit crisis. We view GS as the best-diversified, most global franchise in the industry, with ample intl. growth prospects. Given continued cyclical industry weakness, competitive position seems largely priced in, with book value growth driving the value proposition.

Stock Data

Average Daily Volume	14,413,452

Cyclical backdrop remains pressured, but macro products doing well and GS is a "go-to"

We met last week with Co-Pres. Jon Winkelried, CFO David Viniar, and David Heller and Harvey Schwartz, responsible for Equities and FICC, respectively, in the US.

Clearly GS remains cautious about the broader economic and public policy backdrop, given the magnitude of the mortgage and consumer-credit meltdown and the consequent destabilization of major financial institutions. The big swings in market sentiment can unleash waves of activity but when confidence erodes, clients move to the sidelines, staying liquid and relatively inactive. The most liquid-markets oriented businesses (rates, FX, high-grade corporates) have been busy, but activity has been more sporadic as one moves up the risk curve. GS is benefiting from having maintained its reputation and its balance-sheet capacity at a time when others have had to retrench.

Less balance sheet constrained than the peer group, which supports both Franchise and Principal businesses

To date the firm's read of the likely changes in the regulatory environment is that the fallout will be manageable, and while cyclically earnings power is under pressure, in many ways GS is, we believe, a beneficiary rather than a victim of the current backdrop. The firm is not finding that it is facing any particularly binding constraints on profitability as a result of the de-leveraging trend. In any event, GS is not pressured to de-leverage as have firms that have had losses and run into capital issues. To the extent that its leverage has come down, this is more than anything else a response to the uncertainty in markets broadly and the fact that risk reduction has been the appropriate response. The cost of capital overall has not changed much for GS but it has made risk-based adjustments to capital charges for certain businesses or exposure classes and this has of course in some cases forced down exposure.

As always, GS remains "constructively paranoid" about risk management. The firm believes that at a time like this it is best to be in a position of great flexibility regarding the use of capital, implying a desire to be very tactical as conditions change. The expectation is that major opportunities to make principal investments will arise at a time of stress for many institutions and investors, but at the same time, clients of the "franchise businesses" (i.e., traditional trading and Investment Banking) will be in need of support from the firm's balance sheet and this is as always a critical concern. Despite the fairly constant undertone of criticism over the firm's embrace of principal activities, we believe that Goldman has actually tended its customer-oriented businesses carefully, which explains why at the end of the day, the world tends to come to Goldman, and the absence of major conflict problems.

More market share? It seems to be happening

GS continues to view its share-gain opportunity as very strong, something we have flagged since last autumn; GS is one of less than a handful of capital-markets firms that have (at least to date) weathered the downturn with capital intact and, if anything, enhanced reputation. We believe GS has seen market share gains in numerous key business lines, as many competitors have pulled back because of a need to shrink balance sheets, distractions that have made the firms more inward-looking, stress-induced trepidation, or all of the above. Meanwhile, Goldman has been open for business, with less balance sheet constraints, and a less shell-shocked attitude. Goldman believes, based on client comments and the order flow it is seeing, that it is considerably more engaged as a market-maker than most of its key competitors. Macro areas such as rate products and FX have been very busy, though the mortgage market remains moribund.

Even in Prime Brokerage, a business in which GS has disproportionate share, it has been seeing gains because of the fate of Bear and the growing sensitivity among clients to counterparty risk. We would expect that, with the BSC business in the safe hands of JP Morgan, plenty of that business will find its way back; but it doesn't seem to be happening quickly. As an aside, GS made it clear that it would be careful about taking up stock-borrow rates in the context of the changed SEC shorting regs, since it wants to avoid the appearance of being inappropriately opportunistic.

Confident they can "out-earn" the '02 cyclical bottom

Although conditions have weakened cyclically, GS continues to believe that it is most likely able to out-earn its ROE at the last cyclical bottom, 2002, because of the greater diversity of its business mix by geography and business lines, as well as discernible improvement in relative market position / share, and improving spreads due to greater scarcity value of committed risk capital. This does not mean we can rule out the possibility of a weak quarter or two along the way (we have certainly seen this a couple of times, but it has not been sustained).

Crisis has reinforced GS' key tenets

What did GS learn from the credit crisis? Mostly a reinforcement of things it had always clung to.

- **Liquidity is king.** GS always said so, but the recent crisis confirmed it. Two words sum up the thoughts with regard to access to cash/ funding: "More", and "Longer" Goldman paid up over the last few years to term out its funding, and looks smart to have done so.
- **Nothing new ever happens until it happens.** Destruction lurks in the tails of the distribution; because unexpectedly extreme outcomes can and do happen, scenario-test creatively and size positions appropriately.
- **Size matters.** Having a large, broad, highly diversified franchise adds an important degree of robustness.
- **Discipline is critical:** Making commitments to serve clients or build pipelines of assets for distribution is the heart of many parts of the business, but allowing the assets to build up on the balance sheet can be deadly. Having the discipline to distribute the assets quickly, and slow down origination when the market is signaling faltering appetite, is essential.
- **Risk management must be respected and independent; communication is essential:** Senior management needs to be highly focused on risk and how it is changing as markets deteriorate. To do this, it needs real-time information, which means excellent risk-modeling systems and capabilities but also a timely, open communication flow with a completely independent risk organization, as well as with trading desks. And, within the firm, the risk managers need to have comparable stature to the revenue producers.

Goldman Sachs Bank & Trust? Don't rule it out

Since GS is more convinced than ever that its longstanding liquidity obsession is well-founded, it would appear this thought process has prompted a willingness to at least consider a bank acquisition. The opportunity could conceivably arise as a result of the damage done to some institutions and the fact that valuable, "sticky" deposit franchises may be available at attractive prices. Viniar noted that the firm had done extensive analysis on the degree to which it might be able to deploy excess deposits to fund core businesses; based on the willingness to even consider a transaction, it would seem GS has satisfied itself that core activities could conceivably be funded this way.

This said, the company made it clear that such a deal was unlikely to be pursued if it meant that other traditional, attractive GS businesses could not be continued, Commodities being the obvious example that comes to mind. However, regulators appear to have OK'd JPM's participation in physical Commodities via its acquisition of Bear Stearns, despite its Bank Holding Company status.

We noted that GS has no experience running branch systems or dealing with any but the highest-net-worth individuals, and has in the past expressed some trepidation about the potential for reputational and operational risk in mass-market businesses. It was clear that these issues still give the firm pause, and that a foray into traditional banking is not something that would be entered into lightly. On the whole, we would not ascribe a very high probability to GS acquiring a bank of any particularly large size. There is still the hurdle, under new accounting guidelines, that assets acquired would need to be marked to market and this could give rise to a new-capital need. And GS has shown it can manage through extremely trying conditions with its business model intact, so it is not forced to change its spots. This said, the bottom line here would appear to be: don't rule out a bank acquisition by GS. These are strange times indeed.

Distressed Mortgages: the next big thing

Although the Mortgage arena is weak, as noted, the next major opportunity GS sees is there, not surprisingly. It is likely to develop a range of earnings-generating "principaling" opportunities, on trading desks and in its Private Investing area. For the time being the company is not raising a fund to invest in distressed mortgage assets, because it does not want the funds burning a hole in its pocket and would prefer to proceed opportunistically. Nor does it appear to think that institutions holding assets have to date taken all the pain they will need to, meaning that it is probably too early to become heavily involved. The gulf between what potential distressed-mortgage buyers are willing to pay, and where holders have marked the assets, remains too wide. However, at some point, the market will begin to clear, probably as there starts to be greater visibility about when and at what level home prices, and consumer loan delinquency, level off.

When could this be? Hard to see it before early 2009 at the earliest, in our view, and maybe later next year, given market expectations of when home prices could bottom. It seems increasingly clear that a government-sponsored solution like the RTC of the late 1980s is unlikely, and that instead the private-market solution will be the key. Whenever this happens, GS will be ready to bid on significant portfolios, and when the scale of a package exceeds GS' comfort level, it expects to be able to round up co-investors quickly given its network of investor relationships. The firm's relative financial strength, and willingness to take principal positions, are well telegraphed, so it believes it is already seeing most of the potential deal flow, and will continue to do so.

In order to be prepared for these opportunities as they arise, GS has beefed up its distressed mortgage capability by bringing on a senior member of the former Bear Stearns team, Jeff Verchleiser, and by acquiring a subprime-mortgage servicer (Litton) earlier this year.

We briefly discussed the degree to which GS has been involved in the capital-raising wave for financial institutions. GS believes that the affected institutions are approaching what might be termed the "capitulation" stage of capital-raising, where this is accompanied by actual sales of the assets which created the losses, necessary to convince what is by now reluctant capital to jump in. GS' presence in the advisory and capital-raising effort will, in our view, give GS first look into many of the distressed-asset opportunities ahead.

Capital is stronger than GS thinks it needs to be, though accounting changes may lie ahead

Goldman's own capital position is strong, with its newly disclosed Tier 1/Risk Weighted Assets ratio at 10.8% as of May 31. It was below those of MS and LEH (12.4% and 13.5%, respectively) but GS doesn't view this as an "arms race" and in fact views its own core range as 9.5-10%, with around a percentage point of excess at this time because of the amount of nervousness in the market. Viniar does not believe there will be appreciable differences between Basel I and Basel II ratios for most firms (important because banks, such as JPM, Citi, and B of A are all still on Basel I for the time being).

We asked about the impact of changes in Fin 46 (R) / FAS 140 which may require consolidation of securitized assets starting in 2009. In the most draconian case, GS believes the impact would be to raise total assets by about $300bn. Pro-forma, this would, we estimate, drop the Tier 1 ratio from 10.8% now to about 8.5% (we simply assumed that the $300bn would convert to RWA in the same ratio as GS' current 1.1 trillion in assets convert to RWA of $400bn, which may well be too simplistic). In any event, given that the firm continues to generate considerable capital through earnings, and that it does not believe it needs more than around 10% Tier 1, it's not hard to see how any need engendered by the accounting change could be handled organically, without the need to raise capital, though buybacks might be constrained for a while longer.

Merrill Lynch

Goldman Sachs Group

26 July 2008

Table 1: GS Income Statement ($ mn)

	3Q07 end 8/07	4Q07 end 11/07	1Q08 end 2/08	2Q08 end 5/08	3Q08E end 8/08	2006 end 11/06	2007 end 11/07	2008E end 11/08	2009E end 11/09
REVENUES									
Commissions	1,330	1,243	1,238	1,234	1,222	3,518	4,579	4,940	5,211
Net Interest	1,341	725	951	1,277	1,100	3,498	3,967	4,328	3,700
Trading	6,034	4,544	4,171	3,280	4,342	17,692	21,377	16,453	23,099
Investments/Private Equity/Merchant Bank	211	1,036	-532	725	185	2,317	3,757	628	580
Principal Transactions	6,245	5,580	3,639	4,005	4,527	20,009	25,134	17,081	23,679
Financial Advisory	1,412	1,240	663	800	675	2,580	4,222	2,838	2,161
Underwriting	733	733	509	885	675	3,049	3,333	2,759	2,587
Investment Banking	2,145	1,973	1,165	1,685	1,350	5,629	7,555	5,597	4,748
Asset Management & Fees	1,198	1,165	1,317	1,169	1,270	4,294	4,490	5,040	6,005
Other Revenues	75	54	24	52	55	233	242	186	720
Net Revenues	**12,334**	**10,740**	**8,335**	**9,422**	**9,523**	**37,680**	**45,987**	**37,173**	**43,563**
Net Trading Revenues	*7,375*	*5,269*	*5,122*	*4,557*	*5,442*	*19,940*	*25,364*	*20,781*	*26,799*
EXPENSES									
Comp/Net Revenues	*48.0%*	*30.5%*	*48.0%*	*48.0%*	*48.0%*	*42.0%*	*43.9%*	*45.9%*	*45.0%*
Compensation & Benefits	5,920	3,272	4,001	4,522	4,571	16,457	20,190	17,049	19,603
Communications/ Technology	169	184	187	192	200	544	665	789	813
Office/ Equip./ Depr./ Amort.	363	550	406	417	435	1,371	1,599	1,708	1,776
Professional Services (1)	539	688	580	555	550	1,814	2,122	2,235	2,347
Advertising/ Business Development	148	177	144	126	130	492	601	575	587
Brokerage, Clearing & Exchange Fees	795	774	790	741	750	1,848	2,758	3,056	3,224
Cost of Power Generation	88	0	0	0	0	406	253	0	0
Intangibles Amortization	53	41	34	37	45	173	195	211	215
Non-Compensation Expense	*2,155*	*2,414*	*2,191*	*2,068*	*2,110*	*6,648*	*8,193*	*8,574*	*8,962*
Total Operating Expenses	**8,075**	**5,686**	**6,192**	**6,590**	**6,681**	**23,105**	**28,383**	**25,623**	**28,565**
Income (Loss) Before Inc. Taxes & Other	4,259	5,054	2,143	2,832	2,842	14,575	17,604	11,550	14,998
Income Taxes (Benefit)	1,405	1,840	632	745	853	5,023	6,005	3,348	5,129
Tax Rate	*33.0%*	*36.4%*	*29.5%*	*26.3%*	*30.0%*	*34.5%*	*34.1%*	*29.0%*	*34.2%*
NET INCOME (LOSS)	2,854	3,214	1,511	2,087	1,990	9,552	11,599	8,202	9,869
INCOME FOR COMMON	2,806	3,165	1,467	2,051	1,950	9,413	11,407	8,042	9,604
Average Shares									
Basic	429.0	422.9	432.8	427.5	427.5	451.7	433.1	426.0	435.2
Diluted	457.4	451.7	453.5	447.4	455.6	477.4	461.3	454.2	463.4
EARNINGS PER SHARE									
Basic	$6.54	$7.48	$3.39	$4.80	$4.56	$20.84	$26.34	$18.88	$22.28
Diluted	$6.13	$7.01	$3.23	$4.58	$4.28	$19.72	$24.73	$17.71	$20.92

Source: Company Reports and Merrill Lynch

Price objective basis & risk

Goldman Sachs (GS)

We believe GS shares are appropriately valued at about 1.9x given expectations of 18%+ ROE through '09E. This suggests a PO of $212 when applied to 2Q09E book value (with 5% discount to account for substantial near-term uncertainty).

Risks to price objective: Earnings volatility remains an undeniable part of the GSs business: with GS registering ROE from low teens in trough conditions to high 30s in a peak market environment. Revenues can be very lumpy and subject to global market disruptions. In addition, GS derives a high proportion of revenue from trading and market-making activities. As with most brokers, GSs business is very balance-sheet intensive and employs high leverage. While one source of GS ROE advantage is that it is good at spotting value, pricing illiquid assets, and taking risk, this means GS holds sizeable balances of illiquid securities subject to negative valuation adjustments. Going forward, investment banks and their leverage ratios will likely face greater gov't scrutiny that could hinder returns in peak market environments, particularly if the Fed gains permanent oversight of leverage. More opaque, structured products are an important component of profitability at strong points in the cycle and will probably be out of favor for some time following the mortgage debacle and credit crunch, though we do not believe securitization will be permanently impaired.

Analyst Certification

I, Guy Moszkowski, CFA, hereby certify that the views expressed in this research report accurately reflect my personal views about the subject securities and issuers. I also certify that no part of my compensation was, is, or will be, directly or indirectly, related to the specific recommendations or view expressed in this research report.

US-Mega Banks, Brokers and Asset Managers Coverage Cluster

Investment rating	Company	ML ticker	Bloomberg symbol	Analyst
BUY				
	Affiliated Mgrs.	AMG	AMG US	Cynthia Mayer
	AllianceBernstein	AB	AB US	Cynthia Mayer
	Allied Cap Corp	ALD	ALD US	Faye Elliott
	Ares Capital	ARCC	ARCC US	Faye Elliott
	Calamos	CLMS	CLMS US	Cynthia Mayer
	Eaton Vance	EV	EV US	Cynthia Mayer
	Federated Inv.	FII	FII US	Cynthia Mayer
	Franklin Re	BEN	BEN US	Cynthia Mayer
	Goldman Sachs	GS	GS US	Guy Moszkowski, CFA
	JMP Group Inc	JMP	JMP US	Guy Moszkowski, CFA
	Lazard	LAZ	LAZ US	Guy Moszkowski, CFA
	Morgan Stanley	MS	MS US	Guy Moszkowski, CFA
	Och-Ziff	OZM	OZM US	Cynthia Mayer
	T. Rowe Price	TROW	TROW US	Cynthia Mayer
	Waddell & Reed	WDR	WDR US	Cynthia Mayer
NEUTRAL				
	American Capital Strategies, Ltd.	ACAS	ACAS US	Faye Elliott
	Blackstone Group	BX	BX US	Guy Moszkowski, CFA
	Citigroup	C	C US	Guy Moszkowski, CFA
	Cowen Group Inc	COWN	COWN US	Guy Moszkowski, CFA
	Invesco	IVZ	IVZ US	Cynthia Mayer
	Janus Capital	JNS	JNS US	Cynthia Mayer
	JP Morgan Chase	JPM	JPM US	Guy Moszkowski, CFA
	Legg Mason	LM	LM US	Cynthia Mayer
	Lehman Brothers	LEH	LEH US	Guy Moszkowski, CFA
UNDERPERFORM				
	Boston Priv Fin	BPFH	BPFH US	Cynthia Mayer
	Cohen & Steers	CNS	CNS US	Cynthia Mayer
	GAMCO Investors	GBL	GBL US	Cynthia Mayer
	Jefferies Group	JEF	JEF US	Guy Moszkowski, CFA
	KBW Inc	KBW	KBW US	Guy Moszkowski, CFA
	Kohlberg Capital	KCAP	KCAP US	Faye Elliott
RESTRICTED				
	BlackRock, Inc.	BLK	BLK US	Cynthia Mayer

iQmethod SM Measures Definitions

Business Performance	Numerator	Denominator
Return On Capital Employed	NOPAT = (EBIT + Interest Income) * (1 - Tax Rate) + Goodwill Amortization	Total Assets – Current Liabilities + ST Debt + Accumulated Goodwill Amortization
Return On Equity	Net Income	Shareholders' Equity
Operating Margin	Operating Profit	Sales
Earnings Growth	Expected 5-Year CAGR From Latest Actual	N/A
Free Cash Flow	Cash Flow From Operations – Total Capex	N/A
Quality of Earnings		
Cash Realization Ratio	Cash Flow From Operations	Net Income
Asset Replacement Ratio	Capex	Depreciation
Tax Rate	Tax Charge	Pre-Tax Income
Net Debt-To-Equity Ratio	Net Debt = Total Debt, Less Cash & Equivalents	Total Equity
Interest Cover	EBIT	Interest Expense
Valuation Toolkit		
Price / Earnings Ratio	Current Share Price	Diluted Earnings Per Share (Basis As Specified)
Price / Book Value	Current Share Price	Shareholders' Equity / Current Basic Shares
Dividend Yield	Annualised Declared Cash Dividend	Current Share Price
Free Cash Flow Yield	Cash Flow From Operations – Total Capex	Market Cap. = Current Share Price * Current Basic Shares
Enterprise Value / Sales	EV = Current Share Price * Current Shares + Minority Equity + Net Debt + Other LT Liabilities	Sales
EV / EBITDA	Enterprise Value	Basic EBIT + Depreciation + Amortization

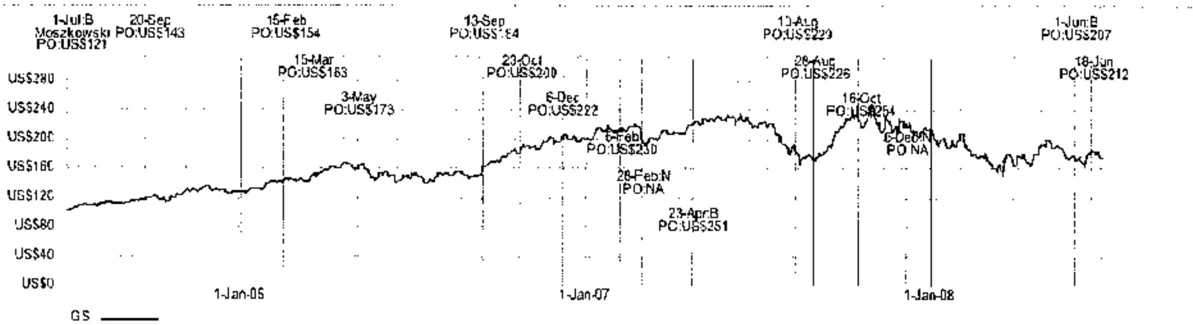
iQmethod SM is the set of Merrill Lynch standard measures that serve to maintain global consistency under three broad headings: Business Performance, Quality of Earnings, and validations. The key features of iQmethod are: A consistently structured, detailed, and transparent methodology. Guidelines to maximize the effectiveness of the comparative valuation process, and to identify some common pitfalls.

iQdatabase® is our real-time global research database that is sourced directly from our equity analysts' earnings models and includes forecasted as well as historical data for income statements, balance sheets, and cash flow statements for companies covered by Merrill Lynch.

iQprofile SM, *iQmethod* SM are service marks of Merrill Lynch & Co., Inc. *iQdatabase*® is a registered service mark of Merrill Lynch & Co., Inc.

Important Disclosures

GS Price Chart



B : Buy, N : Neutral, S : Sell, U : Underperform, PO : Price objective, NA : No longer valid

Prior to June 30, 2008, the investment opinion system included Buy, Neutral and Sell. As of June 30, 2008, the investment opinion system includes Buy, Neutral and Underperform. Dark Grey shading indicates that a security is restricted with the opinion suspended. Light grey shading indicates that a security is under review with the opinion withdrawn. The current investment opinion key is contained at the end of the report. Chart is current as of June 30, 2008 or such later date as indicated.

Investment Rating Distribution: Financial Services Group (as of 01 Jul 2008)

Coverage Universe	Count	Percent	Inv. Banking Relationships*	Count	Percent
Buy	130	44.07%	Buy	48	37.80%
Neutral	91	30.85%	Neutral	37	43.02%
Sell	74	25.08%	Sell	21	28.77%

Investment Rating Distribution: Global Group (as of 01 Jul 2008)

Coverage Universe	Count	Percent	Inv. Banking Relationships*	Count	Percent
Buy	1664	47.42%	Buy	441	29.46%
Neutral	803	22.88%	Neutral	224	31.46%
Sell	1042	29.70%	Sell	217	22.84%

* Companies in respect of which MLPF&S or an affiliate has received compensation for investment banking services within the past 12 months. For purposes of this distribution, a stock rated Underperform is included as a Sell.

FUNDAMENTAL EQUITY OPINION KEY: Opinions include a Volatility Risk Rating, an Investment Rating and an Income Rating. *VOLATILITY RISK RATINGS*, indicators of potential price fluctuation, are: A - Low, B - Medium and C - High. *INVESTMENT RATINGS* reflect the analyst's assessment of a stock's: (i) absolute total return potential and (ii) attractiveness for investment relative to other stocks within its *Coverage Cluster* (defined below). There are three investment ratings: 1 - Buy stocks are expected to have a total return of at least 10% and are the most attractive stocks in the coverage cluster; 2 - Neutral stocks are expected to remain flat or increase in value and are less attractive than Buy rated stocks and 3 - Underperform stocks are the least attractive stocks in a coverage cluster. Analysts assign investment ratings considering, among other things, the 0-12 month total return expectation for a stock and the firm's guidelines for ratings dispersions (shown in the table below). The current price objective for a stock should be referenced to better understand the total return expectation at any given time. The price objective reflects the analyst's view of the potential price appreciation (depreciation).

Investment rating	Total return expectation (within 12-month period of date of initial rating)	Ratings dispersion guidelines for coverage cluster*
Buy	≥ 10%	≤ 70%
Neutral	≥ 0%	≤ 30%
Underperform	N/A	≥ 20%

* Ratings dispersions may vary from time to time where Merrill Lynch Research believes it better reflects the investment prospects of stocks in a Coverage Cluster.

***INCOME RATINGS*, indicators of potential cash dividends, are: 7 - same/higher (dividend considered to be secure), 8 - same/lower (dividend not considered to be secure) and 9 - pays no cash dividend.** *Coverage Cluster* is comprised of stocks covered by a single analyst or two or more analysts sharing a common industry, sector, region or other classification(s). A stock's coverage cluster is included in the most recent Merrill Lynch Comment referencing the stock.

MLPF&S or one of its affiliates acts as a market maker for the securities recommended in the report: Goldman Sachs.
MLPF&S or an affiliate was a manager of a public offering of securities of this company within the last 12 months: Goldman Sachs.
The company is or was, within the last 12 months, an investment banking client of MLPF&S and/or one or more of its affiliates: Goldman Sachs.
MLPF&S or an affiliate has received compensation for investment banking services from this company within the past 12 months: Goldman Sachs.
MLPF&S or an affiliate expects to receive or intends to seek compensation for investment banking services from this company within the next three months: Goldman Sachs.
MLPF&S or one of its affiliates is willing to sell to, or buy from, clients the common equity of the company on a principal basis: Goldman Sachs.
The analyst(s) responsible for covering the securities in this report receive compensation based upon, among other factors, the overall profitability of Merrill Lynch, including profits derived from investment banking revenues.

Other Important Disclosures

UK readers: MLPF&S or an affiliate is a liquidity provider for the securities discussed in this report.

MLPF&S or one of its affiliates has a significant financial interest in the fixed income instruments of the issuer. If this report was issued on or after the 10th day of a month, it reflects a significant financial interest on the last day of the previous month. Reports issued before the 10th day of a month reflect a significant financial interest at the end of the second month preceding the date of the report: Goldman Sachs.

Information relating to Non-U.S. affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S):

MLPF&S distributes research reports of the following non-US affiliates in the US (short name: legal name): Merrill Lynch (France): Merrill Lynch Capital Markets (France) SAS; Merrill Lynch (Frankfurt): Merrill Lynch International Bank Ltd, Frankfurt Branch; Merrill Lynch (South Africa): Merrill Lynch South Africa (Pty) Ltd; Merrill Lynch (Milan): Merrill Lynch International Bank Limited; MLPF&S (UK): Merrill Lynch, Pierce, Fenner & Smith Limited; Merrill Lynch (Australia): Merrill Lynch Equities (Australia) Limited; Merrill Lynch (Hong Kong): Merrill Lynch (Asia Pacific) Limited; Merrill Lynch (Singapore): Merrill Lynch (Singapore) Pte Ltd; Merrill Lynch (Canada): Merrill Lynch Canada Inc; Merrill Lynch (Mexico): Merrill Lynch Mexico, SA de CV, Casa de Bolsa; Merrill Lynch (Argentina): Merrill Lynch Argentina SA; Merrill Lynch (Japan): Merrill Lynch Japan Securities Co, Ltd; Merrill Lynch (Seoul): Merrill Lynch International Incorporated (Seoul Branch); Merrill Lynch (Taiwan): Merrill Lynch Global (Taiwan) Limited; DSP Merrill Lynch (India): DSP Merrill Lynch Limited; PT Merrill Lynch (Indonesia): PT Merrill Lynch Indonesia; Merrill Lynch (KL) Sdn. Bhd.: Merrill Lynch (Malaysia); Merrill Lynch (Israel): Merrill Lynch Israel Limited; Merrill Lynch (Russia): Merrill Lynch CIS Limited, Moscow; Merrill Lynch (Turkey): Merrill Lynch Yatirim Bankasi A.S.; Merrill Lynch (Dubai): Merrill Lynch International Bank Ltd, Dubai Branch; MLPF&S (Zürich rep. office): MLPF&S Incorporated Zürich representative office.

This research report has been prepared and issued by MLPF&S and/or one or more of its non-U.S. affiliates. MLPF&S is the distributor of this research report in the U.S. and accepts full responsibility for research reports of its non-U.S. affiliates distributed in the U.S. Any U.S. person receiving this research report and wishing to effect any transaction in any security discussed in the report should do so through MLPF&S and not such foreign affiliates.

This research report has been approved for publication in the United Kingdom by Merrill Lynch, Pierce, Fenner & Smith Limited, which is authorized and regulated by the Financial Services Authority; has been considered and distributed in Japan by Merrill Lynch Japan Securities Co. Ltd, a registered securities dealer under the Securities and Exchange Law in Japan; is distributed in Hong Kong by Merrill Lynch (Asia Pacific) Limited, which is regulated by the Hong Kong SFC; is issued and distributed in Taiwan by Merrill Lynch Global (Taiwan) Ltd or Merrill Lynch, Pierce, Fenner & Smith Limited (Taiwan Branch); is issued and distributed in Malaysia by Merrill Lynch (KL) Sdn. Bhd., a licensed investment adviser regulated by the Malaysian Securities Commission; is issued and distributed in India by DSP Merrill Lynch Limited; and is issued and distributed in Singapore by Merrill Lynch International Bank Limited (Merchant Bank) and Merrill Lynch (Singapore) Pte Ltd (Company Registration No.'s F 06872E and 198602883D respectively). Merrill Lynch International Bank Limited (Merchant Bank) and Merrill Lynch (Singapore) Pte Ltd. are regulated by the Monetary Authority of Singapore. Merrill Lynch Equities (Australia) Limited, (ABN 65 006 276 795), AFS License 235132, provides this report in Australia. No approval is required for publication or distribution of this report in Brazil.

Merrill Lynch (Frankfurt) distributes this report in Germany. Merrill Lynch (Frankfurt) is regulated by BaFin.

Copyright, User Agreement and other general information related to this report:

 This research report is prepared for the use of Merrill Lynch clients and may not be redistributed, retransmitted or disclosed, in whole or in part, or in any form or manner, without the express written consent of Merrill Lynch. Merrill Lynch research reports are distributed simultaneously to internal and client websites eligible to receive such research prior to any public dissemination by Merrill Lynch of the research report or information or opinion contained therein. Any unauthorized use or disclosure is prohibited. Receipt and review of this research report constitutes your agreement not to redistribute, retransmit, or disclose to others the contents, opinions, conclusion, or information contained in this report (including any investment recommendations, estimates or price targets) prior to Merrill Lynch's public disclosure of such information. The information herein (other than disclosure information relating to Merrill Lynch and its affiliates) was obtained from various sources and we do not guarantee its accuracy. Merrill Lynch makes no representations or warranties whatsoever as to the data and information provided in any third party referenced website and shall have no liability or responsibility arising out of or in connection with any such referenced website.

This research report provides general information only. Neither the information nor any opinion expressed constitutes an offer or an invitation to make an offer, to buy or sell any securities or other investment or any options, futures or derivatives related to such securities or investments. It is not intended to provide personal investment advice and it does not take into account the specific investment objectives, financial situation and the particular needs of any specific person who may receive this report. Investors should seek financial advice regarding the appropriateness of investing in any securities, other investment or investment strategies discussed or recommended in this report and should understand that statements regarding future prospects may not be realized. Investors should note that income from such securities or other investments, if any, may fluctuate and that price or value of such securities and investments may rise or fall. Accordingly, investors may receive back less than originally invested. Past performance is not necessarily a guide to future performance. Any information relating to the tax status of financial instruments discussed herein is not intended to provide tax advice or to be used by anyone to provide tax advice. Investors are urged to seek tax advice based on their particular circumstances from an independent tax professional.

Foreign currency rates of exchange may adversely affect the value, price or income of any security or related investment mentioned in this report. In addition, investors in securities such as ADRs, whose values are influenced by the currency of the underlying security, effectively assume currency risk.

Officers of MLPF&S or one or more of its affiliates (other than research analysts) may have a financial interest in securities of the issuer(s) or in related investments.

Merrill Lynch Research policies relating to conflicts of interest are described at http://www.ml.com/media/43347.pdf.

Fundamental equity reports are produced on a regular basis as necessary to keep the investment recommendation current.

iQmethod, iQmethod 2.0, iQprofile, iQtoolkit, iQworks are service marks of Merrill Lynch & Co., Inc. iQanalytics®, iQcustom®, iQdatabase® are registered service marks of Merrill Lynch & Co., Inc.

Macquarie (USA)
Equities Research

MACQUARIE

Incorporating FBK, the Global FIG Specialist

UNITED STATES

GS US	Neutral
Price 16 Apr 10	US$160.81

12-month target	**US$**	**185.00**
12-month TSR	**%**	**+15.9**
Valuation - Price To Book	**US$**	
GICS sector		**Diversified Financials**
Market cap	**US$m**	**84,731**
30-day avg turnover	**US$m**	**1,588.3**
Number shares on issue	**m**	**526.9**

Investment fundamentals

Year end 31 Dec		2009A	2010E	2011E	2012E
Adjusted profit	m	12,192	10,112	9,031	8,434
EPS adj	US$	22.16	17.30	19.32	21.22
PER adj	x	7.3	9.3	8.3	7.6
Total DPS	US$	1.40	1.40	1.40	1.40
Total div yield	%	0.9	0.9	0.9	0.9
ROE	%	21.8	14.8	13.5	14.4
P/BV	x	1.4	1.2	1.2	1.1

GS US vs S&P 500, & rec history

Note: Recommendation timeline - if not a continuous line, then there was no Macquarie coverage at the time or there was an embargo period.
Source: FactSet, Macquarie Capital (USA), April 2010
(all figures in USD unless noted)

EXHIBIT
PENGAD 800-631-6989
Porten 19
5/1/15 TA

David Trone
1 212 231 8051 david.trone@macquarie.com
Bimal Shah
1 212 231 8053 bimal.shah@macquarie.com

19 April 2010

Goldman Sachs Group

Our Thoughts on the SEC's Fraud Claim

Event

- On Friday, the SEC accused Goldman of fraud associated with a synthetic CDO. We believe equity investors (GS fell 13%), the media, Washington and many others rushed to judgement. GS appears blind-sided by the claim and has issued its side of the story, creating what we see as some doubt about the SEC's logic.

