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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):

April 22, 2010

THE GOLDMAN SACHS GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

No. 001-14965

(Commission
File Number)

No. 13-4019460

(IRS Employer
Identification No.)

**200 West Street
New York, New York**

(Address of principal executive offices)

10282

(Zip Code)

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

N/A

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-
-

Item 8.01 Other Events.

Since April 22, 2010, several putative shareholder derivative actions have been filed in New York Supreme Court, New York County, and the United States District Court for the Southern District of New York against The Goldman Sachs Group, Inc. (GS Inc.), its Board of Directors (Board), and certain officers and employees of GS Inc. and its affiliates generally alleging claims for breach of fiduciary duty, corporate waste, abuse of control, mismanagement and unjust enrichment in connection with collateralized debt obligation offerings made between 2004 and 2007, and challenging the accuracy and completeness of GS Inc.'s disclosure. These derivative complaints seek, among other things, declaratory relief, unspecified compensatory damages, restitution and certain corporate governance reforms. In addition, plaintiffs in an existing purported shareholder derivative action in the Delaware Court of Chancery relating to compensation levels for 2009 have amended their complaint to assert, among other things, allegations similar to those in the derivative complaints referred to above. Copies of five putative shareholder derivative complaints and the amended putative shareholder derivative complaint are filed as Exhibits 99.1 through 99.6 to this Current Report on Form 8-K and are incorporated into this Item 8.01 by reference.

On April 23, 2010, a GS Inc. shareholder, which previously had made a demand that the Board investigate and take action in connection with auction rate securities matters, expanded its demand to address other alleged misconduct by Goldman, Sachs & Co., the Board and certain officers and employees of GS Inc. and its affiliates. The alleged misconduct was in connection with (i) a collateralized debt obligation offering made in early 2007 (the 2007 Transaction) that is the subject of a U.S. Securities and Exchange Commission investigation and a civil action brought by the SEC on April 16, 2010, (ii) the alleged failure by GS Inc. to adequately disclose the SEC investigation, and (iii) GS Inc.'s 2009 compensation practices. A copy of the demand letter is filed as Exhibit 99.7 to this Current Report on Form 8-K and is incorporated into this Item 8.01 by reference.

GS Inc. has been the subject of other legal claims and regulatory inquiries and investigations with respect to the 2007 Transaction and the related SEC investigation and civil action, including purported securities law class actions that name as defendants GS Inc. and certain senior executives (including Lloyd C. Blankfein and Gary D. Cohn, who are members of the Board), allege violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and seek unspecified damages. GS Inc. anticipates that additional putative shareholder derivative actions and other litigation may be filed, and regulatory and other investigations and actions commenced, with respect to offerings of collateralized debt obligations.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are being filed as part of this Current Report on Form 8-K:

- 99.1 Complaint, dated April 22, 2010, filed on behalf of Robert Rosinek with the Supreme Court of the State of New York, County of New York.
- 99.2 Complaint, dated April 22, 2010, filed on behalf of Morton Spiegel with the Supreme Court of the State of New York, County of New York.
- 99.3 Complaint, dated April 26, 2010, filed on behalf of Hal Hubuschman with the U.S. District Court for the Southern District of New York.
- 99.4 Complaint, dated April 26, 2010, filed on behalf of Margaret C. Richardson with the U.S. District Court for the Southern District of New York.
- 99.5 Amended Complaint, dated April 28, 2010, filed on behalf of Southeastern Pennsylvania Transportation Authority and International Brotherhood of Electrical Workers Local 98 Pension Fund with the Court of Chancery of the State of Delaware.
- 99.6 Complaint, dated April 29, 2010, filed on behalf of James Clem with the U.S. District Court for the Southern District of New York.
- 99.7 Shareholder Demand Letter, dated April 23, 2010.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

THE GOLDMAN SACHS GROUP, INC.
(Registrant)

Date: May 3, 2010

By: /s/ Gregory K. Palm
Name: Gregory K. Palm
Title: Executive Vice President and General
Counsel

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

Robert Rosinek, Derivatively On Behalf Of Nominal)
 Defendant GOLDMAN SACHS GROUP, INC.)
 Plaintiff,)
)
 vs.)
 Lloyd C. Blankfein, Gary D. Cohn, Fabrice Tourre, John)
 H. Bryan, Claes Dahlbäck, Stephen Friedman, William)
 W. George, Rajat K. Gupta, James A. Johnson, Lois D.)
 Juliber, Lakshmi N. Mittal, James J. Schiro, Ruth J.)
 Simmons,)
 Defendants,)
)
 and)
)
 GOLDMAN SACHS GROUP, INC.,)
)
 Nominal Defendant.)

Index No. _____

JURY TRIAL DEMANDED

SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff, Robert Rosinek (“Plaintiff”), derivatively and on behalf of nominal defendant Goldman Sachs Group, Inc. (“Goldman Sachs” or the “Company”), by and through his attorneys, alleges the following based upon his personal knowledge as to himself and his own acts, and as to all other matters upon information and belief based upon, *inter alia*, the investigation made by and through his attorneys:

INTRODUCTION

1. This is a shareholder’s derivative action brought on behalf of Goldman Sachs against certain of its officers and the entire board of directors (the “Board”) seeking to remedy defendants’ violations of law, including, but not limited to, breaches of fiduciary duty during a period from 2004 to the present (the “Relevant Period”), that have caused substantial financial loss to Goldman Sachs and damaged its reputation and goodwill.

2. Between 2004 and 2007, Goldman Sachs engaged in 23 “Abacus” transactions, each based at least in part upon highly leveraged synthetic collateralized debt obligations (“CDOs”) tied to the performance of subprime residential mortgage-backed securities (“RMBS”). In these Abacus transactions, Goldman Sachs issued at least \$7.8 billion of Abacus notes, but due to the leveraged nature of the underlying securities, the risk represented by the notes was many multiples higher. Defendants failed to design and implement internal controls with respect to the evaluation, approval and management of the structure, risk, marketing and distribution of the Company’s Abacus transactions of synthetic CDOs. Defendants further failed to institute a system of internal controls to assure that the Company’s Abacus transactions were conducted in compliance with the federal securities laws and that Goldman Sachs was not representing conflicting interests in the structuring and marketing of these Abacus transactions.

3. During the Relevant Period, committees were reviewing and approving the proposed transactions at issue without participation by independent members of the Board. The Risk Committee of Goldman Sachs was in charge of monitoring financial risk but this Committee consisted solely of management level employees that predominantly had worked in two or more divisions and had an average tenure with the Company of 17 years. Similarly, the Mortgage Capital Committee, which specifically authorized the structuring and marketing of the Abacus transactions, consisted of approximately a dozen senior Goldman Sachs executives. Therefore, the 23 Abacus transactions were neither approved or reviewed by independent members of the Board, but instead were reviewed and approved by long term members of management whose compensation was directly linked to the approval and completion of the proposed transactions.

4. The Risk and Mortgage Capital Committees approved the issuance and marketing of Abacus 2007-AC1. The marketing materials for Abacus 2007-AC1, including the term sheet, flip book and offering memorandum 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. These marketing materials failed to disclose that in fact: (i) Paulson & Co. Inc. (“Paulson”), with economic interests directly adverse to investors in the Abacus 2007-AC1, played a significant role in the selection of the reference portfolio; (ii) after participating in the selection of the reference portfolio, Paulson effectively shorted the RMBS portfolio underlying Abacus 2007-AC1 by entering into credit default swaps (“CDS”) with Goldman Sachs to buy protection on specific layers of the Abacus 2007-AC1 capital structure; and (iii) that Goldman Sachs had strong ties to ACA, the purportedly independent collateral manager for the transaction, and in fact Alan S. Rosenman, the CEO of ACA, is married to or cohabitates with Frances R. Bermazohn, Goldman Sachs’ managing director and deputy general counsel.

5. The Abacus 2007-AC1 transaction closed on April 26, 2007, and Paulson paid Goldman Sachs 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 Abacus 2007-AC1 CDO lost over \$1 billion. Paulson’s opposite CDS positions yielded a profit of approximately \$1 billion for Paulson.

6. Goldman Sachs is now the subject of a civil enforcement action by the United States Securities and Exchange Commission (the “SEC”), and faces civil liability of over \$1

billion arising from structuring, marketing and misrepresenting the Abacus 2007-AC1 transaction for the undisclosed benefit of Paulson.

7. The Individual Defendants (defined below) engaged in a systematic failure to exercise oversight of the Company's 23 Abacus transactions which were completed over a three and half year period. As a direct and legal result of the Individual Defendants' wrongful conduct, Goldman Sachs has been significantly and materially damaged, faces billions of dollars of liability, has incurred and will continue incur millions of dollars of expense in defending the claims against the SEC and investors, and has suffered serious damage to its reputation and image.

8. The current members of the Board are antagonistic to this lawsuit, such that making a demand on the Board would be futile. Each of the Individual Defendants faces a substantial likelihood of non-exculpated liability for their complete abdication of their responsibility to monitor and manage the affairs of the Company over a three and half year period, thereby disabling them from impartially considering a demand concerning the subject matter of this suit.

JURISDICTION AND VENUE

9. Venue is proper in this Court because Goldman Sachs' principal place of business is in this County.

10. This Court has jurisdiction over Defendants because Defendants transact business within the State, have committed tortious acts within the State and have committed tortious acts outside the State that have caused injury to persons and property within the State.

THE PARTIES

11. Plaintiff is and has been the owner of Goldman Sachs common stock at all times relevant to this lawsuit.

12. Nominal defendant Goldman Sachs Group Inc. is a corporation organized and existing under the laws of Delaware, with its principal executive offices located at 200 West Street, New York, New York, 10282.

13. Defendant Lloyd C. Blankfein (“Blankfein”) is and has been Chairman and Chief Executive Officer of the Company since June 2006 and a director since 2003. Previously, he was President and Chief Operating Officer of the Company since January 2004. Prior to that, from April 2002 until January 2004, he was a Vice Chairman of Goldman Sachs, with management responsibility for the Company’s Fixed Income, Currency and Commodities Division (“FICC”) and Equities Division (“Equities”). Prior to becoming a Vice Chairman, he had served as co-head of FICC since its formation in 1997. From 1994 to 1997, he headed or co-headed the Currency and Commodities Division. He is affiliated with certain non-profit organizations, including as a member of the Dean’s Advisory Board at Harvard Law School, the Harvard University Committee on University Resources and the Advisory Board of the Tsinghua University School of Economics and Management, an overseer of the Weill Medical College of Cornell University, and a co-chairman of the Partnership for New York City.

14. Defendant Gary D. Cohn (“Cohn”) is and has been President and Chief Operating Officer of the Company since April 2009 and a director since June 2006, and President and Co-Chief Operating Officer from June 2006 through March 2009. Previously, Cohn was the co-head of Goldman Sachs’ global securities businesses since January 2004, the co-head of Equities since 2003, and the co-head of FICC for the Company since September 2002. From March 2002 to September 2002, Cohn served as co-chief operating officer of FICC. Prior to that, beginning in 1999, Cohn managed the FICC macro businesses. From 1996 to 1999, he was the global head of Goldman Sachs’ commodities business. He is affiliated with certain non-profit organizations,

including as a member of the Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association and as a trustee of the Gilmour Academy, NYU Hospital, NYU Medical School, the Harlem Children's Zone and American University.

15. Defendant Fabrice Tourre at all relevant times was Vice President on the structured product correlation trading desk at Goldman Sachs headquarters in New York City. Tourre was the Goldman Sachs agent, representative and employee principally responsible for the structuring and marketing of Abacus 2007-AC1.

16. Defendant John H. Bryan ("Bryan") is and has been a director of Goldman Sachs since November 1999. Bryan is the retired Chairman and Chief Executive Officer of Sara Lee Corporation, where he spent more than 25 years overseeing the global consumer products company. He served as its Chief Executive Officer from 1975 to June 2000 and as its Chairman of the Board from 1976 until his retirement in October 2001. Bryan has been a director of Amoco, BP p.l.c. and General Motors Corporation. Bryan was also the past Chairman of the Grocery Manufacturers of America, Inc. and the past Vice Chairman and a current member of The Business Council. He also served as Co-Chairman of the World Economic Forum's annual meetings in 1994, 1997 and 2000. In addition, Bryan is affiliated with certain non-profit organizations, including as a Life Trustee of The University of Chicago, as the past Chairman and Life Trustee of the Board of Trustees of The Art Institute of Chicago, as Chairman of the Board of Directors of Millennium Park, Inc., and as the past Chairman and a current member of The Chicago Council on Global Affairs. He is also the past Chairman of Catalyst.

17. Defendant Claes Dahlbäck ("Dahlbäck") has been a director of Goldman Sachs since June 2003. From 1999 through 2002, Dahlbäck served as an international advisor to Goldman Sachs. Dahlbäck serves as a Senior Advisor to Investor AB, a Swedish-based

investment company, and is also a Senior Advisor at Foundation Asset Management, which is owned by three Wallenberg Foundations and which acts as advisor to the Foundations with respect to their holdings. He previously served as Investor AB's nonexecutive Chairman from April 2002 until April 2005, its Vice Chairman from April 1999 until April 2002 and its President and Chief Executive Officer from 1978 until April 1999. Dahlbäck has served as a director of Gambro AB, and Stora Enso OYJ. Dahlbäck is affiliated with certain non-profit organizations, including as a member of the Royal Swedish Academy of Engineering Sciences and of Naval Sciences, as Honorary Doctor and Director of the Stockholm School of Economics, as Chair of the Leader of the Year Award, as Chair of the Stockholm School of Economics Association and as Commander of the Order of the White Rose of Finland. He is also a recipient of the Swedish Kings medal of the Twelfth Dimension with the Seraphim ribbon.

18. Defendant Stephen Friedman ("Friedman") has been a director of Goldman Sachs since April 2005. Friedman joined Goldman Sachs in 1966 and worked his way up to Senior Partner and Chairman of the Management Committee of The Goldman Sachs Group, L.P., before his retirement in 1994. Since June 2006 Friedman has been the Chairman of Stone Point Capital, a private equity firm, and a member of the Investment Committees of the Trident Funds; from May 2005 until then, he was a Senior Advisor to Stone Point Capital. Friedman is also Chairman of the Board of Harbor Point Limited. In addition, Friedman was Chairman of the President's Intelligence Advisory Board and Chairman of the Intelligence Oversight Board from January 2006 to January 2009. He served as Assistant to the President for Economic Policy and Director of the National Economic Council from December 2002 until December 2004. Friedman is also a past Chairman of the Federal Reserve Bank of New York. From 1998 until December 2002, Friedman was a senior principal of MMC Capital, the predecessor of Stone Point Capital.

Friedman also previously was a director of Wal-Mart Stores, Fannie Mae, AXIS Capital Holdings Limited, Sedgwick CMS Holdings, Inc. and Vertafore, Inc. In addition, he is affiliated with certain non-profit organizations, including as a board member of the Council on Foreign Relations, Memorial Sloan Kettering and The Aspen Institute.

19. Defendant William W. George (“George”) has been a director of Goldman Sachs since December 2002. George was Chief Executive Officer of Medtronic, Inc. from May 1991 to May 2001 and its Chairman of the Board from April 1996 until his retirement in April 2002. George joined Medtronic in 1989 as President and Chief Operating Officer. Prior to joining Medtronic, he spent ten years as a senior executive with Honeywell International Inc. and ten years with Litton Industries, primarily as President of Litton Microwave Cooking. George is a Professor of Management Practice at the Harvard Business School, where he teaches leadership and leadership development. George was formerly Professor of Leadership and Governance at the International Institute for Management Development from January 2002 until May 2003, Visiting Professor of Technology Management at the École Polytechnique Fédérale de Lausanne from January 2002 until May 2003 and an Executive-in-Residence at the Yale School of Management from September 2003 through December 2003. George has published extensively on leadership and corporate governance issues. George is also on the board of directors of Exxon Mobil Corporation, where he sits on the Board Affairs Committee, Advisory Committee on Contributions and is chairman of the Compensation Committee. He has also been a director of Novartis AG and Target Corporation. In addition, he is affiliated with certain non-profit organizations, including as a board member of the World Economic Forum USA and the Guthrie Theater and as a member of the Carnegie Endowment for International Peace.

20. Defendant Rajat K. Gupta (“Gupta”) has been a director of Goldman Sachs since 2006. Gupta is Senior Partner Emeritus of McKinsey & Company and Chairman of New Silk Route, a private equity firm, in each case since 2008. Gupta previously served as McKinsey & Company’s Worldwide Managing Director from 1994 until 2003 and Senior Partner Worldwide between from 2003 to 2007, and during his tenure oversaw the global expansion of that firm. Prior to that, Gupta held a variety of positions at McKinsey & Company since 1973, where he provided management consulting services across a variety of industries. He advised the chief executive officers and boards of directors at many leading companies on issues related to strategy, organization and operations. Gupta is currently on the boards of the following public companies in addition to Goldman Sachs AMR Corporation, where he sits on the Audit Committee, Genpact LTD, where he is Chairman of the Board and sits on the Compensation Committee and Nominating and Governance Committee, Harman International where he sits on the Nominating and Governance Committee and Procter & Gamble, where he sits on the Audit Committee and Innovation & Technology Committee. Gupta is also an independent director of Qatar Financial Authority. Gupta is affiliated with certain non-profit organizations, including as Chairman of the Indian School of Business, the Public Health Foundation of India and the Advisory Board of the Gates Foundation, Chairman-elect of the International Chamber of Commerce and Co-Chair of the American India Foundation. Mr. Gupta also served as the United Nations Secretary-General’s Special Advisor on UN management reform.

21. Defendant James A. Johnson (“Johnson”) has been a director of Goldman Sachs since May 1999. Johnson has been a Vice Chairman of Perseus, L.L.C., a merchant banking and private equity firm, since April 2001. From January 2000 to March 2001, Johnson served as Chairman and Chief Executive Officer of Johnson Capital Partners, a private investment

company. From January through December 1999, Johnson was Chairman of the Executive Committee of Fannie Mae, having previously served as its Chairman and Chief Executive Officer from February 1991 through December 1998 and its Vice Chairman from 1990 through February 1991. Johnson is on the boards of Forestar Group Inc. where he is chair of the Management Development and Executive Compensation Committee, formerly a subsidiary of Temple-Inland Inc., and Target Corporation, where he chairs the Corporate Governance Committee and the Compensation Committee, and sits on the Executive Committee, and Corporate Responsibility Committee. Johnson has also been a director of the following public companies in the past five years: Gannett Co., Inc., KB Home, Temple-Inland and UnitedHealth Group Inc. Johnson is also affiliated with certain non-profit organizations, including as Chairman Emeritus of the John F. Kennedy Center for the Performing Arts, as a member of each of the American Academy of Arts and Sciences, the American Friends of Bilderberg and the Council on Foreign Relations, and as an honorary trustee of The Brookings Institution.

22. Defendant Lois D. Juliber (“Juliber”) has been a director of Goldman Sachs since March 2004. Juliber was a Vice Chairman of the Colgate-Palmolive Company from July 2004 until March 2005. Juliber served as Colgate-Palmolive’s Chief Operating Officer from March 2000 to September 2004, as its Executive Vice President — North America and Europe from 1997 until March 2000 and as President of Colgate North America from 1994 to 1997. Juliber is also a member of the board of E. I. du Pont de Nemours and Company, where she chairs the Audit Committee and sits on the Strategic Direction Committee and Corporate Governance Committee, and Kraft Foods Inc., where she sits on the Compensation Committee and Public Affairs Committee. Juliber is also affiliated with certain non-profit organizations, including as

Chairman of The MasterCard Foundation and a trustee of Wellesley College and Women's World Banking.

23. Defendant Lakshmi N. Mittal ("Mittal") has been a director of Goldman Sachs since June 2008. Mittal has been Chairman and Chief Executive Officer of ArcelorMittal S.A. since May 2008. Mittal previously served as ArcelorMittal's President and Chief Executive Officer from November 2006 to May 2008. Prior to that, Mittal was Chief Executive Officer of Mittal Steel Company N.V. (formerly the LNM Group) since 1976, when he founded the company. Mittal also serves as a director on the boards of ArcelorMittal, where he is Chairman of the Board, European Aeronautic Defence and Space Company EADS N. V., and ICICI Bank Limited. In addition, Mittal is affiliated with non-profit organizations, including as a member of the International Business Council of the World Economic Forum, the Advisory Board of the Kellogg School of Management at Northwestern University, the Board of Trustees of Cleveland Clinic, the Executive Committee of World Steel Association and the Executive Board of the Indian School of Business, and as a Golden Patron of The Prince's Trust.

24. Defendant James J. Schiro ("Schiro") has been a director of Goldman Sachs since May 2009. Schiro is the former Chief Executive Officer of Zurich Financial Services, a position he held from 2002 until December 2009. Schiro previously served as Zurich's Chief Operating Officer — Finance from March 2002 to May 2002. Prior to that, Schiro was Chief Executive Officer of PricewaterhouseCoopers LLP from 1998 to 2002 and Chairman and Chief Executive Officer of Price Waterhouse from 1995 to 1998, having previously held a variety of other positions at Price Waterhouse since 1967. Schiro also serves as a member of the board of directors of PepsiCo, Inc., where he chairs the Audit Committee and Royal Philips Electronics, where he sits on the Corporate Governance and Nomination & Selection Committee. In addition,

Schiro is a director of certain non-profit organizations, including St. John's University, a member of the Advisory Board of the Tsinghua University School of Economics and Management, a trustee of each of the Institute for Advanced Study and the Lucerne Festival, and Vice Chairman of the American Friends of the Lucerne Festival.

25. Defendant Ruth J. Simmons ("Simmons") has been a director of the Company since January 2000. Simmons has been President of Brown University since July 2001. Simmons was President of Smith College from 1995 to June 2001 and Vice Provost of Princeton University from 1992 to 1995. Simmons also serves as a member of the board Texas Instruments Inc. In addition, Simmons is affiliated with certain non-profit organizations, including as a trustee of Howard University and as a member of the American Academy of Arts and Sciences, the American Philosophical Society and the Council on Foreign Relations.

26. The defendants identified in paragraphs 13 through and including 15 will be collectively referred to herein as the "Officer Defendants." The defendants identified in paragraphs 13 through 14 and 16 through 25 will be collectively referred to herein as the "Director Defendants," and the Officer Defendants and the Director Defendants will be collectively referred to as the "Individual Defendants."

27. By reason of their positions as officers and/or directors of the Company, the Individual Defendants are in a fiduciary relationship with the Company, as well as with Plaintiff and the other public shareholders of Goldman Sachs, and owe each the highest obligations of loyalty, good faith, fair dealing, due care and full and fair disclosure. As detailed herein, the Individual Defendants breached these responsibilities and obligations.

28. The Individual Defendants owe fiduciary duties to exercise due care in the diligent administration of the Company's affairs. The Director Defendants were charged with

the implementation of and oversight over a sufficient system of internal controls whereby the Director Defendants could properly manage and monitor the business, risk and operations of the Company.

29. The Individual Defendants were, and are, required to exercise reasonable and prudent supervision over all management levels as well as the Company's policies, practices and risk controls. Thus, the Individual Defendants were, and are, required to, *inter alia*:

- a. Ensure that an adequate system of internal controls was in place such that Goldman Sachs complied with applicable laws;
- b. Ensure that management was conducting the affairs of the Company with the goal of maximizing shareholder value;
- c. Stay informed about Goldman Sachs' operations, and upon receipt of notice of imprudent or unsound conditions or practices, inquire and take all steps reasonably available to correct such conditions and/or practices, truthfully disclosing all issues in connection therewith in compliance with federal and state securities laws;
- d. Establish guidelines and policies governing the structure of the Company's operations and assumption of risk; and
- e. Establish guidelines and policies governing conflicts of interest in the structuring, issuance and marketing of securities.