Impact

- After reviewing the allegations and Goldman's response, we are not yet willing to assign probabilities on the chance of a conviction. Proof of intent to deceive is key, and we are not convinced that the emails establish this. Also key is what the original long investors knew or didn't know about the selection process.
- Normally, firms settle with the SEC to avoid the risk of losing in court, which would tee-up huge class-action wins. However, in this case, the losses only total $1bn. Typically, reputational damage, particularly in the institutional context, is a paper tiger. However, in this case, the response by the media and Washington has been so severe, that we believe management will want their day in court to prove the firm's innocence. As a result, we may not see the typical settlement but a trial.
- As for the direct financial impact, the worst-case scenario is probably $1.10/sh or 6% of our 2010 estimate while there were no material expectations for synthetic CDO revenue in forward estimates. As for reputation, Goldman clients are "eyes-wide-open".
- The bigger issue may be the role a mortgage-related fraud claim would have on the financial reform process. On one hand, synthetic CDOs had no role in the housing bubble, since they do not create incremental demand for mortgages but are based on existing product. On the other hand, it could be another example of the CDS markets serving as a tool for manipulative schemes (many believe that certain investors sold short shares of Bear, Lehman, Merrill, et al and drove them down via a combination of CDS market manipulation and oral fear-mongering).
- As for read-across, the SEC is apparently looking for similar allegedly concocted selection arrangements set up by other firms. We doubt the SEC will be willing (mkts confidence) and able (manpower, time) to bring many more of these cases.

Earnings and target price revision

- We expect limited impact to operating EPS at the moment.

Price catalyst

- 12-month price target: US$185.00 based on a Price to Book methodology.Catalyst: Quarterly Earnings.

Action and recommendation

- Legal/regulatory trouble often results in short-term pressure, setting up the stock for a sharp recovery upon resolution (see Merrill/Spitzer late-'02-mid-'03). For now, GS is not yet cheap enough and the overhang period is just getting started.

Valuation & Risks

After recovering from the November 2008 abyss, GS now trades at 1.5x TBV of $108 and 1.4x BV of $117. Goldman has only been public for a decade, or just two full boom-bust cycles, thus we can not reliably cite these multiples as low or high. On the other hand, GS trades at about 8.4x our 2011E, which is about normal for full-service firms through a longer historical trading pattern. Our price target is $185, based on 9.6x our 2011 EPS estimate. Goldman relies heavily on principal-driven activities, which naturally create direct risks. Bid-ask spreads in fixed income are the primary factor in short-term earnings, as even a sharp rebound in investment banking could not offset the effects of narrowing.

Fig 1 GS Financial Model

($ Mil.)	1Q09	SEQ Δ	2Q09	SEQ Δ	3Q09	SEQ Δ	4Q09	SEQ Δ	FY09	SEQ Δ	1Q10E	SEQ Δ	2Q10E	SEQ Δ	3Q10E	SEQ Δ	4Q10E	SEQ Δ	FY10E	SEQ Δ	FY11E	SEQ Δ
Revenues																						
Investment Banking	$ 823	-20%	$ 1,440	75%	$ 899	-38%	$ 1,635	82%	$ 4,797	-7%	$ 1,054	-36%	$ 1,434	36%	$ 1,371	-4%	$ 1,393	2%	$ 5,252	9%	$ 5,253	0%
Trading and principal investments	7,150		10,784	51%	10,027	-7%	6,412	-36%	34,373	279%	7,769	21%	8,443	9%	8,083	-4%	7,980	-1%	32,275	-6%	27,200	-16%
Asset management & securities services	1,452	-17%	1,537	6%	1,446	-6%	1,568	8%	6,003	-25%	1,507	-4%	1,562	4%	1,544	-1%	1,699	10%	6,311	5%	6,690	6%
Net Revenues	9,425		13,761	46%	12,372	-10%	9,615	-22%	45,173	103%	10,330	7%	11,439	11%	10,998	-4%	11,071	1%	43,838	-3%	39,143	-11%
Operating expenses																						
Compensation	$ 4,712		$ 6,649	41%	$ 5,351	-20%	$ (519)	-110%	$ 16,193	48%	$ 4,855	NM	$ 5,376	11%	$ 5,059	-6%	$ 4,096	-19%	$ 19,387	20%	$ 17,199	-11%
Amort. of IPO/Acq.Awards	-		-		-		-		-		-		-		-		-		-		-	
Brokerage, clearing, exchange fees	536	-27%	574	7%	580	1%	608	5%	2,298	-23%	547	-10%	558	2%	569	2%	581	2%	2,255	-2%	1,804	-20%
Market development	68	-29%	82	21%	84	2%	108	29%	342	-29%	89	-18%	91	3%	93	2%	84	-10%	357	4%	374	5%
Communications and tech	173	-8%	173	0%	194	12%	169	-13%	709	-7%	169	0%	171	1%	179	5%	179	0%	698	-2%	559	-20%
Depreciation and amortization	511	22%	426	-17%	367	-14%	392	7%	1,696	66%	372	-5%	372	0%	372	0%	372	0%	1,490	-12%	1,341	-10%
Amort. of identifiable intang. Assets	38	-46%	-	-100%	-		-		38	-84%	-		-		-		-		-	-100%	-	
Occupancy	241	-6%	242	0%	230	-5%	237	3%	950	-1%	237	0%	237	0%	237	0%	230	-3%	941	-1%	894	-5%
Other expenses	135	-46%	586	334%	772	32%	1,243	61%	2,736	251%	746	-40%	723	-3%	702	-3%	723	3%	2,894	6%	2,749	-5%
Power generation cost (upto 1Q09)	382	-24%	-	-100%	-		-		382		-		-		-		-		-		-	
Total Non-Comp Expenses	2,084	-17%	2,083	0%	2,227	7%	2,757	24%	9,151	2%	2,160	-22%	2,153	0%	2,153	0%	2,169	1%	8,634	-6%	7,721	-11%
Total Operating Expenses	6,796	236%	8,732	28%	7,578	-13%	2,238	-70%	25,344	27%	7,015	213%	7,529	7%	7,212	-4%	6,265	-13%	28,021	11%	24,920	-11%
Pre-Tax Income	2,629		5,029	91%	4,794	-5%	7,377	54%	19,829	749%	3,315	-55%	3,910	18%	3,786	-3%	4,806	27%	15,817	-20%	14,223	-10%
Provision for taxes	815		1,594	96%	1,606	1%	2,429	51%	6,444	45929%	1,061		1,251	18%	1,212	-3%	1,538	27%	5,061	-21%	4,551	
Preferred Dividends	155	-7%	717	363%	160	-78%	161	1%	1,193		161	0%	161	0%	161	0%	161	0%	644		640	-1%
Net earnings (GAAP)	1,659		2,718	64%	3,028	11%	4,787	58%	12,192	497%	2,093	-56%	2,498	19%	2,414	-3%	3,107	29%	10,112	-17%	9,031	-11%
Net earnings (operating)	$ 1,659		$ 3,179	92%	$ 3,028	-5%	$ 4,787	58%	$ 12,192	497%	$ 2,093	-56%	$ 2,498	19%	$ 2,414	-3%	$ 3,107	29%	$ 10,112	-17%	$ 9,031	-11%
FD EPS (GAAP)	$3.39		$4.93	45%	$5.25	6%	$8.20	56%	$ 21.77		$3.55	-57%	$4.24	20%	$4.14	-2%	$5.38	30%	$ 17.33		$ 19.32	12%
FD EPS (Operating)	$3.39		$5.77	70%	$5.25	-9%	$8.20	56%	$ 22.61	401%	$3.55	-57%	$4.24	20%	$4.14	-2%	$5.39	30%	$ 17.33	-23%	$ 18.32	12%
Avg. FD Shares	489	6%	551	13%	577	5%	584	1%	550	22%	590	1%	588	0%	582	-1%	577	-1%	584	6%	467	-20%
Dividend	$0.35	0%	$0.35	0%	$0.35	0%	$0.35	0%	$ 1.40	0%	$0.35	0%	$0.35	0%	$0.35	0%	$0.35	0%	$ 1.40	0%	$ 1.40	0%
Comp Ratio	50.0%		48.3%		43.3%		-5.4%		35.8%		47.0%		47.0%		46.0%		37.0%		44.2%		43.9%	
Non-Comp Ratio	22.1%		14.9%		17.7%		28.7%		20.3%		20.9%		18.8%		19.6%		19.6%		19.7%		19.7%	
PTOM	27.9%		36.8%		39.0%		76.7%		43.9%		32.1%		34.2%		34.4%		43.4%		36.1%		36.3%	
Effect. Tax Rate	31.0%		31.7%		33.5%		32.9%		32.5%		32.0%		32.0%		32.0%		32.0%		32.0%		32.0%	
Balance Sheet																						
ROE (GAAP)									21.7%		13.0%		15.1%		14.1%		17.5%		16.5%		13.5%	
EOP Book Value Per Share	$98.82		$108.41		111.27		117.48		$ 117.48		$120.48		$124.12		$127.57		$132.24		$ 132.24		$ 138.25	

Source: Company data, Macquarie Capital (USA), April 2010

Important disclosures:

Recommendation definitions

Macquarie - Australia/New Zealand
Outperform – return >5% in excess of benchmark return
Neutral – return within 5% of benchmark return
Underperform – return >5% below benchmark return

Macquarie – Asia/Europe
Outperform – expected return >+10%
Neutral – expected return from -10% to +10%
Underperform – expected return <-10%

Macquarie First South - South Africa
Outperform – expected return >+10%
Neutral – expected return from -10% to +10%
Underperform – expected return <-10%

Macquarie - Canada
Outperform – return >5% in excess of benchmark return
Neutral – return within 5% of benchmark return
Underperform – return >5% below benchmark return

Macquarie - USA
Outperform (Buy) – return >5% in excess of Russell 3000 index return
Neutral (Hold) – return within 5% of Russell 3000 index return
Underperform (Sell)– return >5% below Russell 3000 index return

Recommendations – 12 months

Note: Quant recommendations may differ from Fundamental Analyst recommendations

Volatility index definition*

This is calculated from the volatility of historical price movements.

Very high–highest risk – Stock should be expected to move up or down 60–100% in a year – investors should be aware this stock is highly speculative.

High – stock should be expected to move up or down at least 40–60% in a year – investors should be aware this stock could be speculative.

Medium – stock should be expected to move up or down at least 30–40% in a year.

Low–medium – stock should be expected to move up or down at least 25–30% in a year.

Low – stock should be expected to move up or down at least 15–25% in a year.
* Applicable to Australian/NZ/Canada stocks only

Financial definitions

All "Adjusted" data items have had the following adjustments made:
Added back: goodwill amortisation, provision for catastrophe reserves, IFRS derivatives & hedging, IFRS impairments & IFRS interest expense
Excluded: non recurring items, asset revals, property revals, appraisal value uplift, preference dividends & minority interests

EPS = adjusted net profit / efpowa*
ROA = adjusted ebit / average total assets
ROA Banks/Insurance = adjusted net profit /average total assets
ROE = adjusted net profit / average shareholders funds
Gross cashflow = adjusted net profit + depreciation
*equivalent fully paid ordinary weighted average number of shares

All Reported numbers for Australian/NZ listed stocks are modelled under IFRS (International Financial Reporting Standards).

Recommendation proportions – For quarter ending 31 March 2010

	AU/NZ	Asia	RSA	USA	CA	EUR	
Outperform	50.55%	62.20%	42.25%	42.39%	62.16%	46.74%	(for US coverage by MCUSA, 6.53% of stocks covered are investment banking clients)
Neutral	36.63%	19.02%	47.89%	50.35%	31.89%	34.78%	(for US coverage by MCUSA, 9.62% of stocks covered are investment banking clients)
Underperform	12.82%	18.78%	9.86%	7.27%	5.95%	18.48%	(for US coverage by MCUSA, 0.00% of stocks covered are investment banking clients)

Company Specific Disclosures:

Important disclosure information regarding the subject companies covered in this report is available at www.macquarie.com/research/disclosures.

Analyst Certification:
The views expressed in this research accurately reflect the personal views of the analyst(s) about the subject securities or issuers and no part of the compensation of the analyst(s) was, is, or will be directly or indirectly related to the inclusion of specific recommendations or views in this research. The analyst principally responsible for the preparation of this research receives compensation based on overall revenues of Macquarie Group Ltd ABN 94 122 169 279 (AFSL No. 318062) (MGL) and its related entities (the Macquarie Group) and has taken reasonable care to achieve and maintain independence and objectivity in making any recommendations.

General Disclaimers:
Macquarie Securities (Australia) Ltd; Macquarie Capital (Europe) Ltd; Macquarie Capital Markets Canada Ltd; Macquarie Capital Markets North America Ltd; Macquarie Capital (USA) Inc; Macquarie Capital Securities Ltd and its Taiwan branch; Macquarie Capital Securities (Singapore) Pte Ltd; Macquarie Securities (NZ) Ltd; Macquarie First South Securities (Pty) Limited; Macquarie Capital Securities (India) Pvt Ltd; Macquarie Capital Securities (Malaysia) Sdn Bhd; and Macquarie Securities (Thailand) Ltd are not authorized deposit-taking institutions for the purposes of the Banking Act 1959 (Commonwealth of Australia), and their obligations do not represent deposits or other liabilities of Macquarie Bank Limited ABN 46 008 583 542 (MBL) or MGL. MBL does not guarantee or otherwise provide assurance in respect of the obligations of any of the above mentioned entities. MGL provides a guarantee to the Monetary Authority of Singapore in respect of the obligations and liabilities of Macquarie Capital Securities (Singapore) Pte Ltd for up to SGD 35 million. This research has been prepared for the general use of the wholesale clients of the Macquarie Group and must not be copied, either in whole or in part, or distributed to any other person. If you are not the intended recipient you must not use or disclose the information in this research in any way. If you received it in error, please tell us immediately by return e-mail and delete the document. We do not guarantee the integrity of any e-mails or attached files and are not responsible for any changes made to them by any other person. MGL has established and implemented a conflicts policy at group level (which may be revised and updated from time to time) (the "Conflicts Policy") pursuant to regulatory requirements (including the FSA Rules) which sets out how we must seek to identify and manage all material conflicts of interest. Nothing in this research shall be construed as a solicitation to buy or sell any security or product, or to engage in or refrain from engaging in any transaction. In preparing this research, we did not take into account your investment objectives, financial situation or particular needs. Before making an investment decision on the basis of this research, you need to consider, with or without the assistance of an adviser, whether the advice is appropriate in light of your particular investment needs, objectives and financial circumstances. There are risks involved in securities trading. The price of securities can and does fluctuate, and an individual security may even become valueless. International investors are reminded of the additional risks inherent in international investments, such as currency fluctuations and international stock market or economic conditions, which may adversely affect the value of the investment. This research is based on information obtained from sources believed to be reliable but we do not make any representation or warranty that it is accurate, complete or up to date. We accept no obligation to correct or update the information or opinions in it. Opinions expressed are subject to change without notice. No member of the Macquarie Group accepts any liability whatsoever for any direct, indirect, consequential or other loss arising from any use of this research and/or further communication in relation to this research. Clients should contact analysts at, and execute transactions through, a Macquarie Group entity in their home jurisdiction unless governing law permits otherwise.

Country-Specific Disclaimers:
Australia: In Australia, research is issued and distributed by Macquarie Securities (Australia) Ltd (AFSL No. 238947), a participating organisation of the Australian Securities Exchange. **New Zealand**: In New Zealand, research is issued and distributed by Macquarie Securities (NZ) Ltd, a NZX Firm. **Canada**: In Canada, research is prepared, approved and distributed by Macquarie Capital Markets Canada Ltd, a participating organisation of the Toronto Stock Exchange, TSX Venture Exchange & Montréal Exchange. Macquarie Capital Markets North America Ltd., which is a registered broker-dealer and member of FINRA, accepts responsibility for the contents of reports issued by Macquarie Capital Markets Canada Ltd in the United States and sent to US persons. Any person wishing to effect transactions in the securities described in the reports issued by Macquarie Capital Markets Canada Ltd should do so with Macquarie Capital Markets North America Ltd. The Research Distribution Policy of Macquarie Capital Markets Canada Ltd is to allow all clients that are entitled to have equal access to our research. **United Kingdom**: In the United Kingdom, research is issued and distributed by Macquarie Capital (Europe) Ltd, which is authorised and regulated by the Financial Services Authority (No. 193905). **Germany**: In Germany, research is issued and distributed by

Macquarie Capital (Europe) Ltd, Niederlassung Deutschland, which is authorised and regulated in the United Kingdom by the Financial Services Authority (No. 193905). **France**: In France, research is issued and distributed by Macquarie Capital (Europe) Ltd, which is authorised and regulated in the United Kingdom by the Financial Services Authority (No. 193905). **Hong Kong**: In Hong Kong, research is issued and distributed by Macquarie Capital Securities Ltd, which is licensed and regulated by the Securities and Futures Commission. **Japan**: In Japan, research is issued and distributed by Macquarie Capital Securities (Japan) Limited, a member of the Tokyo Stock Exchange, Inc., Osaka Securities Exchange Co. Ltd, and Jasdaq Securities Exchange, Inc. (Financial Instruments Firm, Kanto Financial Bureau (kin-sho) No. 231, a member of Japan Securities Dealers Association and Financial Futures Association of Japan). **India:** In India, research is issued and distributed by Macquarie Capital Securities (India) Pvt Ltd, which is a SEBI registered Stock Broker having membership with National Stock Exchange of India Limited (INB231246738) and Bombay Stock Exchange Limited (INB011246734). **Malaysia**: In Malaysia, research is issued and distributed by Macquarie Capital Securities (Malaysia) Sdn. Bhd. (Company registration number: 463469-W) which is a Participating Organisation of Bursa Malaysia Berhad and a holder of Capital Markets Services License issued by the Securities Commission. **Taiwan**: Information on securities/instruments that are traded in Taiwan is distributed by Macquarie Capital Securities Ltd, Taiwan Branch, which is licensed and regulated by the Financial Supervisory Commission. No portion of the report may be reproduced or quoted by the press or any other person without authorisation from Macquarie. **Thailand**: In Thailand, research is issued and distributed by Macquarie Securities (Thailand) Ltd, a licensed securities company that is authorized by the Ministry of Finance, regulated by the Securities and Exchange Commission of Thailand and is an exchange member no. 28 of the Stock Exchange of Thailand. The Thai Institute of Directors Association has disclosed the Corporate Governance Report of Thai Listed Companies made pursuant to the policy of the Securities and Exchange Commission of Thailand. Macquarie Securities (Thailand) Ltd does not endorse the result of the Corporate Governance Report of Thai Listed Companies but this Report can be accessed at:http://www.thai-iod.com/en/publications.asp?type=4. **South Africa**: In South Africa, research is issued and distributed by Macquarie First South Securities (Pty) Limited, a member of the JSE Limited. **Singapore**: In Singapore, research is issued and distributed by Macquarie Capital Securities (Singapore) Pte Ltd (Company Registration Number: 198702912C), a Capital Markets Services license holder under the Securities and Futures Act to deal in securities and provide custodial services in Singapore. Pursuant to the Financial Advisers (Amendment) Regulations 2005, Macquarie Capital Securities (Singapore) Pte Ltd is exempt from complying with sections 25, 27 and 36 of the Financial Advisers Act. All Singapore-based recipients of research produced by Macquarie Capital (Europe) Limited, Macquarie Capital Markets Canada Ltd, Macquarie First South Securities (Pty) Limited and Macquarie Capital (USA) Inc. represent and warrant that they are institutional investors as defined in the Securities and Futures Act. **United States**: In the United States, research is issued and distributed by Macquarie Capital (USA) Inc., which is a registered broker-dealer and member of FINRA. Macquarie Capital (USA) Inc, accepts responsibility for the content of each research report prepared by one of its non-US affiliates when the research report is distributed in the United States by Macquarie Capital (USA) Inc. Macquarie Capital (USA) Inc.'s affiliate's analysts are not registered as research analysts with FINRA, may not be associated persons of Macquarie Capital (USA) Inc., and therefore may not be subject to FINRA rule restrictions on communications with a subject company, public appearances, and trading securities held by a research analyst account. Any persons receiving this report directly from Macquarie Capital (USA) Inc. and wishing to effect a transaction in any security described herein should do so with Macquarie Capital (USA) Inc. Important disclosure information regarding the subject companies covered in this report is available at www.macquarie.com/research/disclosures, or contact your registered representative at 1-888-MAC-STOCK, or write to the Supervisory Analysts, Research Department, Macquarie Securities, 125 W.55th Street, New York, NY 10019.

Auckland Tel: (649) 377 6433	**Bangkok** Tel: (662) 694 7999	**Calgary** Tel: (1 403) 218 6650	**Hong Kong** Tel: (852) 2823 3588	**Jakarta** Tel: (62 21) 515 1818	**Johannesburg** Tel: (2711) 583 2000	**Kuala Lumpur** Tel: (60 3) 2059 8833
London Tel: (44 20) 3037 4400	**Manila** Tel: (63 2) 857 0888	**Melbourne** Tel: (613) 9635 8139	**Montreal** Tel: (1 514) 925 2850	**Mumbai** Tel: (91 22) 6653 3000	**Perth** Tel: (618) 9224 0888	**Seoul** Tel: (82 2) 3705 8500
Shanghai Tel: (86 21) 6841 3355	**Singapore** Tel: (65) 6231 1111	**Sydney** Tel: (612) 8232 9555	**Taipei** Tel: (886 2) 2734 7500	**Tokyo** Tel: (81 3) 3512 7900	**Toronto** Tel: (1 416) 848 3500	**New York** Tel: (1 212) 231 2500

Available to clients on the world wide web at www.macquarieresearch.com and through Thomson Financial, FactSet, Reuters, Bloomberg, CapitalIQ and TheMarkets.com.

Macquarie (USA)
Equities Research

MACQUARIE

Research

Heads of Equity Research

John O'Connell (Global Co – Head)	(612) 8232 7544
David Rickards (Global Co – Head)	(44 20) 3037 4399
Mark Little (US)	(1 212) 231 2577
Stephen Harris (Canada)	(1 416) 848 3655

Consumer Discretionary

Gaming & Leisure

Joel Simkins (New York)	(1 212) 231 2635
Chad Beynon (New York)	(1 212) 231 2634

Retailing

David Pupo (Toronto)	(1 416) 848 3505

Homebuilding & Materials

Ken Zener (New York)	(1 212) 231 2479

Energy

Jason Gammel (New York)	(1 212) 231 2633
Chris Feltin (Calgary)	(1 403) 539 8544
Cristina Lopez (Calgary)	(1 403) 539 8542
Leon Knight (Calgary)	(1 403) 303 8655
Chris Theal (Calgary)	(1 403) 539 4349
David Popowich (Calgary)	(1 403) 539 8529
Scott Treadwell (Calgary)	(1 403) 539 8530
Waqar Syed (Denver)	(1 303) 952 2753
Joe Magner (Denver)	(1 303) 952 2751
Ryan McCormick (Denver)	(1 303) 952 2752

Alternative Energy

Kelly Dougherty (New York)	(1 212) 231 2493

Financials

Asset Managers/Financial Technology

Roger Smith (New York)	(1 212) 231 8016
William Broomall (New York)	(1 212) 231 8039

Banks/Trust Banks

David Trone (Head of US Commercial and Investment Banks Research)	(1 212) 231 8051
Andrew Marquardt (New York)	(1 212) 231 8037
Albert Savastano (New York)	(1 212) 231 8046
Adam Klauber (Chicago)	(1 312) 660 9187
John Pancari (New York)	(1 212) 231 8014
Thomas Alonso (New York)	(1 212) 231 8047
Jonathan Elmi (New York)	(1 212) 231 8065
Bill Young (New York)	(1 212) 231 8052
Sumit Malhotra (Toronto)	(1 416) 848 3687

Financial Strategies

Adam Klauber (Chicago)	(1 312) 660 9187

Investment Banks & Brokers

David Trone (New York)	(1 212) 231 8051
Steven Fu (New York)	(1 212) 231 8049
Bimal Shah (New York)	(1 212) 231 8053

Financials – cont

Life Insurance

Mark Finkelstein (Chicago)	(1 312) 660 9179

Market Structure

Edward Ditmire (New York)	(1 212) 231 8076

Mortgage & Consumer Finance

Bill Carcache (New York)	(1 212) 231 8034
Matthew Howlett (New York)	(1 212) 231 8063

Mortgage REITs

Matthew Howlett (New York)	(1 212) 231 8063

Property & Casualty Insurance

William Yankus (West Hartford)	(1 860) 380 2003
Matthew J Carletti (Chicago)	(1 312) 660 9134
Dan Farrell (New York)	(1 212) 231 8044
Amit Kumar (New York)	(1 212) 231 8013
Dan Schlemmer (Chicago)	(1 312) 660 9182

Industrials

Aerospace & Defense

Rob Stallard (New York)	(1 212) 231 2486
Rama Bondada (New York)	(1 212) 231 2481

Capital Goods

Steven Song (New York)	(1 212) 231 2455

Infrastructure Services

Avi Dalfen (Toronto)	(1 416) 628 3934

Construction and Engineering

Sameer Rathod (New York)	(1 212) 231 2474

Transportation & Logistics

Scott Flower (New York)	(1 212) 231 2537

Materials

Global Metals & Mining

Curt Woodworth (New York)	(1 212) 231 2482
Pierre Vaillancourt (Toronto)	(1 416) 848 3647
Duncan McKeen (Montréal)	(1 514) 925 2856

Real Estate

Property Trusts & Developers

Robert Stevenson (New York)	(1 212) 231 8068
Ki Bin Kim (New York)	(1 212) 231 6386
Michael Levy (New York)	(1 212) 231 2626
Dave Wigginton (New York)	(1 212) 231 6380
Michael Smith (Toronto)	(1 416) 848 3696

TMET

Telecommunications

Phil Cusick (New York)	(1 212) 231 6376
Glenn Jamieson (Toronto)	(416) 848 3658

Software

Brad Zelnick (New York)	(1 212) 231 2618

IT Hardware

Richard Choe (New York)	(1 212) 231 6370

Media

Ben Stretch (New York)	(1 212) 231 2574

Technology

Shawn Webster (New York)	(1 212) 231 2539
Glenn Jamieson (Toronto)	(416) 848 3658

Business Services

Kevin McVeigh (New York)	(1 212) 231 6191

Utilities

Angie Storozynski (New York)	(1 212) 231 2569
Matthew Akman (Toronto)	(1 416) 848 3510
Stephen Harris (Toronto)	(1 416) 848 3655

Commodities & Precious Metals

Metals & Mining

Jim Lennon (London)	(44 20) 3037 4271
Max Layton (London)	(44 20) 3037 4273
Kona Haque (London)	(44 20) 3037 4334

Oil & gas

Jan Stuart (New York)	(1 212) 231 2485

Emerging Leaders (Small/Mid Cap)

Al Kabili (New York)	(1 212) 231 2473
Jon Groberg (New York)	(1 212) 231 2612
Cooley May (New York)	(1 212) 231 2586

Economics and Strategy

Stephen Harris (Toronto)	(1 416) 848 3655
Jan Stuart (Global Oil Economist)	(1 212) 231 2485

Find our research at

Macquarie:	www.macquarie.com.au/research
Thomson:	www.thomson.com/financial
Reuters:	www.knowledge.reuters.com
Bloomberg:	MAC GO
Factset:	http://www.factset.com/home.aspx
CapitalIQ	www.capitaliq.com
TheMarkets.com	www.themarkets.com

Contact Gareth Warfield for access (612) 8232 3207

Email addresses

FirstName.Surname@macquarie.com

eg. David.Rickards@macquarie.com

Sales

Equities

Stevan Vrcelj (Head of Global Sales)	(612) 8232 5999
Alex Rothwell (Toronto)	(1 416) 848 3677

US Sales

Greg Coleman (New York)	(1 212) 231 2567

US Financial Specialist Sales

Scott Barishaw (New York)	(1 212) 231 8026

US Sales Trading

Austin Graham (New York)	(1 212) 231 2494

Canada Sales

Tim Sorensen (Toronto)	(1 416) 848 3623

Canada Trading

Perry Catellier (Toronto)	(1 416) 848 3619

EXHIBIT
Porten 18
5/1/15 TD
PENGAD 800-631-6989

April 19, 2010

WELLS FARGO SECURITIES

Equity Research

The Goldman Sachs Group, Inc.

GS: Reputational Risks Increased, But Valuation Still Attractive

Outperform / V

Sector: U.S. Banks
Market Weight

Company Note

- **We are maintaining our Outperform recommendation on GS.** We are maintaining our Outperform recommendation on GS in the wake of the SEC's civil lawsuit (filed April 16) due to: 1) manageable financial impact if GS loses the case - we estimate the cost would be about $1.18, 6% of our expected 2011 EPS; 2) GS' share price decline (13% on 4/16 vs S&P500 decline of 1.6%) appears outsized relative to the "likely worst case" financial cost, suggesting attractive return potential vs. its peers, 3) the possibility the case may be settled at a materially lower cost to GS in the nearer-term (by the end of 2011) given our expectations of a vigorous defense of its position, and 4) our belief that GS' business opportunities will not suffer meaningful detriment from the lawsuit. We have not adjusted our EPS estimates for 2010 or 2011.
- **GS has begun to tell its side of the story, possibility reducing the concerns surrounding the SEC's allegations.** Following the SEC's filing of its lawsuit, GS has issued public documents detailing its belief that its actions with respect to the ABACUS 2007-AC1 synthetic CDO were "entirely appropriate", and that it intends to defend itself vigorously. We believe GS' strong stance could be successful in reducing the fear surrounding the SEC's allegations - and also starts to rebuild the reputational damage from the recent headlines.
- **Headline risk returns with a vengeance for the large cap banks, likely dampening investors enthusiasm for the near-term.** The SEC's highly publicized legal action against GS is likely to make investors concerned that other underwriters of structured or complex securities could also face legal and headline risk. This is likely to dampen investor enthusiasm for the large-cap banks in the near-term, particularly those with material capital markets contributions to net income.
- **The lawsuit could also result in more stringent financial services reform legislation, in our view.** While the allegations against GS do not require additional regulation (fraudulent activity is already illegal), we believe those seeking greater regulation of the financial services sector - and the largest most diversified banks in particular - could use the SEC's allegations as a catalyst for more stringent regulation of the banks and capital markets activities. This could have a negative effect on future revenue generation capabilities for these institutions.

	2009A	2010E		2011E	
EPS		**Curr.**	**Prior**	**Curr.**	**Prior**
Q1 (Mar.)	$3.39	$3.90	NC	$4.32	NC
Q2 (June)	4.93	4.21	NC	4.45	NC
Q3 (Sep.)	5.25	4.30	NC	4.59	NC
Q4 (Dec.)	8.20	5.60	NC	6.10	NC
FY	$22.13	$18.00	NC	$19.45	NC
CY	$22.13	$18.00		$19.45	
FY P/E	7.3x	8.9x		8.3x	
Rev.(MM)	$45,173	$47,134		$49,709	

Source: Company Data, Wells Fargo Securities, LLC estimates, and Reuters
NA = Not Available, NC = No Change, NE = No Estimate, NM = Not Meaningful

Qs may not sum to annual figure due to share count changes or rounding differences.

Ticker	GS
Price (04/16/2010)	$160.70
52-Week Range:	$113-194
Shares Outstanding: (MM)	542.7
Market Cap.: (MM)	$87,211.9
S&P 500:	1,192.13
Avg. Daily Vol.:	8,629,880
Dividend/Yield:	$1.40/0.9%
LT Debt: (MM)	$189,724.0
LT Debt/Total Cap.:	73.0%
ROE:	32.0%
3-5 Yr. Est. Growth Rate:	12.0%
CY 2010 Est. P/E-to-Growth:	0.7x
Last Reporting Date:	01/21/2010 Before Open

Source: Company Data, Wells Fargo Securities, LLC estimates, and Reuters

Valuation Range: $205.00 to $215.00

Our valuation range represents a 1.6x-1.7x price-to-tangible book multiple on our 2010 book value estimate of $128. Risks to achieving our valuation range include further deterioration in legacy assets, trading losses, the advent of more stringent government regulation, employee defections, and the extension of a challenged economic environment.

Investment Thesis:

GS's reduced competition, minimal consumer exposure, and superior risk control should allow the company to drive above average profit growth in the current uncertain environment, thereby resulting in premium valuation over time.

Matthew H. Burnell, Senior Analyst
(704) 374-7148 / matt.burnell@wachovia.com
Herman Chan, CFA, Associate Analyst
(212) 214-8037 / herman.chan@wachovia.com

Please see page 5 for rating definitions, important disclosures and required analyst certifications

Company Description:

The Goldman Sachs Group, Inc. is a leading global banking, securities and investment management firm that provides a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments and high-net-worth individuals.

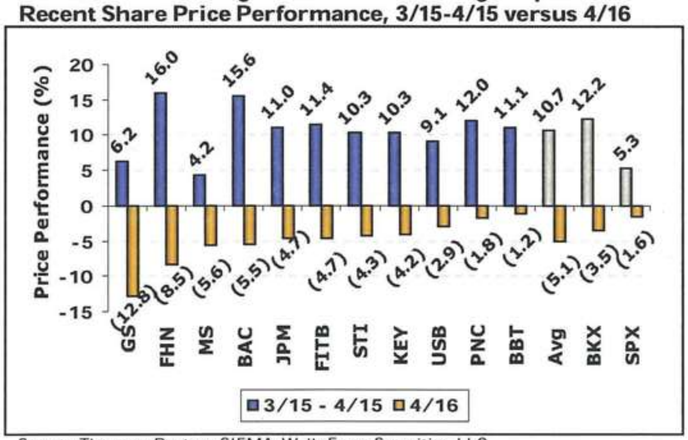
Valuation remains attractive for the intermediate to longer-term, in our view; maintaining our Outperform rating on GS shares. The drop in GS' share price on April 16 leaves it at an attractive level, in our opinion.

1) Our valuation range ($205-$215) is 1.6x-1.7x our estimated FYE 2010E tangible book value, a level well below GS' historical average allowing for a reduced multiple in the future as a result of greater regulation;
2) Our current valuation range based on our price/TBV multiple allows a 28%-34% upside from its current level;
3) GS currently trades at a price/normalized earnings ratio of 5.1x, a level less than half of the regional banks in our coverage universe.

While headline risk is likely to keep GS share price from outperforming in the near-term, we believe the market will come to better appreciate the manageable financial and reputational risks GS faces as well as the benefit of greater clarity on financial services regulatory reform. We believe this should allow GS to outperform its peers in the intermediate to long term. As a result, we have maintained our Outperform rating on GS shares.

Leading up to April 16, bank share price performance had been well ahead of the broader market indices. Given the rally in bank shares over the month from March 15 through April 15, our large cap bank coverage universe enjoyed an average share price improvement of 11% (an annualized return of approximately 128%). While outperforming the S&P 500 by 540 basis points, our coverage universe trailed the BKX Index by 150 bps.

Exhibit 1: Wells Fargo Securities LLC Large Cap Bank Recent Share Price Performance, 3/15-4/15 versus 4/16



Source: Thomson Reuters, SIFMA, Wells Fargo Securities, LLC

SEC's civil lawsuit against Goldman Sachs proved the catalyst for a sector-wide sell off on April 16, in our view. On April 16, however, our coverage universe fell by an average of 5.1%, underperforming both the BKX and the S&P 500. Leading the group lower was Goldman Sachs, who was the subject of a civil lawsuit announced by the SEC in the morning of April 16. The news gave investors a reason to reduce exposure to bank stocks – at least ahead of the weekend and the bulk of bank earnings announcements expected the week of April 19 – for the near-term while the fallout of the GS lawsuit and pending bank regulatory reform are better understood.

Financial risk appears manageable (6% of our 2011E EPS estimate of $19.45) and unlikely to occur in the near-term. Obviously, the primary risk for GS in this specific lawsuit is the risk it may lose the case. If this occurs, we believe the worst-case scenario for GS would be approximately $1.03B: the return of the $15MM in structuring fees received from the transaction, the return of other revenue GS received from transactions related to the CDO (which we estimate at $10MM, which we believe is conservative) plus potential restitution (in the form of fines) of the $1.0 billion that the SEC estimates investors lost on their investments in the transaction. Assuming that such a payment is tax deductible, we estimate this could reduce GS' net income by $677MM, or approximately $1.18 per share using our estimated 2011 estimated weighted average share count of 573MM shares. Given the length of a typical court case, we estimate that the cost would be unlikely to hit GS' results until at 2012 at the earliest.

GS issued a multi-part statement mounting its initial defense against the SEC's allegations – willing to go the distance to clear its name. GS released a document April 18 stating its position on the SEC's lawsuit, clarifying comments made in the aftermath of the SEC's announcement of the lawsuit. In sum, we believe GS' contentions suggest it is willing to take its chance in court, if necessary, to clear its name and attempt to revive its reputation. In its release, GS contends:

1) the fact that GS lost money (approximately $90MM by its count) suggests it did not intend to structure an instrument for the purposes of losing money for investors – of which GS was one;
2) GS noted that the two large investors (IKB and ACA Capital Management) were "provided extensive information" about the static pool of approximately 90 securities and that as "among the most sophisticated mortgage investors in the world, they understood that a synthetic CDO transaction requires a short interest for every corresponding long position."
3) As a market maker, GS did not disclose the name of the investor taking the short position to ACA as a part of normal business practice.
4) ACA's position as the largest investor in the security argues that they "had every incentive to select appropriate securities", and use their own models and analysis to choose every security in the collateral pool. As part of the transaction, GS said that ACA had discussions with IKB and Paulson and Co. about the collateral pool. According to GS, "ACA rejected numerous securities suggested by Paulson & Co., including more than half of its initial suggestions, and was paid a fee for its role as portfolio selection agent in analyzing and approving the underlying reference portfolio." According to the SEC's complaint, Paulson picked 123 securities for inclusion into the CDO, of which ACA approved 55.
5) GS noted that this transaction has been under investigation by the SEC for eighteen months (and Reuters said GS had received a Wells Notice six months ago). GS believes the firm's actions "were entirely appropriate" and expects to "take all steps necessary to defend the firm and its reputation by making all the true facts known."

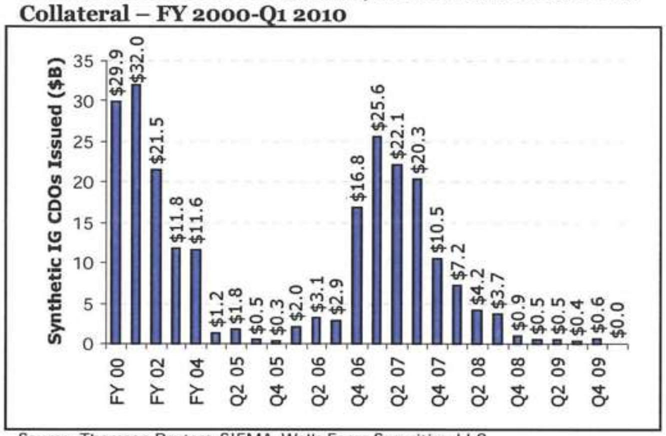
It seems unlikely clients will stop doing business with GS if SEC's suit is not the precursor to other GS-specific legal actions. The SEC's action could lead potential clients seek counterparties and agents other than GS as a means of protesting GS' alleged behavior. We do not consider this a material threat in the long-run, however, due to the following factors: 1) GS has long-held a reputation as a shrewd counterparty and advisor; 2) if clients feel GS has become somewhat chastened by the recent public scrutiny, some clients may believe that could work to their own advantage. We believe that if GS is not implicated in other, similar legal actions the "reputational damage" is manageable. Additional legal actions against the company could further harm its reputation and ability to gain business, in our view.

Charges have not been brought against senior GS management; if a senior executive leaves, we do not believe GS would be materially affected. In its complaint, the SEC has not charged any of GS senior management. Instead the complaint charged then-vice president Fabrice Tourre with fraudulent behavior in marketing the security. We believe that the lack of a senior GS official in the SEC's complaint suggests that it does not believe that GS' procedures and policies were improper, but the actions of selected employees. It also suggests the likelihood of a criminal suit against GS is not high, in our opinion. Nevertheless, we note that the financial crisis of the past two years has resulted in several CEOs relinquishing their seats. Though we believe Lloyd Blankfein and his senior management team continue to receive the support of the company's boards, we cannot completely rule out that a senior executive could leave the firm as a result of the SEC's case. If that were to occur, however, we believe GS' "management bench" is of impressive depth and high quality so that the company would be unlikely to face material negative consequences from such a scenario.

The SEC's lawsuit could embolden other regulators (and investors) to seek legal action against GS. We believe the nature of the SEC's lawsuit against GS in the current political environment across the globe could result in additional legal actions being taken against GS by other regulators. Over the weekend, Bloomberg News reported that both the U.K.'s Financial Service Authority (FSA) and Germany's financial regulator hove both been asked by their respective heads of state to review the SEC's complaint for possible legal action related to this transaction. GS is currently under investigation by the European Union for currency swaps it sold to Greece.

We expect lawmakers will use the allegations against GS as a means to push regulatory reform. At a time of widespread voter disenchantment with the banking system and the largest capital markets focused banks in particular, we believe politicians on both sides of the aisle are likely to attempt to use the SEC's allegations as a means for supporting more aggressive regulatory reform. However, if the SEC's allegations are proven correct, effectively they have proven GS mislead investors – such behavior has long been unlawful.

Exhibit 1: Global CDO Issuance, Investment Grade Bond Collateral – FY 2000-Q1 2010



Source: Thomson Reuters, SIFMA, Wells Fargo Securities, LLC

A reinvigorated "cop on the beat": SEC's action also sends a message to the Street – and investors – that additional legal actions may be announced. The SEC noted it expects to investigate other transactions, which could result in legal actions against other banks. In his comments to reporters following the filing of the SEC's complaint, Robert Khuzami – the newly named director of enforcement – suggested that the agency is looking at a broad range of transactions. We believe this comment suggested to the market that other capital markets participants could face future "headline" and legal risk from legal actions taken by the SEC. We believe this could include any of the major global investment banks as the SEC has made it clear from its legal action against GS that it is willing to take on any of the major firms if it believes a case has merit.

The broader the SEC casts its net, the less idiosyncratic reputational risk, in our view, but increases the risk of greater regulatory oversight. Interestingly, the broader the SEC's investigations and legal actions become, the less impactful on the reputation of any given firm they may be. Though such a course of action would be likely to maintain public (and possibly investor) perception at extremely low levels, dispersion of legal headline risk could reduce the negative effects on any specific firm. Still, it would also likely result in more aggressive regulatory oversight of the business, which could impede future profit growth.

Required Disclosures

	Date	Publication Price ($)	Rating Code	Val. Rng. Low	Val. Rng. High	Close Price ($)
	4/17/2007		Sipkin			
	4/17/2007	NA	1	215.00	220.00	214.90
●	6/7/2007	NA	1	250.00	255.00	220.05
●	9/11/2007	183.61	1	202.00	205.00	183.50
●	9/20/2007	203.53	1	228.00	233.00	203.53
▼	11/8/2007	214.18	2	228.00	233.00	209.94
●	12/18/2007	202.16	2	205.00	210.00	201.51
▲ ●	3/18/2008	151.02	1	180.00	185.00	175.59
●	6/17/2008	179.44	1	194.00	196.00	179.44
▼	6/26/2008	183.65	2	194.00	196.00	176.26
●	9/12/2008	154.62	2	165.00	170.00	154.21
▲ ●	9/17/2008	133.01	1	155.00	160.00	114.50
●	12/16/2008	76.00	1	95.00	100.00	76.00
	2/2/2009		Hausner			
◆	2/2/2009	83.57	SR	NE	NE	83.57
	4/13/2009		Burnell			
◆	4/13/2009	130.15	1	138.00	141.00	130.15
●	6/17/2009	144.16	1	169.00	179.00	139.73
●	10/7/2009	186.98	1	209.00	220.00	190.48
●	1/11/2010	174.31	1	205.00	215.00	171.56

Source: Wells Fargo Securities, LLC estimates and Reuters data

Symbol Key
▼ Rating Downgrade
▲ Rating Upgrade
● Valuation Range Change
◆ Initiation, Resumption, Drop or Suspend
■ Analyst Change
□ Split Adjustment

Rating Code Key
1 Outperform/Buy
2 Market Perform/Hold
3 Underperform/Sell
SR Suspended
NR Not Rated
NE No Estimate

Additional Information Available Upon Request

I certify that:
1) All views expressed in this research report accurately reflect my personal views about any and all of the subject securities or issuers discussed; and
2) No part of my compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by me in this research report.

- Wells Fargo Securities, LLC or its affiliates managed or comanaged a public offering of securities for The Goldman Sachs Group, Inc. within the past 12 months.
- Wells Fargo Securities, LLC or its affiliates intends to seek or expects to receive compensation for investment banking services in the next three months from The Goldman Sachs Group, Inc.
- Wells Fargo Securities, LLC or its affiliates received compensation for investment banking services from The Goldman Sachs Group, Inc. in the past 12 months.
- The Goldman Sachs Group, Inc. currently is, or during the 12-month period preceding the date of distribution of the research report was, a client of Wells Fargo Securities, LLC. Wells Fargo Securities, LLC provided investment banking services to The Goldman Sachs Group, Inc.
- The Goldman Sachs Group, Inc. currently is, or during the 12-month period preceding the date of distribution of the research report was, a client of Wells Fargo Securities, LLC. Wells Fargo Securities, LLC provided noninvestment banking securities-related services to The Goldman Sachs Group, Inc.
- Wells Fargo Securities, LLC received compensation for products or services other than investment banking services from The

Goldman Sachs Group, Inc. in the past 12 months.

GS: Risks to achieving our valuation range include further deterioration in legacy assets, trading losses, the advent of more stringent government regulation, employee defections, and the extension of a challenged economic environment.

Wells Fargo Securities, LLC does not compensate its research analysts based on specific investment banking transactions. Wells Fargo Securities, LLC's research analysts receive compensation that is based upon and impacted by the overall profitability and revenue of the firm, which includes, but is not limited to investment banking revenue.

STOCK RATING

1=Outperform: The stock appears attractively valued, and we believe the stock's total return will exceed that of the market over the next 12 months. BUY
2=Market Perform: The stock appears appropriately valued, and we believe the stock's total return will be in line with the market over the next 12 months. HOLD
3=Underperform: The stock appears overvalued, and we believe the stock's total return will be below the market over the next 12 months. SELL

SECTOR RATING

O=Overweight: Industry expected to outperform the relevant broad market benchmark over the next 12 months.
M=Market Weight: Industry expected to perform in-line with the relevant broad market benchmark over the next 12 months.
U=Underweight: Industry expected to underperform the relevant broad market benchmark over the next 12 months.

VOLATILITY RATING

V = A stock is defined as volatile if the stock price has fluctuated by +/-20% or greater in at least 8 of the past 24 months or if the analyst expects significant volatility. All IPO stocks are automatically rated volatile within the first 24 months of trading.

As of: April 19, 2010

45% of companies covered by Wells Fargo Securities, LLC Equity Research are rated Outperform.	Wells Fargo Securities, LLC has provided investment banking services for 39% of its Equity Research Outperform-rated companies.
50% of companies covered by Wells Fargo Securities, LLC Equity Research are rated Market Perform.	Wells Fargo Securities, LLC has provided investment banking services for 40% of its Equity Research Market Perform-rated companies.
5% of companies covered by Wells Fargo Securities, LLC Equity Research are rated Underperform.	Wells Fargo Securities, LLC has provided investment banking services for 42% of its Equity Research Underperform-rated companies.

Important Disclosure for International Clients

The securities and related financial instruments described herein may not be eligible for sale in all jurisdictions or to certain categories of investors. For certain non-U.S. institutional reader (including readers in the EEA), this report is distributed by Wells Fargo Securities International Limited ("WFSIL"). For the purposes of Section 21 of the UK Financial Services and Markets Act 2000 ("the Act"), the content of this report has been approved by WFSIL a regulated person under the Act. WFSIL does not deal with retail clients as defined in the Markets in Financial Instruments Directive 2007. This research is not intended for, and should not be relied upon, by retail clients.

Important Information for Australian Recipients

Wells Fargo Securities, LLC is exempt from the requirements to hold an Australian financial services license in respect of the financial services it provides to wholesale clients in Australia. Wells Fargo Securities, LLC is a registered broker-dealer registered with the U.S. Securities and Exchange Commission, and a member of the New York Stock Exchange, the Financial Industry Regulatory Authority, and the Securities Investor Protection Corp. Wells Fargo Securities, LLC is regulated under U.S. laws which differ from Australian laws. Any offer or documentation provided to you by Wells Fargo Securities, LLC in the course of providing the financial services will be prepared in accordance with the laws of the United States and not Australian laws.

Important Information for Recipients in the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong")

For recipients resident in Hong Kong, this research is issued and distributed in Hong Kong by Wells Fargo Securities Limited.
Wells Fargo Securities Limited is a Hong Kong incorporated investment firm licensed and regulated by the Securities and Futures Commission to carry on types 1, 4, 6 and 9 regulated activities (as defined in the Securities and Futures Ordinance [the "SFO"]). This research is not intended for, and should not be relied on by, any person other than professional investors (as defined in the SFO). The securities and related financial instruments described herein are not intended for sale nor will be sold to any person other than professional investors (as defined in the SFO). Any sale of any securities or related financial instruments described herein will be made in Hong Kong by Wells Fargo Securities Limited. Please consult your Wells Fargo Securities Limited sales representative or the Wells Fargo Securities Limited office in your area for additional information.

Important Information for Japanese Recipients

This material is distributed in Japan by Wells Fargo Securities (Japan) Co., Ltd., a foreign securities company registered with the Financial Services Agency in Japan.

Additional Disclosures

Wells Fargo Securities, LLC is a U.S. broker-dealer registered with the U.S. Securities and Exchange Commission and a member of the New York Stock Exchange, the Financial Industry Regulatory Authority and the Securities Investor Protection Corp. Wells Fargo Securities International Limited is a U.K. incorporated investment firm authorized and regulated by the Financial Services Authority.

This report is for your information only and is not an offer to sell, or a solicitation of an offer to buy, the securities or instruments named or described in this report. Interested parties are advised to contact the entity with which they deal, or the entity that provided this report to them, if they desire further information. The information in this report has been obtained or derived from sources believed by Wells Fargo Securities, LLC, to be reliable, but Wells Fargo Securities, LLC, does not represent that thisinformation is accurate or complete. Any opinions or estimates contained in this report represent the judgment of Wells Fargo Securities, LLC, at this time, and are subject to change without notice. For the purposes of the U.K. Financial Services Authority's rules, this report constitutes impartial investment research. Each of Wells Fargo Securities, LLC, and Wells Fargo Securities International Limited is a separate legal entity and distinct from affiliated banks.

citi

North America | United States
Investment Banking & Brokerage (GICS) | Banks (Citi)

Company

2 May 2010 | 16 pages

Goldman Sachs Group, Inc. (GS)

Equity ☑
Target price change ☑
Estimate change ☑

Reiterate Buy – Risks Are There, But Still See Significant Upside

- **Reiterate Buy, High Risk Rating** — Despite significant headwinds from regulatory reform and increased legal risks, we are maintaining our Buy (1H) rating on GS. While it's very challenging to pinpoint impacts of regulatory reform, we apply our best conservative estimates on Goldman's business model. In short, we are haircutting trading revenue by 20% to account for impact of OTC derivative reform, we see an additional $4 bil revenue hit from the Volker rule, with the only offsets: 1) estimated $8 bil of capital freed up (which we account for through share buybacks) and 2) lower comp ratio (est 41%). As a result, we reduce our long-term ROTE est from 19.5% to 16%, and reduce our target price to $200. Trading at $145 vs underlying book value of $123, we est market is implying a 12% ROTE, which we view as conservative, and thus creates an opportunity in the stock. Litigation remains a significant overhang on stock, but we continue to believe that GS has among the most robust risk mgmt processes on the street and are assigning a low probability of adverse outcome from lawsuits beyond a monetary fine in our target price.

- **Estimating Impact of Volker Rule and OTC Derivative Reform** — In our Jan 7 note, "Breaking Down the Fixed Income Trading Black Box" we estimated derivatives account for roughly 35% of FICC trading revenue, and in a conservative scenario we could see up to a 15% hit to FICC revenue, or 40-45% reduction in derivatives revenue from proposed derivatives reforms legislation at that time. With the introduction of the Lincoln legislation, there is potentially more downside risk due to tighter exemptions and more flow going to exchanges. Our 20% estimated hit to trading revenue for GS reflects our view that Goldman's revenue mix is more skewed to derivatives than peers. For the Volker rule, we lay out by business where we see revenue impacts and potential capital relief.

- **Updating Estimates, lowering target to $200** — Based on our updated regulatory analysis and 1Q results, we raise 2010 ests from $18.00 to $20.00 to account for 1Q beat, stronger trading revenues and lower est comp ratio (41%). 2011 remains unchanged at $19.50 and we trim 2012 from $22.50 to $21.35.

Buy/High Risk	1H
Price (30 Apr 10)	US$145.20
Target price	US$200.00
from US$240.00	
Expected share price return	37.7%
Expected dividend yield	1.0%
Expected total return	**38.7%**
Market Cap	US$76,499M

Price Performance (RIC: GS.N, BB: GS US)

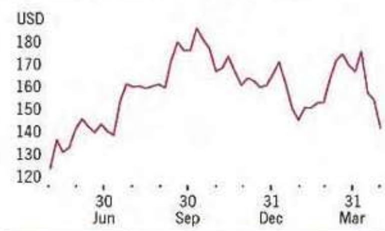


EXHIBIT
PENGAD 800-631-6989
Porten 21
5/1/15 JD

EPS	Q1	Q2	Q3	Q4	FY	FC Cons
2009A	3.39A	4.93A	5.25A	8.20A	22.13A	22.13A
2010E	**5.59A**	**5.20E**	**4.70E**	**4.55E**	**20.00E**	**19.51E**
Previous	4.45E	4.40E	4.15E	4.95E	18.00E	na
2011E	**na**	**na**	**na**	**na**	**19.50E**	**20.85E**
Previous	na	na	na	na	19.50E	na
2012E	**na**	**na**	**na**	**na**	**21.35E**	**22.51E**
Previous	na	na	na	na	22.50E	na

Source: Company Reports and dataCentral, CIR. FC Cons: First Call Consensus.

Keith Horowitz, CFA
+1-212-816-3033
keith.horowitz@citi.com

Craig Singer, CFA
craig.singer@citi.com

See Appendix A-1 for Analyst Certification, Important Disclosures and non-US research analyst disclosures.

Goldman Sachs Group, Inc. (GS)
2 May 2010

Fiscal year end 31-Dec	2008	2009	2010E	2011E	2012E
Valuation Ratios					
P/E adjusted (x)	na	6.6	7.3	7.4	6.8
P/E reported (x)	na	6.6	7.2	7.4	6.8
P/BV (x)	na	1.2	1.1	1.0	0.9
P/Adjusted BV diluted (x)	na	na	na	na	na
Dividend yield (%)	na	1.0	1.0	1.4	1.4
Per Share Data (US$)					
EPS adjusted	na	22.13	20.00	19.50	21.35
EPS reported	na	22.13	20.06	19.58	21.35
BVPS	na	117.48	137.54	149.36	164.47
Tangible BVPS	na	108.42	126.47	135.81	148.63
Adjusted BVPS diluted	na	na	na	na	na
DPS	na	1.40	1.40	2.00	2.00
Profit & Loss (US$M)					
Net interest income	na	0	0	0	0
Fees and commissions	na	10,800	11,661	12,574	13,478
Other operating Income	na	34,373	35,812	31,854	30,362
Total operating income	**na**	**45,173**	**47,473**	**44,428**	**43,840**
Total operating expenses	na	-25,306	-28,639	-27,470	-27,890
Oper. profit bef. provisions	**na**	**19,867**	**18,834**	**16,958**	**15,950**
Bad debt provisions	na	0	0	0	0
Non-operating/exceptionals	na	-38	0	0	0
Pre-tax profit	**na**	**19,829**	**18,834**	**16,958**	**15,950**
Tax	na	-6,444	-6,314	-5,511	-5,184
Extraord./Min. Int./Pref. Div.	na	-1,193	-640	-640	-640
Attributable profit	**na**	**12,192**	**11,880**	**10,806**	**10,126**
Adjusted earnings	na	12,192	11,845	10,762	10,128
Growth Rates (%)					
EPS adjusted	na	na	-9.6	-2.5	9.5
Oper. profit bef. prov.	na	na	-5.2	-10.0	-5.9
Balance Sheet (US$M)					
Total assets	**na**	**848,942**	**948,741**	**1,047,232**	**996,771**
Avg interest earning assets	na	0	0	0	0
Customer loans	na	0	0	0	0
Gross NPLs	na	0	0	0	0
Liab. & shar. funds	**na**	**848,942**	**948,741**	**1,047,232**	**996,771**
Total customer deposits	na	39,418	0	0	0
Reserve for loan losses	na	0	0	0	0
Shareholders' equity	**na**	**70,714**	**81,299**	**72,899**	**65,189**
Profitability/Solvency Ratios (%)					
ROE adjusted	na	21.7	16.8	15.3	15.6
Net interest margin	na	na	na	na	na
Cost/income ratio	na	56.0	60.3	61.8	63.6
Cash cost/average assets	na	2.9	6.7	459.1	466.2
NPLs/customer loans	na	na	na	na	na
Reserve for loan losses/NPLs	na	na	na	na	na
Bad debt prov./avg. cust. loans	na	na	na	na	na
Loans/deposit ratio	na	0.0	na	na	na
Tier 1 capital ratio	na	15.0	15.8	15.6	17.7
Total capital ratio	na	na	na	na	na

For further data queries on Citi's full coverage universe please contact CIR Data Services Americas at CIRDataServicesAmericas@citi.com or +1-212-816-5336

Powered by: dataCentral

Section I: Volcker Rule

We estimate impact to Goldman from implementation of the Volcker rule could eliminate between ~$3.5-4.0 bil of annual revenue, however we would anticipate divestiture or sale of private equity and other businesses would free-up between $8-10 billion of capital, that could be redeployed to other opportunities, or returned to shareholder via buybacks. On a comprehensive basis, assuming theoretically GS could return the existing $8-10 bil estimated capital back to shareholders via stock buybacks, the net impact to our earnings estimate equates to $1.00/share. (Note this estimate strictly includes impact from private equity, "pure prop" trading and hedge fund activities, and excludes proprietary trading related to market making activities, which we interpret to be outside of the scope of the Volcker rules.)

Background – Sponsored by former Fed Chairman Paul Volcker, the so-called "Volcker Rule," which President Obama described as an integral component to financial reform in his April 22 speech in NY – seeks to prohibit banks from engaging in proprietary trading, or owning or sponsoring hedge funds and private equity funds. While the specifics of what counts as proprietary are highly debatable, below we step through a rough exercise using Goldman Sachs, likely the firm most affected by these rule. We try to estimate:

1) **How much revenue is at risk to be lost from elimination of prop trading, HF ownership, and private equity investing?**

2) **Which particular assets are likely to be affected?**

3) **How much regulatory capital currently allocated to these assets could be freed up for redeployment elsewhere or returned to shareholders?**

1) Revenues Impacted – GS management has offered a rough estimate that 10% plus-or-minus of the firm's revenue comes from proprietary investments including Goldman's walled-off proprietary fixed income and equity divisions (SSG and GSPS) as well as their private equity Principal Investments group. We note that management's 10% figure represents a rough average overtime, and is skewed upwards from significantly higher contributions during 2006 and 2007 vs much lower results in recent years.

- ***Principal Investing*: *est ~$2 bil of annual revenue at risk***: We estimate Goldman is likely to forgo ~$2 bil of annual revenue annually from its principal investment portfolio (assumed ~15% annual return on $14 bil portfolio), which consists primarily of co-investments in funds managed by Goldman's Principal Investment Area (PIA) and Real Estate Principal Investment Area (REPIA) which operate the GS Capital Partners Funds and the Whitehall Funds, among others.
  - ***Unclear if ICBC impacted*** – Note GS also holds a $3 bil restricted public common stock position in Industrial Commercial Bank of China (ICBC) which we estimate embeds an unamortized liquidity discount of $900 mil as of 3/31/10. Aside from release of this estimated embedded liquidity discount, we do not model any future revenues from ICBC.

- ***Prop Investments in FICC and Equity trading: est ~$1.0-1.5 bil of annual revenue at risk –*** Within Goldman's trading businesses we believe there are two segments that most likely impacted by the Volcker rule: the Special Situations Group within FICC, and GS Proprietary Strategies in Equities. While we do not believe there is necessarily a "normal" rate of annual revenue for these groups – as in 2006-2007 SSG posted significant gains from sales of several large concentrated positions while GSPS likely lost money in 2008, we estimate Goldman will forgo about $1.0-1.5 bil in average annual revenues from an exit of their SSG and GSPS activities. Our admittedly rough revenue estimate is based on the 10% sensitivity disclosure for risk positions shown in the 10-K, which shows that for a 10% change in value there would be a $431 million increase in revenues for debt positions and a $616 mil increase in equity positions -- for a cumulative impact of roughly $1 billion. Assuming an estimated return of 10-15% on underlying assets, we estimate revenue impact of $1-1.5 billion.

  - ***Note not all activities of SSG seem likely to be prohibited under Volcker –*** We view our $1.0-1.5 bil estimate as relatively conservative, given we believe a number of SSG activities investments relate to distressed loans backed by residential and commercial real estate assets, which may be deemed allowable (if deemed lending activities rather than proprietary investments).

  - ***We exclude market making prop-positions*** – Our estimate excludes proprietary/principal positions taken in market-making activities, which we interpret as outside the scope of the Volcker rule, although the impacts of the final rules are unclear.

- ***Hedge Fund sponsorship/management – est $300-400 mil of revenue at risk.*** In addition we estimate Goldman may be limited in some of its alternative asset management businesses – with instances where Goldman manages hedge funds and co-invests with clients appear most at risk. While the firm has $142 bil of alternative management strategies, we believe most of these strategies would *not* qualify as hedge fund or private equity funds under the Volcker rule. For example, several of Goldman's larger funds (e.g. the $20-30 bil in the Mezzanine Partners family) are likely to be viewed as pooled lending vehicles rather than private equity funds. The unit most likely to see impact in our view is GS Investment Partners, Goldman's long-short hedge fund that was spun out of its Principal Strategies group in late 2006, and which we estimate has between $5-10 bil of AUM.

  - Our $300-400 mil annual revenue estimate assumes 25% of Goldman's $142 bil alternative asset management assets would be impacted, or ~$35 bil of AUM, of which we assume GS will forego annual management fees of 1.0%, or ~$350 mil.

2) We Identify $30 bil of Assets on the Balance Sheet Impacted by Volcker – Below we itemize the most obvious assets on Goldman's balance sheet we estimate will most likely be impacted by the Volcker rule – direct principal investments discussed above, including Goldman's stake in ICBC, our estimate of the equity and debt assets held by Goldman's SSG and GSPS subsidiaries, based on Goldman's 10% sensitivity disclosure for risk positions not included in VAR. We also count other consolidated investments in private equity and hedge funds from Goldman's "difficult to fund" disclosure.

Figure 1. Impacted Assets from Potential "Volcker Rule" Implementation

1) Principal Investments	**19,684**
Private	11,195
Public	2,811
Other Consolid Pvt Equity	2,900
ICBC owned by GS	2,778
2) Proprietary Postions	**10,500**
Equity	6,200
SSG Est	3,720
GSPS Est	2,480
Debt (SSG Est)	4,300
3) Hedge funds / Alternative Asset Mgmt	0
Est Total B/S Assets Impacted	**30,184**

Source: CIRA and company reports as of 1Q10; Other consolidated private equity and pro

3) Capital relief from exiting these businesses – we estimate $8-10 bil of relief. – Based on assets identified above, we estimate that roughly $8-10 bil of capital is currently set aside for private equity/proprietary instruments shown above that potentially could be freed up if GS had to exit these businesses. Assuming a conservative $180 stock price for stock repurchases, would equate to 45-55 million share capacity to return capital to shareholders, or 8-10% of the current 539 mil shares outstanding. Note, our $8-10 bil capital estimate is based on the assumption that Goldman currently holds between capital at a rate of 24% for public investments and 32% for private.

4) Mitigation strategies exist, but can not be employed until final rules are known – We also note that GS may be able to undertake certain mitigating strategies to adjust its business practices so as to eliminate issues caused by the Volcker rule, such as instituting independent boards on some of the alternative asset management products it manages, selling its own co-investment interests in some of its funds, or other activities, which might help reduce the ultimate impact of the Volcker rule.

Section II: Derivatives Reform

Updating our estimates on negative impacts from derivative reform. In our January 7, 2010 note, *"Breaking Down the Fixed Income Trading Black Box"* we estimated that derivatives account for roughly 35% of fixed income trading, and that in a conservative scenario the industry could see up to a 15% hit to fixed income trading revenues, or 40-45% reduction in derivatives revenue based on our interpretations of rules under the House and Senate bills at that time.

- **We estimate Goldman will see a 20% negative hit to trading revenues from derivatives reforms...** Our 20% negative impact to trading revenue estimate for GS reflects our view that Goldman's revenue mix is more heavily weighted to derivatives than peers. Based on our understanding of equities revenues, we have assumed a similar 35/65% derivatives/cash revenue split in the equities business as we have in FICC and therefore use the simplifying assumption of a similar impact to revenues for Goldman.

- **...Note our 20% estimate does not include the more onerous interpretation of the Lincoln bill.** Note that the most conservative interpretation of the Lincoln bill (discussed below) implies US banks eligible to receive federal assistance would have to exit the "swaps business" entirely, which is not in our estimates.

Figure 2. Our Estimate of Industry Trading Revenue at Risk from Derivatives Regulation Reform

200-300 bps	Clearing Impact
500-800 bps	Exchange Impact
300-500 bps	Punitive Capital Rules
10-15%	**Total Potential Negative Impact**

Source: CIRA estimates

Given recent momentum towards new derivatives rules within the broader financial reform legislation and the recent introduction of provisions introduced by Senator Lincoln and the Senate Agriculture Committee legislation, we now see potentially greater downside risk due to our expectation that there might be fewer types of transactions eligible for exemptions from central clearing, and a greater proportion of trading flow pushed to third party exchanges.

The key assumptions in our 10-15% industry revenue hit estimate include: 1) On average 75% of trades are eligible to be centrally cleared (i.e. not with end-users). 2) Of these trades, ~80% of eligible trades are centrally cleared. 3) Dealers will see a 10% loss in volume in cleared business, and an incremental 5% impact to margins. 4) 70% of cleared volumes will also be forced to third party exchanges. 5) Exchange economics will force an incremental 70% hit to bid/ask margins. All combined we estimate this would produce a 7-11% negative impact on overall trading revenues. Lastly, for derivatives not centrally cleared, we estimate that higher funding costs, or the exit from certain types of derivatives business due to highly punitive capital rules, would cost another 3-5% of revenues. (For more details on our calculations and implications, please see our January report.)

Background on Recent Lincoln Bill on Derivatives

Next we summarize some background information on the recent Lincoln bill which updates prior proposed rules on derivatives reform.

Senator Dodd's revised bill on financial regulatory reform, as submitted to the Senate Banking Committee in March, sought centralized clearing for most derivatives and exchange trading for standardized derivatives. The bill did not restrict the ability of banks to engage in derivatives trading, and the Administration had not requested any such restriction, to our knowledge.

However, Senator Blanche Lincoln, chair of the Senate Agriculture Committee, made a far-reaching proposal that subsequently was included in the latest version of Senator Dodd's bill. Sen. Lincoln's Committee approved a bill that would prohibit Federal "bailouts of swap entities." The pertinent provision, section 106, states that no "swaps entity" (which is broadly defined) could receive any Federal assistance, including:

- Access to the Federal Reserve's discount window
- Advances from any Fed credit facility provided under its 13 (3) lender of last resort authority
- Any FDIC insurance or guarantees

Since FDIC insured deposits are the largest funding source for most banks and access to the Fed's emergency lending facilities could be important in a crisis, the practical impact of section 106 would be to force financial firms to move their derivative trading activities out of their bank subsidiaries.

The "Lincoln Amendment" moved swiftly through the legislative process. Sen. Lincoln proposed the general principles to the Agriculture Committee on April 16. The Committee received the text of the proposed bill on April 18 and approved it on April 21. The Agriculture Committee did not hold hearings on the proposal or conduct studies on the possible ramifications.