30. The conduct of the Individual Defendants complained of herein involves a reckless and/or knowing violation of their obligations as directors and officers and the absence of good faith. The Individual Defendants are imputed with the awareness that such conduct risked exposing the Company to serious injury.

SUBSTANTIVE ALLEGATIONS

Background

31. Goldman Sachs was formed in 1869 by Marcus Goldman. The Company initially enjoyed a reputation for pioneering the use of commercial paper for entrepreneurs. Goldman Sachs expanded its operations and was invited to join the New York Stock Exchange in 1896. Then, in the early 20th century, Goldman Sachs was active in establishing the initial public offering market, and in fact managed one of the largest IPOs of the period, that of Sears, Roebuck and Company in 1906.

32. As the Company continued to expand its investment banking operations, on May 7, 1999, Goldman Sachs was converted from a partnership to a corporation when it completed an initial public offering of common stock. Then, on September 21, 2008, Goldman Sachs became a traditional bank holding company under the Bank Holding Company Act, making it eligible for \$10 billion in federal Troubled Asset Relief Program (“TARP”) funds in the form of a preferred stock investment by the U.S. Treasury.

33. Goldman Sachs divides its businesses into three segments: Investment Banking; Trading and Principal Investments; and Asset Management and Securities Services. Within the Trading and Principal Investments segment of the Company’s business, Goldman Sachs makes markets in and trades commercial and residential mortgage-related securities and loan products, as well as other asset-backed and derivative instruments. The Company acquires positions in these products both for trading purposes as well as for securitization or syndication. Goldman Sachs also originates and services commercial and residential mortgages.

34. The principal mortgage related securities Goldman Sachs securitized, syndicated and marketed included RMBS, CDS, CDOs and synthetic CDOs. An RMBS is directly backed by residential mortgages, where investors receive payments out of the interest and principal on the underlying mortgages. A CDS is an over-the-counter derivative contract under which a

protection buyer takes essentially a short position and makes periodic premium payments and the protection seller takes essentially a long position and makes a contingent payment if a reference obligation experiences a credit event. 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 GDSs 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).

35. RMBS, CDOs and synthetic CDOs each offered various tranches bearing differing credit ratings ranging from AAA to BBB. The differing ratings on the notes were tied to how many of the underlying securities needed to default before the CDO classes or tranches would default. Furthermore, the sponsor of a RMBS or CDO would often purchase credit protection in the form of CDS for the highest rated or “mezzanine” level tranches of the RMBS or CDO. Such securitization enabled debt with the lowest investment-grade ratings to be transformed, in part, into AAA securities that turned out to not be as safe as that ranking suggested.

36. Banks, such as Goldman Sachs and other originators of the loans used these vehicles to off-load the risk of mostly subprime home loans and commercial mortgages to investors, while other investors, such as Paulson, also used these vehicles as hedges for similar positions which they continued to hold or to bet against securities itself.

37. To take advantage of the market for mortgage related securities, in late 2004 Goldman Sachs created the structured product correlation trading desk. Among the services it

provided was the structuring and marketing of a series of synthetic CDOs called Abacus, whose performance was tied to RMBS but backed by highly leveraged CDS. The Company sought to protect and expand this profitable franchise in a competitive market throughout the relevant period.

38. Between July 2004 through April 2007, as credit markets boomed, Goldman Sachs created 23 Abacus synthetic CDO transactions, issuing over \$7.8 billion of Abacus notes. In each Abacus transaction Goldman Sachs offered various tranches of notes bearing varying ratings. Because of the highly leveraged nature of these securities, the risk passed to investors, or retained by Goldman Sachs to the extent they retained the notes, was many multiples higher than the face amount, the exact multiple being dependent upon the tranche purchased or held.

39. Each of the Abacus transactions was approved by the Mortgage Capital Committee consisting of approximately twelve senior level executives, without review or participation by any of the independent members of the Board.

40. During this three and one-half year period in which Goldman Sachs' structured product correlation trading desk structured and marketed the highly profitable Abacus transactions, the Goldman Sachs' officers, employees and registered agents received a substantial portion of their annual compensation and benefits based upon their performance. Thus the approval of the structuring and marketing of the Abacus transactions was left solely up to managerial level employees whose compensation was linked to the number and size of the transactions Goldman Sachs was able to close. Notably, during the period that Goldman Sachs was experiencing a boom in the credit markets and completing the Abacus transactions, Goldman Sachs' compensation and benefit expense skyrocketed from \$9.65 billion in 2004 to \$20.19 billion in 2007, representing a staggering 44% of net revenues.

The Background of Abacus 2007 — AC1

41. Paulson founded a hedge fund 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, effectively taking a short position on subprime mortgages betting the subprime mortgage market would collapse.

42. Paulson developed an investment strategy based upon the belief that certain mid-and subprime RMBS rated “Triple B,” meaning bonds rated “BBB” by Standard & Poor’s Ratings & Services (“S&P”) or “Baa2” by Moody’s Investors Services, Inc. (“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 any deterioration of the underlying mortgage loan portfolio.

43. 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.

44. Paulson performed an analysis of recent-vintage BBB-rated RMBS and identified over 100 bonds it expected to experience credit events (i.e., events of default, 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.

45. It has been reported that Paulson then approached now defunct Bear Sterns asking Bear Sterns to structure and market a synthetic CDO referencing the BBB rated bonds it had identified for which Paulson could then enter into a series of CDS and effectively bet against the

referenced portfolio. It has been reported that Bear Sterns “decided that bringing more mortgage-backed securities into the world, just so that Paulson could bet on their toxicity, was a ‘reputation issue’. It did not wish to sell an investment to clients without telling them that a bearish hedge fund had inspired the creation.” Therefore Bear Sterns rejected Paulson’s proposal because as stated by Bear Sterns trader Scott Eichel: “It didn’t pass our ethics standards; it was a reputation issue, and it didn’t pass our moral compass.”

46. In early 2007, Paulson approached Goldman Sachs with the same proposed transaction and asked the Company to help it find counterparties to its desired short positions so that it could buy protection, i.e., take a short position, through the use of CDS, on the RMBS it had adversely selected, under the belief that the bonds would experience credit events, i.e., defaults.

47. Specifically, Paulson suggested a synthetic CDO whose performance was tied to BBB-rated RMBS. Paulson discussed with Goldman Sachs the creation of a CDO that would allow Paulson to participate in selecting a portfolio of reference obligations, which he had already identified, and then effectively short the RMBS portfolio it helped select by entering into CDS with Goldman Sachs to buy protection on specific layers of the synthetic CDO’s capital structure.

48. Both Paulson and Goldman Sachs recognized that the existing market for the sale of CDOs was rapidly declining. In fact, it has been reported that portions of an email in French and English sent by Defendant Tourre, who structured the transaction, 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 monstrosities!!!” Similarly, it has been reported that an email on February 11, 2007 to Tourre from the head of the Goldman Sachs structured product correlation trading desk stated in part, “the cdo biz is dead we don’t have a lot of time left.”

49. Furthermore, both Goldman Sachs and Tourre knew that it would be difficult, if not impossible, to place the liabilities of a synthetic CDO if it were 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 despite the fact that the CDO market that was beginning to decline. Most importantly, Goldman Sachs 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.

50. It has been reported that contemporaneous internal correspondence reflects the fact that Goldman Sachs’ executives knew 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.”

51. Against this backdrop, in January 2007, Goldman Sachs executives 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, and in fact as of December 31, 2006, ACA had closed on 22 CDO transactions with underlying portfolios consisting of \$15.7 billion of assets. Moreover, Goldman Sachs had strong ties to

ACA, and indeed Alan S. Rosenman the CEO of ACA, is married to or cohabitates with Frances R. Bermazohn, Goldman Sachs' managing director and deputy general counsel.

52. Internal correspondence reveals the fact that Goldman Sachs executives, including Defendant Tourre planned to prominently feature the fact that ACA was acting as portfolio selection agent in the marketing materials for the bonds, going so far as to note "this will be important that we can use ACA's branding to help distribute the bonds." Moreover, the memorandum to the Mortgage Capital Committee seeking approval of the transaction stated that Goldman Sachs and Tourre "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."

53. In January 2007, Paulson and Defendant Tourre provided ACA with a list of 123 2006 RMBS rated Baa2 and selected by Paulson. Neither Paulson nor Tourre disclosed to ACA that the bonds were selected based upon Paulson's belief that they would fail, nor the fact that Paulson intended to effectively short the RMBS portfolio it helped select by entering into CDS with Goldman Sachs to buy protection on specific layers of the synthetic CDO's capital structure. Indeed, Defendant Tourre misled ACA into believing that Paulson, as the sponsor, would retain a portion of the equity tranche in CDO, meaning he would retain a portion of the CDO with the highest risk. After analysis of the proposed list, and some further modifications, ACA agreed upon a list of 90 RMBS bonds acceptable to Paulson to form the reference portfolio for Abacus 2007-AC1.

The Marketing of Abacus 2007 - AC1

54. The Goldman Sachs Mortgage Capital Committee, consisting of approximately one dozen senior-level managerial employees of Goldman Sachs — without the participation of any independent members of the Board, and without submission to the Risk Committee,

approved the Abacus 2007-AC 1 transaction on or about March 12, 2007, in what has been described as a routine meeting in a drab conference room which none of the committee members specifically recall. Goldman Sachs expected to earn between \$15-and-\$20 million for structuring and marketing Abacus 2007-AC1, and Defendant Tourre expected to receive substantial incentive compensation for completing the transaction.

55. The marketing materials used by Goldman Sachs and Defendant Tourre for Abacus 2007-AC 1 represented that ACA selected the reference portfolio, but failed to disclose that Paulson, a party with economic interests adverse to CDO investors, played a significant role in the selection of the reference portfolio and that ACA's CEO had strong personal ties to Goldman Sachs' managing director and deputy general counsel.

56. For example, a 9-page term sheet for Abacus 2007-AC1 prepared by Defendant Tourre for Goldman Sachs 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."

57. Similarly, a 65-page flip book for Abacus 2007-AC 1 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.

58. Likewise, the cover page of the 178-page offering memorandum for Abacus 2007-AC 1 included a description of ACA as "Portfolio Selection Agent." The Transaction

Overview, Summary and Portfolio Selection Agent sections of the memorandum each 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

59. These documents contained no mention of Paulson, its economic interests in the transaction, its role in selecting the reference portfolio, or the personal relationship between Alan S. Rosenman the CEO of ACA and Frances R. Bermazohn, Goldman Sachs' managing director and deputy general counsel.

ACA Capital and ABN Amro

60. In addition to ACA's role as set forth above, 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.

61. ACA Capital, like ACA itself, was unaware of Paulson's short position in the Abacus 2007-AC1 transaction. ACA Capital would not 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 position in the form of retention of the equity tranche, as Defendant Toure had represented, in Abacus 2007-AC1.

62. 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 Sachs 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

63. Goldman Sachs 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. Defendant 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.

64. 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.

65. 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 Goldman Sachs \$840,909,090. Most of this money was subsequently paid to Paulson based upon the CDS between Goldman Sachs and Paulson.

IKB

66. Defendant Tourre and other Goldman Sachs executives, employees and agents then used these false and misleading materials to market Abacus-2009AC1, *inter alia*, to IKB, ACA Capital Holdings, Inc. (“ACA Capital”), and ABN Amro.

67. 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. In late 2006 IKB informed a Goldman Sachs sales representative and Defendant 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.

68. Specifically, in February, March and April 2007, Goldman Sachs 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, its adverse economic interests or the personal relationship between Alan S. Rosenman the CEO of ACA and Frances R. Bermazohn, Goldman Sachs’ managing director and deputy general counsel..

69. 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 and AAA by 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.

70. Within months of closing, Abacus 2007-ACI's Class A-1 and A-2 Notes were nearly worthless and IKB lost almost all of its \$150 million investment. Most of this money was ultimately paid to Paulson in a series of transactions based upon the CDS between Goldman Sachs and Paulson.

71. As a result of the forgoing conduct, on April 16, 2010, the SEC filed a civil lawsuit with claims against Goldman Sachs and Defendant Tourre for violation of the federal securities laws seeking injunctive relief, disgorgement of profits, prejudgment interest, civil penalties and other appropriate and necessary equitable relief. Consequently, Goldman Sachs faces claims for civil liability with respect to the sale of Abacus 2007-AC1 bonds in excess of \$1 billion, in addition to the costs of investigation and defense.

DERIVATIVE ALLEGATIONS

72. Plaintiff brings this action derivatively on behalf and for the benefit of the Company to remedy the wrongdoing alleged herein.

73. Plaintiff will fairly and adequately represent the interests of the Company, and has retained competent counsel, experienced in derivative litigation, to enforce and prosecute this action.

74. Goldman Sachs is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

DEMAND IS FUTILE

75. Plaintiff incorporates by reference and realleges each and every allegation stated above as if fully set forth herein. Plaintiff did not make a demand on the Board to bring this action because such demand would be futile given the facts as alleged herein and, therefore, such a demand is excused.

76. At the time of the filing of this action, Goldman Sachs' Board of Directors was composed of twelve (12) directors — defendants Blankfein, Cohn, Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons. Each of these directors has been named as a defendant in this action

77. The Director Defendants owed a duty to Goldman Sachs and its shareholders to be reasonably informed about the business and operations of the Company. The Director Defendants completely abdicated their oversight duties to the Company by failing to implement internal procedures and controls necessary to prevent the wrongdoing alleged herein.

78. Demand on the Goldman Sachs Board to institute this action is not necessary because such a demand would have been a futile and useless act, particularly for the following additional reasons:

a. The principal professional occupation of defendants Blankfein and Cohn is their employment with Goldman Sachs pursuant to which they received and continue to receive substantial monetary compensations and other benefits. Specifically, for FY:07 (the year in which Abacus 2007-AC1 was sold) Goldman Sachs paid defendant Blankfein \$70,324,352 in total compensation and defendant Cohn \$72,511,357 in total compensation. Accordingly, defendants Blankfein and Cohn lack independence and disinterestedness in their ability to evaluate any claims against Goldman Sachs rendering them incapable of impartially considering a demand to commence and vigorously prosecute this action;

b. Each of the Director Defendants, as detailed herein, participated in, approved and/or permitted the wrongs alleged herein to have occurred and are, therefore, not disinterested parties and thus could not exercise independent objective judgment in deciding

whether to bring this action or fairly and fully prosecute such a suit even if such suit was instituted;

c. The Director Defendants had a responsibility and obligation to assure that the Company had a proper system of internal controls and other oversight procedures were in place to detect and prevent the Company and its executives and employees from violating the federal securities laws and/or engaging in transactions which posed an inherent conflict of interest. As detailed above, the Director Defendants abdicated this responsibility over a period of more than three years and permitted the conduct alleged herein to occur. Accordingly, the Director Defendants could not exercise independent objective judgment in deciding whether to bring this action because they are personally interested in the outcome of this lawsuit as it is their actions which have subjected Goldman Sachs to billions of dollars in liability;

d. Defendants Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, and Mittal served on the Company's Audit Committee during the Relevant Period. Among other things, the Audit Committee requires the Audit Committee to "assist the Board in its oversight of . . . (ii) the Company's compliance with legal and regulatory requirements, . . . and (vi) the Company's management of market, credit, liquidity and other financial and operational risks" Despite their responsibilities as members of the Audit Committee and their knowledge of Goldman Sachs' exposure to the subprime mortgage and credit crisis, defendants Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, and Mittal abdicated their responsibility to monitor and oversee the Company's compliance with the federal securities laws and assumption of risk and liability in the form of the Abacus transactions as set forth above. By

such actions, these defendants breached their fiduciary duties and any demand upon them would have been futile; and

e. The acts complained of herein constitute violations of state law and the fiduciary duties owed by the Director Defendants and are incapable of ratification.

79. The Individual Defendants' conduct described herein and summarized above could not have been the product of legitimate business judgments as it was based on intentional, reckless and disloyal misconduct. Thus, none of the Individual Defendants, who constitute a majority of the current Board of the Company, can claim exculpation from their violations of duty pursuant to the Company's charter (to the extent such a provision exists). As a majority of the Individual Defendants face a substantial likelihood of liability, they are self-interested in the transactions challenged herein and cannot be presumed to be capable of exercising independent and disinterested judgment about whether to pursue this action on behalf of the shareholders of the Company. Accordingly, demand is excused as being futile.

FIRST CAUSE OF ACTION

(Breaches of Fiduciary Duties)

80. Plaintiff incorporates by reference and realleges each and every allegation as set forth above as if fully set forth herein.

81. Each defendant owed the Company and its shareholders the highest duties of loyalty, good faith, honesty, and care in conducting their affairs and the business of the Company.

82. The Individual Defendants owed a fiduciary duty of loyalty, due care and good faith to Goldman Sachs to properly install a proper system of internal controls and other oversight procedures to detect and prevent the Company and its executives and employees from violating the federal securities laws and/or engaging in transactions which posed an inherent

conflict of interest, and to monitor and control the risks and liabilities to which the Company was subjected.

83. The Individual Defendants breached their fiduciary duties by failing to properly supervise and monitor the adequacy of Goldman Sachs' internal controls and by allowing Defendant Tourre and other Goldman Sachs executives, employees, and agents to engage in the conduct and structure and market the transactions set forth herein.

84. The Individual Defendants have engaged, knowingly or recklessly, in a sustained and systematic failure to exercise their oversight responsibilities to ensure that Goldman Sachs complied with federal and state laws, rules and regulations over a period of more than three years.

85. As members of the Board of Goldman Sachs, the Director Defendants were directly responsible for authorizing or permitting the authorization of, or failing to monitor, the practices which resulted in violations of the federal and state laws as alleged herein. Each of them had knowledge of and actively participated in and/or approved of or acquiesced in the wrongdoings alleged herein or abdicated his/her responsibilities with respect to these wrongdoings. The alleged acts of wrongdoing have subjected Goldman Sachs to unreasonable risks of loss and expenses.

86. Each of the Individual Defendants' acts in causing or permitting the Company to engage in the conduct and transaction set forth herein and abdicating his oversight responsibilities to the Company has subjected the Company to liability for violations of federal and state law, and therefore was not the product of a valid exercise of business judgment and was a complete abdication of their duties as officers and/or directors of the Company. As a result of the Individual Defendants' unlawful course of conduct and breaches of fiduciary duties, Goldman

Sachs has sustained substantial economic losses, and has had its reputation in the business community and financial markets irreparably tarnished.

87. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

88. Accordingly, Plaintiff, as a shareholder of the Company, seeks monetary damages, injunctive remedies, and other forms of equitable relief on Goldman Sachs' behalf.

89. Plaintiff and the Company have no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including preliminary and permanent injunctive relief, in her favor and in favor of the Company, as appropriate, against all of the Individual Defendants as follows:

- a. Authorizing the maintenance of this action as a derivative action, with Plaintiff as derivative plaintiff;
- b. Declaring that the Individual Defendants have violated their fiduciary duties to the Company;
- c. Awarding compensatory damages against defendants individually and severally in an amount to be determined at trial, together with pre-judgment and post-judgment interest at the maximum rate allowable by law;
- d. Awarding Plaintiff the costs and disbursements of this action, including reasonable allowances for Plaintiffs attorneys' and experts' fees and expenses; and
- e. Granting such other or further relief as may be just and proper under the circumstances.

Dated: April 22, 2010

FARUQI & FARUQI, LLP

By: /s/ Nadeem Faruqi
Nadeem Faruqi

Nadeem Faruqi
Beth A. Keller
369 Lexington Avenue, 10th Floor
New York, NY 10017
Telephone: (212) 983-9330
Facsimile: (212) 983-9331
Attorneys for Plaintiff

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

_____)
 Morton Spiegel, Derivatively On Behalf Of Nominal)
 Defendant GOLDMAN SACHS GROUP, INC.)
)
 Plaintiff,)
)
 vs.)
)
 Lloyd C. Blankfein, Gary D. Cohn, Fabrice Tourre, John)
 H. Bryan, Claes Dahlbäck, Stephen Friedman, William)
 W. George, Rajat K. Gupta, James A. Johnson, Lois D.)
 Juliber, Lakshmi N. Mittal, James J. Schiro, Ruth J.)
 Simmons,)
)
 Defendants,)
)
 and)
)
 GOLDMAN SACHS GROUP, INC.,)
)
 Nominal Defendant.)
 _____)

Index No. _____

JURY TRIAL DEMANDED

SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff, Morton Spiegel (“Plaintiff”), derivatively and on behalf of nominal defendant Goldman Sachs Group, Inc. (“Goldman Sachs” or the “Company”), by and through his attorneys, alleges the following based upon his personal knowledge as to himself and his own acts, and as to all other matters upon information and belief based upon, *inter alia*, the investigation made by and through his attorneys:

INTRODUCTION

1. This is a shareholder’s derivative action brought on behalf of Goldman Sachs against certain of its officers and the entire board of directors (the “Board”) seeking to remedy defendants’ violations of law, including, but not limited to, breaches of fiduciary duty during a period from 2004 to the present (the “Relevant Period”), that have caused substantial financial loss to Goldman Sachs and damaged its reputation and goodwill.

2. Between 2004 and 2007, Goldman Sachs engaged in 23 “Abacus” transactions, each based at least in part upon highly leveraged synthetic collateralized debt obligations (“CDOs”) tied to the performance of subprime residential mortgage-backed securities (“RMBS”). In these Abacus transactions, Goldman Sachs issued at least \$7.8 billion of Abacus notes, but due to the leveraged nature of the underlying securities, the risk represented by the notes was many multiples higher. Defendants failed to design and implement internal controls with respect to the evaluation, approval and management of the structure, risk, marketing and distribution of the Company’s Abacus transactions of synthetic CDOs. Defendants further failed to institute a system of internal controls to assure that the Company’s Abacus transactions were conducted in compliance with the federal securities laws and that Goldman Sachs was not representing conflicting interests in the structuring and marketing of these Abacus transactions.

3. During the Relevant Period, committees were reviewing and approving the proposed transactions at issue without participation by independent members of the Board. The Risk Committee of Goldman Sachs was in charge of monitoring financial risk but this Committee consisted solely of management level employees that predominantly had worked in two or more divisions and had an average tenure with the Company of 17 years. Similarly, the Mortgage Capital Committee, which specifically authorized the structuring and marketing of the Abacus transactions, consisted of approximately a dozen senior Goldman Sachs executives. Therefore, the 23 Abacus transactions were neither approved or reviewed by independent members of the Board, but instead were reviewed and approved by long term members of management whose compensation was directly linked to the approval and completion of the proposed transactions.

4. The Risk and Mortgage Capital Committees approved the issuance and marketing of Abacus 2007-AC1. The marketing materials for Abacus 2007-AC1, including the term sheet, flip book and offering memorandum 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. These marketing materials failed to disclose that in fact: (i) Paulson & Co. Inc. (“Paulson”), with economic interests directly adverse to investors in the Abacus 2007-AC1, played a significant role in the selection of the reference portfolio; (ii) after participating in the selection of the reference portfolio, Paulson effectively shorted the RMBS portfolio underlying Abacus 2007-AC1 by entering into credit default swaps (“CDS”) with Goldman Sachs to buy protection on specific layers of the Abacus 2007-AC1 capital structure; and (iii) that Goldman Sachs had strong ties to ACA, the purportedly independent collateral manager for the transaction, and in fact Alan S. Rosenman, the CEO of ACA, is married to or cohabitates with Frances R. Bermazohn, Goldman Sachs’ managing director and deputy general counsel.

5. The Abacus 2007-AC1 transaction closed on April 26, 2007, and Paulson paid Goldman Sachs 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 Abacus 2007-AC1 CDO lost over \$1 billion. Paulson’s opposite CDS positions yielded a profit of approximately \$1 billion for Paulson.