Sen. Dodd subsequently incorporated section 106 into the latest version of his bill, the "Restoring American Financial Stability Act of 2010", renumbering it as section 716. The scope of the prohibition on banks' trading derivatives is somewhat ambiguous, because of a related provision, section 1155, which concerns "Emergency Financial Stabilization". That section provides that the FDIC is to guarantee "obligations" of solvent banks and bank holding companies during times of economic stress. Under a broader interpretation, the two sections, in combination, might compel bank holding companies to spin off their derivative trading activities into a totally unrelated company, outside the banking group. (We consider the broader interpretation somewhat extreme but several other commentators have also noted the ambiguity regarding the scope of the bill).

The prospects for the passage of the Lincoln Amendment, or narrowing its scope, are not clear at the present. However, some Administration officials have voiced opposition to the proposal to move derivative trading out of banks. FDIC Chair Sheila Bair has sent a letter to Senators Dodd and Lincoln stating that if all derivative activities were moved out of banks, "most of the activity would no doubt continue but in less regulated and more highly leveraged venues.....I urge you to carefully consider the underlying premise of this provision—that the best way to protect the deposit insurance fund is to push higher risk activities into the so-called shadow sector." (Reuters, Swaps Desk Spin-off Not the Right Policy—FDIC, May 1, 2010).

In addition, John Dugan, Comptroller of the Currency, has said that limiting banks' participation in the swaps market was not the best policy and could cause capital to leave the lending part of banks, according to Reuters.

Section III: Legal Issues

Since news of the SEC's civil suit broke on April 16, Goldman Sachs stock has fallen 21% with the most recent leg down driven by press reports on of an ongoing concurrent criminal investigation by the US Attorney in Manhattan.

Our Buy, High Risk (1H) recommendation of GS shares embeds a very low probability of negative outcome from the criminal investigation – Given our view that Goldman Sachs has among the most robust risk management processes in the industry, our understanding of the relatively high burden of proof required in criminal cases, and based on the information available at this point, our buy recommendation of Goldman Sachs stock and $200 target price, embeds a very low probability of negative outcome from the criminal investigation.

Below we summarize: 1) important facts regarding the SEC civil suit, 2) differences between civil and criminal charges, 3) the recent news of a criminal investigation, 4) risks that might arise from an adverse outcome in criminal case, and 5) summarize Goldman's response to the SEC's civil charges.

1) SEC Civil Suit Against Goldman – The SEC alleges that Goldman structured a synthetic collateralized debt obligation (CDO) structure that was based on subprime mortgage securities that Goldman marketed as being selected by an independent manager (ACA Management LLC).

- **It appears the civil case against Goldman is focused on a single transaction and is based on disclosure issues and questions of misrepresentation** – The complaint alleges that Goldman failed to disclose to investors that a major hedge fund (Paulson & Co. Inc.) played a role in the portfolio selection process and had taken a short position against the bonds referenced in the CDO. Essentially saying, investors in the CDO sold protection on the referenced bonds (took the credit risk) through credit default swaps, while Goldman's client bought protection (shorted credit risk). Also, the SEC alleges that Goldman misled ACA into believing that Paulson was investing in the CDO equity and therefore shared a long interest with the CDO investors. The SEC alleges that Paulson paid Goldman $15 million to structure the CDO. According to the complaint, investors in the CDO lost about $1 billion while Paulson made a profit of about $1 billion. GS agrees that it was paid $15 mil in the deal, but said it lost over $100 mil on its own investment.

- **We believe some form of monetary settlement with the SEC is the most likely outcome of the civil suit** – While it is difficult to assess the likely size of any settlement with the SEC, given the strong incentives for Goldman to put an end to the negative publicity from this issue, we believe settlement and payment of a monetary penalty is the most likely outcome of the civil suit.

- **Additional lawsuits from other investors remains a risk** – In addition to risks from the ongoing civil suit and criminal investigations, recent heightened scrutiny of Goldman may increase the risk of new suits from other investors/ clients that may have lost money during the financial crisis.

- **Reputational risk could damage Goldman's franchise** – While we do not believe at this point Goldman's institutional client base has altered their business practices at this point, Goldman's reputation is one of the firm's greatest assets. To the extent clients lose faith and either reduce or eliminate their interactions with Goldman, it could have significant detrimental effect across all of the firm's businesses.

2) Distinguishing between Civil and Criminal Cases: In a civil case, the SEC enforcement attorneys must show that the preponderance of evidence demonstrates that a firm misled investors. The SEC does not have the authority to send individuals found guilty to jail, however it may levy fines and/or revoke securities licenses. In criminal cases, prosecuted by the Department of Justice, prosecutors must prove beyond a reasonable doubt that a firm or its employees intentionally committed fraud. According to the WSJ, "proving such intent to break the law typically is the toughest hurdle for prosecutors to clear."

3) Press Reports Indicate a Criminal Investigation of Goldman is underway – According to recent reports in the Wall Street Journal and Bloomberg, the US Attorney's Office in Manhattan is conducting a criminal investigation into Goldman's mortgage-related activities.

- **Criminal investigation is at an early stage apparently, and it seems too early to draw any conclusions** – According to the Bloomberg, referrals between SEC and Justice are "common" in high-profile cases, and given the intense scrutiny of Goldman, as reflected in the recent Congressional hearings, it is not entirely surprising that a further investigation is being conducted. Of note, the WSJ article said that many criminal investigations are launched without the government filing charges. Based on such press reports, it seems premature to draw any conclusions about whether the investigation will or will not result in charges being filed against the firm. In our opinion, GS has a track record of devoting substantial resources and attention to risk management and compliance matters.

4) Risks of potential implications from criminal charges or conviction are high – Given potential implications, the risk in the event of an adverse legal outcome to Goldman Sachs' securities business is high. While we are assigning a low probability of a negative outcome – given little information regarding the details of the investigation, no access to any evidence involved in the criminal investigation, and our lack of legal expertise – there is significant risk that investors must be aware of.

- **Potential implications to a securities dealer of criminal charges** – There are several potential implications of the filing of criminal charges against a securities dealer. Trading counterparties could pull back from the firm. Investment banking clients could also turn away from a firm, for fear of deals being tainted by reputation of the charged firm. From a liquidity perspective, the ability to issue commercial paper or fund via repurchase transactions could be disrupted by investor/counterparty concerns. Criminal charges could also prompt downgrades from bond ratings agencies, which could negatively impact funding capacity or costs.

- **Potential implications of criminal conviction for a securities firm are severe** – If a securities firm were convicted of criminal fraud, then it could lose its license as a primary treasury dealer; broker dealer licenses to sell securities could also be revoked.

- **There may be new evidence uncovered** – One detail we find concerning is that the WSJ reported the criminal investigation is "centered on different evidence than the SEC's civil case." Despite this point, the WSJ did not provide any details on this matter.

The following portion of this note is excerpted from Citi Research & Analysis corporate bond analyst Ryan O'Connell's April 20, 2010 note "GS: Strong 1Q10 Earnings Overshadowed by SEC lawsuit".

5) **Goldman directly addressed the SEC's civil suit in its 1Q earnings conference call.** Greg Palm, co-General Counsel, summarized Goldman's reaction to the SEC's allegations. The litigation is at a very preliminary stage, and it would be premature to draw any conclusions as to the ultimate outcome of the action or the timing of any resolution. However, we think that Goldman has raised some important questions about the SEC's allegations and the underlying rationale for its lawsuit:

- **According to GS, there were only two institutional investors in the Abacus 2007-1 synthetic CDO structure** and both had substantial experience in investing in subprime mortgages. Furthermore, GS stressed that in synthetic CDO structures there must be both long and short investors. Since these were sophisticated investors in synthetic CDO deals, GS maintains, there was no need to disclose that a large hedge fund was taking the short side. GS pointed to the fact that it lost over $100 million on the deal, because it held a slice of the super senior tranche, as evidence that it did not have an incentive to structure a transaction that was designed to lose money. (Goldman was very circumspect on the call, but our impression was that Goldman would have preferred to sell that holding to other investors but was not able to do so.)

- **GS said that ACA was paid to select the reference bonds for the CDO structure and used its own proprietary models to do so.** ACA rejected numerous suggestions from Paulson, so that "way more than one half of the portfolio were ACA's suggestions", Palm said. According to GS, ACA knew that Paulson was deeply involved in suggesting reference bonds for the CDO and ACA was doing its own due diligence.

- (The complaint states that ACA had several meetings with Paulson & Co., as well as correspondence about which reference bonds would be used in the CDO structure, and that ACA rejected 55 out of Paulson's 123 suggestions.) The SEC has alleged that a Goldman vice president, Fabrice Tourre, misled ACA into thinking that Paulson would take an equity interest (a long position) in the CDO structure. Goldman said on the conference call that it had not made any representation to that effect. For investors who wish to delve into this issue in more detail, please see paragraphs 44-51 of the SEC's complaint, which can be found at www.sec.gov/news/press/2010/2010-59.htm.

- Goldman did not discuss the other investor, a German bank called IKB, in much detail during the conference call. IKB invested about $150 million in the deal, compared to $950 million for ACA, according to GS.

- The SEC alleges that in late 2006 IKB told GS that it was no longer comfortable investing in mortgage CDOs unless an independent portfolio manager selected the reference bonds for a CDO structure. If that allegation is accurate, then IKB might have relied on the representation that ACA (alone) picked the bonds.

- We do not know at this time whether or not the SEC might bring complaints regarding other GS CDO deals. However, we note that the SEC investigated GS' mortgage business for 18 months, according to GS, and it limited the complaint to one transaction.

Goldman Sachs Group, Inc.

Company description

Goldman Sachs Group, Inc. (GS) is a global investment banking, trading, and asset management company, with leading market shares across its businesses. Founded in 1869, it is one of the world's oldest and largest investment banking firms. Headquartered in New York, the firm maintains offices in London, Frankfurt, Tokyo, Hong Kong, and other major financial centers around the globe. Over the past five years ending 2009, Equities and M&A averaged 45% of net revenue, Fixed Income Trading, Debt Underwriting, and Commodity-related revenue comprised 40%, Asset Management and Prime Brokerage accounted for 12%, and Principal Investments accounted for 3%.

Investment strategy

We rate the shares of Goldman Sachs Group Buy/HighRisk (1H). We view Goldman Sachs as a well managed franchise and believe its strong capital base and leading global position in investment banking, capital markets, trading, private equity and asset management offer equity investors a unique opportunity to gain exposure to long-term global economic expansion. In recent months management has bolstered liquidity, actively de-leveraged the balance sheet and made solid progress reducing high risk legacy assets.

Despite the challenges facing the industry, we view Goldman's business model as sound and see the firm winning considerable market share as we exit the current down cycle. At current prices, we believe potential rewards from unique opportunities from distressed investments are likely to outweigh downside risks. We estimate Goldman can produce a double-digit growth rate in book value, and expect shares should see some multiple expansion. Long term, we see Goldman Sachs as among the best positioned to capitalize on global growth given its leadership position, and shares should command a premium valuation relative to peers.

Valuation

Our $200 target price is derived from our discounted residual income model, which values an enterprise based on its discounted excess returns over its cost of equity. The key inputs to the model are a CAPM-derived cost of equity of 11.5%. We also incorporate an estimated long-term ROTE of about 16% (vs management's 20% over-the-cycle target and historical median of 26% since 1999). Our model assumes a 20% dividend payout ratio and a 3% long-term growth rate. Our $200 target price for GS implies the stock should trade at 1.5x our 2010 TBV estimate of $137, or 1.8x current TBV of $111 (which is a the lower-end of Goldman's historical range over the past five years of 0.6-3.5x with an average of 2.8x).

Risks

We rate Goldman Sachs High Risk.

Company-specific negative risks:

- *Severe slowdown in investment banking and capital markets* – A prolonged and deep economic recession could significantly impair Goldman's cyclical investment banking revenue streams, causing earnings to underperform our estimates. Also, an environment with benign risk and relatively low levels of activity would also be a negative.

- *Significant investment and principal losses* – Our estimates for Goldman include significant private equity gains and assume equity market appreciation of 10-15%. If the equity market is significantly weaker than expected, there may be near term risk to our estimates. A severe decline in the equity, fixed income, real estate or commodities markets, and/or ineffective hedging strategies given Goldman's significant financial inventories and principal investments could produce larger-than-expected losses.

- *Regulatory risk* – Goldman operates several businesses including financial and physical commodity trading, private equity or derivatives that could face greater regulation, or in a severe case, require Goldman to divest some business units.

- *Litigation risk* – The SEC recently filed a civil suit against Goldman Sachs alleging fraud. This suit and/or other potential suits create reputational risk and the possibility of significant monetary penalties.

- *An expensive / poorly executed acquisition* - Although Goldman Sachs has a long history of organic growth, the current environment presents numerous acquisition opportunities, which could entail price and execution risk.

If the impact on the company from any of these factors proves to be greater/less than we anticipate, it may prevent the stock from achieving our target price or could cause our target price to be materially outperformed.

Appendix A-1

Analyst Certification

The research analyst(s) primarily responsible for the preparation and content of all or any identified portion of this research report hereby certifies that, with respect to each issuer or security or any identified portion of the report with respect to an issuer or security that the research analyst covers in this research report, all of the views expressed in this research report accurately reflect their personal views about those issuer(s) or securities. The research analyst(s) also certify that no part of their compensation was, is, or will be, directly or indirectly, related to the specific recommendation(s) or view(s) expressed by that research analyst in this research report.

IMPORTANT DISCLOSURES

Goldman Sachs Group, Inc. (GS)

Ratings and Target Price History
Fundamental Research

Analyst: Keith Horowitz, CFA
Covered since April 9 2009

Date	Rating	Target Price	Closing Price
1 14-Jun-07	2H	*230.00	225.75
2 19-Feb-08	2H	*205.00	173.80
3 15-Sep-08	*2S	*175.00	135.50
4 3-Oct-08	2S	*150.00	128.00
5 14-Oct-08	*1S	150.00	122.90

Date	Rating	Target Price	Closing Price
6 16-Nov-08	1S	*125.00	66.73
7 19-Nov-08	Coverage suspended		
8 9-Apr-09	*1M	*145.00	124.33
9 17-May-09	1M	*160.00	134.40
10 15-Jul-09	1M	*175.00	155.26

Date	Rating	Target Price	Closing Price
11 10-Sep-09	1M	*215.00	174.87
12 15-Oct-09	1M	*240.00	188.63
13 16-Apr-10	*1H	240.00	160.70

* Indicates change

Rating/target price changes above reflect Eastern Standard Time

Citigroup Global Markets Inc. or its affiliates beneficially owns 1% or more of any class of common equity securities of Goldman Sachs Group, Inc.. This position reflects information available as of the prior business day.

Within the past 12 months, Citigroup Global Markets Inc. or its affiliates has acted as manager or co-manager of an offering of securities of Goldman Sachs Group, Inc..

Citigroup Global Markets Inc. or its affiliates has received compensation for investment banking services provided within the past 12 months from Goldman Sachs Group, Inc..

Citigroup Global Markets Inc. or an affiliate received compensation for products and services other than investment banking services from Goldman Sachs Group, Inc. in the past 12 months.

Citigroup Global Markets Inc. currently has, or had within the past 12 months, the following as investment banking client(s): Goldman Sachs Group, Inc..

Citigroup Global Markets Inc. currently has, or had within the past 12 months, the following as clients, and the services provided were non-investment-banking, securities-related: Goldman Sachs Group, Inc..

Citigroup Global Markets Inc. currently has, or had within the past 12 months, the following as clients, and the services provided were non-investment-banking, non-securities-related: Goldman Sachs Group, Inc..

Rohini Malkani has in the past worked with the India government or its divisions in her personal capacity.

Analysts' compensation is determined based upon activities and services intended to benefit the investor clients of Citigroup Global Markets Inc. and its affiliates ("the Firm"). Like all Firm employees, analysts receive compensation that is impacted by overall firm profitability which includes investment banking revenues.

For important disclosures (including copies of historical disclosures) regarding the companies that are the subject of this Citi Investment Research & Analysis product ("the Product"), please contact Citi Investment Research & Analysis, 388 Greenwich Street, 28th Floor, New York, NY, 10013, Attention: Legal/Compliance. In addition, the same important disclosures, with the exception of the Valuation and Risk assessments and historical disclosures, are contained on the Firm's disclosure website at www.citigroupgeo.com. Valuation and Risk assessments can be found in the text of the most recent research note/report regarding the subject company. Historical disclosures (for up to the past three years) will be provided upon request.

Citi Investment Research & Analysis Ratings Distribution

Data current as of 31 Mar 2010	Buy	Hold	Sell
Citi Investment Research & Analysis Global Fundamental Coverage	51%	36%	14%
% of companies in each rating category that are investment banking clients	48%	46%	39%

Guide to Citi Investment Research & Analysis (CIRA) Fundamental Research Investment Ratings:

CIRA's stock recommendations include a risk rating and an investment rating.

Risk ratings, which take into account both price volatility and fundamental criteria, are: Low (L), Medium (M), High (H), and Speculative (S).

Investment ratings are a function of CIRA's expectation of total return (forecast price appreciation and dividend yield within the next 12 months) and risk rating.

For securities in developed markets (US, UK, Europe, Japan, and Australia/New Zealand), investment ratings are:Buy (1) (expected total return of 10% or more for Low-Risk stocks, 15% or more for Medium-Risk stocks, 20% or more for High-Risk stocks, and 35% or more for Speculative stocks); Hold (2) (0%-10% for Low-Risk stocks, 0%-15% for Medium-Risk stocks, 0%-20% for High-Risk stocks, and 0%-35% for Speculative stocks); and Sell (3) (negative total return).

Investment ratings are determined by the ranges described above at the time of initiation of coverage, a change in investment and/or risk rating, or a change in target price (subject to limited management discretion). At other times, the expected total returns may fall outside of these ranges because of market price movements and/or other short-term volatility or trading patterns. Such interim deviations from specified ranges will be permitted but will become subject to review by Research Management. Your decision to buy or sell a security should be based upon your personal investment objectives and should be made only after evaluating the stock's expected performance and risk.

Guide to Citi Investment Research & Analysis (CIRA) Corporate Bond Research Credit Opinions and Investment Ratings: CIRA's corporate bond research issuer publications include a fundamental credit opinion of Improving, Stable or Deteriorating and a complementary risk rating of Low (L), Medium (M), High (H) or Speculative (S) regarding the credit risk of the company featured in the report. The fundamental credit opinion reflects the CIRA analyst's opinion of the direction of credit fundamentals of the issuer without respect to securities market vagaries. The fundamental credit opinion is not geared to, but should be viewed in the context of debt ratings issued by major public debt ratings companies such as Moody's Investors Service, Standard and Poor's, and Fitch Ratings. CBR risk ratings are approximately equivalent to the following matrix: Low Risk Triple A to Low Double A; Low to Medium Risk High Single A through High Triple B; Medium to High Risk Mid Triple B through High Double B; High to Speculative Risk Mid Double B and Below. The risk rating element illustrates the analyst's opinion of the relative likelihood of loss of principal when a fixed income security issued by a company is held to maturity, based upon both fundamental and market risk factors. Certain reports published by CIRA will also include investment ratings on specific issues of companies under coverage which have been assigned fundamental credit opinions and risk ratings. Investment ratings are a function of CIRA's expectations for total return, relative return (to publicly available Citigroup bond indices performance), and risk rating. These investment ratings are: Buy/Overweight the bond is expected to outperform the relevant Citigroup bond market sector index (Broad Investment Grade, High Yield Market or Emerging Market), performances of which are updated monthly and can be viewed at https://fidirect.citigroup.com/ using the "Indexes" tab; Hold/Neutral Weight the bond is expected to perform in line with the relevant Citigroup bond market sector index; or Sell/Underweight the bond is expected to underperform the relevant sector of the Citigroup indexes.

NON-US RESEARCH ANALYST DISCLOSURES

Non-US research analysts who have prepared this report (i.e., all research analysts listed below other than those identified as employed by Citigroup Global Markets Inc.) are not registered/qualified as research analysts with FINRA. Such research analysts may not be associated persons of the member organization and therefore may not be subject to the NYSE Rule 472 and NASD Rule 2711 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account. The legal entities employing the authors of this report are listed below:

Citigroup Global Markets Inc	Keith Horowitz, CFA,Craig Singer, CFA

OTHER DISCLOSURES

The subject company's share price set out on the front page of this Product is quoted as at 30 April 2010 04:00 PM on the issuer's primary market.

Citigroup Global Markets Inc. and/or its affiliates has a significant financial interest in relation to Goldman Sachs Group, Inc.. (For an explanation of the determination of significant financial interest, please refer to the policy for managing conflicts of interest which can be found at www.citigroupgeo.com.)

Citigroup Global Markets Inc. or its affiliates beneficially owns 2% or more of any class of common equity securities of Goldman Sachs Group, Inc..

For securities recommended in the Product in which the Firm is not a market maker, the Firm is a liquidity provider in the issuers' financial instruments and may act as principal in connection with such transactions. The Firm is a regular issuer of traded financial instruments linked to securities that may have been recommended in the Product. The Firm regularly trades in the securities of the issuer(s) discussed in the Product. The Firm may engage in securities transactions in a manner inconsistent with the Product and, with respect to securities covered by the Product, will buy or sell from customers on a principal basis.

Securities recommended, offered, or sold by the Firm: (i) are not insured by the Federal Deposit Insurance Corporation; (ii) are not deposits or other obligations of any insured depository institution (including Citibank); and (iii) are subject to investment risks, including the possible loss of the principal amount invested. Although information has been obtained from and is based upon sources that the Firm believes to be reliable, we do not guarantee its accuracy and it may be incomplete and condensed. Note, however, that the Firm has taken all reasonable steps to determine the accuracy and completeness of the disclosures made in the Important Disclosures section of the Product. The Firm's research department has received assistance from the subject company(ies) referred to in this Product including, but not limited to, discussions with management of the subject company(ies). Firm policy prohibits research analysts from sending draft research to subject companies. However, it should be presumed that the author of the Product has had discussions with the subject company to ensure factual accuracy prior to publication. All opinions, projections and estimates constitute the judgment of the author as of the date of the Product and these, plus any other information contained in the Product, are subject to change without notice. Prices and availability of financial instruments also are subject to change without notice. Notwithstanding other departments within the Firm advising the companies discussed in this Product, information obtained in such role is not used in the preparation of the Product. Although Citi Investment Research & Analysis (CIRA) does not set a predetermined frequency for publication, if the Product is a fundamental research report, it is the intention of CIRA to provide research coverage of the/those issuer(s) mentioned therein, including in response to news affecting this issuer, subject to applicable quiet periods and capacity constraints. The Product is for informational purposes only and is not intended as an offer or solicitation for the purchase or sale of a security. Any decision to purchase securities mentioned in the Product must take into account existing public information on such security or any registered prospectus.

Investing in non-U.S. securities, including ADRs, may entail certain risks. The securities of non-U.S. issuers may not be registered with, nor be subject to the reporting requirements of the U.S. Securities and Exchange Commission. There may be limited information available on foreign securities. Foreign companies are generally not subject to uniform audit and reporting standards, practices and requirements comparable to those in the U.S. Securities of some foreign companies may be less liquid and their prices more volatile than securities of comparable U.S. companies. In addition, exchange rate movements may have an adverse effect on the value of an investment in a foreign stock and its corresponding dividend payment for U.S. investors. Net dividends to ADR investors are estimated, using withholding tax rates conventions, deemed accurate, but investors are urged to consult their tax advisor for exact dividend computations. Investors who have received the Product from the Firm may be prohibited in certain states or other jurisdictions from purchasing securities mentioned in the Product from the Firm. Please ask your Financial Consultant for additional details. Citigroup Global Markets Inc. takes responsibility for the Product in the United States. Any orders by US investors resulting from the information contained in the Product may be placed only through Citigroup Global Markets Inc.

Important Disclosures for Morgan Stanley Smith Barney LLC Customers: Morgan Stanley & Co. Incorporated (Morgan Stanley) research reports may be available about the companies that are the subject of this Citi Investment Research & Analysis (CIRA) research report. Ask your Financial Advisor or use smithbarney.com to view any available Morgan Stanley research reports in addition to CIRA research reports.

Important disclosure regarding the relationship between the companies that are the subject of this CIRA research report and Morgan Stanley Smith Barney LLC and its affiliates are available at the Morgan Stanley Smith Barney disclosure website at www.morganstanleysmithbarney.com/researchdisclosures.
The required disclosures provided by Morgan Stanley and Citigroup Global Markets, Inc. on Morgan Stanley and CIRA research relate in part to the separate businesses of Citigroup Global Markets, Inc. and Morgan Stanley that now form Morgan Stanley Smith Barney LLC, rather than to Morgan Stanley Smith Barney LLC in its entirety. For Morgan Stanley and Citigroup Global Markets, Inc. specific disclosures, you may refer to www.morganstanley.com/researchdisclosures and https://www.citigroupgeo.com/geopublic/Disclosures/index_a.html.
This CIRA research report has been reviewed and approved on behalf of Morgan Stanley Smith Barney LLC. This review and approval was conducted by the same person who reviewed this research report on behalf of CIRA. This could create a conflict of interest.

The Citigroup legal entity that takes responsibility for the production of the Product is the legal entity which the first named author is employed by. The Product is made available in Australia through Citigroup Global Markets Australia Pty Ltd. (ABN 64 003 114 832 and AFSL No. 240992), participant of the ASX Group and regulated by the Australian Securities & Investments Commission. Citigroup Centre, 2 Park Street, Sydney, NSW 2000. The Product is made available in Australia to Private Banking wholesale clients through Citigroup Pty Limited (ABN 88 004 325 080 and AFSL 238098). Citigroup Pty Limited provides all financial product advice to Australian Private Banking wholesale clients through bankers and relationship managers. If there is any doubt about the suitability of investments held in Citigroup Private Bank accounts, investors should contact the Citigroup Private Bank in Australia. Citigroup companies may compensate affiliates and their representatives for providing products and services to clients. The Product is made available in Brazil by Citigroup Global Markets Brasil - CCTVM SA, which is regulated by CVM - Comissão de Valores Mobiliários, BACEN - Brazilian Central Bank, APIMEC - Associação dos Analistas e Profissionais de Investimento do Mercado de Capitais and ANBID - Associação Nacional dos Bancos de Investimento. Av. Paulista, 1111 - 11° andar - CEP. 01311920 - São Paulo - SP. If the Product is being made available in certain provinces of Canada by Citigroup Global Markets (Canada) Inc. ("CGM Canada"), CGM Canada has approved the Product. Citigroup Place, 123 Front Street West, Suite 1100, Toronto, Ontario M5J 2M3. The Product is made available in France by Citigroup Global Markets Limited, which is authorised and regulated by Financial Services Authority. 1-5 Rue Paul Cézanne, 8ème, Paris, France. The Product may not be distributed to private clients in Germany. The Product is distributed in Germany by Citigroup Global Markets Deutschland AG & Co. KGaA, which is regulated by Bundesanstalt fuer Finanzdienstleistungsaufsicht (BaFin). Frankfurt am Main, Reuterweg 16, 60323 Frankfurt am Main. If the Product is made available in Hong Kong by, or on behalf of, Citigroup Global Markets Asia Ltd., it is attributable to Citigroup Global Markets Asia Ltd., Citibank Tower, Citibank Plaza, 3 Garden Road, Hong Kong. Citigroup Global Markets Asia Ltd. is regulated by Hong Kong Securities and Futures Commission. If the Product is made available in Hong Kong by The Citigroup Private Bank to its clients, it is attributable to Citibank N.A., Citibank Tower, Citibank Plaza, 3 Garden Road, Hong Kong. The Citigroup Private Bank and Citibank N.A. is regulated by the Hong Kong Monetary Authority. The Product is made available in India by Citigroup Global Markets India Private Limited, which is regulated by Securities and Exchange Board of India. Bakhtawar, Nariman Point, Mumbai 400-021. The Product is made available in Indonesia through PT Citigroup Securities Indonesia. 5/F, Citibank Tower, Bapindo Plaza, Jl. Jend. Sudirman Kav. 54-55, Jakarta 12190. Neither this Product nor any copy hereof may be distributed in Indonesia or to any Indonesian citizens wherever they are domiciled or to Indonesian residents except in compliance with applicable capital market laws and regulations. This Product is not an offer of securities in Indonesia. The securities referred to in this Product have not been registered with the Capital Market and Financial Institutions Supervisory Agency (BAPEPAM-LK) pursuant to relevant capital market laws and regulations, and may not be offered or sold within the territory of the Republic of Indonesia or to Indonesian citizens through a public offering or in circumstances which constitute an offer within the meaning of the Indonesian capital market laws and regulations. The Product is made available in Italy by Citigroup Global Markets Limited, which is authorised and regulated by Financial Services Authority. Foro Buonaparte 16, Milan, 20121, Italy. The Product is made available in Japan by Citigroup Global Markets Japan Inc. ("CGMJ"), which is regulated by Financial Services Agency, Securities and Exchange Surveillance Commission, Japan Securities Dealers Association, Tokyo Stock Exchange and Osaka Securities Exchange. Shin-Marunouchi Building, 1-5-1 Marunouchi, Chiyoda-ku, Tokyo 100-6520 Japan. If the Product was distributed by Nikko Cordial Securities Inc. it is being so distributed under license. In the event that an error is found in an CGMJ research report, a revised version will be posted on the Firm's Global Equities Online (GEO) website. If you have questions regarding GEO, please call (81 3) 6270-3019 for help. The Product is made available in Korea by Citigroup Global Markets Korea Securities Ltd., which is regulated by Financial Services Commission and the Financial Supervisory Service. Hungkuk Life Insurance Building, 226 Shinmunno 1-GA, Jongno-Gu, Seoul, 110-061. The Product is made available in Malaysia by Citigroup Global Markets Malaysia Sdn Bhd, which is regulated by Malaysia Securities Commission. Menara Citibank, 165 Jalan Ampang, Kuala Lumpur, 50450. The Product is made available in Mexico by Acciones y Valores Banamex, S.A. De C. V., Casa de Bolsa, Integrante del Grupo Financiero Banamex ("Accival") which is a wholly owned subsidiary of Citigroup Inc. and is regulated by Comision Nacional Bancaria y de Valores. Reforma 398, Col. Juarez, 06600 Mexico, D.F. In New Zealand the Product is made available through Citigroup Global Markets New Zealand Ltd. (Company Number 604457), a Participant of the New Zealand Exchange Limited and regulated by the New Zealand Securities Commission. Level 19, Mobile on the Park, 157 Lambton Quay, Wellington. The Product is made available in Pakistan by Citibank N.A. Pakistan branch, which is regulated by the State Bank of Pakistan and Securities Exchange Commission, Pakistan. AWT Plaza, 1.1. Chundrigar Road, P.O. Box 4889, Karachi-74200. The Product is made available in Poland by Dom Maklerski Banku Handlowego SA an indirect subsidiary of Citigroup Inc., which is regulated by Komisja Nadzoru Finansowego. Dom Maklerski Banku Handlowego S.A. ul. Chalubinskiego 8, 00-630 Warszawa. The Product is made available in the Russian Federation through ZAO Citibank, which is licensed to carry out banking activities in the Russian Federation in accordance with the general banking license issued by the Central Bank of the Russian Federation and brokerage activities in accordance with the license issued by the Federal Service for Financial Markets. Neither the Product nor any information contained in the Product shall be considered as advertising the securities mentioned in this report within the territory of the Russian Federation or outside the Russian Federation. The Product does not constitute an appraisal within the meaning of the Federal Law of the Russian Federation of 29 July 1998 No. 135-FZ (as amended) On Appraisal Activities in the Russian Federation. 8-10 Gasheka Street, 125047 Moscow. The Product is made available in Singapore through Citigroup Global Markets Singapore Pte. Ltd., a Capital Markets Services Licence holder, and regulated by Monetary Authority of Singapore. 1 Temasek Avenue, #39-02 Millenia Tower, Singapore 039192. The Product is made available by The Citigroup Private Bank in Singapore through Citibank, N.A., Singapore branch, a licensed bank in Singapore that is regulated by Monetary Authority of Singapore. Citigroup Global Markets (Pty) Ltd. is incorporated in the Republic of South Africa (company registration number 2000/025866/07) and its registered office is at 145 West Street, Sandton, 2196, Saxonwold. Citigroup Global Markets (Pty) Ltd. is regulated by JSE Securities Exchange South Africa, South African Reserve Bank and the Financial Services Board. The investments and services contained herein are not available to private customers in South Africa. The Product is made available in Spain by Citigroup Global Markets Limited, which is authorised and regulated by Financial Services Authority. 29 Jose Ortega Y Gasset, 4th Floor, Madrid, 28006, Spain. The Product is made available in Taiwan through Citigroup Global Markets Taiwan Securities Company Ltd., which is regulated by Securities & Futures Bureau. No portion of the report may be reproduced or quoted in Taiwan by the press or any other person. No. 1, Songzhi Road, Taipei 110, Taiwan. The Product is made available in Thailand through Citicorp Securities (Thailand) Ltd., which is regulated by the Securities and Exchange Commission of Thailand. 18/F, 22/F and 29/F, 82 North Sathorn Road, Silom, Bangrak, Bangkok 10500, Thailand. The Product is made available in Turkey through Citibank AS which is regulated by Capital Markets Board. Tekfen Tower, Eski Buyukdere Caddesi # 209 Kat 2B, 23294 Levent, Istanbul, Turkey. In the U.A.E, these materials (the "Materials") are communicated by Citigroup Global Markets Limited, DIFC branch ("CGML"), an entity registered in the Dubai International Financial Center ("DIFC") and licensed and regulated by the Dubai Financial Services Authority ("DFSA" to Professional Clients and Market Counterparties only and should not be relied upon or distributed to Retail Clients. A distribution of the different CIRA ratings distribution, in percentage terms for Investments in each sector covered is made available on request. Financial products and/or services to which the Materials relate will only be made available to Professional Clients and Market Counterparties. The Product is made available in United Kingdom by Citigroup Global Markets Limited, which is authorised and regulated by Financial Services Authority. This material may relate to investments or services of a person outside of the UK or to other matters which are not regulated by the FSA and further details as to where this may be the case are available upon request in respect of this material. Citigroup Centre, Canada Square, Canary Wharf, London, E14 5LB. The Product is made available in United States by Citigroup Global Markets Inc, which is regulated by FINRA and the US Securities and Exchange Commission. 388 Greenwich Street, New York, NY 10013. Unless specified to the contrary, within EU Member States, the Product is made available by Citigroup Global Markets Limited, which is regulated by Financial Services Authority. Many European regulators require that a firm must establish, implement and make available a policy for managing conflicts of interest arising as a result of publication or distribution of investment research. The policy applicable to CIRA's Products can be found at www.citigroupgeo.com. Compensation of equity research analysts is determined by equity research management and Citigroup's senior management and is not linked to specific transactions or recommendations. The Product may have been distributed simultaneously, in multiple formats, to the Firm's worldwide institutional and retail customers. The Product is not to be construed as providing investment services in any jurisdiction where the provision of such services would not be permitted. Subject to the nature and contents of the Product, the investments described therein are subject to fluctuations in price and/or value and investors may get back less than originally invested. Certain high-volatility investments can be subject to sudden and large falls in value that could equal or exceed the amount invested. Certain investments contained in the Product may have tax implications for private customers whereby levels and basis of taxation may be subject to change. If in doubt, investors should seek advice from a tax adviser. The Product does not purport to identify the nature of the specific market or other risks associated with a particular transaction. Advice in the Product is general and should not be construed as personal advice given it has been prepared without taking account of the objectives, financial situation or needs of any particular investor. Accordingly, investors should, before acting on the advice, consider the appropriateness of the advice, having regard to their objectives, financial situation and needs. Prior to acquiring any financial product, it is the client's responsibility to obtain the relevant offer document for the product and consider it before making a decision as to whether to purchase the product.