6. Goldman Sachs is now the subject of a civil enforcement action by the United States Securities and Exchange Commission (the “SEC”), and faces civil liability of over \$1

billion arising from structuring, marketing and misrepresenting the Abacus 2007-AC1 transaction for the undisclosed benefit of Paulson.

7. The Individual Defendants (defined below) engaged in a systematic failure to exercise oversight of the Company's 23 Abacus transactions which were completed over a three and half year period. As a direct and legal result of the Individual Defendants' wrongful conduct, Goldman Sachs has been significantly and materially damaged, faces billions of dollars of liability, has incurred and will continue incur millions of dollars of expense in defending the claims against the SEC and investors, and has suffered serious damage to its reputation and image.

8. The current members of the Board are antagonistic to this lawsuit, such that making a demand on the Board would be futile. Each of the Individual Defendants faces a substantial likelihood of non-exculpated liability for their complete abdication of their responsibility to monitor and manage the affairs of the Company over a three and half year period, thereby disabling them from impartially considering a demand concerning the subject matter of this suit.

JURISDICTION AND VENUE

9. Venue is proper in this Court because Goldman Sachs' principal place of business is in this County.

10. This Court has jurisdiction over Defendants because Defendants transact business within the State, have committed tortious acts within the State and have committed tortious acts outside the State that have caused injury to persons and property within the State.

THE PARTIES

11. Plaintiff is and has been the owner of Goldman Sachs common stock at all times relevant to this lawsuit.

12. Nominal defendant Goldman Sachs Group Inc. is a corporation organized and existing under the laws of Delaware, with its principal executive offices located at 200 West Street, New York, New York, 10282.

13. Defendant Lloyd C. Blankfein (“Blankfein”) is and has been Chairman and Chief Executive Officer of the Company since June 2006 and a director since 2003. Previously, he was President and Chief Operating Officer of the Company since January 2004. Prior to that, from April 2002 until January 2004, he was a Vice Chairman of Goldman Sachs, with management responsibility for the Company’s Fixed Income, Currency and Commodities Division (“FICC”) and Equities Division (“Equities”). Prior to becoming a Vice Chairman, he had served as co-head of FICC since its formation in 1997. From 1994 to 1997, he headed or co-headed the Currency and Commodities Division. He is affiliated with certain non-profit organizations, including as a member of the Dean’s Advisory Board at Harvard Law School, the Harvard University Committee on University Resources and the Advisory Board of the Tsinghua University School of Economics and Management, an overseer of the Weill Medical College of Cornell University, and a co-chairman of the Partnership for New York City.

14. Defendant Gary D. Cohn (“Cohn”) is and has been President and Chief Operating Officer of the Company since April 2009 and a director since June 2006, and President and Co-Chief Operating Officer from June 2006 through March 2009. Previously, Cohn was the co-head of Goldman Sachs’ global securities businesses since January 2004, the co-head of Equities since 2003, and the co-head of FICC for the Company since September 2002. From March 2002 to September 2002, Cohn served as co-chief operating officer of FICC. Prior to that, beginning in 1999, Cohn managed the FICC macro businesses. From 1996 to 1999, he was the global head of Goldman Sachs’ commodities business. He is affiliated with certain non-profit organizations,

including as a member of the Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association and as a trustee of the Gilmour Academy, NYU Hospital, NYU Medical School, the Harlem Children's Zone and American University.

15. Defendant Fabrice Tourre at all relevant times was Vice President on the structured product correlation trading desk at Goldman Sachs headquarters in New York City. Tourre was the Goldman Sachs agent, representative and employee principally responsible for the structuring and marketing of Abacus 2007-AC1.

16. Defendant John H. Bryan ("Bryan") is and has been a director of Goldman Sachs since November 1999. Bryan is the retired Chairman and Chief Executive Officer of Sara Lee Corporation, where he spent more than 25 years overseeing the global consumer products company. He served as its Chief Executive Officer from 1975 to June 2000 and as its Chairman of the Board from 1976 until his retirement in October 2001. Bryan has been a director of Amoco, BP p.l.c. and General Motors Corporation. Bryan was also the past Chairman of the Grocery Manufacturers of America, Inc. and the past Vice Chairman and a current member of The Business Council. He also served as Co-Chairman of the World Economic Forum's annual meetings in 1994, 1997 and 2000. In addition, Bryan is affiliated with certain non-profit organizations, including as a Life Trustee of The University of Chicago, as the past Chairman and Life Trustee of the Board of Trustees of The Art Institute of Chicago, as Chairman of the Board of Directors of Millennium Park, Inc., and as the past Chairman and a current member of The Chicago Council on Global Affairs. He is also the past Chairman of Catalyst.

17. Defendant Claes Dahlbäck ("Dahlbäck") has been a director of Goldman Sachs since June 2003. From 1999 through 2002, Dahlbäck served as an international advisor to Goldman Sachs. Dahlbäck serves as a Senior Advisor to Investor AB, a Swedish-based

investment company, and is also a Senior Advisor at Foundation Asset Management, which is owned by three Wallenberg Foundations and which acts as advisor to the Foundations with respect to their holdings. He previously served as Investor AB's nonexecutive Chairman from April 2002 until April 2005, its Vice Chairman from April 1999 until April 2002 and its President and Chief Executive Officer from 1978 until April 1999. Dahlbäck has served as a director of Gambro AB, and Stora Enso OYJ. Dahlbäck is affiliated with certain non-profit organizations, including as a member of the Royal Swedish Academy of Engineering Sciences and of Naval Sciences, as Honorary Doctor and Director of the Stockholm School of Economics, as Chair of the Leader of the Year Award, as Chair of the Stockholm School of Economics Association and as Commander of the Order of the White Rose of Finland. He is also a recipient of the Swedish Kings medal of the Twelfth Dimension with the Seraphim ribbon.

18. Defendant Stephen Friedman ("Friedman") has been a director of Goldman Sachs since April 2005. Friedman joined Goldman Sachs in 1966 and worked his way up to Senior Partner and Chairman of the Management Committee of The Goldman Sachs Group, L.P., before his retirement in 1994. Since June 2006 Friedman has been the Chairman of Stone Point Capital, a private equity firm, and a member of the Investment Committees of the Trident Funds; from May 2005 until then, he was a Senior Advisor to Stone Point Capital. Friedman is also Chairman of the Board of Harbor Point Limited. In addition, Friedman was Chairman of the President's Intelligence Advisory Board and Chairman of the Intelligence Oversight Board from January 2006 to January 2009. He served as Assistant to the President for Economic Policy and Director of the National Economic Council from December 2002 until December 2004. Friedman is also a past Chairman of the Federal Reserve Bank of New York. From 1998 until December 2002, Friedman was a senior principal of MMC Capital, the predecessor of Stone Point Capital.

Friedman also previously was a director of Wal-Mart Stores, Fannie Mae, AXIS Capital Holdings Limited, Sedgwick CMS Holdings, Inc. and Vertafore, Inc. In addition, he is affiliated with certain non-profit organizations, including as a board member of the Council on Foreign Relations, Memorial Sloan Kettering and The Aspen Institute.

19. Defendant William W. George (“George”) has been a director of Goldman Sachs since December 2002. George was Chief Executive Officer of Medtronic, Inc. from May 1991 to May 2001 and its Chairman of the Board from April 1996 until his retirement in April 2002. George joined Medtronic in 1989 as President and Chief Operating Officer. Prior to joining Medtronic, he spent ten years as a senior executive with Honeywell International Inc. and ten years with Litton Industries, primarily as President of Litton Microwave Cooking. George is a Professor of Management Practice at the Harvard Business School, where he teaches leadership and leadership development. George was formerly Professor of Leadership and Governance at the International Institute for Management Development from January 2002 until May 2003, Visiting Professor of Technology Management at the Ecole Polytechnique Federate de Lausanne from January 2002 until May 2003 and an Executive-in-Residence at the Yale School of Management from September 2003 through December 2003. George has published extensively on leadership and corporate governance issues. George is also on the board of directors of Exxon Mobil Corporation, where he sits on the Board Affairs Committee, Advisory Committee on Contributions and is chairman of the Compensation Committee. He has also been a director of Novartis AG and Target Corporation. In addition, he is affiliated with certain non-profit organizations, including as a board member of the World Economic Forum USA and the Guthrie Theater and as a member of the Carnegie Endowment for International Peace.

20. Defendant Rajat K. Gupta (“Gupta”) has been a director of Goldman Sachs since 2006. Gupta is Senior Partner Emeritus of McKinsey & Company and Chairman of New Silk Route, a private equity firm, in each case since 2008. Gupta previously served as McKinsey & Company’s Worldwide Managing Director from 1994 until 2003 and Senior Partner Worldwide between from 2003 to 2007, and during his tenure oversaw the global expansion of that firm. Prior to that, Gupta held a variety of positions at McKinsey & Company since 1973, where he provided management consulting services across a variety of industries. He advised the chief executive officers and boards of directors at many leading companies on issues related to strategy, organization and operations. Gupta is currently on the boards of the following public companies in addition to Goldman Sachs AMR Corporation, where he sits on the Audit Committee, Genpact LTD, where he is Chairman of the Board and sits on the Compensation Committee and Nominating and Governance Committee, Harman International where he sits on the Nominating and Governance Committee and Procter & Gamble, where he sits on the Audit Committee and Innovation & Technology Committee. Gupta is also an independent director of Qatar Financial Authority. Gupta is affiliated with certain non-profit organizations, including as Chairman of the Indian School of Business, the Public Health Foundation of India and the Advisory Board of the Gates Foundation, Chairman-elect of the International Chamber of Commerce and Co-Chair of the American India Foundation. Mr. Gupta also served as the United Nations Secretary-General’s Special Advisor on UN management reform.

21. Defendant James A. Johnson (“Johnson”) has been a director of Goldman Sachs since May 1999. Johnson has been a Vice Chairman of Perseus, L.L.C., a merchant banking and private equity firm, since April 2001. From January 2000 to March 2001, Johnson served as Chairman and Chief Executive Officer of Johnson Capital Partners, a private investment

company. From January through December 1999, Johnson was Chairman of the Executive Committee of Fannie Mae, having previously served as its Chairman and Chief Executive Officer from February 1991 through December 1998 and its Vice Chairman from 1990 through February 1991. Johnson is on the boards of Forestar Group Inc. where he is chair of the Management Development and Executive Compensation Committee, formerly a subsidiary of Temple-Inland Inc., and Target Corporation, where he chairs the Corporate Governance Committee and the Compensation Committee, and sits on the Executive Committee, and Corporate Responsibility Committee. Johnson has also been a director of the following public companies in the past five years: Gannett Co., Inc., KB Home, Temple-Inland and UnitedHealth Group Inc. Johnson is also affiliated with certain non-profit organizations, including as Chairman Emeritus of the John F. Kennedy Center for the Performing Arts, as a member of each of the American Academy of Arts and Sciences, the American Friends of Bilderberg and the Council on Foreign Relations, and as an honorary trustee of The Brookings Institution.

22. Defendant Lois D. Juliber (“Juliber”) has been a director of Goldman Sachs since March 2004. Juliber was a Vice Chairman of the Colgate-Palmolive Company from July 2004 until March 2005. Juliber served as Colgate-Palmolive’s Chief Operating Officer from March 2000 to September 2004, as its Executive Vice President — North America and Europe from 1997 until March 2000 and as President of Colgate North America from 1994 to 1997. Juliber is also a member of the board of E. I. du Pont de Nemours and Company, where she chairs the Audit Committee and sits on the Strategic Direction Committee and Corporate Governance Committee, and Kraft Foods Inc., where she sits on the Compensation Committee and Public Affairs Committee. Juliber is also affiliated with certain non-profit organizations, including as

Chairman of The MasterCard Foundation and a trustee of Wellesley College and Women's World Banking.

23. Defendant Lakshmi N. Mittal ("Mittal") has been a director of Goldman Sachs since June 2008. Mittal has been Chairman and Chief Executive Officer of ArcelorMittal S.A. since May 2008. Mittal previously served as ArcelorMittal's President and Chief Executive Officer from November 2006 to May 2008. Prior to that, Mittal was Chief Executive Officer of Mittal Steel Company N.V. (formerly the LNM Group) since 1976, when he founded the company. Mittal also serves as a director on the boards of ArcelorMittal, where he is Chairman of the Board, European Aeronautic Defence and Space Company EADS N.V., and ICICI Bank Limited. In addition, Mittal is affiliated with non-profit organizations, including as a member of the International Business Council of the World Economic Forum, the Advisory Board of the Kellogg School of Management at Northwestern University, the Board of Trustees of Cleveland Clinic, the Executive Committee of World Steel Association and the Executive Board of the Indian School of Business, and as a Golden Patron of The Prince's Trust.

24. Defendant James J. Schiro ("Schiro") has been a director of Goldman Sachs since May 2009. Schiro is the former Chief Executive Officer of Zurich Financial Services, a position he held from 2002 until December 2009. Schiro previously served as Zurich's Chief Operating Officer — Finance from March 2002 to May 2002. Prior to that, Schiro was Chief Executive Officer of PricewaterhouseCoopers LLP from 1998 to 2002 and Chairman and Chief Executive Officer of Price Waterhouse from 1995 to 1998, having previously held a variety of other positions at Price Waterhouse since 1967. Schiro also serves as a member of the board of directors of PepsiCo, Inc., where he chairs the Audit Committee and Royal Philips Electronics, where he sits on the Corporate Governance and Nomination & Selection Committee. In addition,

Schiro is a director of certain non-profit organizations, including St. John's University, a member of the Advisory Board of the Tsinghua University School of Economics and Management, a trustee of each of the Institute for Advanced Study and the Lucerne Festival, and Vice Chairman of the American Friends of the Lucerne Festival.

25. Defendant Ruth J. Simmons ("Simmons") has been a director of the Company since January 2000. Simmons has been President of Brown University since July 2001. Simmons was President of Smith College from 1995 to June 2001 and Vice Provost of Princeton University from 1992 to 1995. Simmons also serves as a member of the board Texas Instruments Inc. In addition, Simmons is affiliated with certain non-profit organizations, including as a trustee of Howard University and as a member of the American Academy of Arts and Sciences, the American Philosophical Society and the Council on Foreign Relations.

26. The defendants identified in paragraphs 13 through and including 15 will be collectively referred to herein as the "Officer Defendants." The defendants identified in paragraphs 13 through 14 and 16 through 25 will be collectively referred to herein as the "Director Defendants," and the Officer Defendants and the Director Defendants will be collectively referred to as the "Individual Defendants."

27. By reason of their positions as officers and/or directors of the Company, the Individual Defendants are in a fiduciary relationship with the Company, as well as with Plaintiff and the other public shareholders of Goldman Sachs, and owe each the highest obligations of loyalty, good faith, fair dealing, due care and full and fair disclosure. As detailed herein, the Individual Defendants breached these responsibilities and obligations.

28. The Individual Defendants owe fiduciary duties to exercise due care in the diligent administration of the Company's affairs. The Director Defendants were charged with

the implementation of and oversight over a sufficient system of internal controls whereby the Director Defendants could properly manage and monitor the business, risk and operations of the Company.

29. The Individual Defendants were, and are, required to exercise reasonable and prudent supervision over all management levels as well as the Company's policies, practices and risk controls. Thus, the Individual Defendants were, and are, required to, *inter alia*:

- a. Ensure that an adequate system of internal controls was in place such that Goldman Sachs complied with applicable laws;
- b. Ensure that management was conducting the affairs of the Company with the goal of maximizing shareholder value;
- c. Stay informed about Goldman Sachs' operations, and upon receipt of notice of imprudent or unsound conditions or practices, inquire and take all steps reasonably available to correct such conditions and/or practices, truthfully disclosing all issues in connection therewith in compliance with federal and state securities laws;
- d. Establish guidelines and policies governing the structure of the Company's operations and assumption of risk; and
- e. Establish guidelines and policies governing conflicts of interest in the structuring, issuance and marketing of securities.

30. The conduct of the Individual Defendants complained of herein involves a reckless and/or knowing violation of their obligations as directors and officers and the absence of good faith. The Individual Defendants are imputed with the awareness that such conduct risked exposing the Company to serious injury.

SUBSTANTIVE ALLEGATIONS

Background

31. Goldman Sachs was formed in 1869 by Marcus Goldman. The Company initially enjoyed a reputation for pioneering the use of commercial paper for entrepreneurs. Goldman Sachs expanded its operations and was invited to join the New York Stock Exchange in 1896. Then, in the early 20th century, Goldman Sachs was active in establishing the initial public offering market, and in fact managed one of the largest IPOs of the period, that of Sears, Roebuck and Company in 1906.

32. As the Company continued to expand its investment banking operations, on May 7, 1999, Goldman Sachs was converted from a partnership to a corporation when it completed an initial public offering of common stock. Then, on September 21, 2008, Goldman Sachs became a traditional bank holding company under the Bank Holding Company Act, making it eligible for \$10 billion in federal Troubled Asset Relief Program (“TARP”) funds in the form of a preferred stock investment by the U.S. Treasury.

33. Goldman Sachs divides its businesses into three segments: Investment Banking; Trading and Principal Investments; and Asset Management and Securities Services. Within the Trading and Principal Investments segment of the Company’s business, Goldman Sachs makes markets in and trades commercial and residential mortgage-related securities and loan products, as well as other asset-backed and derivative instruments. The Company acquires positions in these products both for trading purposes as well as for securitization or syndication. Goldman Sachs also originates and services commercial and residential mortgages.

34. The principal mortgage related securities Goldman Sachs securitized, syndicated and marketed included RMBS, CDS, CDOs and synthetic CDOs. An RMBS is directly backed by residential mortgages, where investors receive payments out of the interest and principal on the underlying mortgages. A CDS is an over-the-counter derivative contract under which a

protection buyer takes essentially a short position and makes periodic premium payments and the protection seller takes essentially a long position and makes a contingent payment if a reference obligation experiences a credit event. 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).

35. RMBS, CDOs and synthetic CDOs each offered various tranches bearing differing credit ratings ranging from AAA to BBB. The differing ratings on the notes were tied to how many of the underlying securities needed to default before the CDO classes or tranches would default. Furthermore, the sponsor of a RMBS or CDO would often purchase credit protection in the form of CDS for the highest rated or “mezzanine” level tranches of the RMBS or CDO. Such securitization enabled debt with the lowest investment-grade ratings to be transformed, in part, into AAA securities that turned out to not be as safe as that ranking suggested.

36. Banks, such as Goldman Sachs and other originators of the loans used these vehicles to off-load the risk of mostly subprime home loans and commercial mortgages to investors, while other investors, such as Paulson, also used these vehicles as hedges for similar positions which they continued to hold or to bet against securities itself.

37. To take advantage of the market for mortgage related securities, in late 2004 Goldman Sachs created the structured product correlation trading desk. Among the services it

provided was the structuring and marketing of a series of synthetic CDOs called Abacus, whose performance was tied to RMBS but backed by highly leveraged CDS. The Company sought to protect and expand this profitable franchise in a competitive market throughout the relevant period.

38. Between July 2004 through April 2007, as credit markets boomed, Goldman Sachs created 23 Abacus synthetic CDO transactions, issuing over \$7.8 billion of Abacus notes. In each Abacus transaction Goldman Sachs offered various tranches of notes bearing varying ratings. Because of the highly leveraged nature of these securities, the risk passed to investors, or retained by Goldman Sachs to the extent they retained the notes, was many multiples higher than the face amount, the exact multiple being dependent upon the tranche purchased or held.

39. Each of the Abacus transactions was approved by the Mortgage Capital Committee consisting of approximately twelve senior level executives, without review or participation by any of the independent members of the Board.

40. During this three and one-half year period in which Goldman Sachs' structured product correlation trading desk structured and marketed the highly profitable Abacus transactions, the Goldman Sachs' officers, employees and registered agents received a substantial portion of their annual compensation and benefits based upon their performance. Thus the approval of the structuring and marketing of the Abacus transactions was left solely up to managerial level employees whose compensation was linked to the number and size of the transactions Goldman Sachs was able to close. Notably, during the period that Goldman Sachs was experiencing a boom in the credit markets and completing the Abacus transactions, Goldman Sachs' compensation and benefit expense skyrocketed from \$9.65 billion in 2004 to \$20.19 billion in 2007, representing a staggering 44% of net revenues.

The Background of Abacus 2007 — AC1

41. Paulson founded a hedge fund 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, effectively taking a short position on subprime mortgages betting the subprime mortgage market would collapse.

42. Paulson developed an investment strategy based upon the belief that certain mid-and subprime RMBS rated “Triple B,” meaning bonds rated “BBB” by Standard & Poor’s Ratings & Services (“S&P”) or “Baa2” by Moody’s Investors Services, Inc. (“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 any deterioration of the underlying mortgage loan portfolio.

43. 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.

44. Paulson performed an analysis of recent-vintage BBB-rated RMBS and identified over 100 bonds it expected to experience credit events (i.e., events of default, 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.

45. It has been reported that Paulson then approached now defunct Bear Sterns asking Bear Sterns to structure and market a synthetic CDO referencing the BBB rated bonds it had identified for which Paulson could then enter into a series of CDS and effectively bet against the

referenced portfolio. It has been reported that Bear Sterns “decided that bringing more mortgage-backed securities into the world, just so that Paulson could bet on their toxicity, was a ‘reputation issue’. It did not wish to sell an investment to clients without telling them that a bearish hedge fund had inspired the creation.” Therefore Bear Sterns rejected Paulson’s proposal because as stated by Bear Sterns trader Scott Eichel: “It didn’t pass our ethics standards; it was a reputation issue, and it didn’t pass our moral compass.”

46. In early 2007, Paulson approached Goldman Sachs with the same proposed transaction and asked the Company to help it find counterparties to its desired short positions so that it could buy protection, i.e., take a short position, through the use of CDS, on the RMBS it had adversely selected, under the belief that the bonds would experience credit events, i.e., defaults.

47. Specifically, Paulson suggested a synthetic CDO whose performance was tied to BBB-rated RMBS. Paulson discussed with Goldman Sachs the creation of a CDO that would allow Paulson to participate in selecting a portfolio of reference obligations, which he had already identified, and then effectively short the RMBS portfolio it helped select by entering into CDS with Goldman Sachs to buy protection on specific layers of the synthetic CDO’s capital structure.

48. Both Paulson and Goldman Sachs recognized that the existing market for the sale of CDOs was rapidly declining. In fact, it has been reported that portions of an email in French and English sent by Defendant Tourre, who structured the transaction, 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 monstrosities!!!” Similarly, it has been reported that an email on February 11, 2007 to Tourre from the head of the Goldman Sachs structured product correlation trading desk stated in part, “the cdo biz is dead we don’t have a lot of time left.”

49. Furthermore, both Goldman Sachs and Tourre knew that it would be difficult, if not impossible, to place the liabilities of a synthetic CDO if it were 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 despite the fact that the CDO market that was beginning to decline. Most importantly, Goldman Sachs 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.

50. It has been reported that contemporaneous internal correspondence reflects the fact that Goldman Sachs’ executives knew 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.”

51. Against this backdrop, in January 2007, Goldman Sachs executives 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, and in fact as of December 31, 2006, ACA had closed on 22 CDO transactions with underlying portfolios consisting of \$15.7 billion of assets. Moreover, Goldman Sachs had strong ties to

ACA, and indeed Alan S. Rosenman the CEO of ACA, is married to or cohabitates with Frances R. Bermazohn, Goldman Sachs' managing director and deputy general counsel.

52. Internal correspondence reveals the fact that Goldman Sachs executives, including Defendant Tourre planned to prominently feature the fact that ACA was acting as portfolio selection agent in the marketing materials for the bonds, going so far as to note "this will be important that we can use ACA's branding to help distribute the bonds." Moreover, the memorandum to the Mortgage Capital Committee seeking approval of the transaction stated that Goldman Sachs and Tourre "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."

53. In January 2007, Paulson and Defendant Tourre provided ACA with a list of 123 2006 RMBS rated Baa2 and selected by Paulson. Neither Paulson nor Tourre disclosed to ACA that the bonds were selected based upon Paulson's belief that they would fail, nor the fact that Paulson intended to effectively short the RMBS portfolio it helped select by entering into CDS with Goldman Sachs to buy protection on specific layers of the synthetic CDO's capital structure. Indeed, Defendant Tourre misled ACA into believing that Paulson, as the sponsor, would retain a portion of the equity tranche in CDO, meaning he would retain a portion of the CDO with the highest risk. After analysis of the proposed list, and some further modifications, ACA agreed upon a list of 90 RMBS bonds acceptable to Paulson to form the reference portfolio for Abacus 2007-AC1.

The Marketing of Abacus 2007 — AC1

54. The Goldman Sachs Mortgage Capital Committee, consisting of approximately one dozen senior-level managerial employees of Goldman Sachs — without the participation of any independent members of the Board, and without submission to the Risk Committee,

approved the Abacus 2007-AC1 transaction on or about March 12, 2007, in what has been described as a routine meeting in a drab conference room which none of the committee members specifically recall. Goldman Sachs expected to earn between \$15-and-\$20 million for structuring and marketing Abacus 2007-AC1, and Defendant Tourre expected to receive substantial incentive compensation for completing the transaction.

55. The marketing materials used by Goldman Sachs and Defendant Tourre for Abacus 2007-AC1 represented that ACA selected the reference portfolio, but failed to disclose that Paulson, a party with economic interests adverse to CDO investors, played a significant role in the selection of the reference portfolio and that ACA's CEO had strong personal ties to Goldman Sachs' managing director and deputy general counsel.

56. For example, a 9-page term sheet for Abacus 2007-AC1 prepared by Defendant Tourre for Goldman Sachs 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."

57. Similarly, a 65-page flip book for Abacus 2007-AC1 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.

58. Likewise, the cover page of the 178-page offering memorandum for Abacus 2007-AC1 included a description of ACA as "Portfolio Selection Agent." The Transaction

Overview, Summary and Portfolio Selection Agent sections of the memorandum each 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

59. These documents contained no mention of Paulson, its economic interests in the transaction, its role in selecting the reference portfolio, or the personal relationship between Alan S. Rosenman the CEO of ACA and Frances R. Bermazohn, Goldman Sachs' managing director and deputy general counsel.

ACA Capital and ABN Amro

60. In addition to ACA's role as set forth above, 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.

61. ACA Capital, like ACA itself, was unaware of Paulson's short position in the Abacus 2007-AC1 transaction. ACA Capital would not 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 position in the form of retention of the equity tranche, as Defendant Toure had represented, in Abacus 2007-AC1.

62. 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 Sachs 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

63. Goldman Sachs 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. Defendant 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.

64. 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.

65. 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 Goldman Sachs \$840,909,090. Most of this money was subsequently paid to Paulson based upon the CDS between Goldman Sachs and Paulson.

IKB

66. Defendant Tourre and other Goldman Sachs executives, employees and agents then used these false and misleading materials to market Abacus-2009AC1, *inter alia*, to IKB, ACA Capital Holdings, Inc. (“ACA Capital”), and ABN Amro.

67. 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. In late 2006 IKB informed a Goldman Sachs sales representative and Defendant 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.

68. Specifically, in February, March and April 2007, Goldman Sachs 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, its adverse economic interests or the personal relationship between Alan S. Rosenman the CEO of ACA and Frances R. Bermazohn, Goldman Sachs’ managing director and deputy general counsel..

69. 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 and AAA by 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.

70. Within months of closing, Abacus 2007-AC1's Class A-1 and A-2 Notes were nearly worthless and IKB lost almost all of its \$150 million investment. Most of this money was ultimately paid to Paulson in a series of transactions based upon the CDS between Goldman Sachs and Paulson.

71. As a result of the forgoing conduct, on April 16, 2010, the SEC filed a civil lawsuit with claims against Goldman Sachs and Defendant Toure for violation of the federal securities laws seeking injunctive relief, disgorgement of profits, prejudgment interest, civil penalties and other appropriate and necessary equitable relief. Consequently, Goldman Sachs faces claims for civil liability with respect to the sale of Abacus 2007-AC1 bonds in excess of \$1 billion, in addition to the costs of investigation and defense.

DERIVATIVE ALLEGATIONS

72. Plaintiff brings this action derivatively on behalf and for the benefit of the Company to remedy the wrongdoing alleged herein.

73. Plaintiff will fairly and adequately represent the interests of the Company, and has retained competent counsel, experienced in derivative litigation, to enforce and prosecute this action.

74. Goldman Sachs is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

DEMAND IS FUTILE

75. Plaintiff incorporates by reference and realleges each and every allegation stated above as if fully set forth herein. Plaintiff did not make a demand on the Board to bring this action because such demand would be futile given the facts as alleged herein and, therefore, such a demand is excused.

76. At the time of the filing of this action, Goldman Sachs' Board of Directors was composed of twelve (12) directors — defendants Blankfein, Cohn, Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons. Each of these directors has been named as a defendant in this action

77. The Director Defendants owed a duty to Goldman Sachs and its shareholders to be reasonably informed about the business and operations of the Company. The Director Defendants completely abdicated their oversight duties to the Company by failing to implement internal procedures and controls necessary to prevent the wrongdoing alleged herein.

78. Demand on the Goldman Sachs Board to institute this action is not necessary because such a demand would have been a futile and useless act, particularly for the following additional reasons:

a. The principal professional occupation of defendants Blankfein and Cohn is their employment with Goldman Sachs pursuant to which they received and continue to receive substantial monetary compensations and other benefits. Specifically, for FY:07 (the year in which Abacus 2007-AC1 was sold) Goldman Sachs paid defendant Blankfein \$70,324,352 in total compensation and defendant Cohn \$72,511,357 in total compensation. Accordingly, defendants Blankfein and Cohn lack independence and disinterestedness in their ability to evaluate any claims against Goldman Sachs rendering them incapable of impartially considering a demand to commence and vigorously prosecute this action;

b. Each of the Director Defendants, as detailed herein, participated in, approved and/or permitted the wrongs alleged herein to have occurred and are, therefore, not disinterested parties and thus could not exercise independent objective judgment in deciding

whether to bring this action or fairly and fully prosecute such a suit even if such suit was instituted;

c. The Director Defendants had a responsibility and obligation to assure that the Company had a proper system of internal controls and other oversight procedures were in place to detect and prevent the Company and its executives and employees from violating the federal securities laws and/or engaging in transactions which posed an inherent conflict of interest. As detailed above, the Director Defendants abdicated this responsibility over a period of more than three years and permitted the conduct alleged herein to occur. Accordingly, the Director Defendants could not exercise independent objective judgment in deciding whether to bring this action because they are personally interested in the outcome of this lawsuit as it is their actions which have subjected Goldman Sachs to billions of dollars in liability;

d. Defendants Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, and Mittal served on the Company's Audit Committee during the Relevant Period. Among other things, the Audit Committee requires the Audit Committee to "assist the Board in its oversight of . . . (ii) the Company's compliance with legal and regulatory requirements, . . . and (vi) the Company's management of market, credit, liquidity and other financial and operational risks" Despite their responsibilities as members of the Audit Committee and their knowledge of Goldman Sachs' exposure to the subprime mortgage and credit crisis, defendants Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, and Mittal abdicated their responsibility to monitor and oversee the Company's compliance with the federal securities laws and assumption of risk and liability in the form of the Abacus transactions as set forth above. By

such actions, these defendants breached their fiduciary duties and any demand upon them would have been futile; and

e. The acts complained of herein constitute violations of state law and the fiduciary duties owed by the Director Defendants and are incapable of ratification.

79. The Individual Defendants' conduct described herein and summarized above could not have been the product of legitimate business judgments as it was based on intentional, reckless and disloyal misconduct. Thus, none of the Individual Defendants, who constitute a majority of the current Board of the Company, can claim exculpation from their violations of duty pursuant to the Company's charter (to the extent such a provision exists). As a majority of the Individual Defendants face a substantial likelihood of liability, they are self-interested in the transactions challenged herein and cannot be presumed to be capable of exercising independent and disinterested judgment about whether to pursue this action on behalf of the shareholders of the Company. Accordingly, demand is excused as being futile.

FIRST CAUSE OF ACTION

(Breaches of Fiduciary Duties)

80. Plaintiff incorporates by reference and realleges each and every allegation as set forth above as if fully set forth herein.

81. Each defendant owed the Company and its shareholders the highest duties of loyalty, good faith, honesty, and care in conducting their affairs and the business of the Company.

82. The Individual Defendants owed a fiduciary duty of loyalty, due care and good faith to Goldman Sachs to properly install a proper system of internal controls and other oversight procedures to detect and prevent the Company and its executives and employees from violating the federal securities laws and/or engaging in transactions which posed an inherent

conflict of interest, and to monitor and control the risks and liabilities to which the Company was subjected.

83. The Individual Defendants breached their fiduciary duties by failing to properly supervise and monitor the adequacy of Goldman Sachs' internal controls and by allowing Defendant Tourre and other Goldman Sachs executives, employees, and agents to engage in the conduct and structure and market the transactions set forth herein.

84. The Individual Defendants have engaged, knowingly or recklessly, in a sustained and systematic failure to exercise their oversight responsibilities to ensure that Goldman Sachs complied with federal and state laws, rules and regulations over a period of more than three years.

85. As members of the Board of Goldman Sachs, the Director Defendants were directly responsible for authorizing or permitting the authorization of, or failing to monitor, the practices which resulted in violations of the federal and state laws as alleged herein. Each of them had knowledge of and actively participated in and/or approved of or acquiesced in the wrongdoings alleged herein or abdicated his/her responsibilities with respect to these wrongdoings. The alleged acts of wrongdoing have subjected Goldman Sachs to unreasonable risks of loss and expenses.

86. Each of the Individual Defendants' acts in causing or permitting the Company to engage in the conduct and transaction set forth herein and abdicating his oversight responsibilities to the Company has subjected the Company to liability for violations of federal and state law, and therefore was not the product of a valid exercise of business judgment and was a complete abdication of their duties as officers and/or directors of the Company. As a result of the Individual Defendants' unlawful course of conduct and breaches of fiduciary duties, Goldman

Sachs has sustained substantial economic losses, and has had its reputation in the business community and financial markets irreparably tarnished.

87. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

88. Accordingly, Plaintiff, as a shareholder of the Company, seeks monetary damages, injunctive remedies, and other forms of equitable relief on Goldman Sachs' behalf.

89. Plaintiff and the Company have no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including preliminary and permanent injunctive relief, in her favor and in favor of the Company, as appropriate, against all of the Individual Defendants as follows:

- a. Authorizing the maintenance of this action as a derivative action, with Plaintiff as derivative plaintiff;
- b. Declaring that the Individual Defendants have violated their fiduciary duties to the Company;
- c. Awarding compensatory damages against defendants individually and severally in an amount to be determined at trial, together with pre-judgment and post-judgment interest at the maximum rate allowable by law;
- d. Awarding Plaintiff the costs and disbursements of this action, including reasonable allowances for Plaintiffs attorneys' and experts' fees and expenses; and
- e. Granting such other or further relief as may be just and proper under the circumstances.

Dated: April 22, 2010

FARUQI & FARUQI, LLP

By: /s/ Nadeem Faruqi
Nadeem Faruqi

Nadeem Faruqi
Beth A. Keller
369 Lexington Avenue, 10th Floor
New York, NY 10017
Telephone: (212) 983-9330
Facsimile: (212) 983-9331

GARDY & NOTIS, LLP
Mark C. Gardy
James S. Notis
560 Sylvan Avenue, Third Floor
Englewood Cliffs, NJ 07632
Telephone: (201) 567-7377
Facsimile: (201) 853-2768

Attorneys for Plaintiff

JUDGE GARDEPHE

10 CV 3476

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

<hr/>		X	Case No.
HAL HUBUSCHMAN, Derivatively on Behalf	:		
of THE GOLDMAN SACHS GROUP, INC.,	:		
Plaintiff,	:		
	:		VERIFIED SHAREHOLDER DERIVATIVE
vs.	:		COMPLAINT FOR BREACH OF
LLOYD C. BLANKFEIN, GARY D. COHN,	:		FIDUCIARY DUTY, WASTE OF
DAVID A. VINIAR, JOHN H. BRYAN, JAMES	:		CORPORATE ASSETS, AND UNJUST
A. JOHNSON, RUTH J. SIMMONS, WILLIAM	:		ENRICHMENT
W. GEORGE, CLAES DAHLBACK, LOIS D.	:		
JULIBER, STEPHEN FRIEDMAN, RAJ AT K.	:		
GUPTA, LAKSHMI N. MITTAL, and JAMES J.	:		
SCHIRO,	:		
	:		
Defendants,	:		
	:		
-and-	:		
	:		
THE GOLDMAN SACHS GROUP, INC., a	:		
Delaware corporation,	:		
	:		
Nominal Defendant.	:		
<hr/>		X	<u>DEMAND FOR JURY TRIAL</u>

Plaintiff, by his attorneys, submits this Verified Shareholder Derivative Complaint against the defendants named herein.

NATURE AND SUMMARY OF THE ACTION

1. This is a derivative action brought by a shareholder of The Goldman Sachs Group, Inc. (“Goldman” or the “Company”) on behalf of the Company against certain of its officers and directors. Plaintiff seeks to remedy defendants’ violations of state law, including breaches of fiduciary duties, waste of corporate assets, and unjust enrichment that occurred between December 2009 and the present and that have caused substantial monetary losses to Goldman and other damages, such as to its reputation and goodwill.

2. Goldman is a global investment banking, securities, and investment management firm that provides a wide range of financial services. Its clients include corporations, financial institutions, governments, and high-net-worth individuals. Goldman is a bank holding company and a financial holding company regulated by the Board of Governors of the Federal Reserve System under the U.S. Bank Holding Company Act of 1956 (BHC Act). Goldman’s activities are divided into three segments: (i) Investment Banking; (ii) Trading and Principal Investments and (iii) Asset Management and Securities Services.

3. On April 16, 2010, the Securities and Exchange Commission (“SEC”) filed an action against Goldman, Sachs & Co. and its employee Fabrice Tourre (“Tourre”) for violating the U.S. federal securities laws in the U.S. District Court for the Southern District of New York (the “SEC Action”). The SEC Action arises out of Goldman’s role in creating and selling a synthetic collateralized debt obligation (“CDO”) offering in early 2007. The CDO structure at issue in the SEC Action is known as Abacus 2007-AC1. Beginning in 2004, Goldman created or engaged in 23 Abacus transactions, each based at least in part upon highly leveraged synthetic CDOs. According to the SEC Action, a committee comprised of senior-level management at Goldman, the Mortgage Capital Committee, approved Abacus 2007-AC1.

4. The gravamen of the SEC Action is that Goldman did not reveal to Abacus 2007-AC1 investors that Paulson & Co., Inc. (“Paulson”) played a large role in picking the underlying securities

that would be bundled in the CDO and that Paulson would be taking a short position against the CDO. In particular, the SEC Action alleges that Paulson approached Goldman to make a market through a structured transaction consistent with Paulson's negative view on the residential mortgage backed securities ("RMBS") market. The structure of the deal allowed Paulson to pick and short what it believed were the riskiest assets.

5. Goldman created the marketing materials for Abacus 2007-AC1. The disclosure documents prepared by Tourre and Goldman only represented that ACA Capital Management LLC ("ACA") selected the Abacus 2007-AC1 portfolio. ACA is a third party company known for bundling mortgages and similar securities. ACA's reputation allowed Goldman to entice other investors to participate in the transaction. Notably, IKB Deutsche Industriebank AG ("IKB") invested approximately \$150 million in Abacus 2007-AC1. Goldman's marketing documents said nothing about Paulson's participation, even though its senior management knew Paulson's involvement was material. Moreover, the SEC Action states that Goldman represented to ACA that Paulson was investing in Abacus 2007-AC1 and thus their interests were aligned.

6. 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 lost over \$1 billion. Paulson made approximately \$900 million. Goldman made approximately \$15 million as a result of Abacus 2007-AC1, but has suffered significant repercussions for its involvement in Abacus 2007-AC1, including significant damage to the Company's market capitalization.

7. Due to the statements by its top executives denying any wrongdoing during the subprime crisis, the public and Goldman's shareholders were shocked that the SEC filed an action against the Company and by the contents of the SEC Action. The same cannot be said for Goldman's executives and Board of Directors ("Board") members. The SEC asked Goldman for information on this transaction in August of 2008. During the investigation, Goldman met with the SEC officials trying to fend off the civil lawsuit. According to the *Washington Post*, the SEC informed Goldman in writing that it planned on bringing a civil action against the Company. Nevertheless, Goldman did

not disclose that it had received a Wells notice regarding the Abacus 2007-AC1 transaction, that it was producing documents to the SEC, or that an SEC action was imminent until after the SEC Action was filed. Even after the SEC filed its action, executives at Goldman claimed they were “blindsided.”

8. The Individual Defendants (as defined herein) concealed their wrongdoing because of the intense public scrutiny placed on Goldman because of the TARP funds and public suspicion of their role in the collapse. According to Brad Hintz of Bernstein Research, Goldman could lose over \$700 million, or \$1.20 per share, over the next two years as a result of charges that it misled investors. In addition to the SEC Action, investors in the Abacus 2007-AC1 will likely file direct claims against Goldman seeking to recoup their losses and any available punitive damages.

9. As a result of the Company’s improper guidance, its credibility with investors declined. Goldman’s market capitalization declined by over \$12.4 billion, or 12.7%, in a single day.

JURISDICTION AND VENUE

10. This Court has jurisdiction over all claims asserted herein pursuant to 28 U.S.C. § 1332(a)(2) because complete diversity exists between the plaintiff and each defendant, and the amount in controversy exceeds \$75,000. This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

11. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by the District courts permissible under traditional notions of fair play and substantial justice.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (a) because: (i) Goldman maintains its principal place of business in the District; (ii) one or more of the defendants either resides in or maintains executive offices in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including the defendants’ primary participation in the wrongful acts detailed herein, and aiding and abetting and conspiracy in violation of fiduciary duties owed to

Goldman occurred in this District; and (iv) defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

THE PARTIES

13. Plaintiff Hal Hubuschman was a shareholder at the time of the continuing wrong complained of and remains a shareholder. The continuing wrong included the issuance of improper statements about the Company's bets against its clients' interest and failure to disclose that the Company received a Wells notice and was being investigated by the SEC. Plaintiff is a citizen of Georgia.

14. Nominal defendant Goldman is a Delaware corporation with its principal executive offices located at 200 West Street, New York, New York. Goldman is a global investment banking, securities, and investment management firm that provides a wide range of financial services.

15. Defendant Lloyd C. Blankfein ("Blankfein") is Goldman's Chairman of the Board and Chief Executive Officer and has been since June 2006. Blankfein is also a Goldman director and has been since April 2003. Blankfein was Goldman's President and Chief Operating Officer from January 2004 to June 2006; Vice Chairman from April 2002 to January 2004; co-head of Fixed Income, Currency and Commodities Division ("FICC") from 1997 to April 2002; and head or co-head of the Currency and Commodities Division from 1994 to 1997. Goldman paid defendant Blankfein the following compensation as an executive:

Fiscal Year	Salary	All Other Compensation
2009	\$600,000	\$262,657

Defendant Blankfein is a citizen of New York.

16. Defendant Gary D. Cohn ("Cohn") is Goldman's President and has been since June 2006. Cohn is also Goldman's Chief Operating Officer and has been since April 2009. Cohn was Goldman's Co-Chief Operating Officer from June 2006 to March 2009 and co-head of global securities businesses from January 2004 to June 2006. Cohn also served in various other positions at Goldman from 1996 to January 2004, including as co-head of Equities, co-head of FICC, co-chief

operating officer of FICC; and global head of the commodities business. Goldman paid defendant Conn the following compensation as an executive:

Fiscal Year	Salary	All Other Compensation
2009	\$600,000	\$225,156

Defendant Conn is a citizen of New York.

17. Defendant David A. Viniar (“Viniar”) is a Goldman Executive Vice President and Chief Financial Officer and has been since May 1999. Viniar is also Goldman’s head of Operations, Technology, Finance and Services Division and has been since December 2002. Viniar was Goldman’s head of the Finance Division and co-head of Credit Risk Management and Advisory and Firmwide Risk from December 2001 to December 2002, and co-head of Operations, Finance and Resources from March 1999 to December 2001. Viniar also served in various other positions at Goldman Sachs Group, L.P., Goldman’s predecessor, from 1992 to May 1999, including as Chief Financial Officer; Deputy Chief Financial Officer; head of Finance; head of Treasury; and part of the Structured Finance Department of Investment Banking. Goldman paid defendant Viniar the following compensation as an executive:

Fiscal Year	Salary	All Other Compensation
2009	\$600,000	\$237,365

Defendant Viniar is a citizen of New Jersey.

18. Defendant John H. Bryan (“Bryan”) is Goldman’s Presiding Director and has been since at least February 2007 and a director and has been since November 1999. Bryan is also a member of Goldman’s Audit Committee and has been since at least November 2008. While in possession of material non-public information concerning Goldman’s true business health, defendant Bryan sold 6,000 of his Goldman shares for \$932,220 in proceeds. Goldman paid defendant Bryan the following compensation as director:

Fiscal Year	Total Compensation
2009	\$476,004

Defendant Bryan is a citizen of Illinois.

19. Defendant James A. Johnson (“Johnson”) is a Goldman director and has been since May 1999. Johnson is also a member of Goldman’s Audit Committee and has been since at least November 2008. Goldman paid defendant Johnson the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$476,004

Defendant Johnson is a citizen of Idaho.

20. Defendant Ruth J. Simmons (“Simmons”) is a Goldman Sachs director and has been since January 2000. Simmons announced in February 2010 that she will retire from Goldman Sachs’s Board of Directors in May 2010. Goldman paid defendant Simmons the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$450,876

Defendant Simmons is a citizen of Rhode Island.

21. Defendant William W. George (“George”) is a Goldman director and has been since December 2002. George is also a member of Goldman’s Audit Committee and has been since at least November 2008. Goldman paid defendant George the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$455,676

Defendant George is a citizen of Massachusetts.

22. Defendant Claes Dahlbäck (“Dahlbäck”) is a Goldman’s director and has been since June 2003. Dahlbäck is also a member of Goldman’s Audit Committee and has been since at least November 2008. Goldman paid defendant Dahlbäck the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$455,676

Defendant Dahlbäck is a citizen of Sweden.

23. Defendant Lois D. Juliber (“Juliber”) is a Goldman director and has been since March 2004. Juliber is also a member of Goldman’s Audit Committee and has been since at least November 2008. Goldman paid defendant Juliber the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$455,676

Defendant Juliber is a citizen of New York.

24. Defendant Stephen Friedman (“Friedman”) is a Goldman director and has been since April 2005. Friedman served in various other positions at Goldman Sachs Group, L.P., Goldman’s predecessor, from 1966 to 1994, including as Senior Partner and Chairman of the Management Committee. Friedman is also Chairman of Goldman’s Audit Committee and has been since October 2008. Goldman paid defendant Friedman the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$476,004

Defendant Friedman is a citizen of New York.