ADDITIONAL INFORMATION IS AVAILABLE UPON REQUEST

May 4, 2010

BERNSTEINRESEARCH

Brad Hintz (Senior Analyst) • brad.hintz@bernstein.com • +1-212 756 4590
Vincent M. Curotto • vincent.curotto@bernstein.com • +1-212 756 1887
Luke Montgomery, CFA • lucas.montgomery@bernstein.com • +1-212-969-6714

EXHIBIT Starks 5 9/22/15 TD

Goldman Sachs: Management Speaks Frankly About the Future of the Firm

Ticker	Rating	CUR	5/3/2010 Closing Price	Target Price	TTM Rel. Perf.	EPS 2009A	EPS 2010E	EPS 2011E	P/E 2009A	P/E 2010E	P/E 2011E	Yield
GS	O	USD	149.50	210.00	-19.4%	22.13	18.08	18.01	6.8	8.3	8.3	1.0%
SPX			1202.26			61.70	83.20	98.56	19.5	14.5	12.2	1.8%

O – Outperform, M – Market-Perform, U – Underperform, N – Not Rated

Highlights

On Friday afternoon, Bernstein met with representatives of Goldman Sachs Senior Management: Gary Cohn, (President and Chief Operating Officer), David Viniar (CFO), David Solomon (Co-Head Investment Banking) and Harvey Schwartz and David Heller (Co-Heads of Securities Division). Much of the conversation was focused on the future of regulation. Though management believes they lack clear insight into how regulation will ultimately shake out, it is committed to keeping an open dialogue with regulators and has invested much of the firm's resource and focus into preparing the business for the eventual outcome.

- **The firm and clients respond to recent allegations:** For the last two weeks Goldman's most senior management has been visiting with clients worldwide to discuss any concerns they may have with the firm in the wake of the SEC announcement. According to Goldman, "*...through today, we have seen no degradation of business.*" Assignments that Goldman had anticipated winning have been won and trade flows remain in line with expectations. The firm's underwritings are being priced at market and the FICC and Institutional Equity are not having any difficulty placing GS client paper. In fact, management confirmed that the Monday following the announced SEC claim was the largest equity commission day of the year.

- **The outlook for regulation is unclear:** The impact of new regulation is still very difficult to quantify. The firm works constantly on "war gaming" different scenarios and outcomes of regulation so implementation is quick and seamless. According to the firm, the only proposal that seems nearly certain is the mandate of higher capital levels across the industry. Goldman reassured investors that "We are already running the firm as if things have already changed that capital uses is higher and higher levels of liquidity is needed."

- **Derivative Regulation Remains Unclear:** Admittedly, the outlook for derivatives is uncertain according to the firm. Bernstein notes that a regulated bank subsidiary of a bank holding company has higher credit ratings than the holding company. As a result, moving the derivatives book from the bank (higher ratings) to a new subsidiary guaranteed by the holding company (lower ratings) is unlikely to be popular with the current and prospective derivative counterparties of US banks, many of which are the constituencies of legislators. Goldman admitted that the firm is at a historic disadvantage with this vanilla OTC business as their credit terms are particularly onerous and given the firm has historically been less willing to compete on leverage by increasing the unsecured margin trigger point relative to competitors. Therefore, forcing standardized margin requirements on an exchange could effectively "level the playing field" for Goldman.

Brad Hintz (Senior Analyst) • brad.hintz@bernstein.com • +1-212-756-4590

- **Positioning the firm for an unclear future:** Goldman is preemptively positioning its trading businesses for a changed business model of exchange listed products and higher capital charges - to succeed in the future, trading needs to be "nimble". Goldman wants to quickly take the skill that it has in its leading, individual trading products and transfer the intellectual property and technology to new products as market opportunities arise. As management stated, "we want to be fast and better than everyone else."
- There is substantial uncertainty about future regulation, civil litigation and client reputation concerning Goldman Sachs. These risks notwithstanding, Goldman Sachs is the leading investment bank and trading house in the world and strategically positioned and focused on taking market share from competitors no matter how regulation ultimately shakes out. We continue to believe the headlines that pressure the stock provide a buying opportunity for investors who are able to look past the near term headline risk. We rate GS Outperform.

Investment Conclusion

"There is the risk you cannot afford to take,

and there is the risk you cannot afford not to take."

Peter Drucker

Goldman Sachs shares plummeted on Friday on press reports that the US Justice Department was reviewing Goldman's MBS business in light of allegations made by the SEC concerning the ABACUS CDO deal.

Based on the information that has been publicly disclosed to date, a legal expert with whom Bernstein has consulted unequivocally stated that there is *"...no basis for a criminal prosecution."* Furthermore, he believes GS has strong defenses against the SEC lawsuit. With respect to the SEC case, we note that Tourre bolstered GS's position by testifying that he actually told ACA that Paulson would be buying credit protection against some of the tranches (i.e., that Paulson would be short, which is reportedly the same thing Paulson's employee Paolo Pellegrini has said he told the ACA deal team). This is potentially damaging to the SEC's civil case.

According to our legal advisor "*many informed lawyers agree that the SEC's lawsuit is just not very strong*" in the context of meeting the legal requirements for proving securities fraud under either of the SEC's two legal claims (section 17(a) of the 1933 Act and section 10(b) of the 1934 Act. To prove civil fraud, the SEC will have to show that a material fact was misstated or omitted and that misstatement or omission directly caused the loss to ACA.

Admittedly, Goldman Sachs has incurred reputation damage and may suffer client fallout due to this case - it is arguably difficult for a portfolio manager to buy or own GS in an ERISA portfolio, a separately managed account or in a mutual fund due to the current public outrage against the firm. However, Goldman Sachs remains the world's leading M&A house having closed 286 deals last year totaling $653 billion of deals, the second largest equity underwriter with 10% market share and the leading global fixed income franchise that we believe will continue to book solid trading performance through 2010. In addition, Goldman has the largest private equity portfolio of any large capitalization bank, and as confirmed by management, the company is entering the most favorable portion of the economic cycle when the revenues of its highest margin businesses – ECM and M&A - accelerate and its merchant banking business can "harvest" gains.

There is substantial uncertainty about future regulation, civil litigation and client reputation concerning this stock, but Goldman remains Goldman, the premier investment bank and trading house in the world. We continue to believe the headlines that pressure the stock provides a buying opportunity for investors. We rate GS Outperform.

Brad Hintz (Senior Analyst) • brad.hintz@bernstein.com • +1-212-756-4590

Details

Goldman Sachs shares fell on Friday based on press reports that the Department of Justice was considering a criminal investigation of Goldman's MBS business in light of the allegations made in the SEC's civil complaint against the bank concerning the ABACUS CDO. On Friday, Bernstein met with representatives of Goldman Sachs Senior Management: Gary Cohn, (President and Chief Operating Officer), David Viniar (CFO), David Solomon (Co-Head Investment Banking) as well as Harvey Schwartz and David Heller (Co-Heads of Securities Division). The meetings focused on the investigation, the client fallout of the SEC's civil litigation, new regulation and derivatives as well as the long-term outlook for the business.

The Investigation

Goldman stated that the firm initially found out about a prospective criminal investigation through press reports, but management was not surprised by Friday's news. With an SEC fraud investigation, management had been informed by their legal counsel that it was likely that the Department of Justice would either choose to investigate the firm or be asked by Congress to investigate. Goldman Sachs assured us that the firm has cooperated with all investigations and will cooperate with any new investigations but admitted that a criminal charge would indeed be severely negative for the company.

Management told us that this is not an SEC vs. Goldman Sachs issue it is a simple dispute relating to the facts of one case. "*We do not want to be in an adversarial relationship with regulators*". Management stated that this message is being delivered throughout the firm and that its top priority is to make sure they are on the same page as regulators.

For the last two weeks, Goldman's most senior management has been visiting with clients worldwide to discuss the SEC civil litigation and the ABACUS transaction details, reviewing client relationships and discussing clients' concerns. According to the firm, "*we are not just talking to the direct clients but also to the indirect clients such as board members.*" The clients keep asking. "*When is this going to stop.*" Unfortunately, this case may continue for quite a while. Goldman Sachs does not want to admit a violation that it did not believe it committed and the firm will certain attempt to avoid a "10b violation".

To date, Goldman employee morale remains good. The Goldman representatives stated that as a group they are very proud of the Goldman staff during this difficult period. According to GS their employees are pulling together like a team under pressure. Perhaps not surprising, the partnership has closed ranks too and at Goldman's April 20, 2010 Managing Directors Earnings Call, Lloyd Blankfein received a standing ovation from his partners.

Fallout from the ABACUS Civil Litigation

Management was cautiously optimistic about Q2 2010 performance. The investment banking business was clearly recovering and trading flows remains solid. According to Goldman, the client fallout from the CDO revelations has been small -- "*...though today, we have seen no degradation of business.*" Assignments that Goldman had anticipated winning are being won and trade flows are in line with expectations. The firm's underwritings are being priced at market and the sales FICC and Institutional Equity sales teams are able to place client paper just as before. In fact, the only sector that has experienced a negative impact, albeit minimally, has been the firm's municipal and government business. Goldman reportedly has relationships with over 80 governments around the world and the firm has lost 1 or 2 pieces of business in this client sector since the announcement of the ABACUS case.

While the revenue impact of the litigation to date remains small, Goldman made it clear that the firm is reviewing not just its 144 issuance standards but also many of its other operating procedures related to clients. According to the firm, "*Everything is on the table.*" Goldman is using this as an opportunity to review all of the firm's internal policies.

Brad Hintz (Senior Analyst) • brad.hintz@bernstein.com • +1-212-756-4590

Regulation and Capital

According to management, the impact of new regulation is still very difficult to quantify. Scenarios can be envisioned where performance declines and scenarios can be envisioned where markets become more illiquid and that bid offer spreads widen and offset the new rules. According to the Goldman CFO, "We are war gaming a bunch of scenarios and I doubt any will be [perfectly] right." The only thing certain according to Goldman is the mandate for the industry to retain higher capital levels than recent history. If there are no increased revenues to go along with it, then there is going to lower ROE. Goldman reassured investors that "We are already running the firm as if things have already changed that capital uses is higher and higher levels of liquidity is needed." However, capital constraints could be imposing for competitors under certain scenarios, resulting in competitors unable to earn above their costs of equity. Under certain scenarios:

- Every competitor stays in the business despite higher equity levels and the Street acts irrationally on product pricing. Consequently, margins collapse and trading ROE falls sharply.
- All competitors stay in the market and margins modestly narrow. ROE falls but not precipitously.
- Competitors drop out of the business, competition may weaken and margins may actually widen. In this case ROE remains strong
- Goldman repurchased $2.27 billion in capital last quarter despite the lack of clarity on where regulation will settle. On the firm's earnings conference call they assured that the repurchase was done with the approval of regulators. As capital continues to grow through earnings, the firm continues to hold plenty of capital, but the impetus of the recent buyback was to some extent offset capital offerings to employees in 2009. Though the firm has no more clarity than the market in terms of future regulation, they are comfortable with current levels given the firm's rate of capital growth and earnings.

The current draft of the Senate Bill will shift a large percentage of derivatives[1] onto the exchanges. According to GS' estimate, approximately 75% - 80% of notional derivatives will move onto exchanges. These "at-risk" products are characterized as the simple, vanilla OTC derivatives (i.e., fixed-floating swaps, simple FX swaps and simple equity index swaps). Goldman stated that this business yields "razor thin margin[2]". Goldman admitted that the firm is at a historic disadvantage with this vanilla OTC business as their credit terms are particularly onerous. Goldman management pointed out that every trading firm in the OTC market takes some limited, unsecured exposure. The vast majority of OTC derivative clients must post margin at some unsecured trigger level of exposure. In 2006, GS was willing to give $400 million in open credit exposure to AAA rated AIG. But GS has historically been less willing to compete on leverage by increasing the unsecured trigger point.

It is a common assumption that if a derivative product moves to an exchange, OTC bid offer spreads will narrow. However, GS management argued that this is not always the case and an exchange is not always a perfect solution to liquidity and pricing - markets may be narrow, trade volumes small and a contract strip may cease to trade beyond the first few contract dates. By way of example, Goldman pointed out that the introduction of the "Trace" system in the fixed income market led to fragmentation of the market and more frequent, albeit smaller, trades that did not generate significant trading costs savings.

---

[1] Bernstein estimates that Wall Street's OTC derivative revenues in fixed income makes up fifteen percent of total fixed income revenues. In Equities, OTC derivatives make up twenty percent of net revenues. Derivatives are a relatively higher margin business than cash trading with pretax margins of thirty to thirty five percent.

[2] Pricing ranges from sixteenths of one percent to thirty seconds and appears to be going to sixty fourths

Brad Hintz (Senior Analyst) • brad.hintz@bernstein.com • +1-212-756-4590

At this point, all that can be deduced is that the movement of derivatives to exchanges will set a standard initial margin[3] and impose daily variation margin - essentially new regulation will be a "Reg T" for derivatives. This action would place Goldman and its more leveraged OTC competitors on a "level playing field", which may prove positive for GS and other conservative banks[4]. In a world where leverage is standardized, derivatives desks will be forced to compete not on open, unsecured credit exposure, but on execution speed and liquidity. This is a market dynamic that GS feels that it can successfully use to take market share.

Goldman argues that the highly profitable, tailored segment of the derivative business is unable go on an exchange due to low volumes or pricing difficulty. Alternatively, these high margin OTC products will likely be cleared through a common settlement venue, and based on the current draft of the Senate Bill, would have to be originated outside the bank (Section 1065). This would force banks to move their fixed income derivatives books from the bank subsidiary (that is FDIC protected and has access to the Fed window) to a new separately capitalized (and lower rated) derivatives subsidiary that would likely be guaranteed by the bank holding company. Goldman already operates its OTC fixed income derivatives book out of such a subsidiary and would not have to use new capital to support this subsidiary.

Regulatory Uncertainty Threatens US Derivatives Market.

Admittedly, the outlook for derivatives is not certain according to the firm. Bernstein notes that regulated bank subsidiary of a bank holding company has higher credit ratings than the holding company. As a result, moving the derivatives book from the bank (higher ratings) to a new subsidiary guaranteed by the holding company (lower ratings) is unlikely to be popular with the current and prospective derivative counterparties of US banks.

One interpretation[6] of the current Senate bill is that the holding company cannot provide a guaranty to a derivatives subsidiary. Without a parent guaranty, some OTC counterparties will be reluctant to enter into OTC derivatives with a much lower rated derivative subsidiary.

Exacerbating this potential credit rating problem is the impact of the new regulatory authority proposed to allow for the "wind up" of systemically important institutions. This new authority could effectively subordinate the bondholders of the bank holding companies. As a result, the major credit rating agencies have warned that bank holding company ratings may be reduced if the "wind up" authority is too onerous.

Bernstein believes that the OTC derivatives activities of US banks could face market share pressure related to lower credit rating of their derivative offerings relative to those of the major European and Japanese banks which will be able to continue to trade derivatives with implied government supported within "too big to fail" commercial bank subsidiaries.

Trading Responds to Prospective Regulatory Changes

Goldman is preemptively positioning its trading businesses for a changed business model of exchange listed products and higher capital charges - to succeed in the future, trading needs to be "nimble". Goldman wants to quickly take the skill that it has in its leading, individual trading products and transfer the intellectual property and technology to new products as market opportunities arise. As management stated, "we want to be fast and better than everyone else." The firm has set its goal on providing the broadest list of top tier

[3] Goldman pointed out that the biggest new poster of margin would be the GSEs. This fact likely means that the US government will seek an exemption from the posting of margin for its outstanding OTC derivatives.

[4] Goldman did not name the less conservative banks.

[5] Section 106 requires that a bank move all the OTC derivatives out of a financial institutions 180 days from now all

[6] The interpretation depends on the law firm doing the review.

Brad Hintz (Senior Analyst) • brad.hintz@bernstein.com • +1-212-756-4590

trading products and capabilities. It wishes to be an efficient and effective competitor in high frequency trading, equities, fixed income and FX.

When asked about the firm's ability to adapt to new regulation in its trading business, management argued that the entire market will be able to respond and evolve to these new mandates. Goldman is convinced that it will have the technology and flexible organization to quickly change its business model and adjust to the new market conditions. They argue products that are transferred to a clearinghouse can trade more easily and over time trading volumes may pick up and parallel markets could be established that trade against the listed futures market. Goldman intends to be able to profit from this potential outcome.

The Key Regulatory Issues Facing the Industry

At this point, the industry is looking for certainty in new regulations. If a financial regulation bill is passed that gives broad authority to regulators to higher capital limits, establish sound business practices or constrain or ban certain business activities the industry would view it as a victory. However, Congress may not want to relegate interpretive responsibility to the bank regulators.

The industry is focusing on five large issues that could make statutory changes to the industry and cannot be easily changed: 1.) the Consumer Financial Protection Agency; 2.) Section 106 which bans OTC derivatives from depository bank; 3.) the Volcker rule which prohibit and limit proprietary trading and private equity; 4.) the requirement for a swap dealer to act as a fiduciary when dealing with endowments, pensions and trusts; and 5.) the Pre-determination and Pre-announcement of Profit on each Derivative Trade.

GS Business Outlook:

Sales & Trading

- Q1 2010 FICC revenues were up 86% sequentially from a cyclically slow Q4, 13% YoY. These FICC results were driven by solid performance for credit commodities and rates across all the major bond markets. The firm's revenue return on net assets (RRONA) was a strong 3.7%, well above its long-term average of 1.6%. Every business in trading is planning a *"fair amount of hiring"* for 2010.
- In equities, hedge funds have turned the corner from net redemptions to net subscriptions. Clients that wanted out of a hedge fund are now gone and new investors are committing new capital. Prime brokerage revenues are up, but the yield on balances is down. GS is cautiously optimistic that securities lending revenues will rise as rates increase.

Investment Banking

- From a broad cycle perspective, Goldman confirmed that the market is entering the early stage investment banking rebound as industry revenues are off the bottom of last summer, *"Admittedly regulatory uncertainty may* [negatively] *impact CEO confidence – and CEO confidence is a key factor in driving transaction activity but broadly speaking we are off the bottom*". CEOs are becoming more optimistic about the US economy and the dialogue is certainly improving despite the lack of marked improvement in announced deal volumes. Management teams are surprised by the resilience in the economy
- The management team also stated that the private equity market is getting more active. Historically a "great time" for PE to invest is coming out of an economic down cycle as pools invested at these points typically have favorable investment returns. Investment banking headcount is expected to grow by 9% in 2010

Brad Hintz (Senior Analyst) • brad.hintz@bernstein.com • +1-212-756-4590

Disclosure Appendix

Valuation Methodology

Bernstein has found that the major brokerage firms' common stocks trade on a price-to-tangible book basis. Bernstein believes that the tangible book value of a securities firm is a "hard number" for these companies reflecting the industry's mark-to-market accounting discipline and the rapid turnover of brokerage firm balance-sheets. By comparison, forecasting the highly cyclical earnings is problematic and therefore price-to-earnings valuation ratios are not accurate or stable. The price targets are based upon a valuation model that takes into account Return on Equity (ROE) versus Ke (the CAPM-based cost of equity), credit rating and a variable that differentiates between the 1999-2000 internet bubble period and all other periods of history. The formula is:

- **P/TB (Banks) = 1.35 x Forecasted Tangible ROE NTM / Bank Industry K_e – 0.2112**

Investors should note that this price-to-book valuation regression only explains 85% of the quarterly change in price-to-book of a bank or securities firm

Risks

As investors learned from the Lehman Brothers Holdings and the Drexel Burnham Lambert bankruptcies, the most significant risk to any major broker-dealer is a loss of confidence in its name, especially in the credit markets. The major broker-dealers rely upon the ability to roll over their debt at reasonable interest rates in order to fund their balance sheets at gross leverage ratios of 15 to 20x. The inability to meet debt obligations will result in the failure of a broker-dealer. In order to prevent a liquidity issue, a broker-dealer can sell assets to raise cash, but in the illiquid markets of a 'tail event' this may be impossible.

The liquidity facilities provided by the Federal Reserve have provided a lender of last resort to Morgan Stanley and Goldman Sachs – but nonetheless, a loss of confidence can also destroy a firm's franchise and morale. Counter-parties tend to limit exposure to firms whose credit ratings face downgrades and are perceived as being in risk. So, in a crisis of confidence, while a firm may avert a liquidity event, the firm's brand name and ongoing business will also come under threat. A prolonged loss of confidence in a firm's name would significantly reduce the ability of its stock to achieve our share price target. Other key risks include rising net charge-off rates, rising asset impairment write-downs, lowered ability to generate tax benefits, and the potential for increasing government regulation and taxation of financial institutions which may constrict asset and leverage levels.

But today, the greatest strategic challenge facing Goldman Sachs today is the uncertainty of new regulations. The Bank of England, the Swiss Central Bank, the Federal Reserve, the FDIC, the OCC, the CFTC, the SEC, both U.S. Brokerage Houses of Congress and the Basel Committee have proposed new regulations and laws that will raise capital charges, limit balance sheets, increase liquidity, prohibit or limit some businesses and constrain risk taking. These new rules generally will negatively impact GS' fixed income, equities and commodity trading business and constrain private equity. The more severe the regulations the lower the ROE and the slower the revenue growth rate of the effected businesses

SRO REQUIRED DISCLOSURES

- References to "Bernstein" relate to Sanford C. Bernstein & Co., LLC, Sanford C. Bernstein Limited, and Sanford C. Bernstein, a unit of AllianceBernstein Hong Kong Limited, collectively.
- Bernstein analysts are compensated based on aggregate contributions to the research franchise as measured by account penetration, productivity and proactivity of investment ideas. No analysts are compensated based on performance in, or contributions to, generating investment banking revenues.
- Bernstein rates stocks based on forecasts of relative performance for the next 6-12 months versus the S&P 500 for stocks listed on the U.S. and Canadian exchanges, versus the MSCI Pan Europe Index for stocks listed on the European exchanges (except for Russian companies), versus the MSCI Emerging Markets Index for Russian companies and stocks listed on emerging markets exchanges outside of the Asia Pacific region, and versus the MSCI Asia Pacific ex-Japan Index for stocks listed on the Asian (ex-Japan) exchanges - unless otherwise specified. We have three categories of ratings:

  Outperform: Stock will outpace the market index by more than 15 pp in the year ahead.

  Market-Perform: Stock will perform in line with the market index to within +/-15 pp in the year ahead.

  Underperform: Stock will trail the performance of the market index by more than 15 pp in the year ahead.

  Not Rated: The stock Rating, Target Price and estimates (if any) have been suspended temporarily.
- As of 05/03/2010, Bernstein's ratings were distributed as follows: Outperform - 46.6% (1.0% banking clients) ; Market-Perform - 46.9% (1.0% banking clients); Underperform - 6.5% (0.0% banking clients); Not Rated - 0.0% (0.0% banking clients). The numbers in parentheses represent the percentage of companies in each category to whom Bernstein provided investment banking services within the last twelve (12) months.
- Brad Hintz, as a former Managing Director at Morgan Stanley Group (MS), owns an equity position in MS that is held in a Morgan Stanley Group ESOP Trust at Mellon Bank as convertible preferred stock. These MS ESOP securities were awarded to him as compensation and are fully vested. Mr. Hintz is also an investor in Morgan Stanley Capital Partners III, LP — a merchant banking fund where Morgan Stanley maintains an equity interest as a limited partner. Mr. Hintz participates in the Morgan Stanley Pre Tax Investment Plan, which is a deferred compensation plan structured as a note to Mr. Hintz from Morgan Stanley with the return on the note tied to one of many alternative asset classes. In addition, as a result of the complete spin-off of Discover from Morgan Stanley on June 30, 2007, Mr. Hintz received a long position in Discover stock as a beneficiary of the Morgan Stanley ESOP. These shares of Discover will ultimately be distributed to Mr. Hintz by the ESOP trustee.
- Mr. Hintz maintains a long position in Chicago Mercantile Exchange Holdings Inc. (CME).
- Accounts over which Bernstein and/or their affiliates exercise investment discretion own more than 1% of the outstanding common stock of the following companies GS / Goldman Sachs.
- The following companies are or during the past twelve (12) months were clients of Bernstein, which provided non-investment banking-securities related services and received compensation for such services GS / Goldman Sachs.
- An affiliate of Bernstein received compensation for non-investment banking-securities related services from the following companies GS / Goldman Sachs.
- In the next three (3) months, Bernstein or an affiliate expects to receive or intends to seek compensation for investment banking services from GS / Goldman Sachs.

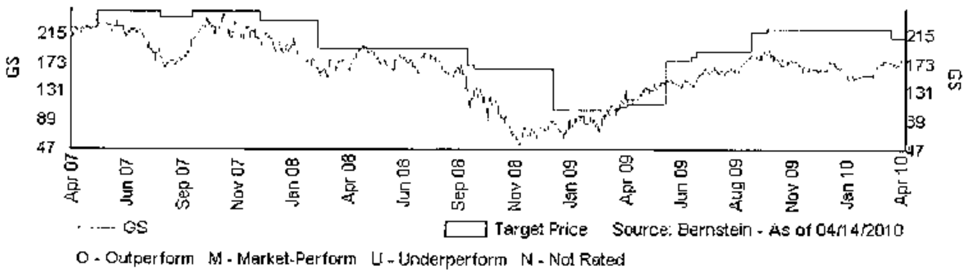
12-Month Rating History as of 05/03/2010

Ticker	Rating Changes	
GS	O (RC) 06/04/09	M (RC) 12/16/05

Rating Guide: O - Outperform, M - Market-Perform, U - Underperform, N - Not Rated
Rating Actions: IC - Initiated Coverage, DC - Dropped Coverage, RC - Rating Change

GS / Goldman Sachs

Date	Rating	Target(USD)
04/09/07	M	225.00
05/18/07	M	250.00
08/09/07	M	240.00
09/21/07	M	250.00
12/19/07	M	235.00
03/03/08	M	195.00
09/17/08	M	170.00
09/24/08	M	165.00
01/07/09	M	105.00
04/03/09	M	109.00
04/14/09	M	113.00
06/04/09	O	176.00
07/08/09	O	184.00
07/15/09	O	190.00
09/24/09	O	220.00
10/16/09	O	225.00
03/26/10	O	210.00



OTHER DISCLOSURES

A price movement of a security which may be temporary will not necessarily trigger a recommendation change. Bernstein will advise as and when coverage of securities commences and ceases. Bernstein has no policy or standard as to the frequency of any updates or changes to its coverage policies. Although the definition and application of these methods are based on generally accepted industry practices and models, please note that there is a range of reasonable variations within these models. The application of models typically depends on forecasts of a range of economic variables, which may include, but not limited to, interest rates, exchange rates, earnings, cash flows and risk factors that are subject to uncertainty and also may change over time. Any valuation is dependent upon the subjective opinion of the analysts carrying out this valuation.

This document may not be passed on to any person in the United Kingdom (i) who is a retail client (ii) unless that person or entity qualifies as an authorised person or exempt person within the meaning of section 19 of the UK Financial Services and Markets Act 2000 (the "Act"), or qualifies as a person to whom the financial promotion restriction imposed by the Act does not apply by virtue of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, or is a person classified as an "professional client" for the purposes of the Conduct of Business Rules of the Financial Services Authority.

To our readers in the United States: Sanford C. Bernstein & Co., LLC is distributing this publication in the United States and accepts responsibility for its contents. Any U.S. person receiving this publication and wishing to effect securities transactions in any security discussed herein should do so only through Sanford C. Bernstein & Co., LLC.

To our readers in the United Kingdom: This publication has been issued or approved for issue in the United Kingdom by Sanford C. Bernstein Limited, authorised and regulated by the Financial Services Authority and located at Devonshire House, 1 Mayfair Place, London W1J 8SB, +44 (0)20-7170-5000.

To our readers in member states of the EEA: This publication is being distributed in the EEA by Sanford C. Bernstein Limited, which is authorised and regulated in the United Kingdom by the Financial Services Authority and holds a passport under the Investment Services Directive.

To our readers in Hong Kong: This publication is being issued in Hong Kong by Sanford C. Bernstein, a unit of AllianceBernstein Hong Kong Limited. AllianceBernstein Hong Kong Limited is regulated by the Hong Kong Securities and Futures Commission.

To our readers in Australia: Sanford C. Bernstein & Co., LLC and Sanford C. Bernstein Limited are exempt from the requirement to hold an Australian financial services licence under the Corporations Act 2001 in respect of the provision of the following financial services to wholesale clients:

- providing financial product advice;
- dealing in a financial product;
- making a market for a financial product; and
- providing a custodial or depository service.

Sanford C. Bernstein & Co., LLC, Sanford C. Bernstein Limited and AllianceBernstein Hong Kong Limited are regulated by, respectively, the Securities and Exchange Commission under U.S. laws, by the Financial Services Authority under U.K. laws, and by the Hong Kong Securities and Futures Commission under Hong Kong laws, all of which differ from Australian laws.

One or more of the officers, directors, or employees of Sanford C. Bernstein & Co., LLC, Sanford C. Bernstein Limited, Sanford C. Bernstein, a unit of AllianceBernstein Hong Kong Limited, and/or their affiliates may at any time hold, increase or decrease positions in securities of any company mentioned herein.

Bernstein or its affiliates may provide investment management or other services to the pension or profit sharing plans, or employees of any company mentioned herein, and may give advice to others as to investments in such companies. These entities may effect transactions that are similar to or different from those recommended herein.

Bernstein Research Publications are disseminated to our customers through posting on the firm's password protected website, www.bernsteinresearch.com. Additionally, Bernstein Research Publications are available through email, postal mail and commercial research portals. If you wish to alter your current distribution method, please contact your salesperson for details.

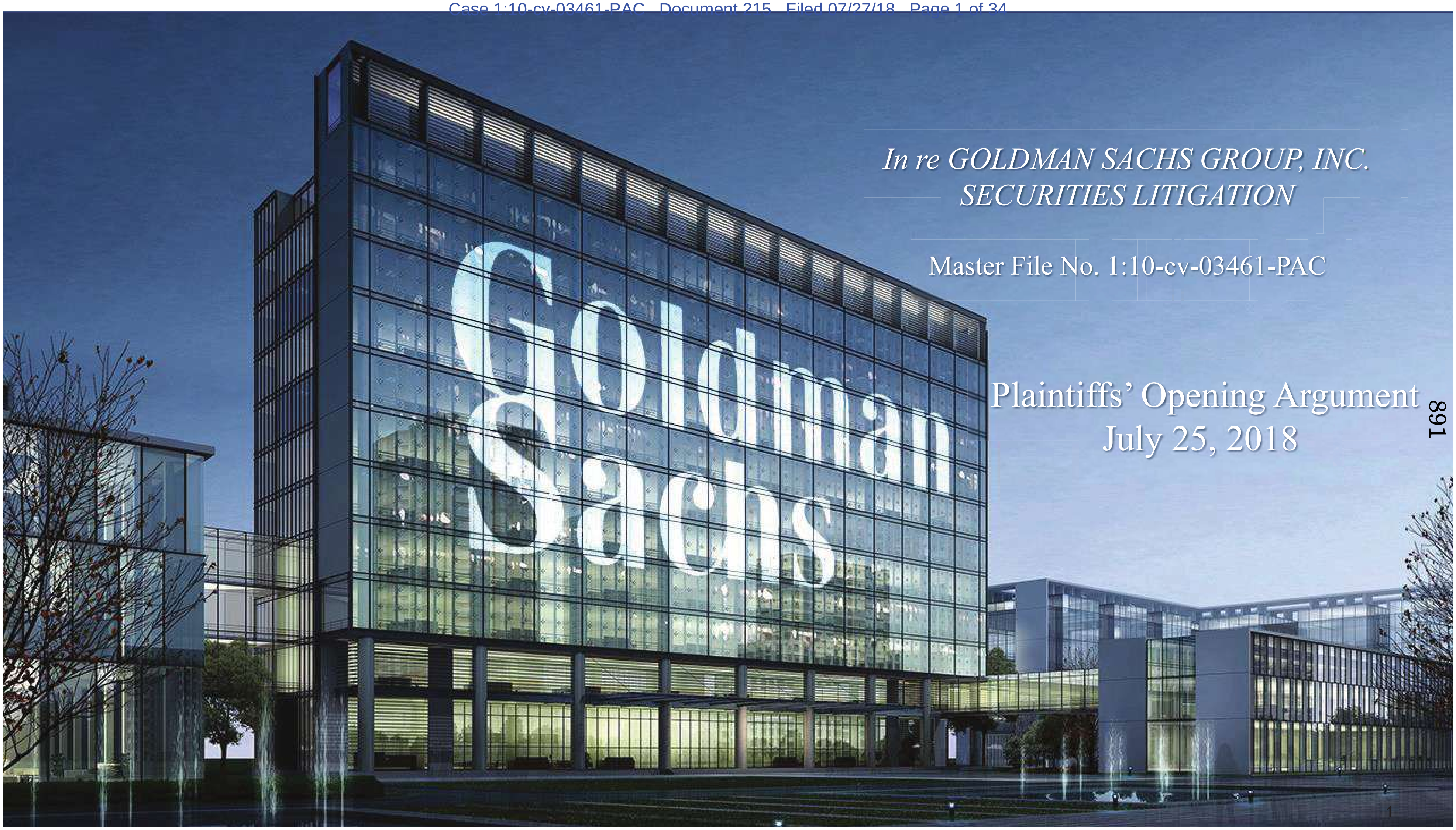
Bernstein and/or its affiliates do and seek to do business with companies covered in its research publications. As a result, investors should be aware that Bernstein and/or its affiliates may have a conflict of interest that could affect the objectivity of this publication. Investors should consider this publication as only a single factor in making their investment decisions.