25. Defendant Rajat K. Gupta (“Gupta”) is a Goldman director and has been since November 2006. Gupta is also a member of Goldman’s Audit Committee and has been since at least November 2008. Gupta announced in March 2010 that he will retire from Goldman’s Board in May 2010. Goldman paid defendant Gupta the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$450,876

Defendant Gupta is a citizen of Connecticut.

26. Defendant Lakshmi N. Mittal (“Mittal”) is a Goldman director and has been since June 2008. Mittal is also a member of Goldman’s Audit Committee and has been since June 2008. Goldman paid defendant Mittal the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$450,876

Defendant Mittal is a citizen of Luxembourg.

27. Defendant James J. Schiro (“Schiro”) is a Goldman director and has been since May 2009. Schiro is also a member of Goldman’s Audit Committee and has been since May 2009. Goldman paid defendant Schiro the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$307,087

Defendant Schiro is a citizen of New Jersey.

28. The defendants identified in 15, 18-27 are referred to herein as the “Director Defendants.” The defendants identified in 15-17 are referred to herein as the “Officer Defendants.” Collectively, the Director Defendants and the Officer Defendants are referred to herein as the “Individual Defendants.”

DUTIES OF THE INDIVIDUAL DEFENDANTS

Fiduciary Duties

29. By reason of their positions as officers, directors, and/or fiduciaries of Goldman and because of their ability to control the business and corporate affairs of Goldman, the Individual Defendants owed Goldman fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage Goldman in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of Goldman so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit.

30. Each director and officer of the Company owes to Goldman the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing. In addition, as officers and/or directors of a publicly held company, the Individual Defendants had a duty to promptly disseminate all material information, in an accurate and truthful manner, including the Company’s receipt of a Wells notice and ongoing investigation by the SEC, so that the market price of the Company’s stock would be based on truthful and accurate information.

31. The Company's Corporate Governance Guidelines, in effect since January 2007, state in relevant part:

IX. Board Responsibilities

The business and affairs of the Company are managed by or under the direction of the Board in accordance with Delaware law. The Board's responsibility is to provide direction and oversight. The Board establishes the strategic direction of the Company and oversees the performance of the Company's business and management. The management of the Company is responsible for presenting strategic plans to the Board for review and approval and for implementing the Company's strategic direction. In performing their duties, the primary responsibility of the directors is to exercise their business judgment in the best interests of the Company.

* * *

4. *Reviewing and Approving Significant Transactions.* Board approval of a particular transaction may be appropriate because of several factors, including:

- legal or regulatory requirements,
- the materiality of the transaction to the Company's financial performance, risk profile or business,
- the terms of the transaction, or
- other factors, such as the entering into of a new line of business or a variation from the Company's strategic plan.

To the extent the Board determines it to be appropriate, the Board shall develop standards to be utilized by management in determining types of transactions that should be submitted to the Board for review and approval or notification.

X. Expectations for Directors

* * *

6. *Contact with Management and Employees.* All directors shall be free to contact the CEO at any time to discuss any aspect of the Company's business. Directors shall also have complete access to other employees of the Company. The Board expects that there will be frequent opportunities for directors to meet with the CEO and other members of management in Board and Committee meetings, or in other formal or informal settings.

Further, the Board encourages management to bring into Board meetings from time to time (or otherwise make available to Board members) individuals who can provide additional insight into the items being discussed because of personal involvement and substantial knowledge in those areas.

32. Goldman's Code of Business Conduct and Ethics, in effect since May 2009 and substantially similar to the prior version in effect since January 2005, states in relevant part:

This Code of Business Conduct and Ethics (the "Code") embodies the commitment of The Goldman Sachs Group, Inc. and its subsidiaries to conduct our business in accordance with all applicable laws, rules and regulations and the highest ethical standards. All employees and members of our Board of Directors are expected to adhere to those principles and procedures set forth in this Code that apply to them. We also expect the consultants we retain generally to abide by this Code. (For purposes of Section 406 of the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder, Section I of this Code shall be our code of ethics for Senior Financial Officers (as defined below).)

The Code should be read in conjunction with Our Business Principles, which provide in part that, "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.*" Our Business Principles are attached to this Code. Each employee, consultant and director should also read and be familiar with the portions of the Compendium of Firmwide Compliance Policies (the "Compendium") applicable to such employee, consultant or director, which Compendium is not part of this Code.

SECTION I

A. Compliance and Reporting

Employees and directors should strive to identify and raise potential issues before they lead to problems, and should ask about the application of this Code whenever in doubt. Any employee or director who becomes aware of any existing or potential violation of this Code should promptly notify, in the case of employees, an appropriate contact listed in the Directory of Contacts included in the Compendium and, in the case of directors and the Chief Executive Officer, the Chief Financial Officer and the Principal Accounting Officer (the "Senior Financial Officers"), one of the firm's General Counsel (we refer to such contacts as "Appropriate Ethics Contacts"). The firm will take such disciplinary or preventive action as it deems appropriate to address any existing or potential violation of this Code brought to its attention.

Any questions relating to how these policies should be interpreted or applied should be addressed to an Appropriate Ethics Contact.

B. Personal Conflicts of Interest

A "personal conflict of interest" occurs when an individual's private interest improperly interferes with the interests of the firm. Personal conflicts of interest are prohibited as a matter of firm policy, unless they have been approved by the firm. In particular, an employee or director must never use or attempt to use his or her

position at the firm to obtain any improper personal benefit for himself or herself, for his or her family members, or for any other person, including loans or guarantees of obligations, from any person or entity.

Service to the firm should never be subordinated to personal gain and advantage.

Conflicts of interest should, to the extent possible, be avoided.

Any employee or director who is aware of a material transaction or relationship that could reasonably be expected to give rise to a conflict of interest should discuss the matter promptly with an Appropriate Ethics Contact.

C. Public Disclosure

It is the firm's policy that the information in its public communications, including SEC filings, be full, fair, accurate, timely and understandable. All employees and directors who are involved in the company's disclosure process, including the Senior Financial Officers, are responsible for acting in furtherance of this policy. In particular, these individuals are required to maintain familiarity with the disclosure requirements applicable to the firm and are prohibited from knowingly misrepresenting, omitting, or causing others to misrepresent or omit, material facts about the firm to others, whether within or outside the firm, including the firm's independent auditors. In addition, any employee or director who has a supervisory role in the firm's disclosure process has an obligation to discharge his or her responsibilities diligently.

D. Compliance with Laws, Rules and Regulations

It is the firm's policy to comply with all applicable laws, rules and regulations. It is the personal responsibility of each employee and director to adhere to the standards and restrictions imposed by those laws, rules and regulations. The Compendium provides guidance as to certain of the laws, rules and regulations that apply to the firm's activities.

Generally, it is both illegal and against firm policy for any employee or director who is aware of material nonpublic information relating to the firm, any of the firm's clients or any other private or governmental issuer of securities to buy or sell any securities of those issuers, or recommend that another person buy, sell or hold the securities of those issuers.

More detailed rules governing the trading of securities by the firm's employees and directors are set forth in the Compendium. Any employee or director who is uncertain about the legal rules involving his or her purchase or sale of any firm securities or any securities in issuers that he or she is familiar with by virtue of his or her work for the firm should consult with an Appropriate Ethics Contact before making any such purchase or sale.

SECTION II

A. Corporate Opportunities

Employees and directors owe a duty to the firm to advance the firm's legitimate business interests when the opportunity to do so arises. Employees and directors are prohibited from taking for themselves (or directing to a third party) a business opportunity that is discovered through the use of corporate property, information or position, unless the firm has already been offered the opportunity and turned it down. More generally, employees and directors are prohibited from using corporate property, information or position for personal gain or competing with the firm.

Sometimes the line between personal and firm benefits is difficult to draw, and sometimes both personal and firm benefits may be derived from certain activities. The only prudent course of conduct for our employees and directors is to make sure that any use of firm property or services that is not solely for the benefit of the firm is approved beforehand through the Appropriate Ethics Contact.

* * *

C. Fair Dealing

We have a history of succeeding through honest business competition. We do not seek competitive advantages through illegal or unethical business practices. Each employee and director should endeavor to deal fairly with the firm's clients, service providers, suppliers, competitors and employees. No employee or director should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any unfair dealing practice.

Specific Audit Committee Fiduciary Duties

33. In addition to these duties, defendants Bryan, Johnson, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, and Schiro owe and owed specific duties under the Audit Committee's charter to Goldman to review and ensure the accuracy and appropriateness of the earnings press releases and annual and interim financial statements. During 2009, the Audit Committee met twelve times. In particular, the Audit Committee's charter in effect since at least January 2009 provides, in pertinent part, as follows:

Purpose of Committee

The purpose of the Audit Committee (the "Committee") of the Board of Directors (the "Board") of The Goldman Sachs Group, Inc. (the "Company") is to:

- (a) assist the Board in its oversight of (i) the integrity of the Company's financial statements, (ii) the Company's compliance with legal and regulatory requirements, (iii) the independent auditors' qualifications, independence and performance, (iv) the performance of the Company's internal audit function, (v) the Company's internal control over financial reporting, and (vi) the Company's management of market, credit, liquidity and other financial and operational risks;
- (b) decide whether to appoint, retain or terminate the Company's independent auditors and to pre-approve all audit, audit-related, tax and other services, if any, to be provided by the independent auditors; and
- (c) prepare the report required to be prepared by the Committee pursuant to the rules of the Securities and Exchange Commission (the "SEC") for inclusion in the Company's annual proxy statement.

* * *

Committee Duties and Responsibilities

The following are the duties and responsibilities of the Committee:

* * *

5. To review and discuss with management and the independent auditors the Company's annual audited financial statements and quarterly financial statements, including the Company's specific disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Controls and Procedures," and to discuss with the Company's Chief Executive Officer and Chief Financial Officer (a) their certifications to be provided pursuant to Sections 302 and 906 of the 2002 Act, including whether the financial statements fairly present, in all material respects, the financial condition, results of operations and cash flows of the Company as of and for the periods presented and whether any significant deficiencies and material weaknesses exist in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information, or any fraud has occurred, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting and (b) management's report on internal control over financial reporting pursuant to Section 404 of the 2002 Act. The Committee shall discuss, as applicable: (a) major issues regarding accounting principles and financial statement presentations, including any significant changes in the Company's selection or application of accounting principles, and major issues as to the adequacy of the Company's internal controls and any special audit steps adopted in light of material control deficiencies; (b) analyses prepared by management and/or

the independent auditors setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements; and (c) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the Company.

* * *

7. To discuss with management earnings press releases and to review generally the type and presentation of information to be included in earnings press releases (paying particular attention to any use of “pro forma” or “adjusted” non-GAAP, information).
8. To review generally with management the type and presentation of any financial information and earnings guidance provided to analysts and rating agencies.
9. To review with management and, as appropriate, the independent auditors periodically, normally on at least an annual basis:
 - The independent auditors’ annual audit scope, risk assessment and plan.
 - The form of independent auditors’ report on the annual financial statements and matters related to the conduct of the audit under the standards of the Public Company Accounting Oversight Board (United States).
 - Comments by the independent auditors on internal controls and significant findings and recommendations resulting from the audit.

* * *

12. review the procedures for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters, and for the confidential, anonymous submission by Company employees of concerns regarding questionable accounting or auditing matters, and to assess compliance with these procedures.

* * *

14. To discuss with management periodically management’s assessment of the Company’s market, credit, liquidity and other financial and operational risks, and the guidelines, policies and processes for managing such risks.
15. To review and monitor the adequacy of the structures, policies and procedures that the Company has developed to assure the integrity of its investment research, including compliance with the requirements of Sections 1.3 and 1.5 of Addendum A to the global research settlement to which the Company is a party. As part of this process, the Committee shall meet periodically with the Company’s investment research ombudsman, senior management of Global Investment Research and such other individuals

within the Company who are charged with overseeing the Company's performance with respect to the investment research area as the Committee may determine.

16. To discuss with one of the Company's General Counsel and/or Chief Compliance Officer any significant legal, compliance or regulatory matters that may have a material impact on the Company's business, financial statements or compliance policies.

* * *

Committee Reports

The Committee shall produce the following report and evaluation and provide them to the Board:

1. Any report, including any recommendation, or other disclosures required to be prepared by the Committee pursuant to the rules of the SEC for inclusion in the Company's annual proxy statement.
2. An annual performance evaluation of the Committee, which evaluation shall compare the performance of the Committee with the requirements of this charter. The performance evaluation shall also include a review of the adequacy of this charter and shall recommend to the Board any revisions the Committee deems necessary or desirable, although the Board shall have the sole authority to amend this charter. The performance evaluation shall be conducted in such manner as the Committee deems appropriate.

Control, Access, and Authority

34. The Individual Defendants, because of their positions of control and authority as directors and/or officers of Goldman, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public statements issued by the Company.

35. Because of their advisory, executive, managerial, and directorial positions with Goldman, each of the Individual Defendants had access to adverse, non-public information about the financial condition, operations, and improper representations of Goldman, including information regarding Goldman's standing on both sides of transactions in which it played a significant role.

36. At all times relevant hereto, each of the Individual Defendants was the agent of each of the other Individual Defendants and of Goldman, and was at all times acting within the course and scope of such agency.

37. The Board met twelve times during the 2009 fiscal year.

Reasonable and Prudent Supervision

38. To discharge their duties, the officers and directors of Goldman were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the financial affairs of the Company. By virtue of such duties, the officers and directors of Goldman were required to, among other things:

(a) ensure that the Company complied with its legal obligations and requirements, including acting only within the scope of its legal authority and disseminating truthful and accurate statements to the investing public;

(b) ensure that the Company was operated in a diligent, honest, and prudent manner in compliance with all applicable laws, rules, and regulations

(c) conduct the affairs of the Company in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(d) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time, including making accurate statements about the Company's results;

(e) refrain from acting upon material, non-public information; and

(f) remain informed as to how Goldman conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with securities laws.

Breaches of Duties

39. Each Individual Defendant, by virtue of his or her position as a director and/or officer, owed to the Company the fiduciary duty of loyalty and good faith and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of

herein involves a knowing and culpable violation of their obligations as directors and officers of Goldman, the absence of good faith on their part, and a reckless disregard for their duties to the Company that the Individual Defendants were aware or should have been aware posed a risk of serious injury to the Company. The conduct of the Individual Defendants who were also officers and/or directors of the Company have been ratified by the remaining Individual Defendants who collectively comprised all of Goldman's Board.

40. The Individual Defendants breached their duty of loyalty by allowing defendants to cause, or by themselves causing, the Company to misrepresent that it did not stand on both sides of transactions and failed to disclose it had received a Wells notice, as detailed herein below, and by failing to prevent the Individual Defendants from taking such illegal actions.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

41. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their common plan or design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

42. During all times relevant hereto, the Individual Defendants collectively and individually initiated a course of conduct that was designed to and did: (i) conceal the fact that the Company was standing on both sides of transactions with its customers and had received a Wells notice; (ii) enhance the Individual Defendants' executive and directorial positions at Goldman and the profits, power, and prestige that the Individual Defendants enjoyed as a result of holding these positions; and (iii) deceive the investing public regarding the Individual Defendants' management of Goldman's conflicted interest that were not disclosed to customers, in particular IKB. In furtherance of this plan, conspiracy, and course of conduct, the Individual Defendants collectively and individually took the actions set forth herein.

43. The Individual Defendants engaged in a conspiracy, common enterprise, and/or common course of conduct. During this time, the Individual Defendants caused the Company to issue improper statements.

44. The purpose and effect of the Individual Defendants' conspiracy, common enterprise, and/or common course of conduct was, among other things, to disguise the Individual Defendants' violations of law, breaches of fiduciary duty, waste of corporate assets, and unjust enrichment, and to conceal adverse information concerning the Company's operations, financial condition, and future business prospects.

45. The Individual Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company to purposefully, recklessly, or negligently release improper statements. Because the actions described herein occurred under the authority of the Board, each of the Individual Defendants was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

46. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Individual Defendant acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

IMPROPER STATEMENTS

47. The Individual Defendants by their fiduciary duties of care, good faith, and loyalty owe to Goldman a duty to ensure that the Company's reporting fairly represents the operations and condition of the Company. In order to adequately carry out these duties, it is necessary for the Individual Defendants to know and understand the material, non-public information that should be either disclosed or omitted from the Company's public statements.

48. This material, non-public information principally included Goldman's exposure to the subprime mortgage crisis. Furthermore, defendants Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, and Schiro, as members of the Audit Committee, had a special duty to know

and understand this material information as set out in the Audit Committee's charter which provides that the committee is responsible for reviewing and discussing earnings press releases and annual statements filed with the SEC.

49. Defendants Bryan, Johnson, Simmons, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, and Schiro had ample opportunity to discuss this material information with officers at management meetings and via internal corporate documents and reports, as well as at meetings of committees of the Board. Despite these duties, the Individual Defendants recklessly and/or intentionally caused or allowed, by their actions or inactions, the following improper statements to be disseminated by Goldman to the investing public.

50. On December 24, 2009, *The New York Times* ran an article titled "Banks Bundled Bad Debt, Bet Against It and Won." The article detailed Goldman's CDO practices which occurred just as residential home prices were deteriorating and the RMBS was becoming unappealing. The article stated in part:

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 over extended 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.

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. C. 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.

* * *

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 DBS, the big Swiss bank. Of more than 500 C.D.O.'s analyzed by DBS, 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.

* * *

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.

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.

* * *

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.

51. On December 24, 2009, Goldman issued a press release titled "Goldman Sachs Responds to The New York Times on Synthetic Collateralized Debt Obligations." In response to *The New York Times* article, Goldman made improper statements that misled the public as to Goldman's involvement in the CDO transactions it brokered. Goldman 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.

52. On January 21, 2010, Goldman reported its fourth quarter and year ended December 31, 2009 results in a press release which emphasized the Company's focus on 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.”

53. Also on January 21, 2010, the defendants held a conference call with analysts. On the conference call, defendant Viniar improperly stated that:

Many of our core beliefs were also confirmed over the past two years, principally the importance of our client franchise, employees, reputation and our long-term focus on creating shareholder value. These tenets are encapsulated in the Firm’s first three business principles, and they remain as relevant today as they did when they were written over three decades ago.

Defendant Viniar went on to state that:

And I would also tell you *if people are focused on things that caused or were real contributors to the crisis, it wasn’t traded*. Most trading results were actually pretty good, not just at Goldman Sachs, but at most firms, and that is not really where the problems were.

54. On March 1, 2010, Goldman filed its Form 10-K with the SEC for the year ended December 31, 2009. Defendants Blankfein, Bryan, Cohn, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, Simmons, and Viniar signed the Form 10-K. The Form 10-K disclosed that the Company “received requests for information ... relating to subprime mortgages, and securitizations, collateralized debt obligations and synthetic products related to subprime mortgages.” However, the Form 10-K did not state the seriousness of those inquiries or that the Company had received a Wells notice from the SEC. Instead, the defendants decided to mislead the public and state the Company is “client-driven” even though it failed to disclose to ACA that Paulson played a significant role that influenced the mortgages in Abacus 2007-AC1. In the Form 10-K the defendants stated that:

In our client-driven businesses, FICC [Fixed Income, Currency and Commodities] and Equities strike 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.

55. On or about April 7, 2010, Goldman issued its 2009 Annual Report to Shareholders. Included in the report was a letter to shareholders signed by Blankfein and Cohn which stated in part:

The firm's focus on staying close to our clients and helping them to navigate uncertainty and achieve their objectives is largely responsible for what proved to be a year of resiliency across our businesses and, by extension, a strong performance for Goldman Sachs....

* * *

As part of our trading with AIG, we purchased from them protection on super-senior collateralized debt obligation (CDO) risk. This protection was designed to hedge equivalent transactions executed with clients taking the other side of the same trades. In so doing, we served as an intermediary in assisting our clients to express a defined view on the market. The net risk we were exposed to was consistent with our role as a market intermediary rather than a proprietary market participant.

* * *

Through the end of 2006, Goldman Sachs generally was long in exposure to residential mortgages and mortgage-related products, such as residential mortgage-backed securities (RMBS). CDOs backed by residential mortgages and credit default swaps referencing residential mortgage products. In late 2006, we began to experience losses in our daily residential mortgage-related products P&L as we market downed the value of our inventory of various residential mortgage-related products to reflect lower market prices.

In response to those losses, we decided to reduce our overall exposure to the residential housing market, consistent with our risk protocols — given the uncertainty of the future direction of prices in the housing market and the increased market volatility. *The firm did not generate enormous net revenues or profits by betting against residential mortgage-related products, as some have speculated;* rather, our relatively early risk reduction resulted in our losing less money than we otherwise would have when the residential housing market began to deteriorate rapidly.

The markets for residential mortgage-related products, and subprime mortgage securities in particular, were volatile and unpredictable in the first half of 2007. Investors in these markets held very different views of the future direction of the U.S. housing market based on their outlook on factors that were equally available to all market participants, including housing prices, interest rates and personal income and indebtedness data

The investors who transacted with Goldman Sachs in CDOs in 2007, as in prior years, were primarily large, global financial institutions, insurance companies

and hedge funds (no pension funds invested in these products, with one exception: a corporate-related pension fund that had long been active in this area made a purchase of less than \$5 million). These investors had significant resources, relationship with multiple financial intermediaries and access to extensive information and research flow, performed their own analysis of the data, formed their own views about trends, and many actively negotiated at arm's length the structure and terms of transactions.

* * *

Although Goldman Sachs held various positions in residential mortgage-related products in 2007, our short positions were not a “bet against our clients.” Rather, they served to offset our long positions. Our goal was, and is, to be in a position to make markets for our clients while managing our risk within prescribed limits.

THE TRUTH IS REVEALED

56. On April 16, 2010, the SEC filed civil charges against Goldman and Tourre alleging that Goldman had sold mortgage investments without telling the buyer that the securities were crafted with input from Paulson who was betting that the securities would decrease in value. The investors lost nearly \$1 billion while Paulson was able to capitalize on the housing market bust.

57. The SEC is seeking to impose unspecified civil fines against Goldman and Tourre. The SEC says that Paulson paid Goldman approximately \$15 million in 2007 to devise an investment tied to RMBS that the hedge fund viewed as likely to decline in value. The fraud allegations focus on how Goldman sold the securities. Goldman told investors that a third party, ACA, had selected the pools of subprime mortgages it used to create the securities. The SEC alleges that Goldman misled investors by failing to disclose that Paulson also played a role in selecting the mortgage bundles and stood to profit from its decline in value. According to the SEC Action, investors in the CDO lost about \$1 billion while Paulson made a profit of about \$1 billion.

58. Included in the SEC Action is an email from Tourre demonstrating that there was an intent to deceive Abacus 2007-AC1 investors. The email stated “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 monstrosities!!!”

59. On April 16, 2010, a Bank of America Merrill Lynch analyst stated that:

This is clearly a serious charge..... The total alleged losses of \$1bn would, if they were the basis of a settlement, be about \$1/ share.

...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 and for the industry more broadly.

* * *

Potential Settlement amount probably manageable, but reputational hit harder to measure

The case states that GS received a \$15 mm structuring fee and that Paulson earned, and investors lost, about \$1 bn. The extent of GS' direct financial exposure would thus seem to be about \$1bn, or around \$1 per share, assuming a judgment or (more likely in our view) settlement with the SEC were tax-deductible. **However, the 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.

60. Analysts also questioned whether the Abacus 2007-AC1 is the only CDO that had disclosure issues. An April 16,2010, Citi Investment Research & Analysis analyst stated that: "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." An April 16, 2010, Oppenheimer & Co. analyst report stated that "we believe that GS is probably vulnerable to more charges and outsized fines." A UBS Investment Research analyst was also concerned whether this is just the "tip of the iceberg." The analyst stated "One-off or is this the tip of the iceberg? While this complaint refers to a single transaction, we think there could be others."

61. On April 19,2010, *The Guardian* reported that even Bear Stearns saw that creating a CDO at the behest of Paulson and that Paulson would then short would subject them to a "reputation issue." *The Guardian* stated:

It is fascinating to learn that Bear Stearns turned down the opportunity to work with Paulson. The ill-fated investment bank decided that bringing more mortgage-backed securities into the world, just so that Paulson could bet on their toxicity, was a "reputation issue". It did not wish to sell an investment to clients without telling them that a bearish hedge fund had inspired the creation.

62. On April 17,2010, the AP reported that the German government may consider taking legal action against Goldman. IKB stood as a buyer of Abacus 2007-AC1 and was rescued by

German state-owned KfW development bank. On April 20, 2010, as a result of the Individual Defendants misdeeds related to CDOs, Great Britain's Financial Services Authority opened an inquiry into the Company subjecting it to further liability and costs.

63. On April 24, 2010, the Senate Permanent Subcommittee on Investigations issued a press release stating that it would be investigating Goldman's role in the financial crisis. In the press release, United States Senator Carl Levin stated:

"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." The 2009 Goldman Sachs annual report stated that the firm "did not generate enormous net revenues by betting against residential related products."... "These emails show that, in fact, Goldman made a lot of money by betting against the mortgage market.

64. The press release also contained four Goldman internal emails related to the RMBS and CDO transactions. An email from defendant Blankfein stated that Goldman had come out ahead of the mortgage crisis. The email stated that "we lost money, then made more than we lost because of shorts."

REASONS THE STATEMENTS WERE IMPROPER

65. Goldman's improper statements failed to disclose and misrepresented the following material adverse facts, which the Individual Defendants knew, consciously disregarded, or were reckless and grossly negligent in not knowing:

(a) the Company had received a Wells notice and the SEC would file a civil action against the Company about the Company's involvement in Abacus 2007-AC1; and

(b) the Company bet against its clients.

DAMAGES TO GOLDMAN CAUSED BY THE INDIVIDUAL DEFENDANTS

66. As a result of the Individual Defendants' improprieties, Goldman disseminated improper statements concerning its business prospects as alleged above. These improper statements

have devastated Goldman's credibility as reflected by the Company's \$12.4 billion, or 12.7%, market capitalization loss in a single day.

67. Further, as a direct and proximate result of the Individual Defendants' actions, Goldman has expended and will continue to expend significant sums of money. Such expenditures include, but are not limited to:

- (a) costs incurred from the defense and liability faced in the SEC Action;
- (b) costs incurred from damage to the Company's reputation;
- (c) costs incurred from the defense of the investigation by the Financial Services Authority into Goldman's London subsidiary; and
- (d) costs incurred from compensation and benefits paid to the defendants who have breached their duties to Goldman.

68. Moreover, these actions have irreparably damaged Goldman's corporate image and goodwill. For at least the foreseeable future, Goldman will suffer from what is known as the "liar's discount," a term applied to the stocks of companies who have been implicated in illegal behavior and have misled the investing public, such that Goldman's ability to raise equity capital or debt on favorable terms in the future is now impaired.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

69. Plaintiff brings this action derivatively in the right and for the benefit of Goldman to redress injuries suffered, and to be suffered, by Goldman as a direct result of breaches of fiduciary duty, waste of corporate assets, and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. Goldman is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

70. Plaintiff will adequately and fairly represent the interests of Goldman in enforcing and prosecuting its rights.

71. Plaintiff was a shareholder at the time of the continuing wrong complained of and remains a shareholder. The continuing wrong included the issuance of improper statements about

the Company's bets against its clients' interests and failure to disclose that the Company received a Wells notice and was being investigated by the SEC.

72. The current Board of Goldman consists of the following twelve individuals: defendants Blankfein, Cohn, Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, Simmons, and Schiro.

73. As alleged above, defendant Blankfein, Cohn, Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, Simmons, and Schiro, breached their fiduciary duties of loyalty and good faith by making improper statements regarding Goldman's statements that it put its client's interests first, did not stand on both sides of transactions, and failure to disclose a Wells notice from the SEC.

74. The SEC's investigation and inquiries are something that must go to the Board level. If the Board was unaware of the SEC investigations and inquiries, then the Board acted in bad faith in not creating a reporting structure that would bring the SEC investigations to its attention. According to the *Washington Post*, the SEC and Goldman were engaged in discussions of a possible settlement for months before the SEC filed its action. SEC officials stated that they told Goldman during the Summer of 2009 that an action was likely. Additionally, the SEC informed Goldman in writing in March 2010 that it was planning to bring an action. Due to the seriousness of the SEC's allegations, the past statements of the Company's executives and that the SEC stood ready to file an action, the Board had a duty to disclose that Goldman was under investigation and that it received a Wells notice. In fact, during a conference call on April 20, 2010, Goldman's General Counsel Gregory Palm stated that, "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." Thus, the Board was well aware investigations and other regulatory matters are material information that must be disclosed to the Company's shareholders. Nevertheless, the Board approved disclosures that omitted this material information and approved or allowed Goldman to make additional misleading statements about its role in CDO transactions. Such actions could not be the result of a fully-informed good faith decision, and therefore does not receive the protection of the

business judgment rule, excusing a demand. In addition, the Board members face a substantial likelihood of liability due to their roles in misleading the Company's shareholders and violating federal securities law. Accordingly, demand is futile as to the entire Board.

75. Defendants Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, and Schiro (the "Audit Committee Defendants") were members of the Audit Committee. The Audit Committee's charter provides that it is responsible for reviewing and approving earnings press releases and annual financial statements files with the SEC. Thus, the Audit Committee Defendants were responsible for overseeing and directly participating in the dissemination of Goldman improper press releases and financial statements. Despite their knowledge, the Audit Committee Defendants approved the dissemination of the improper statements alleged above. In doing so, the Audit Committee Defendants breached their fiduciary duty of loyalty and good faith because they participated in the preparation of earnings press releases and financial statements that contained improper information. The Audit Committee Defendants now face a substantial likelihood of liability for their breach of fiduciary duties, making any demand upon them is futile.

76. The principal professional occupation of defendant Blankfein is his employment with Goldman, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits as alleged above. Accordingly, defendant Blankfein lacks independence from the remaining Director Defendants due to his interest in maintaining his executive positions at Goldman. This lack of independence renders defendant Blankfein incapable of impartially considering a demand to commence and vigorously prosecute this action. Goldman paid defendant Blankfein the following compensation:

Fiscal Year	Salary	All Other Compensation
2009	\$600,000	\$262,657

Accordingly, defendant Blankfein is incapable of impartially considering a demand to commence and vigorously prosecute this action because he has an interest in maintaining his principal occupation and the substantial compensation he receives in connection with that occupation. Demand is futile as to defendant Blankfein.

77. The principal professional occupation of defendant Cohn is his employment with Goldman, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits as alleged above. Accordingly, defendant Cohn lacks independence from the remaining Director Defendants due to his interest in maintaining his executive positions at Goldman. This lack of independence renders defendant Cohn incapable of impartially considering a demand to commence and vigorously prosecute this action. Goldman paid defendant Cohn the following compensation:

Fiscal Year	Salary	All Other Compensation
2009	\$600,000	\$225,156

Accordingly, defendant Cohn is incapable of impartially considering a demand to commence and vigorously prosecute this action because he has an interest in maintaining his principal occupation and the substantial compensation he receives in connection with that occupation. Demand is futile as to defendant Cohn.

78. Defendant Bryan sold Goldman stock under highly suspicious circumstances. Defendant Bryan as a director, possessed material, nonpublic company information and used that information to benefit himself. Defendant Bryan sold stock based on his knowledge of material, nonpublic Company information regarding the impending action by the SEC and the impending decrease in the value of his holdings of Goldman. While in possession of material non-public information concerning Goldman's true business health, defendant Bryan sold 6,000 of his Goldman shares for \$932,220 in proceeds. Accordingly, defendant Bryan faces a substantial likelihood of liability for breach of his fiduciary duty of loyalty. Any demand upon defendant Bryan is futile.

79. According to reports, defendant Gupta is being examined by federal prosecutors relating to the Galleon hedge-fund founder Raj Rajaratnam's insider trading. In particular, the *Wall Street Journal* reported that Gupta told Mr. Rajaratnam about Warren Buffet's impending \$5 billion investment in Goldman before the deal was announced. Defendant Gupta has a duty to the Company to withhold sharing information for the benefit of a third party to trade on material, nonpublic Company information. Gupta will not vote to initiate litigation against the Board knowing that it might reveal further details of his illegal and improper acts concerning Galleon or that it might

provoke Board members into initiating its own litigation against him. Thus, any demand upon defendant Gupta is futile.

80. Certain defendants are not independent because of their interrelated business, professional and personal relationships, have developed debilitating conflicts of interest that prevent the Board members of the Company from taking the necessary and proper action on behalf of the Company as requested herein. Specifically, the defendants listed below, are subject to the following prejudicial entanglements:

(a) Defendants Blankfein, Schiro, and Gupta serve on the advisory board to Tsinghua University. These common directorships and loyalties prevent defendants Blankfein, Schiro, and Gupta from bringing causes of action against each other; and

(b) Defendant Friedman and Johnson serve on the board of The Brookings Institution. These directorships and loyalties prevent defendants Friedman and Johnson from bringing causes of action against each other.

81. Defendants Bryan, Johnson, Gupta, Friedman, Juliber, and Simmons are non-employee directors that have excessive financial relationships with the private Goldman Sachs Foundation (the "Foundation"), which is controlled by Blankfein, the Chairman and CEO of the Company. The Foundation is a New York not-for-profit corporation. The Foundation is funded by the Company. The Foundation is an exempt organization under 26 U.S.C. §501 (c)(3). Defendants Bryan, Johnson, Gupta, Friedman, and Juliber are all board members of entities that rely on donations. As a result of the Foundation's donations, defendants Bryan, Johnson, Gupta, Friedman, Juliber, and Simmons have all been assisted in their fund raising responsibilities directly by the Foundation and indirectly by Goldman. The Foundation's contributions to their fund raising responsibilities were material. The SEC views a contribution for each director to be material if it equals or exceeds \$10,000 per year. 17 C.F.R. § 229.402(k)(2)(vii) and Instruction 3 thereto.

82. Defendant Bryan is a life trustee of the University of Chicago, to which the Foundation donated \$200,000 in 2006 and allocated another \$100,000 in 2007. As a trustee of the University, it is part of his job to raise money for it. These strong personal and financial ties raise

reasonable doubts as to whether he can fairly and objectively consider a demand to sue Blankfein without being conflicted in his loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Bryan.

83. Defendant Johnson is beholden to Blankfein for Goldman's past and future gifts to The Brookings Institution. The Foundation donated \$100,000 to The Brookings Institution in 2006 and \$50,000 in 2007. These strong personal and financial ties raise reasonable doubts as to whether he can fairly and objectively consider a demand to sue Blankfein without being conflicted in his loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Johnson.

84. Defendant Gupta is chairman of the board for the Indian School of Business in Hyderabad, India, member of the advisory board of Tsinghua University School of Economics and Management, and as a member of the United Nations Commission on the Private Sector and Development, as special adviser to the UN Secretary General on UN Reform. Gupta is conflicted due to Blankfein causing Goldman to donate to these various organizations. In particular, the Foundation has donated at least: (i) \$1,600,000 to the Friends of the Indian School of Business; (ii) \$2,500,000 to the Friends of Tsinghua School of Economics and Management; and (iii) \$1,000,000 to the Model UN program. These strong personal and financial ties raise reasonable doubts as to whether he can fairly and objectively consider a demand to sue Blankfein without being conflicted in his loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Gupta.

85. Defendant Friedman is an emeritus trustee of Columbia University. The Foundation donated \$890,000 to Columbia University. These strong personal and financial ties raise reasonable doubts as to whether he can fairly and objectively consider a demand to sue Blankfein without being conflicted in his loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Friedman.

86. Defendant Juliber is on the board of Girls Incorporated. In 2006 and 2007, the Foundation donated \$200,000 each year to Girls Incorporated, for a total of \$400,000. These strong

personal and financial ties raise reasonable doubts as to whether she can fairly and objectively consider a demand to sue Blankfein without being conflicted in her loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Juliber.

87. Defendant Simmons is the President of Brown University. In 2006 and 2007, the Foundation donated \$100,000 each year to Brown University, for a total of \$200,000. These strong personal and financial ties raise reasonable doubts as to whether she can fairly and objectively consider a demand to sue Blankfein without being conflicted in her loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Simmons.

88. Moreover, the acts complained of constitute violations of the fiduciary duties owed by Goldman's officers and directors and these acts are incapable of ratification.

89. Each of the defendant directors of Goldman authorized and/or permitted the improper statements disseminated directly to the public or made directly to securities analysts and which were made available and distributed to shareholders, authorized and/or permitted the issuance of various of the improper statements and are principal beneficiaries of the wrongdoing alleged herein, and thus could not fairly and fully prosecute such a suit even if such suit was instituted by them.

90. Goldman has been and will continue to be exposed to significant losses due to the wrongdoing complained of herein, yet the Individual Defendants and current Board have not filed any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt to recover for Goldman any part of the damages Goldman suffered and will suffer thereby.

91. If Goldman's current and past officers and directors are protected against personal liability for their acts of mismanagement and breach of fiduciary duty alleged in this complaint by directors' and officers' liability insurance, they caused the Company to purchase that insurance for their protection with corporate funds, *i.e.*, monies belonging to the stockholders of Goldman. However, the directors' and officers' liability insurance policies covering the defendants in this case contain provisions that eliminate coverage for any action brought directly by Goldman against these defendants, known as the "insured versus insured exclusion." As a result, if these directors were to cause Goldman to sue themselves or certain of the officers of Goldman, there would be no directors'

and officers' insurance protection and thus, this is a further reason why they will not bring such a suit. On the other hand, if the suit is brought derivatively, as this action is brought, such insurance coverage exists and will provide a basis for the Company to effectuate recovery. If there is no directors' and officers' liability insurance, then the current directors will not cause Goldman to sue the defendants named herein, since they will face a large uninsured liability and lose the ability to recover for the Company from the insurance.

92. Moreover, despite the Individual Defendants having knowledge of the claims and causes of action raised by plaintiff, the current Board has failed and refused to seek to recover for Goldman for any of the wrongdoing alleged by plaintiff herein.

93. Plaintiff has not made any demand on the other shareholders of Goldman to institute this action since such demand would be a futile and use less act for at least the following reasons:

(a) Goldman is a publicly held company with over 526.8 million shares outstanding, and thousands of shareholders;

(b) making a demand on such a number of shareholders would be impossible for plaintiff who has no way of finding out the names, addresses or phone numbers of shareholders; and

(c) making demand on all shareholders would force plaintiff to incur huge expenses, assuming all shareholders could be individually identified.

COUNT I

Against Defendants Blankfein, Cohn, and Viniar for Breach of Fiduciary Duties of Care and Loyalty

94. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

95. The wrongful conduct alleged includes the issuance of improper statements about the Company's bets against its clients' interests and failure to disclose that the Company received a Wells notice and was being investigated by the SEC. The wrongful conduct was continuous, connected, and was ongoing throughout the applicable time period. It resulted in continuous connected and ongoing harm to the Company.

96. Defendants Blankfein, Cohn, and Viniar owed and owe Goldman fiduciary obligations. By reason of their fiduciary relationships, these defendants owed and owe Goldman the highest obligation of due care and loyalty and good faith.

97. Defendants Blankfein, Cohn, and Viniar violated and breached their fiduciary duties of care and loyalty by making improper statements by stating that the Company was not standing on both sides of transactions with its customers and for failure to disclose that the Company had received a Wells notice from the SEC.

98. Defendants Blankfein, Cohn, and Viniar's actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

99. As a direct and proximate result of defendants Blankfein, Cohn, and Viniar's failure to perform their fiduciary obligations, Goldman has sustained significant damages. As a result of the misconduct alleged herein, these defendants are liable to the Company.

100. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

COUNT II

Against the Audit Committee Defendants for Breach of Fiduciary Duties of Loyalty for Dissemination of False and Misleading Statements

101. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

102. The wrongful conduct alleged includes the issuance of improper statements about the Company's bets against its clients' interests and failure to disclose that the Company received a Wells notice and was being investigated by the SEC. The wrongful conduct was continuous, connected, and was ongoing throughout the applicable time period. It resulted in continuous connected and ongoing harm to the Company.

103. Plaintiff was a shareholder at the time of the continuing wrong complained of and remains a shareholder. The continuing wrong included the issuance of improper statements about the Company's bets against its clients' interests and failure to disclose that the Company received a Wells notice and was being investigated by the SEC.

104. The Audit Committee Defendants, defendants Bryan, Dahlbäck, Friedman, George,

Gupta, Johnson, Juliber, Mittal, and Schiro owed and owe Goldman fiduciary obligations. Additionally, the Audit Committee Defendants owed specific duties under the Audit Committee Charter in effect during times relevant hereto to review and discuss Goldman's earnings press releases and financial results. By reason of their fiduciary relationships, these defendants owed and owe Goldman the highest obligation of loyalty, fair dealing, and good faith.

105. The Audit Committee Defendants violated and breached their fiduciary duties of loyalty, reasonable inquiry, oversight, good faith, and supervision by knowingly or recklessly reviewing and approving improper statements included in Goldman's earnings press releases and financial filings. As alleged above, these statements improperly stated and/or omitted to state that Goldman stood on both sides of its client's transactions, failed to disclose that it received a Wells notice from the SEC, and failed to disclose material information to its clients exposing it to significant liability. These statements were improper, however, because Goldman faced a substantial risk from increased regulation and oversight by regulatory authorities for the credit market crisis.

106. The Audit Committee Defendants' wrongful conduct could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

107. As a direct and proximate result of the Audit Committee Defendants' failure to perform their fiduciary obligations, Goldman has sustained significant damages. As a result of the misconduct alleged herein, the Audit Committee Defendants are liable to the Company.

COUNT III

Against Defendants Blankfein, Cohn, Bryan, Johnson, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, Simmons, and Schiro for Breach of the Fiduciary Duties of Loyalty

108. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

109. The wrongful conduct alleged includes the issuance of improper statements about the Company's bets against its clients' interests and failure to disclose that the Company received a Wells notice and was being investigated by the SEC. The wrongful conduct was continuous, connected,

and was ongoing throughout the applicable time period. It resulted in continuous connected and ongoing harm to the Company.

110. Defendants Blankfein, Cohn, Bryan, Johnson, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, Simmons, and Schiro owed and owe Goldman fiduciary obligations. By reason of their fiduciary relationships, these defendants owed and owe Goldman the highest obligation of loyalty, fair dealing and good faith.

111. Defendants Blankfein, Cohn, Bryan, Johnson, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, Simmons, and Schiro violated and breached their fiduciary duties by knowingly and/or recklessly making improper statements regarding Goldman's exposure to the SEC Action, failing to disclose a Wells notice it received, and for improper statements that it did not stand on both sides of transactions with its clients.

112. Defendants Blankfein, Cohn, Bryan, Johnson, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, Simmons, and Schiro's wrongful conduct could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

113. As a direct and proximate result of defendants Blankfein, Cohn, Bryan, Johnson, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, Simmons, and Schiro's failure to perform their fiduciary obligations, Goldman has sustained significant damages. As a result of the misconduct alleged herein, these defendants are liable to the Company.

114. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

COUNT IV

Against All Defendants for Waste of Corporate Assets

115. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

116. The wrongful conduct alleged includes the issuance of improper statements about the Company's bets against its clients' interests and failure to disclose that the Company received a Wells notice and was being investigated by the SEC. The wrongful conduct was continuous, connected, and was ongoing throughout the applicable time period. It resulted in continuous connected and ongoing harm to the Company.

117. As a result of the misconduct described above, the Individual Defendants wasted corporate assets: (i) by making improper statements that failed to disclose they were on both sides of their clients' transactions and that the Company had received a Wells notice from the SEC; (ii) by failing to properly consider the interests of the Company and its public shareholders; (iii) by failing to conduct proper supervision; (iv) by paying undeserved incentive compensation to certain of its executive officers; and (v) by incurring potentially hundreds of millions of dollars of legal liability and/or legal costs to defend defendants' unlawful actions.

118. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

119. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

COUNT V

Against All Individual Defendants for Unjust Enrichment

120. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

121. The wrongful conduct alleged includes the issuance of improper statements about the Company's bets against its clients' interests and failure to disclose that the Company received a Wells notice and was being investigated by the SEC. The wrongful conduct was continuous, connected, and was ongoing throughout the applicable time period. It resulted in continuous connected and ongoing harm to the Company.

122. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Goldman. The Individual Defendants were unjustly enriched as a result of the compensation and director remuneration they received while breaching fiduciary duties owed to Goldman.

123. Plaintiff, as a shareholder and representative of Goldman, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

124. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands for a judgment as follows:

A. Against all of the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties, waste of corporate assets, and unjust enrichment;

B. Directing Goldman to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Goldman and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote, resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote the following Corporate Governance Policies:

1. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;
2. a provision to permit the shareholders of Goldman to nominate at least three candidates for election to the Board;
3. a provision to create a Board committee to monitor conflicts of interests in financial transactions;
4. a provision to require the Board to disclose that the Company received a Wells notice and the substance of the Wells notice; and
5. a proposal to strengthen Goldman's oversight of its disclosure procedures.

C. Extraordinary equitable and/or injunctive relief as permitted by law, equity and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on or otherwise restricting defendants' assets so as to assure that plaintiff on behalf of Goldman has an effective remedy;

D. Awarding to Goldman restitution from the defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the defendants;

- E. Awarding to plaintiff reasonable attorneys' fees, consultant and expert fees, costs and expenses; and
- F. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: April 26, 2010

LAW OFFICES OF THOMAS G. AMON
THOMAS G. AMON

/s/ Thomas G. Amon
THOMAS G. AMON (TGA-1515)

250 West 57th Street, Suite 1316
New York, NY 10107
Telephone: (212) 810-2430
Facsimile: (212) 810-2427

HOLZER HOLZER & FISTEL LLC
MICHAEL I. FISTEL
MARSHALL DEES
200 Ashford Center North, Suite 300
Atlanta, GA 30338
Telephone: (770) 392-0090
Facsimile: (770) 392-0029

Attorneys for Plaintiff

VERIFICATION

I, Hal Hubuschman, hereby declare as follows:

I am a shareholder of The Goldman Sachs Group, Inc. I was a shareholder at the time of the wrongdoing complained of and I remain a shareholder. I have retained competent counsel and I am ready, willing and able to pursue this action vigorously on behalf of The Goldman Sachs Group, Inc. I have reviewed the Verified Shareholder Derivative Complaint For Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment. Based upon discussions with and reliance upon my counsel, and as to those facts of which I have personal knowledge, the Verified Shareholder Derivative Complaint For Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment is true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Signed and Accepted:

Date: April 26, 2010

/s/ Hal Hubuschman

Hal Hubuschman

JUDGE CASTEL ORIGINAL
10 CV 3505

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARGARET C. RICHARDSON, :
derivatively on behalf of THE GOLDMAN : Civil Action No.
SACHS GROUP, INC. :
:

Plaintiff, :

v. :

LLOYD C. BLANKFEIN, GARY D. :
COHN, JOHN H. BRYAN, CLAES :
DAHLBACK, STEPHEN FRIEDMAN, :
WILLIAM W. GEORGE, RAJAT K. :
GUPTA, JAMES A. JOHNSON, LOIS D. :
JULIBER, LAKSHMI N. MITTAL, :
JAMES J. SCHIRO, FABRICE TOURRE, :
DAVID A. VINIAR, JONATHAN EGOL, :
PABLO SALAME, RUTH J. SIMMONS, :
ESTA E. STECHER, J. MICHAEL :
EVANS, MICHAEL S. SHERWOOD, and :
SARAH E. SMITH, :

JURY TRIAL DEMANDED

Defendants, :

and :

THE GOLDMAN SACHS GROUP, INC.,
Nominal Defendant.