This publication has been published and distributed in accordance with Bernstein's policy for management of conflicts of interest in investment research, a copy of which is available from Sanford C. Bernstein & Co., LLC, Director of Compliance, 1345 Avenue of the Americas, New York, N.Y. 10105, Sanford C. Bernstein Limited, Director of Compliance, Devonshire House, One Mayfair Place, LondonW1J 8SB, United Kingdom, or Sanford C. Bernstein, a unit of AllianceBernstein Hong Kong Limited, Director of Compliance, Suite 3401, 34th Floor, One IFC, One Harbour View Street, Central, Hong Kong.

CERTIFICATIONS

- I/(we), Brad Hintz, Senior Analyst(s), certify that all of the views expressed in this publication accurately reflect my/(our) personal views about any and all of the subject securities or issuers and that no part of my/(our) compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views in this publication.

Approved By: NK


Goldman
Sachs
In re GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION
Master File No. 1:10-cv-03461-PAC
Plaintiffs' Opening Argument
July 25, 2018
1

Background Regarding Goldman's Fraudulent Misconduct

- Goldman's $550 million payment to the SEC – the largest fine in history as of that date;
- Goldman pays $5 billion to Justice Dept. to settle all mortgage behavior from 2005-2007;
- Goldman's admission in SEC Consent Decree that the Abacus marketing materials contained "incomplete" information by not fully disclosing Paulson's role;
- FINRA's finding that in Hudson "there were knowing and material omissions and misstatements in the marketing materials . . . that masked a significant conflict of interest with its clients," and a resulting $80 million penalty; and
- A federal jury verdict that Tourre aided and abetted Goldman's fraud in Abacus in violation of Rule 10b-5.

Standard

Defendants' burden of persuasion by preponderance of the evidence that: there was **no** price impact from statement **or** its correction.

Waggoner v. Barclays, PLC 875 F.3d 79, 101,(2d Cir. 2017); *see also*
Halliburton Co. v. Erica P. John Fund, Inc., 134 S. Ct. 2398, 2417 (2004)

The Second Circuit Took No View on the "34 Dates" Evidence

Ark. Teachers Ret. Sys. v. Goldman Sachs Grp., Inc.

United States Court of Appeals for the Second Circuit

March 15, 2017, Argued; January 12, 2018, Decided

Docket No. 16-250

Reporter

879 F.3d 474 *; 2018 U.S. App. LEXIS 810 **; Fed. Sec. L. Rep. (CCH) P99,952; 105 Fed. R. Evid. Serv. (Callaghan) 499; 99 Fed. R. Serv. 3d (Callaghan) 932; 2018 WL 385215

ARKANSAS TEACHERS RETIREMENT SYSTEM, WEST VIRGINIA INVESTMENT MANAGEMENT BOARD, PLUMBERS AND PIPEFITTERS PENSION GROUP, ILENE RICHMAN, individually and on behalf of all others similarly situated, PABLO ELIZONDO, HOWARD SORKIN, individually and on behalf of all others similarly situated, TIVKA BOCHNER, EHSAN AFSHANI, LOUIS GOLD, THOMAS DRAFT, individually and on behalf of all others similarly situated, Plaintiffs-Appellees, v. GOLDMAN SACHS GROUP, INC., LLOYD C. BLANKFEIN, DAVID A. VINIAR, GARY D. COHN, Defendants-Appellants.*

Prior History: Defendants-Appellants Goldman Sachs Group, Inc., Lloyd Blankfein, David A. Viniar, and Gary D. Cohn, appeal from a September 24, 2015 order of the United States District Court for the Southern District of New York (Crotty, J.), certifying a class of plaintiffs who purchased shares of common stock in G... Inc., between 2007 and 2010. Plaintiffs alleged that defendants made material misstateme... efforts to avoid conflicts of interest, and that those misstatements caused the value of their... establish the predominance of class-wide issues under *Federal Rule of Civil Procedure 23(b*... the rebuttable presumption of reliance established in Basic Inc. v. Levinson, 485 U.S. 224, 10... 2d 194 (1988). In light of this Court's recent pronouncement that defendants seeking to rebut t... must do so by a preponderance of the evidence, see Waggoner v. Barclays PLC, 875 F.3d 7... and for the additional reasons stated herein, we VACATE the District Court's order and... proceedings consistent with this opinion.

Core Terms

stock, misrepresentation, defendants', misstatements, class certification, market price, securiti... shares, conflicting interest, stock price, predominance, transactions, investors, preponderance ... class action, company's, traded, buy, internal quotation marks, rebutting a presumption, burden of persuasion, class member, materiality, issues, fraud-on-the-market, plaintiffs', Securities, requirements, conclusive

Case Summary

Overview

HOLDINGS: [1]-Defendants ... urities fraud claim must do so by a preponderance ... concluded its findings with its finding that defendants failed to rebut the Basic presumption because they did not conclusively prove a complete absence of price impact, it was unclear to the court whether the district court required more of defendants than a preponderance of the evidence; [2]-The district court erred in declining to consider defendants' evidence because, contrary to the district court's characterization of their evidence, defendants did not present a truth on the market defense.

"We espouse no views as to whether the evidence is sufficient to rebut the *Basic* presumption …."

Ark. Teachers Ret. Sys. v. Goldman Sachs Grp., 879 F.3d 474, 485 (2d Cir. 2018)

How Can Defendants Rebut the Presumption?

- Not Statistically Significant
- Stock Decline Due Entirely to Non-Fraud Information
- No new information related to the fraud that corrected the misstatements
  - *Halliburton*–Asbestos verdict was new information related to the fraud that corrected the misstatements
  - Defendants could not show entire decline due to non-fraud *Halliburton* specific information

Erica P. John Fund, Inc. v. Halliburton Co., 309 F.R.D. 251 (N.D. Tex. 2015)

Defendants’ Experts Admit that Goldman Suffered Statistically Significant Drops on the Three Corrective Disclosure Dates

4/16/2010	Abacus Lawsuit	Statistically Significant
4/30/2010	DOJ Investigation	Statistically Significant
6/10/2010	SEC Hudson Investigation	Statistically Significant

Presumption Not Rebutted

Defendants Cannot Rebut the Presumption Because New Information Caused Price Impact

- 22 pages of detail in 4/16/2010 SEC Complaint that Goldman was engaged in fraudulent conduct that violated its conflict of interest policies and its Business Principles.
- Numerous Goldman and ACA emails revealed for the first time that Goldman's previous denials were false, it was engaged in conflict of interests and not putting clients' interests first.
- Emails show Goldman affirmatively misled ACA (collateral manager that was also long the ABACUS deal) that Paulson was also long due to his purchase of the equity tranche.
- Emails show Goldman affirmatively misled investors IKB, ACA and ABN in ABACUS about Paulson's role in selecting assets – marketing materials said ACA was sole asset selector.
- Severity of misconduct led to SEC lawsuit, DOJ fraud investigation and SEC Hudson investigation.
- Market participants recognized that Goldman's misconduct violated its Business Principles and Conflict Policies.

New Internal Goldman Communications in the SEC Complaint Detailed Goldman's Fraudulent Conduct

1 **Jan. 23, 2007**

Email From Tourre to a friend :
"More and more leverage in the system, The whole building is about to collapse anytime now…Only potential survivor, the fabulous Fab[rice Tourre]… standing in the middle of all these complex, highly leveraged, exotic trades he created without necessarily understanding all of the implications of those monstruosities!!!"

2 **Feb. 11, 2007**

Email to Tourre from the head of the GS&Co structured product correlation trading desk:
"the cdo biz is dead we don't have a lot of time left."

3 **Jan. 8, 2007**

ACA email to GS&Co Sales Rep
Subject: "Paulson Meeting"
"I have no idea how it went – I wouldn't say it went poorly, not at all, but I think it didn't help that we didn't know exactly how they [Paulson] want to participate in the space. Can you get us some feedback?"

4 **Jan. 10, 2007**

Tourre email to ACA "Transaction Summary" with Paulson as the "Transaction Sponsor"
"The description of this [0]%–[9]% tranche at the bottom of the capital structure was consistent with the description of an equity tranche and ACA reasonably believed it to be a reference to the equity tranche."

New Internal Goldman Communications in the SEC Complaint Detailed Goldman's Fraudulent Conduct

5 **Feb. 7, 2007**

Tourre email:
"One thing that we need to make sure ACA understands is that we want their name on this transaction. This is a transaction for which they are acting as portfolio selection agent, this will be important that we can use ACA's branding to help distribute the bonds."

6 **Mar. 12, 2007**

Goldman MMC Memo:
"We expect to leverage ACA's credibility and franchise to help distribute this Transaction."

7 **Feb. 2, 2007**

Tourre and GS&Co, of course, were fully aware that Paulson's economic interests with respect to the quality of the reference portfolio were directly adverse to CDO investors. During the meeting, Tourre sent an email to another GS&Co employee stating: "I am at this aca paulson meeting, this is surreal."

8 **Mar. 6, 2007**

Email from GS&Co to IKB
"This is a portfolio selected by ACA . . . ."
Tourre internal Goldman email portfolio "selected by ACA/Paulson."

9 **Mar. 6, 2007**

Toure emails to ABN: ACA selected the portfolio

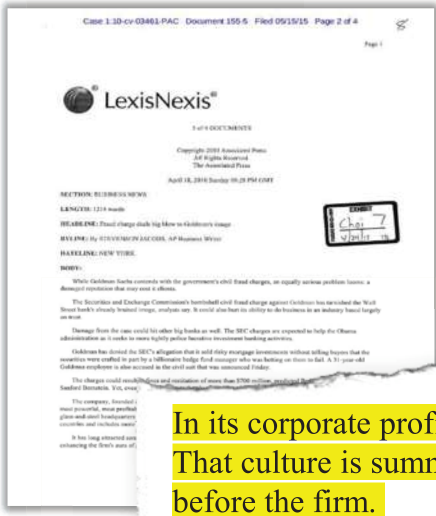
Defendants' Expert Dr. Gompers Admitted that the SEC Complaint Revealed New Information

It's my understanding that the first time it was revealed to have been alleged that Goldman Sachs misled ACA was in the complaint. So that is my understanding.

So my understanding is that particular piece of information is alleged and for the first time revealed in the complaint.

Gompers, Paul A. (Vol. 02) at 98:14-99:6

Market Participants Recognized that Goldman's Misconduct Violated Its Business Principles and Conflict Policies


Case 1:10-cv-03461-PAC Document 155-5 Filed 05/15/15 Page 2 of 4

LexisNexis®

April 18, 2010 Sunday 09:28 PM GMT

SECTION: BUSINESS NEWS

LENGTH: 1214 words

HEADLINE: Fraud charge deals big blow to Goldman's image

BYLINE: By STEVENSON JACOBS, AP Business Writer

901

In its corporate profile, the company says its culture distinguishes it from other firms and "helps to make us a magnet for talent." That culture is summed up in the firm's "14 Business Principles," which preach an almost militant philosophy of putting the client before the firm.

Now, it's that very philosophy that has been questioned by the government.

"Our clients' interests always come first," the company says on its website under the heading, "Goldman Sachs Business Principle No. 1."

Investors are already betting the legal troubles will hurt Goldman's finances. The company's shares plunged 13 percent after the charges . . . .

Choi Depo. Ex. 7
(ECF No. 155-5)

Market Participants Recognized that Goldman's Misconduct Violated Its Business Principles and Conflict Policies

LexisNexis®

1 of 1 DOCUMENT

Copyright 2010 Factiva ®, from Dow Jones
All Rights Reserved

FACTIVA

(Copyright (c) 2010, Dow Jones & Company, Inc.)

THE WALL STREET JOURNAL.

The Wall Street Journal

Choi 9

April 21, 2010 Wednesday

SECTION: Pg. C2

LENGTH: 1391 words

HEADLINE: Common Sense: Where's the Goldman Sachs That I Used to Know?

BYLINE: By James B. Stewart SmartMoney

BODY:

It's hard to imagine the damage that these developments have done already to Goldman Sachs's reputation. The company has always maintained a public position that the business of investment banking depends on trust, integrity and putting clients' interests first.

Whether those clients remain loyal to Goldman, and whether the firm can attract new ones, remain to be seen. Investors' reaction to the news was swift and negative: Goldman shares closed down 13% Friday after the SEC filed its suit.

Choi Depo. Ex. 9 / Gompers Depo. Ex. 5
(ECF No. 155-7)

Market Participants Recognized that Goldman's Misconduct Violated Its Business Principles and Conflict Policies

From: Libstag, Gwen (FIN 200W41)
Sent: Friday, May 21, 2010 2:47 PM
To: Cohn, Gary [EO]; Viniar, David;

How Goldman Gets Its Premium Back

CONFIDENTIAL GS-CDO-500195691

- May 21, 2010, 1:53 AM GMT

How Goldman Gets Its Premium Back

Top of Form 1

Search The Source

▪By Robert Armstrong and Gregory J. Milman

But there is another possibility: that the premium has dissolved because the market is worried, not about lawsuits or politics, but about Goldman's core business.

The Abacus affair has highlighted the conflicts intrinsic to the investment banking business. But historically Goldman has managed those conflicts well.

This territory is especially dangerous for Goldman because of the perception that it is an elite adviser and an elite trader that can do both simultaneously while managing the conflicts to the satisfaction of its clients. That's why its stock carries a premium to its peers in bull markets.

Conversely, evidence of poorly managed conflicts is especially dangerous to Goldman. Some damage has already been done.

Libstag Depo. Ex. 9
(ECF No. 201-11)

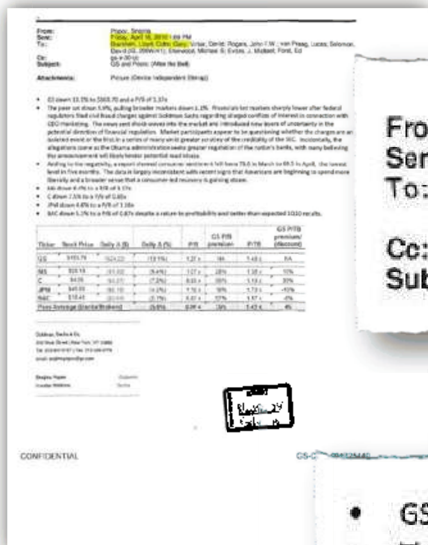
Market Participants Recognized that Goldman's Misconduct Violated Its Business Principles and Conflict Policies

4/16/2010 Decline:

Finnerty analyzed ***analyst commentary*** linking the SEC lawsuit to Goldman's conflicts of interest, improper business practices, and resulting damage to its ***reputation*** – the precise subjects of the alleged misrepresentations. *E.g.*:

- *Citi*, 4/16/2010: "[T]he SEC alleges that Goldman ***misled ACA*** . . . . ***Reputation*** risk is ***biggest issue*** in our view . . . ." 8/7/2015 Finnerty Report, ¶131
- *Bank of America Merrill Lynch,* 4/16/2010: "This is a serious charge . . . . [T]he ***reputational damage*** could be considerably greater . . . ." *Id.*
- *Macquarie*, 4/16/2010: "Typically, ***reputational damage*** . . . is a paper tiger. However, in this case, the response by the media and Washington has been ***so severe*** . . . . As for ***reputation***, Goldman ***clients*** are 'eyes-wide-open.'" *Id.*
- *Wells Fargo*, 4/19/2010: "The SEC's action could lead potential ***clients*** seek counterparties and agents other than GS as a means of protesting GS' alleged behavior . . . . Additional legal actions against the company could ***further harm its reputation and ability to gain business*** . . . ." *Id.*
- *Credit Suisse*, 4/20/2010: "More worrisome to us is the potential longer-term impact on the firm's ***client*** franchise, human capital and ***reputation***." *Id.*

Goldman Acknowledged Internally that its Conduct Caused the Stock Price Decline



From:	Popov, Snejina
Sent:	Friday, April 16, 2010 1:09 PM
To:	Blankfein, Lloyd; Cohn, Gary; Viniar, David; Rogers, John F.W.; van Praag, Lucas; Solomon, David (IB, 200W/41); Sherwood, Michael S; Evans, J. Michael; Forst, Ed
Cc:	gs-ir-30-cc
Subject:	GS and Peers: (After the Bell)

- GS down 13.1% to $160.70 and a P/B of 1.37x
- The peer set down 5.9%, pulling broader markets down 1.1%. Financials led markets sharply lower after federal regulators filed civil fraud charges against Goldman Sachs regarding alleged conflicts of interest in connection with CDO marketing. The news sent shock-waves into the market and introduced new layers of uncertainty in the

Blankfein Depo. Ex. 24
(ECF No. 197-8)

Market Participants Recognized that Goldman's Misconduct Violated its Business Principles and Conflict Policies

4/30/2010 Decline:

When *The Wall Street Journal* reported that the DOJ opened a criminal investigation into Goldman's mortgage trading practices based on "different evidence" and Goldman's stock fell 9.39% on 4/30/2010, market commentators reported:

- *Washington Post*, 4/30/2010: "The Justice Department's criminal investigation into Goldman Sachs ***goes beyond*** the financial transactions targeted by the [SEC] . . . . " 5/22/2015 Finnerty Report, ¶¶118-120
- *Fitch Ratings*, 5/5/2010: "The Rating Outlook ***revision to Negative*** incorporates recent legal developments and ongoing regulatory challenges that could adversely impact ***Goldman's reputation and revenue generating capacity***." 5/22/2015 Finnerty Report, ¶121
- *Bank of America Merrill Lynch*, 4/30/2010*:* "Our ***downgrade*** is prompted by news reports . . . including the Wall St. Journal indicating that federal prosecutors have opened an investigation of GS in connection with its trading activities . . . ." 5/22/2015 Finnerty Report, ¶126

Market Participants Recognized that Goldman's Misconduct Violated Its Business Principles and Conflict Policies

6/10/2010 Decline:

The market learned that Goldman, while shorting the Hudson 2006-1 CDO, was marketing Hudson by telling investors that "Goldman Sachs has aligned incentives with the Hudson program." Then, it was reported that Hudson was also the target of a probe by the SEC – and Goldman's stock fell 2.21% on 6/10/2010. Finnerty found that market commentators reported, *e.g.*:

– *Wells Fargo*, 6/10/2010: "[M]edia reports of a second SEC investigation into Goldman's CDO marketing practices, specifically the Hudson 2006-1 CDO, pushed Goldman shares down as much as 4% on [June 10, 2010]." 5/22/2015 Finnerty Report, ¶143

Defendants' Evidence Is Not "Unrebutted"

Dr. Finnerty's economic analysis and event study demonstrate price impact on the three corrective disclosure dates.

- Dr. Finnerty explained that Defendants' statements and omissions on the first day of the Class Period inflated Goldman's stock price – *i.e.*, kept the stock trading at a higher price than it would have been had the truth been known – and subsequent statements and omissions further inflated and maintained inflation. 5/15/2015 Finnerty Decl., ¶205; 8/7/2015 Finnerty Report, ¶¶ 3(b), 10-14.
- Dr. Finnerty concluded that the statistically significant price declines on the three corrective disclosure dates "establish price impact." 5/15/2015 Finnerty Decl., ¶¶202-205.
- Dr. Finnerty connected the stock declines to the alleged misrepresentations. 8/7/2015 Finnerty Report, ¶¶3(c), 38-42, 131-133; 5/22/2015 Finnerty Report, ¶¶11.a-c, 65-94, 108-147.

Analogous Case Law Rejects Defendants' Rebuttal

Lapin v. Goldman Sachs Grp., Inc., 506 F. Supp. 2d 221 (S.D.N.Y. 2006)
Lapin v. Goldman Sachs & Co., 254 F.R.D. 168 (S.D.N.Y. 2008)

- Goldman misrepresented its research analysts as "independent" and unbiased and failed to disclose the analysts' conflict of interest with Goldman's investment banking clients to help Goldman compete for IPO's and other future business.
- "The third category consists of statements noting Goldman's high ethical standards and its compliance with industry rules and regulations (e.g., '[w]e are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us,' SAC P 124)." – Exact Same Statement ¶154 Goldman Annual Report
- Goldman "argues that knowledge of the alleged fraud in this case was widespread among investors of GS stock, and thus the *Basic* presumption is rebutted."
- Articles, media interview and customer complaint–but Goldman denied misconduct.
- "[I]nvestors were also being fed reassuring statements by Goldman, implying that the criticisms discussed in the articles and the complaint did not apply to Goldman" and **defending the "independence and quality"** of GS research.
- Denials by Goldman – "was reinforced by Goldman in several announcements made both contemporaneously **with and post-dating** the news articles and the filing of the *Stefansky* complaint."

Analogous Case Law Rejects Defendants' Rebuttal

Lapin v. Goldman Sachs Grp., Inc., 506 F. Supp. 2d 221 (S.D.N.Y. 2006)
Lapin v. Goldman Sachs & Co., 254 F.R.D. 168 (S.D.N.Y. 2008)

Because the Court finds that GS has failed to show that the truth about the alleged conflicts at GS (and the result, if any, that those conflicts had on stock price) "credibly entered the market," *Basic*, 485 U.S. at 248-49, the Court finds that the reliance link is not severed, and the *Basic* presumption is not rebutted on these grounds.

Goldman's stock price declined "once its true research practices began to emerge" via announcements of a NY Attorney General investigation into Goldman, and two weeks later the announcement of investigations by the SEC and DOJ.

Waggoner v. Barclays PLC, 875 F.3d 79 (2d Cir. 2017)

New York Attorney General suit is fraud-related corrective disclosure. "[T]he regulatory action and any ensuing fines were a part of the alleged harm that Plaintiffs suffered."

Denials: 2007-2010

March 26, 2007	Forbes	"There is no conflict" snaps Goldman spokesman. (ECF No. 193-15)
Dec. 2, 2007	The New York Times	"The Goldman Sachs spokesman said that the company routinely shorts the securities it underwrites and said that this is disclosed." (ECF No. 193-19)
Dec. 6, 2007	FT FINANCIAL TIMES	"[T]here is no evidence that Goldman did [anything] wrong ... I do not believe Goldman broke insider trading laws. It would be stupid to risk its reputation … it 'brushes' off … accusations of conflicts of interest." (ECF No. 193-21)
Dec. 11, 2007	DOWJONES	Questions raised by the author about Goldman's disclosures – Goldman's previous denials. (ECF No. 193-22)

Denials: 2007-2010

Dec. 16, 2007	REUTERS	"'People believe they [at Goldman] haven't done anything wrong' … which many market sources and analysts call unfounded." (ECF No. 193-24)
Dec. 23, 2007	The New York Times	"Goldman asserts that it did nothing wrong …. Goldman emphatically says its short sales and similar trades were normal hedging operators." (ECF No. 193-25)
Dec. 27, 2007	DOWJONES	"No one suggests that Goldman Sachs violated any law by underwriting CDOs while also selling them short."(ECF No. 193-26)
Nov. 11, 2008	Los Angeles Times	"There is no evidence that the wall was breached in this case … fear of market manipulation was unfounded." (ECF No. 193-28)

912

Denials: 2007-2010

May 13, 2009	THE WALL STREET JOURNAL.	"Goldman said that its interests are aligned with those of Whitehall's investors …." (ECF No. 193-29)
July 9, 2009	Rolling Stone	"Goldman …. has denied wrongdoing …." (ECF No. 193-30)
July 16, 2009	The New York Times	Paul Krugman – "All of this was perfectly legal …." (ECF No. 193-31)
Aug. 4, 2009	INVESTOR'S BUSINESS DAILY	"You would be hard-pressed to find a company of any size that has done a better job of managing risk than Goldman Sachs." (ECF No. 193-33)

Denials: 2007-2010

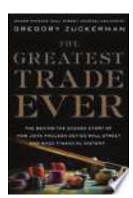
Nov. 1, 2009 McCLATCHY

A Goldman spokesman claimed its practices were to "hedge" and "investors were fully informed."

Professor John Coffee – "the legality of Goldman's maneuvers depends on what its executives knew at the time."

"Asked whether Goldman's bond sellers knew about the contrary bets, spokesman Duvally said the company's mortgage business 'has extensive barriers designed to keep information within its proper confines.'" (ECF No. 193-36)

Oct. 30 – Nov. 2/3, 2009 THE WALL STREET JOURNAL.



Mixed information- Paulson denials: "We didn't create any securities … it was a negotiation; we threw out some names, they threw out some names but the bankers ultimately picked the collateral." "But the deals weren't created for us, we just facilitated it . . . ." (ECF No. 193-37)

Denials: 2007-2010

Nov. 19, 2009 MarketWatch — Goldman says: "We were just smart and have done nothing wrong." (ECF No. 193-38)

Dec. 6, 2009 The New York Times — Book review: No new information in article that wasn't in book. (ECF No. 193-39)

Dec. 24, 2009 The New York Times — No discussion of Paulson selection of assets – Only that he was one of many hedge funds and investment banks, short CDO's and made profits

"Goldman and other Wall Street firms maintain there is nothing improper about synthetic C.D.O.'s, saying that they typically employ many trading techniques to hedge investments and protect against losses."

"The Goldman salesman said that C.D.O. buyers were not misled because they were advised that Goldman was placing large bets against the securities."

"[H]e [Mr. Duvall] said that clients knew Goldman might be betting against mortgages linked to the securities . . . ." (ECF No. 193-40)

915

Denials: 2007-2010

Dec 24, 2009	BUSINESS INSIDER	"Goldman Blasts The New York Times's Hit Job" (Gompers 4/20/2015 Depo. Ex. 12)
Dec 29, 2009	The Telegraph	"Goldman Sachs denies betting against its clients on CDOs"
Dec. 29, 2009	The New York Times	"Goldman says that its clients knew that it might place contrary bets." (ECF No. 193-42)
Dec. 30, 2009	McCLATCHY	A Goldman spokesman "dismissed as 'untrue' any suggestion that the firm had misled" investors. (ECF No. 193-43)
Jan. 13, 2010	THE WALL STREET JOURNAL.	FCIC Testimony – Blankfein: "We sold what people wanted. Kids want candy you sell them candy. They should know what it does to their teeth . . . . We are 'market makers . . . .'" (ECF No. 193-47)

916

Denials: 2007-2010

Jan 14, 2010	Goldman Sachs	"Mr. Blankfein does not believe, nor did he say, that Goldman Sachs had behaved improperly in any way. In fact, his answer to the various statements explained the market making function and how our practices were entirely appropriate." (Blankfein Depo. Ex. 7)
Jan. 13, 2010	DOWJONES	"[Blankfein] replied that Goldman didn't have a legal obligation to disclose when it was betting against the securities it was selling." (ECF No. 193-48)
Feb. 7, 2010	The New York Times	"Viniar said that Goldman had done nothing wrong." (ECF No. 193-51)
Mar. 10, 2010	The New York Times	Goldman "said it saw no conflicts in its various roles." (ECF No. 193-54)

2007-2010 Goldman Reassured Investors that It Complied with Conflict Policies and Business Principles

Plaintiffs claim that Goldman's conduct in the Abacus, Hudson, Anderson and Timberwolf I CDO transactions made the following disclosures materially misleading:

- "[W]e increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interest of another client . . . ." (Complaint, ¶134 (Form 10-K))
- "We have extensive procedures and controls that are designed to … address conflicts of interest . . . ." (Complaint, ¶¶134, 154 (Form 10-K))
- "Our clients' interests always come first. Our experience shows that if we serve our clients well, our own success will follow." (Complaint, ¶154 (Goldman Annual Report))
- "Integrity and honesty are at the heart of our business." (Complaint, ¶289 (Goldman Annual Report))
- "Most importantly, and the basic reason for our success, is our extraordinary focus on our clients." (Complaint, ¶154 (Viniar's Statements on Goldman's Investor Conference Call))
- "Our reputation is one of our most important assets." (Complaint, ¶154 (Form 10-K))
- "We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard." (Complaint, ¶154 (Goldman Annual Report))

SEC Fraud Lawsuit and News of Subsequent Investigations Reveal Goldman's Numerous and Repeated Denials No Longer Credible

New Information on 4/16/2010

- Internal Goldman emails show Goldman engaged in fraudulent conduct in violation of its conflict of interests and business principles
- Goldman lied to ACA, IKB and ABN Amro.

New Information on 4/30/2010

- Following disclosure of emails about GS misconduct in Timberwolf, Hudson and Anderson, DOJ investigation based on "different evidence" than SEC Abacus lawsuit – similar to *Lapin.*

New Information on 6/10/2010

- SEC investigation into Hudson – severity of conduct similar to *Lapin.*

Dr. Choi Fails to Demonstrate that the Entire Stock Decline on the Corrective Disclosure Dates Was Due Solely to Non-fraud-related Information

On its face, Dr. Choi's argument is misplaced because the SEC fraud lawsuit and the DOJ and SEC fraud investigations were clearly fraud-related and are evidence of price impact.

"the regulatory enforcement actions are direct consequences of, and intertwined with, Goldman's allegedly fraudulent conduct" in the four CDOs, the announcements of the actions "are not confounding news but are appropriately recognized as corrective disclosures" 8/7/2015 Finnerty Report, ¶73; *see also id.*, ¶¶46-47

"the regulatory action and any ensuing fines were a part of the alleged harm the Plaintiffs suffered, and the failure to disaggregate the action and fines did not preclude class certification" *Waggoner v. Barclays PLC* , 875 F.3d 79, 106 (2d Cir. 2017)

Court Previously Found Dr. Choi's Opinions Insufficient to Show Lack of Price Impact

Positive
As of: May 8, 2018 12:51 AM Z

In re Goldman Sachs Grp., Inc. Sec. Litig.

United States District Court for the Southern District of New York

September 24, 2015, Decided; September 24, 2015, Filed

Master File No. 10 Civ. 3461 (PAC)

Reporter
2015 U.S. Dist. LEXIS 128856 *; Fed. Sec. L. Rep. (CCH) P98,823; 2015 WL 5613150

IN re *GOLDMAN* SACHS GROUP, INC. SECURITIES LITIGATION. This Document Relates To: ALL ACTIONS

Subsequent History: Motion granted by Ark. Teachers Ret. Sys. v. Goldman Sachs Grp., Inc., 2016 U.S. App. LEXIS 23694 (2d Cir., Jan. 26, 2016)

Prior History: Richman v. Goldman Sachs Group, Inc., 274 F.R.D. 473, 2011 U.S. Dist. LEXIS 64016 (S.D.N.Y., Mar. 25, 2011)

Core Terms

stock price, disclosure, misstatements, damages, corrective, methodology, Reply, stock, misrepresentation, enforcement action, announcement, predominance, conflicting interest, class certification, investigations, requirements, Rebuttal, asserts, revelation, securities, appointed, inflation, abnormal, analyst, business practice, class period, common stock, certification, statistically, classwide

Counsel: [*1] For Pension Funds, Lead Plaintiff: Christopher J. Keller, LEAD ATTORNEY, Labaton

Blaydes, PLLC, Charleston, WVc; Robert R. Henssler, Jr., PRO HAC VICE, Robbins Geller Rudman & Dowd LLP, San Francisco,

For Plumbers and Pi
Plaintiff: Spencer A.
Robbins Geller Rudr
Brian E Cochran, PR
Rudman & Dowd LLI
Henssler, Jr., PRO H
& Dowd LLP, San Fr

For Ilene [*2] Richm
others similarly situa
Rudman, LEAD ATT
Robbins Geller Rudr
Catherine J. Kowale
David C. Walton, Robbins Geller Rudman & Dowd LLP (San Diego), San Diego, CA; Darren J. Robbins, Eric I. Niehaus, Jonah H. Goldstein, Robert R. Henssler, Jr., Spencer A. Burkholz, PRO HAC VICE, Robbins Geller Rudman & Dowd LLP (SANDIEGO), San Diego, CA; Kenneth A. Elan, Kenneth A. Elan, Esq, New York, NY; Mark W. Carbone, PRO HAC VICE, Carbone & Blaydes, PLLC, Charleston, WV.

For Pablo Elizondo, Plaintiff: Danielle Suzanne Myers,

Likewise, while Dr. Choi's report focuses on the fact that the announcements of enforcement actions would cause a level of decline, Dr. Choi fails to demonstrate that it would cause the entirety of the decline that occurred here.