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

1. Plaintiff Margaret C. Richardson (“Plaintiff”), by and through her undersigned attorneys, hereby submits this Verified Shareholder Derivative Complaint (the “Complaint”) for the benefit of nominal defendant The Goldman Sachs Group, Inc. (“Goldman” or the “Company”) against certain current and/or former members of its Board of Directors (the “Board”) and executive officers seeking to remedy defendants’ breaches of fiduciary duties and unjust enrichment from 2007 to the present (the “Relevant Period”).

NATURE OF THE ACTION

2. This is a shareholder derivative action based on defendants’ breaches of fiduciary

duty and other misconduct in connection with a synthetic collateralized debt obligation (“CDO”) defendants caused Goldman to structure and market to investors, which eventually led to the prosecution of the Company by the U.S. Securities and Exchange Commission (the “SEC”).

3. This synthetic CDO, ABACUS 2007-AC1, was tied to the performance of subprime residential mortgage-backed securities (“RMBS”) and was structured and marketed by defendants in early 2007, when the U.S. housing market and related securities were beginning to show signs of distress. Synthetic CDOs such as ABACUS 2007-AC1 contributed to the recent financial crisis by magnifying losses associated with the downturn in the U.S. housing market.

4. Defendants’ 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 ABACUS 2007-AC1, played a significant role in the portfolio selection process. In fact, Paulson was designing the portfolio to *decrease* in value, as it was planning on “shorting” this synthetic CDO.

5. 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 Goldman 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. Defendants 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.

6. In sum, defendants 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, 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.

7. The SEC has alleged that one Goldman employee, defendant Fabrice Tourre ("Tourre"), was principally responsible for ABACUS 2007-AC1. It has been alleged that Tourre devised the transaction, prepared the marketing materials, and communicated directly with investors. Defendant Tourre knew of Paulson's undisclosed short interest and its role in the collateral selection process. Defendant 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.

8. The deal closed on April 26, 2007. Paulson paid Goldman 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 ABACUS 2007-AC1 lost over **\$1 billion**. Meanwhile, Paulson's opposite CDS positions yielded a profit of approximately \$1 billion for Paulson.

9. Defendants, including the Board, knew that as a result of these events, in July 2009, the Company received a Wells Notice¹ from the SEC. Critically, defendants concealed the

¹ A Wells Notice is a letter that the SEC sends to firms (or individuals) when it is planning to bring an enforcement action against them. The Wells Notice indicates that the SEC staff has determined it may bring a civil action against a firm or person.

existence of the Wells Notice and/or the SEC's investigation from the public for eight months — indeed; defendants did not disclose that the SEC had served Goldman with a Wells Notice until after the SEC ultimately filed a lawsuit against Goldman on April 16, 2010.

10. While defendants (but not the public) knew of the Wells Notice issued to Goldman, certain of them, including Esta E. Stecher (“Stecher”), Goldman's co-General Counsel, and John H. Bryan (“Bryan”), a Board member, took advantage of their possession of material, adverse, non-public information and collectively sold approximately **\$65.4 million** worth of Goldman shares between October 2009 and February 2010. As the *Wall Street Journal* (the “*Journal*”) reported on April 24, 2010, this was **“the most active spate of insider selling [at Goldman] in three years.”**

11. As the *Journal* revealed in an article entitled “Insiders Sold Shares As SEC Probed Firm”:

Five senior executives of Goldman Sachs Group Inc., including the firm's co-general counsel, sold \$65.4 million worth of stock after the firm received notice of possible fraud charges, which later drove its stock down 13%.

Sales by three of the five Goldman insiders occurred at prices higher than the stock's current level. The stock sales by co-general counsel Esta Stecher, vice chairmen Michael Evans and Michael Sherwood, principal accounting officer Sarah Smith and board member John Bryan occurred between October 2009 and February 2010. ***It was the most active spate of insider selling in three years,*** according to InsiderScore.com in Princeton, N.J., which tracks and analyzes purchases and sales of stocks by top executives and directors.

Goldman received notice of the possible charges last July, but didn't publicly disclose that fact, later explaining that it didn't consider such a notice material information investors would have needed to value the stock. A week ago, on April 16, the Securities and Exchange Commission filed civil-fraud charges against Goldman for failing to disclose that a short seller, Paulson & Co., participated in selection of assets in a pool tied to subprime mortgages.

The charges drove Goldman stock down from a closing price of \$184.27 on April 15 to \$160.70 on April 16. The stock hasn't recovered any of the first-day loss. It closed out the week at \$157.40 in 4 p.m. trading on the New York Stock Exchange.

* * *

Messrs. Bryan and Sherwood and Ms. Stecher sold some or all of their shares after exercising options to buy at lower prices that would have expired between November 2010 and November 2012.

Ms. Smith sold 16,129 shares on Oct. 16 for \$3 million at \$186.57 a share, according to InsiderScore.com.

Mr. Sherwood sold shares between Nov. 13 and 24 for \$31.9 million, or \$174.65 a share, InsiderScore.com said. Mr. Evans sold shares between Nov. 23 and 27 for \$23.7 million, or \$169.56 a share. Ms. Stecher sold shares on Feb. 8 and 26 for \$5.8 million, or \$153.38 a share. And Mr. Bryant sold shares on Feb. 18 for \$932,223, or \$155.37 a share.

Mr. Sherwood, co-chief executive of Goldman Sachs International in London and Mr. Evans, chairman of Goldman Sachs Asia in Hong Kong, are on the Goldman management committee with Ms. Stecher.

Ben Silverman, director of research at InsiderScore.com, said *the insider selling since October “was the most aggressive” at Goldman in three years*, since late 2006 through early 2007.

12. On December 23, 2009 (four months after the SEC issued a Wells Notice to Goldman, which defendants had not disclosed), The *New York Times* published an article entitled “Banks Bundled Bad Debt, Bet Against It and Won,” which specifically “outed” defendants’ breaches of fiduciary duties and bets against Goldman’s clients, and particularly in connection with the ABACUS deals. The *Times* article stated, in pertinent part:

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."*

* * *

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.

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.

[Jonathan] 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.

13. In response to the *New York Times*' December 23, 2009 article, defendants caused the Company to issue a press release the next day (December 24, 2009) specifically denying any wrongdoing by any Goldman personnel entitled "Goldman Sachs Responds to The *New York Times* on Synthetic Collateralized Debt Obligations." Notably, the Board conducted no internal

investigation into the matters raised by the December 23, 2009 *New York Times* article (nor caused such an internal investigation to take place) before or after issuing this blanket denial of wrongdoing.

14. Perhaps worse still (particularly in light of the fact that the *New York Times* had now revealed that multiple governmental and regulatory investigations, including one by the SEC, had begun), in addition to denying any misconduct at Goldman, the Board chose to continue to conceal that the Company had received a Wells Notice months earlier, or that the SEC was investigating misconduct at Goldman. Defendants' press release stated, in relevant part:

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.

15. Several months later, on or about April 7, 2010, in a letter to Goldman shareholders published as part of the Company's Annual Report on Form 10-K, defendants Lloyd Blankfein ("Blankfein"), Goldman's Chairman and Chief Executive Officer ("CEO"), and Gary D. Cohn ("Cohn"), the Company's President and Chief Operating Officer ("COO") again denied any wrongdoing. Specifically, Blankfein and Cohn stated: "Although Goldman Sachs held various positions in residential mortgage-related products in 2007, our short positions were not a 'bet against our clients.'"

16. This was a lie. As the *New York Times* would later report in an article entitled "Goldman Cited 'Serious' Profits On Mortgages" published on April 24, 2010, certain of the

defendants (and other top Goldman insiders), including Blankfein, Cohn, and David A. Viniar (“Viniar”), the Company’s Chief Financial Officer (“CFO”), traded e-mail messages in 2007 saying, among other things, that they would make “some serious money” betting against the housing markets. These emails, as noted by the *New York Times*, “**contradict statements by Goldman that left the impression that the firm lost money on mortgage-related investments.**”

17. A little over a week after defendants specifically denied that Goldman personnel had placed bets against the Company’s own clients, on April 16, 2010, the SEC filed a civil action against Goldman and defendant Tourre in this Court captioned *Securities and Exchange Commission v. Goldman Sachs & Co. and Fabrice Tourre*, Case No. 1:10-cv-03229-BSJ (the “SEC Action”). The SEC Action charged Goldman and Tourre with defrauding investors by misstating and omitting key facts about the products described herein.

18. Later that day, in a hastily-assembled press release, Defendants (including the Board) once again, as usual, flatly denied the SEC’s allegations or any allegations of wrongdoing at Goldman. Specifically, Defendants defiantly claimed that “[t]he SEC’s charges are completely unfounded in law and fact and we will vigorously contest them and defend the firm and its reputation.” Further, Defendants arrogantly added that “[they] are disappointed that the SEC would bring this action.”

19. Immediately following the filing of the SEC Action, the price of the Company’s stock fell 13% from \$184.27 per share to close at \$160.70 per share on April 16, 2010. This represented a one-day market capitalization loss of over **\$10 billion**.

20. The news for Goldman and its stockholders has only continued to worsen in the wake of the filing of the SEC Action as the financial press got a hold of the story and investigated further.

21. For instance, in a April 17, 2010 article entitled “For Goldman, a Bet’s Stakes Keep Growing,” the *New York Times* reported that, according to former Goldman employees, “[a]s the housing market began to fracture in 2007, senior Goldman executives began overseeing the mortgage department closely...[and] routinely visited the unit. Among them were David A. Viniar, the chief financial officer; Gary D. Cohn, then the co-president; and Pablo Salome, a sales and trading executive, these former employees said. Even Goldman’s chief executive, Lloyd C. Blankfein, got involved.” The *New York Times* also noted in this article that “[r]ecent public statements made by Mr. Blankfein seem to conflict with the S.E.C. account.”

22. The *New York Times* further confirmed the involvement of top Goldman insiders, including defendant Blankfein, in an April 18, 2010 article entitled “Senior Executives at Goldman Had a Role In Mortgage Unit.” This article specifically states that “*executives up to and including Lloyd C. Blankfein, the chairman and chief executive, took an active role in overseeing the mortgage unit as the tremors in the housing market began to reverberate through the nation’s economy.*”

23. Notwithstanding these revelations, defendants (including the Board) have continued to issue unequivocal denials of wrongdoing and have refused to conduct any type of internal investigation. For instance, on April 19, 2010, defendants caused the Company to state that “we believe that the firm’s actions were entirely appropriate.”

24. The Board has specifically come under fire (and rightfully so) for its failure to investigate and properly inform itself in the face of such serious allegations. For instance, in an April 19, 2010 article published by *Bloomberg* entitled “Goldman Sachs Stock, Board Under Pressure Amid Probe,” James Post, a professor of corporate governance and ethics at Boston

University, took the Board to task for its apparent inaction and failure to investigate, and noted that defendants' strong and swift public denials of any wrongdoing have compromised the Board's ability to investigate or take any meaningful action. Moreover, this article also indicated that the total costs to Goldman in connection with the SEC Action could amount to **\$2 billion**. The *Bloomberg* article, in pertinent part, states:

Prime Minister Gordon Brown called yesterday for the U.K. Financial Services Authority to start a probe, saying he was "shocked" at the "moral bankruptcy" indicated in the Securities and Exchange Commission suit against Goldman Sachs. Germany's financial regulator, Bafin, asked the SEC for details on the suit, a spokesman for Chancellor Angela Merkel said.

The escalating rhetoric adds urgency to efforts by Chairman and Chief Executive Officer Lloyd Blankfein and the rest of his board to stem negative publicity. Although Goldman Sachs vowed to fight the SEC case, calling it "unfounded in law and fact," the stock plunged 13 percent on April 16. The shares rose 1.6 percent to \$163.32 at 4:50 p.m. in New York Stock Exchange composite trading.

"The lynch-mob mentality that is prevailing right now against Goldman is such that you don't know where this thing could go, so I think the stock is going to be under continuing pressure," said Michael Holland, who oversees more than \$4 billion as chairman of New York-based Holland & Co. "The board actually has to pay attention not only to the legal niceties of this thing but also to the franchise viability as well."

* * *

Steve Stelmach, an analyst at FBR Capital Markets in Arlington, Virginia, today removed Goldman from his "Top Picks" list, citing the SEC suit. He still reiterated his outperform rating because of the bank's "strong fundamentals."

"The market appears to be overly discounting the potential earnings impact from the SEC charges," he wrote in a note to clients today. The stock's drop implies the suit may cost the bank \$2 billion before tax, twice the \$1 billion the SEC says investors lost in the transaction, he wrote.

* * *

Goldman Sachs's board of directors should conduct its own investigation to ensure that it understands what senior management knew about the issues raised by the SEC's complaint, said James Post, a professor of corporate governance and ethics at the Boston University School of Management.

'How Long?'

"The board has got to be insisting on a much deeper level of internal investigation that reports only to them, not to Blankfein," Post said. "They've

got to be asking the question ‘how long can we continue going with Blankfein before we’ve got to clean house and put a new group of people in there?’”

William W. George, a Harvard Business School professor who has served on Goldman Sachs’s board since 2002, referred a request for an interview to the company’s press office. His Twitter account, which lauded JPMorgan Chase & Co. CEO Jamie Dimon for his firm’s better-than-expected earnings on April 14, remained silent on the controversy surrounding Goldman Sachs.

Boston University’s *Post* said ***he wouldn’t expect the board to take any immediate action to change the firm’s management because it would seem to contradict the defiant position the company took on April 16.***

“I’m pretty sure that the board at Goldman is having a bad weekend,” Post said yesterday. “They may be praying for some news out of the Vatican or a new volcano to get them off the front pages.”

25. Defendants (including the Board) have similarly faced strong criticism for their failure to disclose the Company’s receipt of a Wells Notice. For example, on April 19, 2010, *Reuters* published an article entitled “Goldman May Face Backlash For Staying Mum on Probe,” which stated that not only did defendants learn of the likelihood of charges against Goldman in July 2009 with the issuance of a Wells Notice, but that Defendants’ blanket denials and silence since that time may further hurt the Company. Defendants’ decision to conceal the Wells Notice issued to Goldman has further been criticized by Charles Elson,² in an April 19, 2010 *New York Post* article entitled “Goldman Bosses Hid Feds’ Probe.” Specifically, Mr. Elson stated ***“[i]n an age of heightened transparency...receipt of that [Wells] notice should have been disclosed.”***

26. In addition to the Company’s problems within the U.S. as a result of these events, on April 20, 2010, it was revealed that Britain’s Financial Services Authority has now launched its own probe in the matter.

27. On April 24, 2010, the *New York Times* published its article “Goldman Cited ‘Serious’ Profits On Mortgages” which revealed the contradiction between defendants’ public

² Mr. Elson is the Edgar S. Woolard, Jr., Chair in Corporate Governance and the Director of the John L. Weinberg Center for Corporate Governance at the University of Delaware.

statements and their private communications. Specifically, the *New York Times* reported:

In late 2007, as the mortgage crisis gained momentum and many banks were suffering losses, Goldman Sachs executives traded e-mail messages saying that they would make “some serious money” betting against the housing markets.

The messages, released Saturday by the Senate Permanent Subcommittee on Investigations, appear to contradict statements by Goldman that left the impression that the firm lost money on mortgage-related investments.

In the messages, Lloyd C. Blankfein, the bank’s chief executive, acknowledged in November 2007 that the firm had lost money initially. But it later recovered by making negative bets, known as short positions, to profit as housing prices plummeted. “Of course we didn’t dodge the mortgage mess,” he wrote. ***“We lost money, then made more than we lost because of shorts”*** He added, “It’s not over, so who knows how it will turn out ultimately.”

In another message, dated July 25, 2007, David A. Viniar, Goldman’s chief financial officer, reacted to figures that said the company had made a \$51 million profit from bets that housing securities would drop in value. ***“Tells you what might be happening to people who don’t have the big short,”*** he wrote to Gary D. Cohn, now Goldman’s president.

* * *

Goldman on Saturday denied it made a significant profit on mortgage-related products in 2007 and 2008. It said the subcommittee had “cherry-picked” e-mail messages from the nearly 20 million pages of documents it provided. This sets up a showdown between the Senate subcommittee and Goldman, which has aggressively defended itself since the Securities and Exchange Commission filed a security fraud complaint against it nine days ago. On Tuesday, seven current and former Goldman employees, including Mr. Blankfein, are expected to testify at a Congressional hearing.

Carl Levin, Democrat of Michigan and head of the Permanent Subcommittee on Investigations, said that the e-mail messages contrasted with Goldman’s public statements about its trading results. ***“The 2009 Goldman Sachs annual report stated that the firm ‘did not generate enormous net revenues by betting against residential related products,’”*** Senator Levin said in a statement Saturday. ***“These e-mails show that, in fact, Goldman made a lot of money by betting against the mortgage market.”***

The messages appear to connect some of the dots at a crucial moment of Goldman history. They show that in 2007, as most other banks hemorrhaged money from plummeting mortgage holdings, Goldman prospered.

At first, Goldman openly discussed its prescience in calling the housing downfall. In the third quarter of 2007, the investment bank reported publicly that it had made big profits on its negative bet on mortgages.

But by the end of 2007, the firm curtailed disclosures about its mortgage trading results. Its chief financial officer told analysts that they should not expect Goldman to reveal whether it was long or short on the housing market. By late

2008, Goldman was emphasizing its losses, rather than its profits, pointing regularly to write-downs of \$1.7 billion on mortgage assets in 2008 and not disclosing the amount it made on its negative bets.

Goldman and other firms often take positions on both sides of an investment. Some are long, which are bets that the investment will do well, and some are shorts, which are bets the investment will do poorly.

Goldman has said it added shorts to balance its mortgage book, not to make a directional bet on a market collapse. But ***the messages released by the subcommittee Saturday appear to show that in 2007, at least, Goldman's short bets were eclipsing the losses on its long positions.***

In May 2007, for instance, Goldman workers e-mailed one another about losses on a bundle of mortgages issued by Long Beach Mortgage Securities. Though the firm lost money on those, a worker wrote, there was "good news": "we own 10 mm in protection." That meant Goldman had enough of a bet against the bond that, over all, it profited by \$5 million.

On Oct. 11, 2007, one Goldman manager in the trading unit wrote to another, "***Sounds like we will make some serious money,***" and received the response, "***Yes we are well positioned.***"

Documents released by the Senate subcommittee appear to indicate that ***in July 2007, Goldman's accounting showed losses of \$322 million on positive mortgage positions, but its negative bet — what Mr. Viniar called "the big short" — brought in \$373 million.***

As recently as a week ago, a Goldman spokesman emphasized that the firm had tried only to hedge its mortgage holdings in 2007.

The firm said in its annual report this month that it did not know back then where housing was headed, a sentiment expressed by Mr. Blankfein the last time he appeared before Congress.

"We did not know at any minute what would happen next, even though there was a lot of writing," he told the Financial Crisis Inquiry Commission in January.

It is not known how much money in total Goldman made on its negative housing bets. Neither Goldman nor the panel issued information about Goldman's mortgage earnings in 2009

In its response Saturday, Goldman Sachs released an assortment of internal e-mail messages. They showed workers disagreeing at some junctures over the direction of the mortgage market. In 2008, Goldman was stung by some losses on higher-quality mortgage bonds it held, when the crisis expanded from losses on risky bonds with subprime loans to losses in mortgages that were given to people with better credit histories.

Still, ***in late 2006, there are messages that show Goldman executives discussing ways to get rid of the firm's positive mortgage positions by selling them to clients. In one message, Goldman's chief financial officer, Mr. Viniar, wrote, "Let's be aggressive distributing things."***

Goldman also released detailed financial statements for its mortgage trading unit. Those statements showed that a group of traders in what was known as the structured products group made a profit of \$3.69 billion as of Oct. 26, 2007, which more than covered losses in other parts of Goldman's mortgage unit. Several traders from that group will testify on Tuesday.

The messages released by Goldman included many written by Fabrice Tourre, the executive who is the only Goldman employee named in the S.E.C. complaint. They reveal his skepticism about the direction of the subprime mortgage market in 2007. In a March 7 message to his girlfriend, he wrote, "According to Sparks, that business is totally dead, and the poor little subprime borrowers will not last so long." He was referring to Dan Sparks, then the head of Goldman's mortgage trading unit.

28. That same day, the *Journal* published its article "Insiders Sold Shares As SEC Probed Firm," detailing defendants' illicit insider sales made while they, but not the public, knew of the Wells Notice that had been issued to Goldman by the SEC.

29. Defendants' attitude and actions in the face of a firestorm of criticism in the wake of the recent global financial crisis are consistent with their knee-jerk, strong denials of wrongdoing and their failure to disclose the Wells Notice. For instance, one needs to look no further than the now-infamous comment defendant Blankfein made to *The Times of London* in November 2009, "***I'm doing God's work***," in response to the recent public scrutiny over the Company's excessive executive compensation practices,³ to understand defendants' "circle the wagons" mentality.

30. Indeed, rather than investigate the serious allegations of wrongdoing raised by the *New York Times*, or later in the SEC Action, or take any other steps to properly inform themselves, the Board has brashly stated that the "SEC's charges are completely unfounded in law and fact." Clearly, Defendants, including the Board, have consistently and repeatedly taken the hard-line stance that no wrongdoing could have possibly occurred at Goldman. Accordingly,

³ That the SEC issued a Wells Notice to the Company at the same time that Goldman was already publicly under fire for its executive compensation practices and policies only underscores the impropriety of defendants' failure to disclose the Wells Notice.

it would be wholly impossible to expect that the Board would be able to consider a stockholder demand in good faith.

31. As a result of defendants' breaches of fiduciary duty and other misconduct, the price of the Company's stock still has not recovered and currently trades at around \$152 per share — a plummet of approximately 18% in less than two weeks.

32. Accordingly, the Company has been damaged.

JURISDICTION AND VENUE

33. This Court has jurisdiction over all causes of action asserted herein pursuant to 28 U.S.C. §1332(a)(1) in that Plaintiffs and defendants are citizens of different states and/or countries and the amount in controversy exceeds \$75,000, exclusive of interest and costs. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. This action is not a collusive action designed to confer jurisdiction on this court of a court of the United States that it would not otherwise have.

34. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by the District courts permissible under traditional notions of fair play and substantial justice.

35. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) because: (i) Goldman maintains its principal place of business in this District; (ii) one or more of the defendants either resides in or maintains executive offices in this District; (iii) a substantial

portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, and aiding and abetting and conspiracy in violation of fiduciary duties owed to Goldman, occurred in this District; and (iv) defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

THE PARTIES

36. Plaintiff has continuously held Goldman stock since May 2007. Plaintiff is a citizen of the state of California.

37. Nominal defendant Goldman is a Delaware corporation headquartered at 85 Broad Street, New York, NY 10004. Goldman is a leading global financial services firm providing investment banking, securities, and investment management services to a diversified client base that includes corporations, financial institutions, governments, and high-net-worth individuals.

38. Defendant Blankfein has served as Chairman and CEO of Goldman since June 2006. In addition, Blankfein has served as a director of the Company since April 2003. Upon information and belief, defendant Blankfein is a citizen of the state of New York.

39. Defendant Cohn has served as the President and COO of the Company since April 2009. In addition, defendant Cohen has served as a director of the Company since June 2006. Upon information and belief, defendant Cohn is a citizen of the state of New York.

40. Defendant Bryan has served as a director of the Company since November 1999. In addition, defendant Bryan has served as a member of the Board's Audit Committee (the "Audit Committee") during the Relevant Period. Upon information and belief, defendant Bryan is a citizen of the state of Illinois.