Dr. Choi's Opinion Is Unsound and Based on Unreliable Methodology

- Same exact data set that the Court rejected at Class Certification
- Ignored the fraudulent conduct in 113 out of the 117 SEC Enforcement Actions in his dataset
- Cherry-picked three arbitrary "severity" factors unsupported by academic literature to support results
- Ignores market commentary linking SEC fraud lawsuit to Goldman policies and business principles
- Ignored his own previous research admitting that SEC Enforcement Actions convey information about the egregiousness of the underlying misconduct

Defendants Fail to Rebut Presumption

- Defendants' experts (and Dr. Finnerty) agree the stock price declines were statistically significant
- Defendants' experts (and Dr. Finnerty) agree that the SEC Fraud Complaint, DOJ fraud investigation, and additional SEC fraud investigation caused the stock price declines
- New information that corrected Defendants' prior statements
- To deny certification, Defendants ask the Court to hold that the SEC fraud lawsuit (and the fraud investigations) are not fraud related and had no impact on Goldman's stock price

AlixPartners
when it really matters

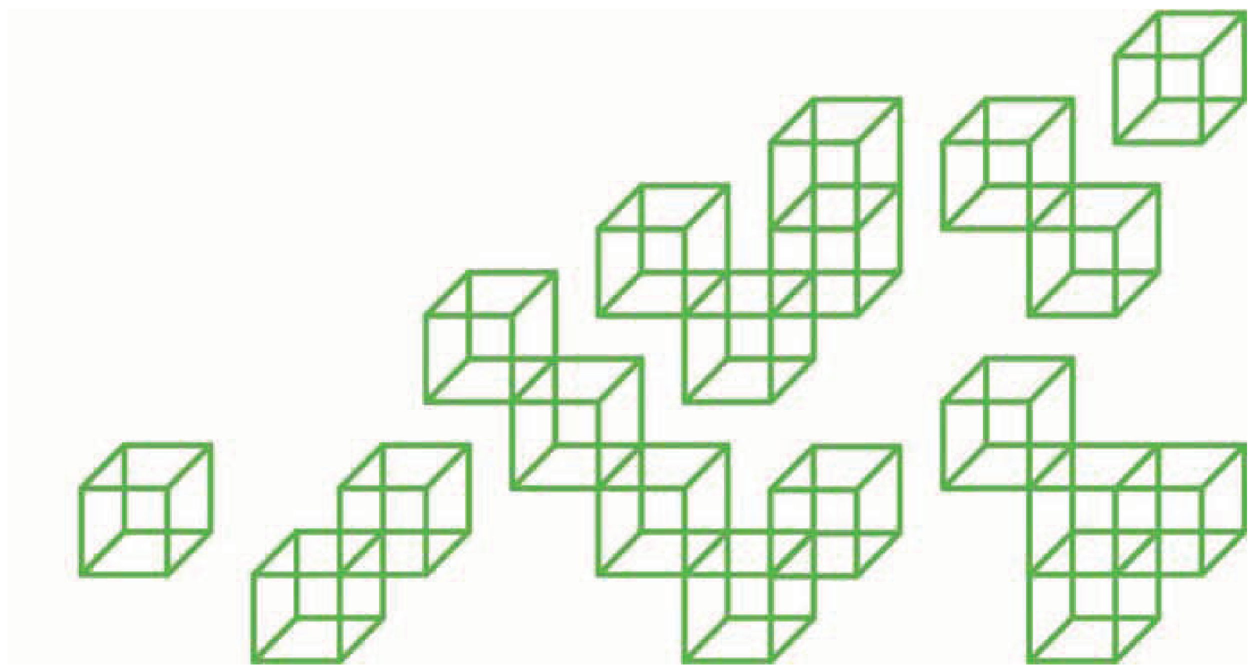
JULY 25 2018

In re Goldman Sachs Group, Inc. Securities Litigation

John D. Finnerty, Ph.D.

Professor of Finance, Fordham University

Academic Affiliate, AlixPartners, LLP



AlixPartners
when it really matters

1

Qualifications

Qualifications

Education

Ph.D. in Operations Research, Naval Postgraduate School	1977
B.A. and M.A. in Economics, Cambridge University	1973, 1977
A.B. in Mathematics, Williams College	1971

Academic Experience

Fordham University Gabelli School of Business, Professor of Finance and founding Director of the Master of Science in Quantitative Finance Program	1987-Present

Business Experience

AlixPartners, LLP, Academic Affiliate, Financial Advisory Services Group	2017-Present
AlixPartners, LLP, Managing Director, Financial Advisory Services Group	2013-2017
Finnerty Economic Consulting, LLC, Managing Principal	2003-2013
Analysis Group, Inc., Managing Principal	2001-2003
PricewaterhouseCoopers, LLP, Partner, Financial Advisory Services Group	1997-2001
Houlihan Lokey Howard & Zukin, Director	1995-1997
McFarland Dewey & Co, General Partner	1989-1995
College Savings Bank, Executive Vice President and Chief Financial Officer	1986-1989
Lazard Frères & Company, Vice President, Corporate Finance Department	1982-1986
Morgan Stanley & Co. Inc., Associate, Corporate Finance Department	1977-1982

Qualifications

Professional Associations

Chair of the Trustees, Eastern Finance Association (2009-2010), Trustee (2008-Present), President (2007-2008), and Director (2005-2008)

President, Fixed Income Analysts Society (2006-2007), and Director (2001-2009)

Director, Financial Management Association (1991-1999, 2005-2007, 2011-2013)

Editor, *Financial Management* (1993-1999)

Editor, *FMA Online* (2001-2010)

Awards

Marshall Scholar	1971
Gladys and Henry Crown Award for Faculty Excellence, Fordham Business School	1997
Best Investments Paper, Southern Finance Association	2001
Best Corporate Finance Paper, Southern Finance Association	2006
Bene Merenti Medal, Fordham University	2007
Fixed Income Analysts Society Hall of Fame	2011
Achievements in Excellence Team Award, AlixPartners, LLP	2014
Ashley Greater New York Community Service Award	2018

Qualifications

Selected Books and Publications

Douglas R. Emery, John D. Finnerty, and John D. Stowe, Corporate Financial Management, 5th ed. Wohl Publishing, Morristown, NJ, 2018.

John D. Finnerty, Shantaram P. Hegde, and Christopher B. Malone, "Fraud and Firm Performance: Keeping the Good Times (Apparently) Rolling," Managerial Finance (No. 2, 2016), pp. 151-172.

John D. Finnerty, "What Lessons Can We Learn from Recent Derivatives Litigation and Regulatory Enforcement Actions?" Securities Regulation Law Journal (Winter 2016), pp. 361-427.

John D. Finnerty, Cameron D. Miller, and Ren-Raw Chen, "The Impact of Credit Rating Announcements on Credit Default Swap Spreads," Journal of Banking and Finance (June 2013), pp. 2011-2030.

John D. Finnerty, Project Financing: Asset-Based Financial Engineering, 3rd ed. John Wiley & Sons, New York, 2013.

John D. Finnerty, "A Closer Look at Correction for False Discovery Bias When Making Multiple Comparisons," Journal of Forensic Economics (December 2009), pp. 55-62.

John D. Finnerty and Gautam Goswami, "Determinants of the Settlement Amount in Securities Fraud Class Action Litigation," Hastings Business Law Journal (Summer 2006), pp. 453-486.

John D. Finnerty and George M. Pushner, "An Improved Two-Trader Model for Measuring Damages in Securities Fraud Class Actions," Stanford Journal of Law, Business & Finance (Spring 2003), pp. 213-263.

John D. Finnerty and Douglas R. Emery, Debt Management, Harvard Business School Press, Boston, 2001.

Douglas R. Emery, John D. Finnerty, and John D. Stowe, Principles of Financial Management. Prentice Hall, Upper Saddle River, NJ, 1998.

928

Qualifications

Selected Expert Testimony Experience

In re American International Group, Inc. Securities Litigation	U.S. District Court for the Southern District of New York
In Re Par Pharmaceutical Securities Litigation	U.S. District Court for the District of New Jersey
In re STEC, Inc. Securities Litigation	U.S. District Court for the Central District of California Southern Division
In re The Bear Stearns Companies, Inc. Securities, Derivative, and ERISA Litigation	U.S. District Court for the Southern District of New York
Carpenters Pension Trust Fund of St. Louis, et al. v. Barclays plc, et al.	U.S. District Court for the Southern District of New York
U.S. Securities and Exchange Commission v. Stifel, Nicolaus & Co., Inc. and David W. Noack	U.S. District Court for the Eastern District of Wisconsin
Bruce S. Sherman v. Bear Stearns Companies Inc., et al.	U.S. District Court for the Southern District of New York
In re Amgen Inc., Securities Litigation	District of California Western Division
In re Petrobras Securities Litigation Discovery Global Citizens Master Fund, Ltd., et al. v. Petroleo Brasileiro S.A., et al.	U.S. District Court for the Southern District of New York
In re Facebook, Inc., IPO Securities and Derivative Litigation	U.S. District Court for the Southern District of New York
Broadway Gate Master Fund, Ltd., et al. v. Ocwen Financial Corporation, et al.	U.S. District Court for the Southern District of Florida

AlixPartners
when it really matters

2

Dr. Gompers' "34 Dates Evidence" (and Defendants' Additional Articles) Were Not Corrective Disclosures

Dr. Gompers' "34 Dates Evidence" (and Defendants' Additional Articles) Were Not Corrective Disclosures

- Flaws in Dr. Gompers' analysis include:
  - Most of the articles only raised **possibility of conflicts of interest**.
  - Dr. Gompers failed to consider **confounding information** in the articles. 8/7/15 Finnerty Report ¶¶15-37; 5/15/15 Finnerty Reb. Decl. ¶¶176-186, Ex. 6.
  - Almost all articles contained **denials by Goldman**. 8/7/15 Finnerty Report ¶¶15-37; 5/15/15 Finnerty Reb. Decl. ¶¶176-186, Ex. 6.
  - Almost all articles contained **market commentary that Goldman's conduct was legal and appropriate**. Finnerty Report ¶¶15-37; 5/15/15 Finnerty Reb. Decl. ¶¶176-186, Ex. 6.
  - The **SEC lawsuit (and investigations) revealed new information that Goldman violated its Business Principles and Conflict Policies** that had artificially inflated Goldman's stock price. 5/22/15 Finnerty Report ¶¶11(c), 65-94, 5/15/15 Finnerty Reb. Decl. ¶¶202-205; 8/7/15 Finnerty Report ¶3(b), 43-55.

Note: A complete analysis on the information released on each of the 34 dates is provided in Exhibit 6 of the Rebuttal Declaration of John D. Finnerty, dated May 15, 2015. The information released on two additional dates is discussed in the Rebuttal Expert Report of John D. Finnerty, dated August 7, 2015. The information released on two more additional dates was only submitted very recently by defendants' counsel.

Dr. Gompers' "34 Dates Evidence" (and Defendants' Additional Articles) Were Not Corrective Disclosures

Examples:

- 12/6/07, "Goldman's Glory May be Short-lived," *Financial Times*

"Goldman has been more aggressive than any other bank in putting the three [advisory, securities, and investment businesses] together - it often advises a company on a transaction, finances it and invests its own money. That regularly puts Goldman in delicate spots. ... **It often faces accusations of conflicts of interest over its overlapping roles but it brushes them off by saying that its job is to 'manage conflicts'**."

- Article did **not** disclose the fact that Goldman had failed to manage its conflicts of interest and had violated its business principles risking damage to its reputation.
- Article merely raised **possibility** of conflicts of interest.
- Goldman explicitly denied any wrongdoing.
- The author did not believe Goldman did anything wrong.

"**But there is no evidence that Goldman did wrong** by issuing Mr. Hatzius's research or conversing with Mr. Paulson about financial conditions, if it actually did the latter**. I do not believe that Goldman broke insider trading laws. It would be stupid to risk its reputation in this way and it is anything but stupid**."

Dr. Gompers' "34 Dates Evidence" (and Defendants' Additional Articles) Were Not Corrective Disclosures

Examples:

- 12/11/07, "13 Reasons Why Bush's Mortgage Bailout Won't Stop A Recession," *Dow Jones Business News*

> "New York Attorney General Andrew Cuomo has already subpoenaed Wall Street. Next: Congress, the SEC and other state regulators will demand answers, such as why was Goldman shorting the SIVs they were selling, many of which quickly went into default? What did they fail to disclose? **Sounds like** a massive conflict of interest with major liabilities."

  - Article did **not** disclose the fact that Goldman had failed to manage its conflicts of interest and had violated its business principles risking damage to its reputation.
  - Article merely raised **possibility** of conflicts of interest.
  - Goldman previously explicitly denied any wrongdoing in articles published on December 3, 2007, "The Long and Short of It at Goldman Sachs," *The New York Times*; December 5, 2007, "Market Insight: Goldman's Risk Control Offers Right Example of Governance," *Financial Times*; and December 6, 2007, "Goldman's Glory May be Short-lived," *Financial Times*.

Dr. Gompers' "34 Dates Evidence" (and Defendants' Additional Articles) Were Not Corrective Disclosures

Examples:

- 12/14/07, "How Goldman Won Big On Mortgage Meltdown," *The Wall Street Journal*

> "Goldman's success at wringing profits out of the subprime fiasco, however, **raises questions** about how the firm balances its responsibilities to its shareholders and to its clients. … Why did Goldman continue to peddle CDOs to customers early this year while its own traders were betting that CDO values would fall? ... **The structured-products trading group that executed the winning trades isn't involved in selling CDOs minted by Goldman, a task handled by others. Its principal job is to 'make a market' for Goldman clients** trading various financial instruments tied to mortgage-backed securities… If it spots opportunity, it can trade Goldman's own capital to make a profit. **And when it does, it doesn't necessarily have to share such information with clients, who may be making opposite bets.** This year, Goldman's traders did a brisk business handling trades for clients who were bullish on the subprime-mortgage-securities market. At the same time, they used Goldman's money to bet that that market would fall."

  - Article did **not** disclose the fact that Goldman had failed to manage its conflicts of interest and had violated its business principles risking damage to its reputation.
  - Article merely raised **possibility** of conflicts of interest.
  - Article indicated that Goldman appropriately managed conflicts of interest.
  - Goldman's previous denials that they disclosed everything, managed any potential conflicts, and did nothing wrong were already in the marketplace.

Dr. Gompers' "34 Dates Evidence" (and Defendants' Additional Articles) Were Not Corrective Disclosures

Examples:

- 11/2/09, Zuckerman (2009), The Greatest Trade Ever

> "For his part, Paulson says that investment banks like Bear Stearns didn't need to worry about including only risky debt for the CDO's because 'it was a negotiation; we threw out some names, they threw out some names, **but the bankers ultimately picked the collateral**. We didn't create any securities, **we never sold the securities to investors**... We always thought they were bad loans.' … 'We provided the collateral' for the CDOs, Paulson acknowledges. 'But the deals weren't created for us, we just facilitated it; we proposed recent vintages of mortgages' to the banks." "Other bankers, including…**Goldman Sachs, didn't see anything wrong with Paulson's request and agreed to work with his team.**"

  - Book did **not** disclose the fact that Goldman had failed to manage its conflicts of interest and had violated its business principles risking damage to its reputation.
  - Book contained mixed information – including Paulson's denials: "we didn't create any securities" and "it was a negotiation; we threw out some names, they threw out some, but **the bankers ultimately picked the collateral.**"
  - Author conveyed that Goldman denied any wrongdoing.
  - In two articles published on the same day ("Profiting From the Crash," *The Wall Street Journal*; and "How Goldman Secretly Bet on the U.S. Housing Crash," *McClatchy Washington Bureau*), **Goldman explicitly denied any wrongdoing**.
  - Excerpt suggested that the relevant trading by Goldman was done as a market maker supplying liquidity to the market.

Dr. Gompers' "34 Dates Evidence" (and Defendants' Additional Articles) Were Not Corrective Disclosures

Examples:

- 12/5/09, "Economy's Loss Was One Man's Gain," *The New York Times,* Book Review

> "Mr. Paulson persuaded Goldman Sachs and Deutsche Bank to put together securitized collateralized debt obligations (known as C.D.O.'s), which were filled with nasty mortgages that he could then short. Of course, nobody told the suckers -- er, investors -- who bought those C.D.O.'s that they were designed to help a man who wanted the most toxic mortgages imaginable so he could profit when they went sour."

  - Article did **not** disclose the fact that Goldman had failed to manage its conflicts of interest and had violated its business principles risking damage to its reputation.
  - No new information in article that was not in book – old news.
  - Article focused on Paulson, not Goldman, and contains no discussion of structuring of Abacus or what was misrepresented to Abacus investors.

Dr. Gompers' "34 Dates Evidence" (and Defendants' Additional Articles) Were Not Corrective Disclosures

Examples:

- 12/24/09, "Banks Bundled Bad Debt, Bet Against It and Won," *The New York Times*

> Regarding preliminary investigations, "authorities **appear** to be looking at **whether** securities laws or rules of fair dealing were violated by firms that created and sold these mortgage-linked debt instruments and then bet against the clients who purchased them."

  - Article did **not** disclose the fact that Goldman had failed to manage its conflicts of interest and had violated its business principles risking damage to its reputation.
  - Article merely raised **possibility** of conflicts of interest.
  - Article indicated that Goldman appropriately managed potential conflicts of interest.
  - Article included direct denial by Goldman and mixed information.

> "**Goldman and other Wall Street firms maintain there is nothing improper about synthetic C.D.O.'s**, saying that they typically employ many trading techniques to **hedge investments and protect against losses**." "Mr. DuVally said **many of the C.D.O.'s created by Wall Street were made to satisfy client demand** for such products……and that **clients knew Goldman might be betting against mortgages linked to the securities**…" "The Goldman salesman said that **C.D.O. buyers were not misled because they were advised that Goldman was placing large bets against the securities**. "We were very open with all the risks that we thought we sold."

Market Commentary Confirms that Dr. Gompers' "34 Dates Evidence" (and Defendants' Additional Articles) Did Not Disclose Goldman's Severe Conflicts and Did Not Have an Impact on Goldman's Reputation

- CIBC World Markets, Analyst Report January 29, 2007 (Ex. 19 (Porten Ex.9))

"According to Viniar, **Goldman was very careful about the conflicts or perceived conflicts that emerge**, and actually has **a full time partner monitoring these conflicts**."

- Merrill Lynch, Analyst Report March 13, 2007 (Ex. 20 (Porten Ex.7))

<u>Conflict Management skill maximizes franchise value</u>

The **consistency with which the firm has avoided crossing the line and damaging its reputation** is such that it must be doing something right. The conflict management process is clearly **taken extremely seriously** at the firm, since it is viewed as not just a by-product but a key pillar of the firm's franchise business. Though the **process is highly structured and rigorous, 20% of the conflicts end up at the top of the firm**.

Goldman manages conflicts, rather than simply avoiding them, in order to **maximize the value of its franchise…**

- Merrill Lynch, Analyst Report July 28, 2008 (Ex. 20 (Porten Ex.8))

Despite the fairly constant undertone of criticism over the firm's embrace of principal activities, we believe that **Goldman has actually tended its customer-oriented business carefully**, which explains why at the end of the day, the world tends to come to Goldman, and **the absence of major conflict problems**.

Effective Versus Ineffective Denials

- Goldman's denials prior to April 16, 2010 and its denial on April 16, 2010 are fundamentally different. **Before the SEC lawsuit**, Goldman's denials were **credible** and therefore believed by the market.
- News articles published prior to April 16 2010 that Dr. Gompers focused on did not disclose the fact that Goldman had actually failed to manage its conflicts of interest and had violated its business principles, which would necessarily result in subsequent harm to Goldman's reputation, its client relationships, and therefore its business.
- Therefore, whenever Goldman denied the allegations in the news articles discussing Goldman's potential conflicts, market participants were not able to determine that Goldman had (a) engaged in any fraudulent conduct by failing to manage its conflicts of interest effectively and (b) concealed this misconduct.
- In contrast, the announcement of the SEC enforcement action on April 16, 2010 revealed, contrary to Goldman's previous denials, the full details and severity of Goldman's mismanagement of its conflicts of interest and violation of its business principles as demonstrated by the Abacus 2007-AC1 CDO.
- Therefore, **Goldman's denials** in response to the SEC's enforcement action announced on April 16, 2010 **were no longer credible**.
- The April 30, 2010 disclosure of a DOJ criminal investigation and the June 10, 2010 disclosure of an SEC enforcement investigation further conveyed to the market the seriousness and severity of Goldman's mismanagement of its conflicts of interest and Goldman's violations of its business principles.
- These announcements further harmed Goldman's reputation and undermined the credibility of Goldman's previous denials.

AlixPartners
when it really matters

3

Dr. Choi Failed to Demonstrate that the Entire Stock Price Decline on the Corrective Disclosure Dates Was Due Solely to Non-Fraud-Related Information

Dr. Choi Failed to Demonstrate that the Entire Stock Price Decline on the Corrective Disclosure Dates Was Due Solely to Non-Fraud-Related Information

- The **statistically significant price declines** following the announcements of the SEC Abacus fraud lawsuit on 4/16/10, the DOJ criminal investigation on 4/29/10, and the SEC Hudson investigation on 6/9/10 **demonstrate stock price impact** from the misrepresentations. 8/7/15 Finnerty Report ¶3(b).

- Dr. Choi (and Dr. Gompers) mischaracterize the SEC complaint and DOJ and SEC investigations as confounding information (or non-allegation-related information).

- But my analysis demonstrates:
  - "[T]he description of Goldman's conduct embodied in those announcements is **inextricably tied** to the regulatory enforcement actions. This is the precise conduct that is the subject of the alleged misstatements and omissions regarding Goldman's Conflicts of Interest and its Business Principles." 8/7/15 Finnerty Report ¶¶45-47

  - "[T]he news concerning the regulatory enforcement actions on the Disclosure Dates cannot be characterized as "confounding news" but, instead, is directly related to the allegations in this matter, as stated in the Complaint." 8/7/15 Finnerty Report ¶3(c).

Dr. Choi Failed to Demonstrate that the Entire Stock Price Decline on the Corrective Disclosure Dates Was Due Solely to Non-Fraud-Related Information

- Dr. Choi's analysis is critically flawed for the following reasons:
  - The alleged misconduct in the four enforcement actions he cites is **not comparable** to Goldman's alleged misconduct that is the subject of the enforcement action announced on April 16, 2010.
  - In measuring abnormal returns, Dr. Choi did not perform proper event studies, because he **failed to check for confounding news** (and adjust for its impact on the company's stock price).
  - **The sample size of four is too small** to yield any meaningful conclusions. In particular, this very small sample has a very wide range of abnormal returns, which extends from -17% to -3%.

Defendant Name	Abnormal Return
Life Partners Holdings, Inc.	-17.09%
BankAtlantic Bancorp, Inc	-8.13%
Stifel, Nicolaus & Co.	-3.73%
Houston American Energy Corp	-3.34%

  - His two-sample t-test is improper; the -9.27% abnormal return is not a "sample," and it is improper to perform a two-sample t-test with such small samples and with a population that is not normal. But even if considering Dr. Choi's flawed 95% confidence interval, the result demonstrates that the 4/16/10 SEC lawsuit "in and of itself" **did not fully explain** Goldman's 9.27% stock drop.
  - Dr. Choi ignored his own prior research recognizing that the announcement of an enforcement action inherently conveys information about the underlying misconduct.
  - Dr. Choi **ignored market commentary** linking the SEC fraud lawsuit to the alleged false statements about conflict policies and business principles.

942

Additional Reasons Dr. Choi Fails to Show a Complete Lack of Price Impact

- Dr. Choi's qualitative analysis of the circumstances surrounding the announcements of the Goldman regulatory actions on the three corrective disclosure dates is speculative, unrooted in financial analysis, and contradicted by contemporaneous market commentary.

- Consequently, Dr. Choi's qualitative analysis of the April 16, 2010 disclosure does not demonstrate a complete lack of price impact.

- Dr. Choi fails to provide any statistical analysis of the abnormal returns on the April 30, 2010 and June 10, 2010 disclosure dates, and thus his qualitative analysis for these dates also cannot show a complete lack of price impact.

AlixPartners
when it really matters

4

Event Study and Economic Analysis Demonstrate Price Impact on the Three Corrective Disclosure Dates

Event Study and Economic Analysis Demonstrate Price Impact on the Three Corrective Disclosure Dates

- Defendants' misstatements and omissions on the first day of the Class Period inflated Goldman's stock price – i.e., kept the stock trading at a higher price than it would have been had the truth been known – and subsequent statements and omissions further inflated and maintained inflation. 5/25/15 Finnerty Reb. Decl., ¶205; 8/7/15 Finnerty Reb. Decl., ¶3(b), 10-14.

- The statistically significant stock price declines on the three corrective disclosure dates "establish price impact." 5/22/15 Finnerty Reb. Decl., ¶¶202-205.

- The statistically significant stock price declines are related to the alleged misrepresentations. 8/7/15 Finnerty Reb. Decl., ¶¶3(c), 38-42, 131-133; 5/22/15 Finnerty Rep ¶11.a-c, 65-94, 108-147.

Event Study and Economic Analysis Demonstrate Price Impact on the Three Corrective Disclosure Dates

Effective Disclosure Date	Information Disclosed	Actual Return	Abn. Return	Sig
April 16, 2010	• The SEC announced that it had filed a **complaint against Goldman charging Goldman with securities fraud** as demonstrated by Abacus 2007-AC1. The **22-page** SEC Complaint revealed various conflicts including that Paulson, with economic interests directly adverse to investors in the CDO, played a significant role in the portfolio selection process. • The new information revealed that **Goldman's marketing materials for Abacus 2007-AC1 misled investors** by failing to disclose Paulson's involvement in selecting the reference portfolio of the CDO and by misrepresenting that the reference portfolio was selected by ACA. • The new information also revealed that Goldman had **misled ACA** that ACA's and Paulson's interests were aligned by failing to disclose to ACA Paulson's massive short position. • The SEC's fraud charge provided **new information** regarding the **severity** of Goldman's conduct and revealed that Goldman had been engaged in undisclosed conflicts of interest and had violated its business principles.	-12.79%	-9.27%	***
April 26, 2010	• The Senate Subcommittee on Investigations announced the release of **four Goldman internal emails**, which indicated that it had made money shorting the mortgage market.	-3.41%	-1.68%	

Note: ***, **, * denote statistical significance at the 1%, 5%, and 10% levels, respectively.

Event Study and Economic Analysis Demonstrate Price Impact on the Three Corrective Disclosure Dates

Effective Disclosure Date	Information disclosed	Actual Return	Abn. Return	Sig
April 30, 2010	• The *Wall Street Journal* reported that the Department of Justice (**DOJ**) had opened a **criminal investigation** (centered on "different evidence" than the SEC's civil case). • In connection with Goldman's allegedly fraudulent conduct, the Senate Subcommittee on Investigations had **previously criticized the Abacus 2007-AC1, Hudson 2006-1, Timberwolf 1, and Anderson 2007-1** CDO transactions. • The *Wall Street Journal* article provided significant new information regarding the **severity** of Goldman's conflicts of interest and violations of its business principles in contrast to Goldman's allegedly false and misleading statements.	-9.39%	-7.75%	***
June 10, 2010	• Bloomberg reported on June 9 that the **Hudson 2006-1** CDO was also **being investigated by the SEC**. • The second SEC probe into a Goldman CDO transaction provided significant new information regarding the **severity** of Goldman's conduct and revealed that Goldman had been engaged in undisclosed conflicts of interest and violated its business principles in contrast to Goldman's allegedly false and misleading statements.	-2.21%	-4.52%	**

Note: ***, **, * denote statistical significance at the 1%, 5%, and 10% levels, respectively.

Market Commentary in Response to the April 16, 2010 Corrective Disclosure Supports Price Impact Analysis

- *Associated Press*, "Fraud Charge Deals Big Blow To Goldman's Image," April 18, 2010 (ECF No. 155-5)

> "In its corporate profile, the company says its culture distinguishes it from other firms and 'helps to make us a magnet for talent.' That culture is summed up in the firm's '14 Business Principles,' which preach an almost militant philosophy of putting the client before the firm. Now, it's that very philosophy that has been questioned by the government."
>
> "Our Clients' interests always come first" the company says on its website under the heading, "Goldman Sachs Business Principle No. 1."

- *Wall Street Journal*, "Common Sense: Where's the Goldman Sachs I Used to Know?," April 21, 2010 (ECF No. 155-7)

> "It's hard to imagine the damage that these developments have done already to Goldman Sachs's reputation. The company has always maintained a public position that the business of investment banking depends on trust, integrity and putting clients' interests first."

- *Wall Street Journal Blog*, "How Goldman Gets Its Premium Back," May 21, 2010 (ECF No. 201, Ex 25)

> "…the premium has dissolved because the market is worried, not about lawsuits or politics, but about Goldman's core business. The Abacus affair has highlighted the conflicts intrinsic to the investment banking business. But historically Goldman has managed those conflicts well."
>
> Conversely, evidence of poorly managed conflicts is especially dangerous to Goldman. Some damage has already been done.

Market Commentary in Response to the April 16, 2010 Corrective Disclosure Supports Price Impact Analysis

- John Coffee, a securities law professor at Columbia Law School, April 19, 2010

> "These charges are far more severe than anyone had imagined" and Goldman had teamed with "the leading short-seller in the industry to design a portfolio of securities that would crash."

- Citigroup Global Market, April 16, 2010

> "This is the first time the SEC has brought a complaint alleging fraud on the part of a broker dealer in marketing investments on subprime mortgages... the issue is whether this was an isolated incident or not. Reputation risk is biggest issue in our view, and we do not view this as a 'life threatening issue', but clearly seems like a 'black eye' for Goldman."

- Bank of America Merrill Lynch, April 16, 2010

> "This is clearly a serious charge,... it's not clear whether there are more such cases; nor whether the SEC might refer the case to the DOJ for criminal charges; nor how serious the reputational effects might be for GS and for the industry more broadly."

- Moody's, April 19, 2010

> "This development is a credit negative for Goldman Sachs given the potential franchise implications and direct financial costs."

Market Commentary in Response to the April 29, 2010 Corrective Disclosure Supports Price Impact Analysis

- Fitch Ratings, May 5, 2010

> "The Rating Outlook revision to Negative incorporates recent legal developments and ongoing regulatory challenges that could adversely impact Goldman's reputation and revenue generating capacity…. And for financial services companies, particularly those dependent on the capital markets, reputation is critically important."

- Bank of America Merrill Lynch, April 30, 2010

> "We are lowering our rating on GS to Neutral from Buy and our price objective to $160 from $220. Our downgrade is prompted by news reports filed Thursday evening by the media including the Wall St. Journal indicating that federal prosecutors have opened an investigation of GS in connection with its trading activities, raising the possibility of criminal charges."

- Standard & Poor's Equity Research Group, April 30, 2010

> Cut its investment recommendation on Goldman's stock to Sell from Hold and lowered its price target by $40 to $140, stating that "we think the risk of a formal securities fraud charge, on top of the SEC fraud charge and pending legislation to reshape the financial industry, further muddies Goldman's outlook."

- Citigroup Global Market, May 2, 2010

> "Goldman's reputation is one of the firm's greatest assets. To the extent clients lose faith and either reduce or eliminate their transactions with Goldman, it could have significant detrimental effect across all of the firm's business."

- *The Washington Post*, April 30, 2010

> "The Justice Department's criminal investigation into Goldman Sachs goes beyond the financial transactions targeted by the Securities and Exchange Commission in the civil fraud suit brought against the firm last month… While prosecutors and investigators are focusing on some of the same mortgage-related transactions as the SEC,… the Justice Department cast a wider net."

950

Market Commentary in Response to the June 9, 2010 Corrective Disclosure Supports Price Impact Analysis

- Wells Fargo, June 10, 2010

> Near-term challenges for Goldman's stock were likely to persist, although it believed that a settlement with the SEC in the future would be positive for Goldman's stock. It noted that media reports of a second SEC investigation into Goldman's CDO marketing practices, specifically the Hudson 2006-1 CDO, pushed Goldman shares down as much as 4% on June 10, 2010.

Labaton Sucharow

Robbins Geller Rudman & Dowd LLP

In re Goldman Sachs Grp., Inc. Secs. Litig., No. 1:10-cv-03461-PAC

Lead Plaintiffs' Summary of Argument in Further Support of Class Certification

July 26, 2018

Alleged Misstatements Contained Omissions to Maintain the Goldman "Premium"

- Price maintenance
  - Courts have recognized that misstatements and omissions of material information cause price impact by keeping a company's stock price trading at a higher level than it would have traded had the truth been revealed
  - The Second Circuit affirmed this
    - *See In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 259 (2d Cir. 2016)

Alleged Misstatements Contained Omissions to Maintain the Goldman "Premium," Cont'd

- Professor Finnerty explained yesterday that this is a price maintenance case
  - What caused inflation in Goldman's stock price "was a ***failure to disclose*** the conflicts of interest and the failure to manage those conflicts of interest, the failure to adhere to the business principles and ***the failure to disclose*** the ***risk to Goldman's reputation*** associated with not managing its conflicts of interest." 7/25/18 Hearing Tr. at 196:13-17
  - Goldman's 14 misstatements and omissions between June 14, 2007 and April 16, 2010 ***maintained price inflation*** in Goldman's stock price *Id.* at 199:3-9

Alleged Misstatements Contained Omissions to Maintain the Goldman "Premium," Cont'd

- The ***premium*** that the market attached to Goldman's stock was maintained in the absence of corrective information
- ***Analysts recognized that Goldman's ability to manage conflicts was a key element driving the Goldman Sachs premium and was thereby reflected in the stock price:***
  - "***Conflict Management skill maximizes franchise value***: [T]he consistency with which [Goldman] has ***avoided*** crossing the line and ***damaging its reputation*** is such that it must be doing something right. The conflict management process is clearly taken extremely seriously at the firm, since it is viewed as not just a by-product but ***a key pillar of the firm's franchise business***. Though the process is highly structured and rigorous, 20% of the conflicts end up at the top of the firm. ***Goldman manages conflicts***, rather than simply avoiding them, in order to ***maximize the value of its franchise***"

    Merrill Lynch, March 13, 2007 (Pls' Ex. 20 (Porten Ex. 7))

Alleged Misstatements Contained Omissions to Maintain the Goldman "Premium," Cont'd

- "[W]hile ***[Goldman] trades at a substantial premium to its peers***, we believe it is warranted given its diversified franchise, ***strong brand***, higher ROE profile, and ***peerless risk management***" Buckingham Research Group, June 17, 2008
- "Investment Thesis: GS' deleveraging and slower global economic activity should drive lower absolute levels of profitability in 2009, but reduced competition, minimal consumer exposure, and ***GS' sterling reputation*** should allow the company to drive above-average profit growth, ***resulting in premium valuation*** over time" Wachovia, April 13, 2009 (Porten Ex. 14)

Alleged Misstatements Contained Omissions to Maintain the Goldman "Premium," Cont'd

- After the first two corrective disclosures, the premium largely "dissolved":
  - "***How Goldman Gets Its Premium Back***: "[T]here is another possibility [as to why investors are steering clear of Goldman stock]: that ***the premium has dissolved because the market is worried***, not about lawsuits or politics, but ***about Goldman's core business*** . . . . This territory [the specifics of the conflicts revealed by the SEC in connection with Abacus] is especially dangerous for Goldman because of the ***perception that it is an elite adviser and an elite trader that can do both simultaneously while managing the conflicts to the satisfaction of its clients***. ***That's why its stock carries a premium to its peers in bull markets***. ***Conversely, evidence of poorly managed conflicts is especially dangerous to Goldman***. Some damage has already been done . . . . To regain ***its valuation premium***, Goldman must steer back to the light side" *Wall Street Journal*, May 21, 2010 (Pls' Ex. 25 (Porten Ex. 19))

Introduction – Gompers

- Gompers's theory is that all information on 36 dates should have ***in fact*** revealed the false and misleading nature of alleged misstatements/omissions.
- He argues the fact that Goldman's stock did not decline on those dates shows there was ***no*** inflation introduced into the stock by those misstatements/omissions, i.e., no price impact.
- He needed to show that those 40+ articles were ***in fact*** corrective to prove that.
- He did not.

Defendants’ 36 Dates Evidence Fails to Meet Their Burden – Overview

Evidence fails to carry Defendants’ burden because:

1. Most of the 36 Dates articles included conflicting information that blunted any potential negative price reaction:
   a. ***Goldman’s denials*** of any wrongdoing and/or
   b. ***similar statements by the authors or others*** indicating Goldman’s conduct was ***not illegal or improper***

Defendants' 36 Dates Evidence Fails to Meet Their Burden – Overview, Cont'd

2. The 36 Dates articles were ***not corrective***
   - These articles ***at most*** discussed Goldman's "***potential***" conflicts, consistent with the alleged misstatements
     - » *i.e.*, they suggested ***possible*** or ***theoretical*** conflicts
   - They did not disclose that conflicts ***in fact arose*** or that Goldman ***actually*** failed to "address" them

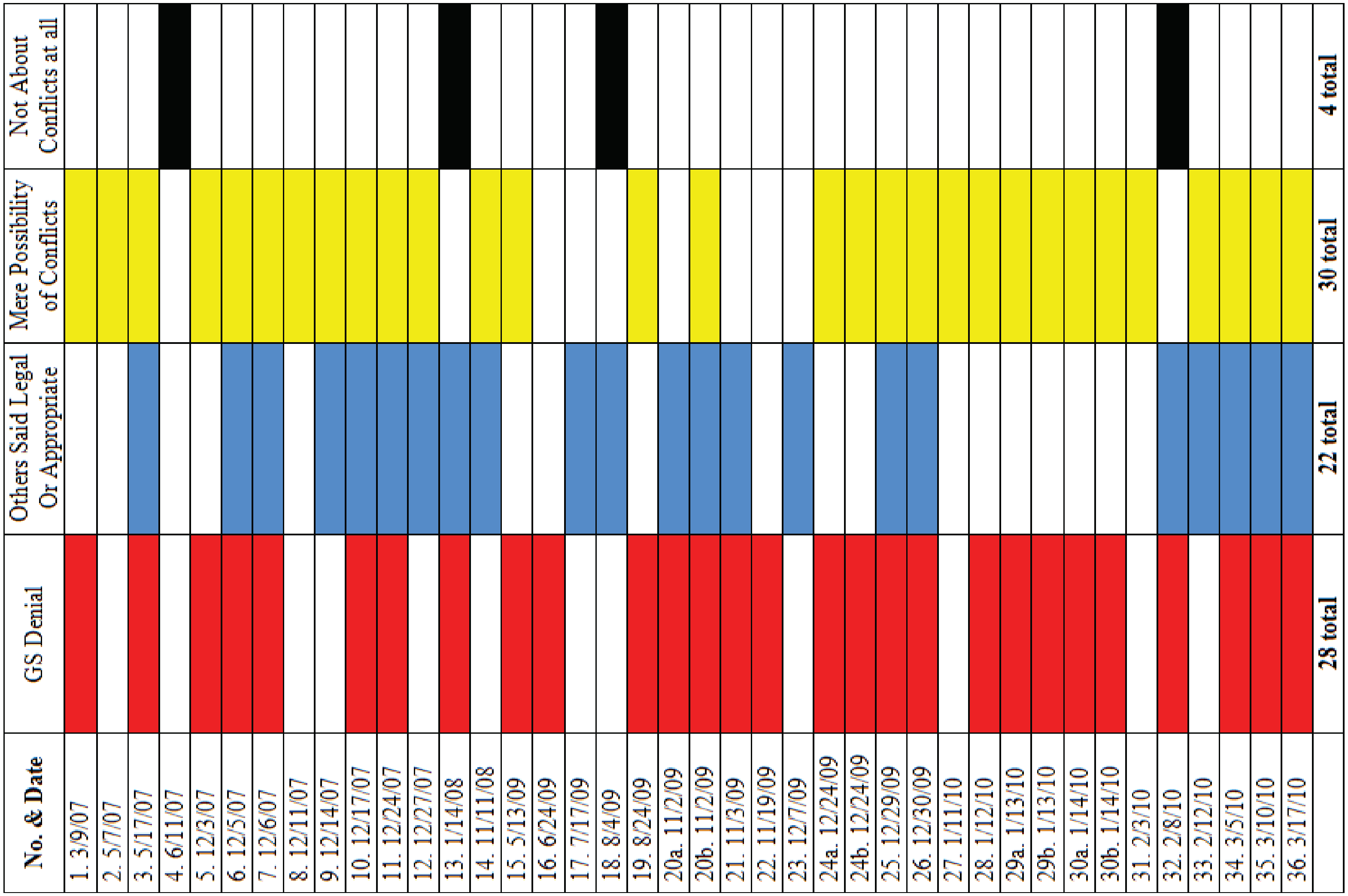
Defendants’ 36 Dates Evidence Fails to Meet Their Burden – Overview, Cont’d

3. Some were ***not*** about ***conflicts at all***

Defendants' 36 Dates Evidence Fails to Meet Their Burden – Overview, Cont'd

- In total:
  - 28 contain Goldman ***denials***
    - 12 left
  - 22 characterized conduct as ***legal or appropriate***
    - 5 left (due to overlap)
  - 30 of the 40 merely raised the ***possibility*** of conflicts
    - 1 left
  - 4 of the 40 Articles are not about conflicts ***at all***
    - 0 left

The 36 Dates Articles Did Not Reveal the Falsity of the Alleged Misstatements



Goldman's Denials of Any Conflicts or Misconduct Blunted a Negative Price Reaction

- Defs' Ex. 3, which listed ***only 16*** articles with such denials ***understates***—by almost ***half***—the actual number *See* ECF No. 193-3
- Dr. Finnerty opined that such denials blunted any negative stock price reaction

December 6, 2007: "Goldman's Glory May be Short-lived," *Financial Times* (Defs' Ex. 21)

Defendants' Excerpts, *e.g.*:

- Goldman's "*leaders **astutely** decided to hedge its mortgage book.... Two commentators have now ... **accuse[d]** Goldman of behaving unethically and **perhaps** of breaking the law.... [It] often faces **accusations** of conflicts of interest … **but it brushes them off by saying its job is to 'manage conflicts'**"* Defs' Ex. 21 at 4 (ECF No. 193-21)
  - ➢ Merely raised the ***possibility*** of conflicts

They Omit, *e.g.*:

- ***Repeats Goldman's denial***: "***Goldman bankers say it is impressed upon them that they must tell others of any concerns they have about clients***" *Id.* at 4
- **Conduct characterized by others as *legal or proper***: "[T]here is ***no evidence that Goldman did wrong***.... ***I do not believe that Goldman broke insider trading laws***. It would be stupid to risk its ***reputation*** in this way and it is anything but stupid." *Id.* at 4
  - ➢ Merely raised ***possible*** conflicts, while indicating they were ***appropriately managed***
- One of two articles the ***Second Circuit*** said this Court "should consider"

December 11, 2007: "13 Reasons Why Bush's Mortgage Bailout Won't Stop A Recession," *Dow Jones Business News* (Defs' Ex. 22)

<u>Defendants' Excerpts, *e.g.*:</u>

- "[R]egulators will demand answers, such as *why was Goldman shorting the SIVs they were selling, many of which quickly went into default? What did they fail to disclose?* ***Sounds like*** *a massive conflict of interest....*" Defs' Ex. 22 at 4 (ECF No. 193-22)
  - Merely raised the ***possibility*** of conflicts

<u>Article conveyed ***opinions*** based on previously public info:</u>

- Merely raised questions that "***demand[ed] answers***" – not facts showing actual conflicts, much less tying them to impact on Goldman's reputaiton
- Speculated that "regulators will demand answers" and posed ***questions***, not conclusions; conceded **"*hearings could drag on a long time*"** such that resolution of such questions was still distant (*id.*)
- One of two articles the ***Second Circuit*** said this Court "should consider"

December 24, 2009: "Banks Bundled Bad Debt, Bet Against It and Won," *New York Times* (Defs' Ex. 39)

Defendants' Excerpts, *e.g.*:

- "*Goldman kept a significant amount of the financial bets against securities in* ***Hudson****, so it would profit if they failed…. Congress [and] the [SEC] ...* ***appear to be*** *looking at* ***whether*** *securities laws or rules of fair dealing were violated.*" Defs Ex. 39 at 3

They Omit, *e.g.*,:

- Merely raised the ***possibility*** of conflicts: "the investigations are in the ***early phases***"
- ***Goldman's denials***:
  - "Goldman and other Wall Street firms maintain ***there is nothing improper about synthetic C.D.O.'s,*** saying that they typically employ many trading techniques to ***hedge investments and protect against losses***. *Id.* at 2
  - Goldman spokesman DuVally "said many of the C.D.O.'s ... were made ***to satisfy client demand*** for such products" and "said that ***clients knew Goldman might be betting against*** mortgages linked to the securities." *Id.* at 3
  - "The Goldman salesman said that ***[Hudson] C.D.O. buyers were not misled*** because they were ***advised that Goldman was placing large bets against the securities***. 'We were ***very open*** with all the risks….'" *Id.* at 3
- Goldman made more ***false denials*** in a press release ***the same day*** (ECF No. 196 at 11)
  - ➢ Cited as one of Defendants' top examples (Defs' Supp. Br. at 9 & 18)

Goldman's Denials Blunted a Negative Price Reaction, Cont'd

- At the evidentiary hearing, Dr. Gompers conceded: "***[P]ositive news can offset negative news***. Any day that you have ***confounding news, you have to try an[d] ascertain what each component*** is doing to the stock price" -7/25/18 Hearing Tr. at 83:23-84:4

- He also agreed that "***positive news can cancel out negative news***," stating: "hypothetically, if two identical pieces of news with the identical but opposite cash flow implications came to the market, ***they would exactly offset and would you have no stock price movement***" - *Id.* at 84:5-11

Goldman's Denials Blunted a Negative Price Reaction, Cont'd

- In response to whether Goldman's ***denials*** of wrongdoing on the 36 Dates was "positive or negative" news, Dr. Gompers further conceded that "[i]t is ***certainly not negative news***"
  - *Id.* at 84:12-25

– When asked whether such denials were "relevant information to investors," he also admitted that "***it is relevant about whether or not the investors thought that the actions were legal***"
  - *Id.* at 91:11-16

Goldman's Denials Blunted a Negative Price Reaction, Cont'd

- But Dr. Gompers also admitted that he ***did not consider Goldman's denials in conducting his event study.*** Specifically, he admitted that:
  - ***He did not search for Goldman's denials*** in looking for public "discussion of conflicts of interest at Goldman Sachs" for his event study. -*Id.* at 82:5-15
  - That Goldman's press releases denying the conflicts alleged in certain 36 Dates articles "***wouldn't have been picked up***" by his database search. -*Id.* at 90:5-91:8.
  - And, "***If it is not picked up then I wouldn't have looked at it***." -*Id.* at 90:25-91:1

Goldman's Denials Blunted a Negative Price Reaction, Cont'd

- Dr. Gompers also ***selectively excerpted*** his descriptions of the articles on the 36 Dates in his charts (Exs. 5 & 6 to his report) ***to omit Goldman's denials*** contained therein. He repeatedly testified, *e.g.*,:
  - "***The denial*** -- this portion of the article ***is not there*** [in Ex. 6]"
  - Such denials were ***"not included in what I excerpted in Exhibit 6"***
    - 7/25/18 Hearing Tr. at 85:17-90:18

Goldman's Denials Blunted a Negative Price Reaction, Cont'd

- Effect of denials is ***not*** a "speculative theory"

  (Defs' Supp. Br., ECF No. 192, at 14)

  – "[T]he *Basic* presumption" was ***not*** "rebutted" where public reports "during the class period . . . ***publicized the existence of conflicts of interest*" *by Goldman*** because "throughout the same time period, ***investors were also being fed reassuring statements by Goldman" denying conflicts*. *Lapin v. Goldman Sachs & Co.*, 254 F.R.D. 168, 182-84 (S.D.N.Y. 2008)

    - *See also In re Moody's Corp. Sec. Litig.*, 274 F.R.D. 480, 490-92 (S.D.N.Y. 2011) (same where "the market was well aware of the ***potential*** for conflicts, ***but each time the [defendants] assured investors that the conflicts were either being managed or negligible***")

Defendants' 36 Dates Evidence Fails to Meet Their Burden, Cont'd

- For example, even after the first 13 of Gompers's articles were published, an analyst from Merrill Lynch observed on July 28, 2008:
  - "***[W]e believe that Goldman has actually tended its customer-oriented businesses carefully, which explains why at the end of the day, the world tends to come to Goldman, and the absence of major conflict problems***."
    - Pls' Ex. 21 (ECF No. 201-7)

Analysts Rebut Gompers During Time Period of 36 Articles

- Many analysts covered Goldman's conflicts policies and reputation ***positively***, showing that ***the market did not learn*** of its failure to adequately address conflicts from the 36 Dates articles. *E.g.*,:
  - On March 9, 2007 – the first of Gompers's 36 Dates, a *Forbes* article reported ***potential*** conflicts and contained this ***denial***: "'***There is no conflict***,' snaps Lucas van Praag, Goldman's Chief spokesman"
  - Four days later, Merrill Lynch issued the following analyst report: "***Conflict Management skill*** maximizes franchise value: … ***[T]he consistency with which the firm has avoided crossing the line and damaging its reputation is such that it must be doing something right. The conflict management process is clearly taken extremely seriously at the firm*** … ***Goldman manages conflicts, rather than simply avoiding them***, in order to maximize the value of its franchise…." Pls' Ex. 20 (3/13/2007 Merrill Lynch report, ECF No. 201-7)

Analysts Rebut Gompers, Cont'd

- Pls' Ex. 19 (1/29/2007 CIBC): "According to Viniar, ***Goldman is very careful about the conflicts or perceived conflicts*** that emerge, and actually ***has a full time partner monitoring these conflicts***."
- Pls' Ex. 21 (7/28/2008 Merrill Lynch): "***[W]e believe that Goldman has actually tended its customer-oriented businesses carefully***, which explains why at the end of the day, the world tends to come to Goldman, ***and the absence of major conflict problems***."

- 11/24/09 Bank of America Merrill Lynch: "***Goldman has always managed its conflicts effectively.*** … Goldman has often been viewed as having more than the average amount of ***potential conflict*** because of its principal activities (private equity and prop trading), though the scale and growth of its client trading and investment-banking franchise make it clear that ***these conflicts have overall been well managed***."
  - *Issued just 5 days after Defs' Ex. 37 ("GS a Short? And Five Reasons We Hate Goldman Sachs") and within a few weeks of *The Greatest Trade Ever* (Defs' Ex. 36, 11/3/09) and other 36 Dates articles (Defs' Exs. 34 & 35, 11/2/09)

Introduction – Choi

The Facts Don’t Matter

Introduction – Choi

- Choi's theory begins from the undisputed fact that there are three statistically significant stock drops on the revelation of information about Goldman's unmanaged conflicts of interest and related enforcement activity
- So he must explain it away 100%
- He has to prove that all of the decline was not due to revelation that Defendants' conflict management and Business Principles Statements were false.
- ***This is what he has failed to show***
- ***In fact***, the information disclosed on these three dates did affect Goldman's stock price

Defendants' *Burden* Under the Preponderance of the Evidence Standard Is Not Minimal, Cont'd

- "[M]erely suggesting that another factor ***also*** contributed to an impact on a security's price does not establish that the fraudulent conduct complained of did not also impact the price."
  - ***Barclays***, 875 F. 3d at 104-05 (emphasis in original)

Choi's Analysis Fails to Show No Price Impact

- Dr. Choi's evidence does not carry Defendants' burden

1) <u>**First Drop**</u>: His analysis is problematic for the reasons Finnerty explained:
   - His quantitative analysis is suspect
   - His qualitative analysis is undercut by the fact that he ignores news and stock analyst coverage

2) <u>**Second and Third Drops**</u>:
   - He did ***not*** conduct a ***quantitative*** analysis at all
   - **Second Drop:** At the evidentiary hearing, he testified that he ***did not do an "empirical analysis*** of the causes of the April 30 stock price decline"

     -7/25/18 Hearing Tr. at 116:19-117:9
   - **Third Drop:** Likewise, he testified that he did not did not do an "empirical analysis of the causes of the June 10 price decline"

     - *Id.* at 119:17-120:7

Choi's Analysis Fails to Show No Price Impact, Cont'd

- Choi's analysis was ***unreliable*** for several reasons:
  - Choi's use of his three "severity factors" that are purportedly indicative of the cost of an SEC action for his event study was arbitrary and not supported by academic literature
    - At the evidentiary hearing, he conceded that he was "***not aware of any [empirical studies] that used all three factors together***" and that he is "***the only person to ever have done this analysis***"
      - 7/25/18 Hearing Tr. at 142:6-143:11
- Choi applied those "severity factors" to 117 SEC enforcement actions
- Choi acknowledged that he did not review the complaints in those 117 SEC enforcement actions for substance:
  - Q. In 113 complaints out of 117, ***you did not look at the actual allegations*** that the SEC said was the basis for the enforcement action, actually go page by page ***or even skim them***, to say here is the charges that the SEC brought; right, sir?
  - A. ***That's correct***; for the reasons I give in my direct testimony.
    - 7/25/18 Hearing Tr. at 137:10-16

Choi's Analysis Fails to Show No Price Impact, Cont'd

- Choi ignored the fraudulent conduct in 113 of the 117 SEC enforcement actions
- Resulted in four cases with one obvious outlier

Defendant Name	Abnormal Return
Life Partners Holdings, Inc.	-17.09%
BankAtlantic Bancorp, Inc	-8.13%
Stifel, Nicolaus & Co.	-3.73%
Houston American Energy Corp	-3.34%

- Choi created a too-small sample size of only four other SEC complaints based on these three arbitrary "severity factors"
  – "A t-test is ***not appropriate*** for small samples drawn from a population that is not normal." Federal Judicial Center Reference Manual on Scientific Evidence, "Reference Guide on Statistics" 300 (3d. Ed. 2011)

Dr. Choi Failed to Demonstrate that the Entire Stock Price Decline on the Corrective Disclosure Dates Was Due Solely to Non-Fraud-Related Information

- Dr. Choi's analysis is critically flawed for the following reasons:
  - The alleged misconduct in the four enforcement actions he cites is **not comparable** to Goldman's alleged misconduct that is the subject of the enforcement action announced on April 16, 2010.
  - In measuring abnormal returns, Dr. Choi did not perform proper event studies, because he **failed to check for confounding news** (and adjust for its impact on the company's stock price).
  - **The sample size of four is too small** to yield any meaningful conclusions. In particular, this very small sample has a very wide range of abnormal returns, which extends from -17% to -3%.

Defendant Name	Abnormal Return
Life Partners Holdings, Inc.	-17.09%
BankAtlantic Bancorp, Inc	-8.13%
Stifel, Nicolaus & Co.	-3.73%
Houston American Energy Corp	-3.34%

  - His two-sample t-test is improper; the -9.27% abnormal return is not a "sample," and it is improper to perform a two-sample t-test with such small samples and with a population that is not normal. But even if considering Dr. Choi's flawed 95% confidence interval, the result demonstrates that the 4/16/10 SEC lawsuit "in and of itself" **did not fully explain** Goldman's 9.27% stock drop.
  - Dr. Choi ignored his own prior research recognizing that the announcement of an enforcement action inherently conveys information about the underlying misconduct.
  - Dr. Choi **ignored market commentary** linking the SEC fraud lawsuit to the alleged false statements about conflict policies and business principles.

0

SEC v. Life Partners Holdings, Inc. Complaint – Restatement Case

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LIFE PARTNERS HOLDINGS, INC., BRIAN D. PARDO, R. SCOTT PEDEN, AND DAVID M. MARTIN,

Defendants.

Civil Action No.: 6: 12-cv-00002

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

SUMMARY

1. Since 2006, Defendants Life Partners Holdings, Inc. (referred to jointly with its wholly-owned subsidiary, Life Partners, Inc. as "Life Partners" or the "Company")—through senior officers Brian D. Pardo ("Pardo"), R. Scott Peden ("Peden"), and, since 2008, David Martin ("Martin")—engaged in a disclosure and accounting fraud that misled the Company's shareholders about the sustainability of Life Partners' revenues and profit margins, consumer demand for the life settlement investments that the Company brokers, and, since at least fiscal year 2007, the Company's net income. Pardo and Peden profited from the fraud by trading on inside information that Life Partners systematically uses life expectancy estimates that the Company knows to be materially short in brokering life settlements. Life Partners engaged in this practice to artificially inflate the Company's revenues and profit margins. Pardo and Peden knew the Company engaged in this practice, which Defendants concealed from shareholders, and took advantage of the non-public information to sell shares of Life Partners common stock at artificially inflated prices.

17. As a result of Life Partners' practice of prematurely recognizing revenue and failing to appropriately impair its own investments in life settlements, Defendants materially misstated net income from at least fiscal year 2007 through the third quarter of fiscal year 2011. On November 22, 2011, Life Partners restated its financial results for fiscal years 2007 through 2010, and for the first three quarters of fiscal year 2011, to correct errors related to revenue recognition, impairment of investments in owned policies, accrued liabilities, and the related tax impact, which the Company admitted had been previously "incorrectly accounted for under [GA

137. The table below is based upon the Restatement and indicates that Life Partners' misstatements of net income range from negative 29% to positive 11% for fiscal years 2007, 2008, 2009, and 2010. Similarly, the Company misstated net income for the first, second, and third quarters of fiscal year 2011 by 7%, 2%, and (78)% respectively. The misstatements of net income resulting from prematurely recognizing revenue prior to the Closing Date and inadequate impairment of investments in policies are material to Life Partners consolidated financial statements for fiscal years 2007, 2008, 2009, 2010 and for the first, second, and third quarters of fiscal year 2011.

	Increase (Decrease) Net Income (Dollars in millions)			
Nature of Restatement Adjustment	Year Ended 2/28/07	Year Ended 2/29/08	Year Ended 2/28/09	Year Ended 2/28/10
1.Revenue based on closing date	$ 0.4	$ (3.8)	$ 0.1	$ (2.1)
2.Impairment	--	(0.2)	(2.2)	(1.8)
3.Deferred policy monitoring costs	N/A	(1.9)	(0.7)	(0.4)
4.Other[1]	(0.2)	(0.3)	0.6	(0.1)
Subtotal, pretax	0.2	(6.2)	(2.2)	(4.4)
Federal and state taxes	0.2	2.0	0.6	1.1
Misstatement, after tax	0.4	(4.2)	(1.6)	(3.3)
Reported net income	3.4	18.8	27.1	29.4
Restated net income	$ 3.8	$ 14.6	$ 25.5	$ 26.1
% Misstatement, under (over) stated	11%	(29)%	(6)%	(13)%

[1] The Company's restatement of prior year financial statements includes correction of errors related to the timing of expensing executive bonuses, impairment of investments in securities, and certain other items.

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence

- Dr. Finnerty found that there was price impact, and that Goldman's misrepresentations and omissions were incorporated into its stock price
- He further found that none of the 36 Dates articles were corrective, explaining why no stock drop would be expected before the corrective disclosures
  - Thus, he opined that Gompers's evidence of 36 dates did not negate the idea that Goldman's misrepresentations and omissions inflated its stock price

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence

- Defendants claim Plaintiffs have submitted "***no evidence*** of price impact of ***any*** kind" (Defs' Supp. Br. at 11) and that their evidence was thus "***unrebutted***" (*id.* at 8, 22)
  - *See also* Defs' Reply at 1 (Plaintiffs "offer only speculation and criticism, ***not evidence***")
- Not so. They ignore ***Plaintiffs' evidence of price impact***:

1. Dr. Finnerty's ***event study*** showed statistically significant stock drops; and
2. ***Market commentary***, by reporters and stock analysts, connected the news to Goldman's alleged misstatements and ensuing reputational harm

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence

1. ***Dr. Finnerty's event study*** found the 3 ***statistically significant*** stock drops on disclosures ***correcting prior misstatements re: Goldman's conflicts and business practices***—proving price impact *See* 1/30/15 Finnerty Decl. at ¶¶52-81 (ECF No. 137); 5/15/15 Finnerty Reb. Decl. at ¶¶202-206 (ECF No. 154)
   - Gompers ***agreed*** that these drops were statistically significant. 4/6/15 Gompers Decl. ¶¶ 64, 79, 89 (ECF No. 193-4).

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence, Cont'd

1. *Dr. Finnerty's* ***event study*** (*cont'd*)

– This event study is "***direct evidence*** of price impact."
Barclays, 875 F.3d at 97-99

- *See also Pirnik v. Fiat Chrysler Automobiles NV*, 2018 WL 3130596 (S.D.N.Y. Jun. 26, 2018) (Furman, J.) (holding "Defendants did not carry their burden of demonstrating the absence of price impact" where, *inter alia*, plaintiff's expert's "event study ***does*** identify abnormal price movements in response to six allegedly corrective disclosures (as one would expect in a 'price maintenance' scenario)")
- *W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, 2016 WL 4138613, at *14 (E.D. Pa. Aug. 4, 2016) (defendants "failed to overcome the *Basic* presumption" where "***Plaintiffs produced evidence of price impact upon the disclosure*** of the misrepresentations [*i.e.* ***their expert's event study***], and Defendants have failed to provide a valid reason to discount that evidence")

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence, Cont'd

2. **Finnerty** found ***market commentary*** attributing Goldman's stock drops on the corrective disclosure dates to the revealed misconduct that ***contradicted*** the alleged misrepresentations regarding its conflicts of interest and reputation. *E.g.*:

   a) ***First Drop:*** After the SEC filed its complaint on 4/16/10, Goldman's stock fell 12.79% and the press connected the news to Goldman's statements:

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence, Cont'd

– *Reuters*, 4/19/10: "The greatest penalty for Goldman is not the financial damages . . . but the ***reputational damage***." 5/22/15 Finnerty Rep. ¶194 (ECF No. 170-10)

– *Wall Street Journal*, 4/21/10: "It's hard to imagine the ***damage*** that these developments have done already ***to Goldman Sachs's reputation***. The company has always maintained a public position that the business of investment banking depends on ***trust, integrity and putting clients' interests first***." 8/7/15 Finnerty Reb. Rep. ¶131 (ECF No. 170-11)

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence, Cont'd

a) ***First Drop (Cont'd):*** **Finnerty** also analyzed ***analyst commentary***:

– *Citi*, 4/16/10: "[T]he SEC alleges that Goldman ***misled ACA*** . . . ***Reputation*** risk is ***biggest issue*** in our view." 8/7/15 Finnerty Reb. Rep. ¶131 (ECF No. 170-11)

– *Bank of America Merrill Lynch,* 4/16/10: "This is a serious charge . . . [T]he ***reputational damage*** could be considerably greater." *Id.*

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence, Cont'd

- *Macquarie*, 4/19/10: "Typically, ***reputational damage*** . . . is a paper tiger. However, in this case, the response by the media and Washington has been ***so severe***. . . . As for ***reputation***, Goldman ***clients*** are 'eyes-wide-open.'" *Id.*
- *Wells Fargo*, 4/19/20: "The SEC's action could lead potential ***clients*** seek counterparties and agents other than GS as a means of protesting GS' alleged behavior. . . . Additional legal actions against the company could ***further harm its reputation and ability to gain business***. . . ." *Id.*
- Credit Suisse, 4/20/10: "More worrisome to us is the potential longer-term impact on the firm's ***client*** franchise, human capital and ***reputation***." *Id.*

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence, Cont'd

b. ***Second Drop:*** When the *Wall Street Journal* reported that the DOJ opened a ***criminal*** investigation into Goldman's mortgage trading practices based on "***different evidence***" and Goldman's stock fell 9.39% on 4/30/10, market commentators reported:

– *Washington Post*, 4/30/10: "The Justice Department's criminal investigation into Goldman Sachs ***goes beyond*** the financial transactions targeted by the [SEC]. . . "

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence, Cont'd

- *Fitch Ratings*, 5/5/10: "The Rating Outlook ***revision to Negative*** incorporates recent legal developments and ongoing regulatory challenges that could adversely impact ***Goldman's reputation and revenue generating capacity***." 5/22/15 Finnerty Rep. ¶121
- *Bank of America Merrill Lynch*, 4/30/10*:* "Our ***downgrade*** is prompted by news reports . . . including the *Wall St. Journal* indicating that federal prosecutors have opened an investigation of GS in connection with its trading activities. . . ." 5/22/15 Finnerty Rep. ¶126

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence, Cont'd

c. ***Third Drop:*** The market learned that Goldman, while shorting ***Hudson***, was marketing this CDO by telling investors ***for the first time*** that "***Goldman Sachs has aligned incentives with the Hudson program***." Then, it was reported that Hudson was also the target of a probe by the SEC – and Goldman's stock fell 2.21% on 6/10/10. Finnerty found that market commentators reported, *e.g.*:

– *Wells Fargo*, 6/10/10: "[M]edia reports of a second SEC investigation into Goldman's CDO marketing practices, specifically the ***Hudson*** 2006-1 CDO, pushed Goldman shares down as much as 4%" on June 10, 2010

– 5/22/15 Finnerty Rep. ¶143

Defendants Mischaracterize the Record – Plaintiffs Submitted Price Impact Evidence, Cont'd

- Courts have held that analysts' reactions to a corrective disclosure are evidence of price impact. *E.g.*:
  - *Halliburton II Remand*, 309 F.R.D. 251, 277 (N.D. Tex. 2015) ("[A] sufficient number of analysts viewed Halliburton's disclosure of the Baltimore verdict on December 7 as new news, and the cause of Halliburton's price decline. Thus, the analyst reports and commentary cited by [defendants] will not serve to refute what the parties agree was a statistically significant price reaction....");
  - *Wallace v. Intralinks*, 302 F.R.D. 310, 317 (S.D.N.Y. 2014) (Griesa, J.) (finding defendants failed to carry the burden of showing a lack of price impact in part because of "[a]mple evidence in the record suggest[ing] that analysts and market participants ... found it significant when they learned that FDIC was reducing its usage of IntraLinks. This undermines defendants' speculation that factors unrelated to the FDIC customer relationship exclusively cause the drop in IntraLink's share price....");
  - *Local 703, I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin. Corp.*, 2014 WL 6661918, at *7 (N.D. Ala. Nov. 19, 2014) (analyst reporting that announced goodwill impairment accounted for $8.66/share of the loss "is evidence of price impact")

Price Impact Has Been Proven Beyond a Preponderance of the Evidence

- The strongest evidence of ***price impact*** is ***Viniar's own description*** of the -12.89% stock drop on April 16, 2010
- At his deposition, he testified that "the SEC suit on the Abacus case" was an example of a breach of conflicts policy because ***"the world deemed us to have not managed [the] conflict well and the SEC deemed us not to,"*** which is "not good for your ***reputation***."
  - Pls' Ex. 9, ECF No. 197-9, at 15:16-16:8

Price Impact Has Been Proven Beyond a Preponderance of the Evidence, Cont'd

VINIAR - CONFIDENTIAL

between Goldman and its customers, would that affect Goldman's reputation?

A. Yes, it would.

Q. Any examples you can recall of that happening?

A. I can recall more recent examples of people thinking that we had not handled a conflict particularly well. There was one with, I'm trying to remember the deal recently where an investment banker was representing a company and also owned stock in that company, and it was deemed to be, you know, a conflict.

Q. How about between Goldman Sachs and its clients or customers, any examples you recall of a breach of conflicts of interest policy that harmed Goldman's reputation?

A. Well, sure, there was the SEC suit on the Abacus case.

Q. And so you will agree that the SEC suit harmed Goldman's reputation?

A. Yes.

VINIAR - CONFIDENTIAL

Q. Why?

A. Because there was a, you know, the world deemed us to have not managed conflict well and the SEC deemed us not to and we were sued by our primary regulator, and being sued by your primary regulator is not good for your reputation.

Q. All right, we will get back to that.

Now, you mentioned other -- you said that the Firm-Wide Risk Committee set firm-wide risk limits. Can you explain what you meant by that?

A. Sure. There were market risk limits at the firm-wide level based on a variety of metrics, including VAR. I don't know if you know what VAR is.

Q. Value --

A. Value at risk, VAR. There were certain stress tests that we did and there were a whole variety of financial metrics on which the Firm-Wide Risk Committee would set limits.

Q. Financial metrics, you mean,

Summary of the 3 Corrective Disclosures

1. <u>**April 16, 2010:**</u> SEC complaint alleged Abacus was an ***actual*** conflict Goldman ***failed to manage***, supported by internal emails
   - ***12.79%*** stock drop, statistically significant
2. <u>**April 29, 2010:**</u> Press reported DOJ's criminal investigation "centered on ***different evidence*** than the SEC's" case two days after the Senate named ***Anderson***, ***Timberwolf***, and ***Hudson***
   - ***9.39%*** stock drop, statistically significant
3. <u>**June 10, 2010:**</u> Press reported that ***another*** SEC probe was targeting ***Hudson***
   - ***2.21%*** stock drop, statistically significant