41. Defendant Claes Dahlback (“Dahlback”) has served as a director of the Company since June 2003. In addition, defendant Dahlback has served as a member of the Audit Committee during the Relevant Period. Upon information and belief, defendant Dahlback is a citizen of Sweden.

42. Defendant Stephen Friedman (“Friedman”) has served as a director of the Company since April 2005. In addition, defendant Friedman has served as a member of the Audit Committee during the Relevant Period. Upon information and belief, defendant Friedman is a citizen of the state of New York.

43. Defendant William W. George (“George”) has served as a director of the Company since December 2002. In addition, defendant George has served as a member of the Audit Committee during the Relevant Period. Upon information and belief, defendant George is citizen of the Commonwealth of Massachusetts.

44. Defendant Rajat K. Gupta (“Gupta”) has served as a director of the Company since November 2006. In addition, defendant Gupta has served as a member of the Audit Committee during the Relevant Period. Upon information and belief, defendant Gupta is a citizen of the state of Connecticut.

45. Defendant James A. Johnson (“Johnson”) has served as a director of the Company since May 1999. In addition, defendant Johnson has served as a member of the Audit Committee during the Relevant Period. Upon information and belief, defendant Johnson is a citizen of the District of Columbia.

46. Defendant Lois D. Juliber (“Juliber”) has served as a director of the Company since March 2004. In addition, defendant Juliber has served as a member of the Audit Committee during the Relevant Period. Upon information and belief, defendant Juliber is a

citizen of the state of New York.

47. Defendant Lakshmi N. Mittal (“Mittal”) has served as a director of the Company since June 2008. In addition, defendant Mittal has served as a member of both the Audit Committee during the Relevant Period. Upon information and belief, defendant Mittal is a citizen of the state of New York.

48. Defendant James J. Schiro (“Schiro”) has served as a director of the Company since May 2009. In addition, defendant Schiro has served as a member of the Audit Committee during the Relevant Period. Upon information and belief, defendant Schiro is a citizen of the state of New York.

49. Defendant Ruth J. Simmons (“Simmons”) has served as a director of the Company since January 2000. Upon information and belief, defendant Simmons is a citizen of Rhode Island.

50. Defendant Tourre has served as a registered representative with Goldman throughout the Relevant Period. Upon information and belief, defendant Tourre is a citizen of England.

51. Defendant Pablo Salame (“Salame”) served as a sales and trading executive for the Company during the Relevant Period. Upon information and belief, defendant Salame is a citizen of England.

52. Defendant Jonathan Egol (“Egol”) served as a Vice President of the Company during the Relevant Period. Upon information and belief, defendant Egol is a citizen of England.

53. Defendant Viniar has served as the Company’s Executive Vice President and CFO since 1999. Upon information and belief, defendant Viniar is a citizen of the state of New York.

54. Defendant Stecher has served as the Company's Executive Vice President, General Counsel, and Co-Head of the Legal Department since December 2000. Upon information and belief, defendant Stecher is a citizen of the state of New York.

55. Defendant J. Michael Evans ("Evans") has served as a Vice Chairman of Goldman since February 2008 and as Chairman of Goldman Sachs Asia since 2004. Upon information and belief, defendant Evans is a citizen of China.

56. Defendant Michael S. Sherwood ("Sherwood") has served as a Vice Chairman of Goldman since February 2008 and as Co-CEO of Goldman Sachs International since 2005. Upon information and belief, defendant Sherwood is a citizen of England.

57. Defendant Sarah E. Smith ("Smith") has served as the Company's Principal Accounting Officer since 2000. Upon information and belief, defendant Smith is a citizen of the state of New York.

58. Defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, Simmons, Viniar, Egol, Salame, Tourre, Stecher, Evans, Sherwood, and Smith shall be referred to herein as "Defendants."

59. Defendants Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, and Schiro shall be referred to herein as the "Audit Committee Defendants."

60. Defendants Bryan, Stecher, Evans, Sherwood, and Smith shall be referred to herein as the "Insider Selling Defendants."

61. Defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons shall be collectively referred to herein as the "Director Defendants."

DEFENDANTS' DUTIES

62. By reason of their positions as officers, directors, and/or fiduciaries of Goldman and because of their ability to control the business and corporate affairs of Goldman, Defendants owed Goldman and its shareholders fiduciary obligations of good faith, loyalty, and candor, and were and are required to use their utmost ability to control and manage Goldman in a fair, just, honest, and equitable manner. Defendants were and are required to act in furtherance of the best interests of Goldman and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each director and officer of the Company owes to Goldman and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

63. Defendants, because of their positions of control and authority as directors and/or officers of Goldman, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein. Because of their advisory, executive, managerial, and directorial positions with Goldman, each of the Defendants had knowledge of material nonpublic information regarding the Company.

64. To discharge their duties, the officers and directors of Goldman were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of Goldman were required to, among other things:

- a. Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

- b. Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority; and
- c. When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

65. Goldman's Code of Business Conduct and Ethics, which applies to "all employees and members of our Board of Directors," states, among other things:

- a. "Integrity and honesty are at the heart of our business. We expect our people to maintain high ethical standards in everything they do";
- b. "an employee or director must never use or attempt to use his or her position at the firm to obtain any improper personal benefit for himself or herself;
- c. "It is the firm's policy that the information in its public communications, including SEC filings, be full, fair, accurate, timely, and understandable";
- d. Employees and directors "are prohibited from knowingly misrepresenting, omitting, or causing others to misrepresent or omit, material facts about the firm to others, whether within or outside the firm";
- e. "It is the firm's policy to comply with all applicable laws, rules, and regulations. It is the personal responsibility of each employee and director to adhere to the standards and restrictions imposed by those laws, rules, and regulations"; and
- f. "We have a history of succeeding through honest business competition. We

do not seek competitive advantages through illegal or unethical business practices. Each employee and director should endeavor to deal fairly with the firm's clients, service providers, suppliers, competitors, and employees. No employee or director should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any unfair dealing practice."

66. Pursuant to the Audit Committee's Charter, the purposes of the Audit Committee include, among other things, the oversight of the integrity of the Company's financial statements, the Company's compliance with legal and regulatory requirements, the performance of the Company's internal controls, and the Company's management of market, credit, liquidity and other financial and operational risks.

67. Per the terms of the Audit Committee Charter, the members of the Audit Committee are specifically required, among other things, to:

- a. Oversee the integrity of the Company's financial statements;
- b. Oversee the Company's internal control over financial reporting;
- c. Oversee the Company's management of market, credit, liquidity and other financial and operational risks;
- d. Discuss with management earnings press releases and review generally the type and presentation of information to be included in earnings press releases; and
- e. Review with management the type and presentation of any financial information and earnings guidance provided to analysts and rating agencies.

SUBSTANTIVE ALLEGATIONS

Goldman's Correlation Trading Desk

68. Goldman'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. Defendants sought to protect and expand this profitable franchise in a competitive market both before and throughout the Relevant Period.

69. It has been alleged that, according to an internal Goldman 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."

Paulson's Investment Strategy

70. 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.

71. 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.

72. 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).

73. 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.

Under Defendants’ Direction, Goldman and Paulson Discuss a Proposed Transaction

74. It has been alleged that Paulson performed an analysis of recent-vintage Triple B-rated RMBS and identified various bonds it expected to experience credit events. Paulson then asked Defendants 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.

75. It has also been alleged that Paulson discussed with Defendants 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 Defendants 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 Goldman to buy protection on specific layers of the synthetic CDO's capital structure.

76. It has been alleged that 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.”

77. At the same time, Defendants recognized that market conditions were presenting challenges to the successful marketing of CDO transactions backed by mortgage-related securities. For example, it has been alleged that portions of an email in both French and English sent by defendant 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 monstrosities!!!”

78. Similarly, it has been alleged that an email dated February 11, 2007 to defendant Tourre from the head of the Goldman structured product correlation trading desk stated in part, “the cdo biz is dead we don't have a lot of time left.”

Introduction of ACA to the Proposed Transaction

79. Defendants 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.

80. Defendants 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.

81. Defendants therefore sought a collateral manager to play a role in the transaction proposed by Paulson. It has been alleged that contemporaneous internal correspondence reflects that Defendants 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.”

82. In or about January 2007, Defendants 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.

83. It has been alleged that internal Goldman communications emphasized the advantages from a marketing perspective of having ACA associated with the transaction. For example, an internal email from defendant 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.”

84. Likewise, it has been alleged that an internal Goldman 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.”

Paulson’s Participation In the Collateral Selection Process

85. In late 2006 and early 2007, it has been alleged that 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 Defendants that it wanted the reference portfolio for the contemplated transaction to include the RMBS it identified or bonds with similar characteristics.

86. It has been alleged that on January 8, 2007, defendant Tourre attended a meeting with representatives from Paulson and ACA at Paulson’s offices in New York City to discuss the proposed transaction.

87. It has also been alleged that, on January 9, 2007, Goldman personnel 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.

88. It has further been alleged that on January 9, 2007, representatives from Goldman

informed ACA that Tourre was “very excited by the initial portfolio feedback.”

89. It has also been alleged that on January 10, 2007, defendant Tourre sent an email to ACA with the subject line, “Transaction Summary.” The text of defendant 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.”

90. It has been alleged that on January 22, 2007, ACA sent an email to Tourre and additional Goldman personnel 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.”

91. It has been alleged that 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. Defendant 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.”

92. It has further been alleged that 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 Goldman to buy protection on specific layers of the synthetic CDO’s capital structure.

93. Defendant Tourre and the other Defendants, 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, defendant Tourre sent an email to another Goldman employee stating, "I am at this aca paulson meeting, this is surreal." Later that same day, ACA emailed Paulson, Tourre, and other Goldman personnel 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."

94. It has also been alleged that on February 5, 2007, Paulson sent an email to ACA, with a copy to defendant Tourre, deleting eight RMBS recommended by ACA, leaving the rest, and stating that defendant Tourre agreed that 92 bonds were a sufficient portfolio.

95. Additionally, it has been alleged that 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.

96. Lastly, it has been alleged that 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.

**Under Defendants' Direction, Goldman Represented That ACA Selected the Portfolio
Without Disclosing Paulson's Significant Role in Determining the Portfolio and Its Adverse
Economic Interests**

97. Goldman's marketing materials for ABACUS 2007-AC1, prepared under Defendants' direction, were materially 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.

98. For example, a 9-page term sheet for ABACUS 2007-AC1 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.

99. Similarly, a 65-page flip book for ABACUS 2007-AC1 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.

100. It has been alleged that defendant Toure had primary responsibility for preparing the term sheet and flip book.

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

102. On or about April 26, 2007, Defendants 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.

103. It has been alleged that defendant Tourre reviewed at least the Summary section of the offering memorandum before it was sent to potential investors.

104. It has been alleged that although the marketing materials for ABACUS 2007-AC1 made no mention of Paulson or its role in the transaction, internal Goldman 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.”

Defendants Misled ACA Into Believing Paulson Was Long Equity

105. Defendants 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.

106. Had ACA been aware that Paulson was taking a short position against the CDO, ACA would have likely 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.

107. It has been alleged that, on January 8, 2007, defendant 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 Goldman. Later that day, ACA sent a Goldman 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?"

108. On January 10, 2007, defendant 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, Defendants never intended to market to anyone a "[0]% — [9]%" first loss equity tranche in this transaction.

109. It has been alleged that on January 12, 2007, defendant Tourre spoke by telephone with ACA about the proposed transaction. Following that conversation, on January 14, 2007, ACA sent an email to the Goldman 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."

110. It has been alleged that on January 16, 2007, the Goldman sales representative forwarded that email to defendant Tourre. As of that date, defendant 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.

111. Based upon the January 10, 2007, "Transaction Summary" sent by defendant Tourre, the January 12, 2007 telephone call with defendant Tourre and continuing communications with Tourre and other Goldman personnel, ACA continued to believe through the course of the transaction that Paulson would be an equity investor in ABACUS 2007-AC1.

112. On February 12, 2007, ACA's Commitments Committee approved the firm's participation in ABACUS as portfolio selection agent. It has been alleged that 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."

ABACUS 2007-AC1 Investors

A. IKB

113. 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 referencng, 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."

114. The identity and experience of those involved in the selection of CDO portfolios was an important investment factor for IKB. It has been alleged that in late 2006 IKB informed a Goldman sales representative and defendant 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. Defendant Tourre and other Goldman personnel knew that ACA was a collateral manager likely to be acceptable to IKB.

115. In February, March and April 2007, under Defendants' direction, Goldman 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. Defendants did not inform IKB of Paulson's participation in the collateral selection process and its adverse economic interests.

116. It has been alleged that the first written marketing materials for ABACUS 2007-AC1 were distributed on February 15, 2007, when Defendants emailed a preliminary term sheet and reference portfolio to the Goldman sales representative covering IKB. Defendant Tourre was aware these materials would be delivered to IKB.

117. It has been further alleged that on February 19, 2007, a Goldman 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."

118. It has been further alleged that defendant Tourre maintained direct and indirect contact with IKB in an effort to close the deal. This included a March 6, 2007 email to the Goldman sales representative for IKB representing that, "This is a portfolio selected by ACA ... " Defendant Tourre subsequently described the portfolio in an internal Goldman email as having been "selected by ACA/Paulson."

119. ABACUS 2007-AC1 closed on or about April 26, 2007. It has been alleged that 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.

120. It has been alleged that 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.

121. 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 Goldman and Paulson.

B ACA/ABN AMRO

122. It has been alleged that 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.

123. It has further been alleged that 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.

124. 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.

125. Under Defendants' direction, Goldman 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. Defendant 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.

126. 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.

127. 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 Goldman \$840,909,090. Most of this money was subsequently paid by Goldman to Paulson.

Defendants’ False and Misleading Public Statements During the Relevant Period

128. Throughout the Relevant Period, notwithstanding the events described above, Defendants repeatedly stated in the Company’s public filings that their goal was to protect their clients’ interests. For instance, in the Company’s Annual Report on Form 10-K filed on January 29, 2008, Defendants claimed:

Our current structure, which is organized by regional, industry and product groups, seeks to combine client-focused investment bankers with execution and industry expertise. *We continually assess and adapt our organization to meet the demands of our clients in each geographic region. Through our commitment to teamwork, we believe that we provide services in an integrated fashion for the benefit of our clients.*

Our goal is to make available to our clients the entire resources of the firm in a seamless fashion, with investment banking serving as “front of the house.” To accomplish this objective, we focus on coordination among our equity and debt underwriting activities and our corporate risk and liability management activities.

This coordination is intended to assist our investment banking clients in managing their asset and liability exposures and their capital.

129. The above-quoted passage was also included *verbatim* in the Company's Annual Report on Form 10-K filed with the SEC on January 27, 2009, which was signed by, among others, defendants Viniar, Blankfein, Bryan, Cohn, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Simmons, and Smith.

130. Not only have Defendants repeatedly touted the Company's ability to "manag[e] [their clients] asset and liability exposures and their capital," but they also have failed to disclose any indications that the SEC was investigating Goldman or that the Company received a Wells Notice in July 2009. For instance, in the Company's Annual Report on Form 10-K filed on March 1, 2010, the "Legal Proceedings" section states the following, in pertinent part:

Item 3. Legal Proceedings

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 expenses can be expected to remain high.

IPO Process Matters

Group Inc. and GS&Co. are among the numerous financial services companies that have been named as defendants in a variety of lawsuits alleging improprieties in the process by which those companies participated in the underwriting of public offerings in recent years.

* * *

World Online Litigation

In March 2001, a Dutch shareholders association initiated legal proceedings for an unspecified amount of damages against GSI and others in Amsterdam District Court in connection with the initial public offering of World Online in March 2000, alleging misstatements and omissions in the offering materials and that the market was artificially inflated by improper public statements and stabilization activities. Goldman Sachs and ABN AMRO Rothschild served as joint global coordinators of the approximately€2.9 billion offering. GSI underwrote

20,268,846 shares and GS&Co. underwrote 6,756,282 shares for a total offering price of approximately €1.16 billion.

* * *

Research Independence Matters

GS&Co. is one of several investment firms that have been named as defendants in substantively identical purported class actions filed in the U.S. District Court for the Southern District of New York alleging violations of the federal securities laws in connection with research coverage of certain issuers and seeking compensatory damages. In one such action, relating to coverage of RSL Communications, Inc. commenced on July 15, 2003, GS&Co.'s motion to dismiss the complaint was denied. The district court granted the plaintiffs' motion for class certification and the U.S. Court of Appeals for the Second Circuit, by an order dated January 26, 2007, vacated the district court's class certification and remanded for reconsideration. By a decision dated August 4, 2009, the district court granted plaintiffs' renewed motion seeking class certification. Defendants' petition with the appellate court seeking review of the certification ruling was denied on January 25, 2010.

* * *

Enron Litigation Matters

Goldman Sachs affiliates are defendants in certain actions relating to Enron Corp., which filed for protection under the U.S. bankruptcy laws on December 2, 2001.

* * *

Montana Power Litigation

GS&Co. and Group Inc. have been named as defendants in two actions relating to financial advisory work rendered to Montana Power Company. On November 13, 2009, all parties entered into a settlement and the settlement was preliminarily approved on February 10, 2010. A final hearing has been scheduled for May 20, 2010 to May 21, 2010.

* * *

Adelphia Communications Fraudulent Conveyance Litigation

GS&Co. is among numerous entities named as defendants in two adversary proceedings commenced in the U.S. Bankruptcy Court for the Southern District of New York, one on July 6, 2003 by a creditors committee, and the second on or about July 31, 2003 by an equity committee of Adelphia Communications, Inc. Those proceedings have now been consolidated in a single amended complaint filed by the Adelphia Recovery Trust on October 31, 2007. The complaint seeks, among other things, to recover, as fraudulent conveyances, payments made allegedly by Adelphia Communications, Inc. and its affiliates to certain brokerage firms, including approximately \$62.9 million allegedly paid to GS&Co., in respect of margin calls made in the ordinary course of business on accounts owned by members of the family that formerly controlled Adelphia Communications, Inc. By a decision dated May 4, 2009, the district court denied

GS&Co.'s motion to dismiss the claim related to margin payments. GS&Co. moved for reconsideration, and by a decision dated June 15, 2009, the district court granted the motion insofar as requiring plaintiff to amend its complaint to specify the source of the margin payments to GS&Co. By a decision dated July 30, 2009, the district court held that the sufficiency of the amended claim would be determined at the summary judgment stage.

Specialist Matters

Spear, Leeds & Kellogg Specialists LLC (SLKS) and certain affiliates have received requests for information from various governmental agencies and self-regulatory organizations as part of an industry-wide investigation relating to activities of floor specialists in recent years. Goldman Sachs has cooperated with the requests.

* * *

Treasury Matters

On September 4, 2003, the SEC announced that GS&Co. had settled an administrative proceeding arising from certain trading in U.S. Treasury bonds over an approximately eight-minute period after GS&Co. received an October 31, 2001 telephone call from a Washington, D.C.-based political consultant concerning a forthcoming Treasury refunding announcement. Without admitting or denying the allegations, GS&Co. consented to the entry of an order that, among other things, (i) censured GS&Co.; (ii) directed GS&Co. to cease and desist from committing or causing any violations of Sections 15(c)(1)(A) and (C) and 15(f) of, and Rule 15c 1-2 under, the Exchange Act; (iii) ordered GS&Co. to pay disgorgement and prejudgment interest in the amount of \$1,742,642, and a civil monetary penalty of \$5 million; and (iv) directed GS&Co. to conduct a review of its policies and procedures and adopt, implement and maintain policies and procedures consistent with the order and that review. GS&Co. also undertook to pay \$2,562,740 in disgorgement and interest relating to certain trading in U.S. Treasury bond futures during the same eight-minute period.

* * *

Mutual Fund Matters

GS&Co. and certain mutual fund affiliates have received subpoenas and requests for information from various governmental agencies and self-regulatory organizations including the SEC as part of the industry-wide investigation relating to the practices of mutual funds and their customers. GS&Co. and its affiliates have cooperated with such requests.

Refco Securities Litigation

GS&Co. and the other lead underwriters for the August 2005 initial public offering of 26,500,000 shares of common stock of Refco Inc. are among the defendants in various putative class actions filed in the U.S. District Court for the Southern District of New York beginning in October 2005 by investors in Refco Inc. in response to certain publicly reported events that culminated in the October 17, 2005 filing by Refco Inc. and certain affiliates for protection under U.S. bankruptcy laws. The actions, which have been consolidated, allege violations of

the disclosure requirements of the federal securities laws and seek compensatory damages. In addition to the underwriters, the consolidated complaint names as defendants Refco Inc. and certain of its affiliates, certain officers and directors of Refco Inc., Thomas H. Lee Partners, L.P. (which held a majority of Refco Inc.'s equity through certain funds it manages), Grant Thornton (Refco Inc.'s outside auditor), and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft (BAWAG). Lead plaintiffs entered into a settlement with BAWAG, which was approved following certain amendments on June 29, 2007. GS&Co. underwrote 5,639,200 shares of common stock at a price of \$22 per share for a total offering price of approximately \$124 million.

* * *

Short-Selling Litigation

Group Inc., GS&Co. and Goldman Sachs Execution & Clearing, L.P. are among the numerous financial services firms that have been named as defendants in a purported class action filed on April 12, 2006 in the U.S. District Court for the Southern District of New York by customers who engaged in short-selling transactions in equity securities since April 12, 2000. The amended complaint generally alleges that the customers were charged fees in connection with the short sales but that the applicable securities were not necessarily borrowed to effect delivery, resulting in failed deliveries, and that the defendants conspired to set a minimum threshold borrowing rate for securities designated as hard to borrow. The complaint asserts a claim under the federal antitrust laws, as well as claims under the New York Business Law and common law, and seeks treble damages as well as injunctive relief. Defendants' motion to dismiss the complaint was granted by a decision dated December 20, 2007. On December 3, 2009, the dismissal was affirmed by the U.S. Court of Appeals for the Second Circuit.

Fannie Mae Litigation

GS&Co. was added as a defendant in an amended complaint filed on August 14, 2006 in a purported class action pending in the U.S. District Court for the District of Columbia. The complaint asserts violations of the federal securities laws generally arising from allegations concerning Fannie Mae's accounting practices in connection with certain Fannie Mae-sponsored REMIC transactions that were allegedly arranged by GS&Co. The other defendants include Fannie Mae, certain of its past and present officers and directors, and accountants. By a decision dated May 8, 2007, the district court granted GS&Co.'s motion to dismiss the claim against it. The time for an appeal will not begin to run until disposition of the claims against other defendants.

* * *

Compensation Related Litigation

On March 16, 2007, Group Inc., its board of directors, executive officers and members of its management committee were named as defendants in a purported shareholder derivative action in the U.S. District Court for the Eastern District of New York challenging the sufficiency of the firm's February 21, 2007 Proxy Statement and the compensation of certain employees. The complaint generally alleges that the Proxy Statement undervalues stock option awards disclosed therein, that the recipients received excessive awards because the proper methodology was not followed, and that the firm's senior management received

excessive compensation, constituting corporate waste. The complaint seeks, among other things, an injunction against the 2007 Annual Meeting of Shareholders, the voiding of any election of directors in the absence of an injunction and an equitable accounting for the allegedly excessive compensation. On July 20, 2007, defendants moved to dismiss the complaint, and the motion was granted by an order dated December 18, 2008. Plaintiff appealed on January 13, 2009, and the dismissal was affirmed by the U.S. Court of Appeals for the Second Circuit on December 14, 2009.

* * *

Mortgage-Related Matters

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.

* * *

Auction Products Matters

On August 21, 2008, GS&Co. entered into a settlement in principle with the Office of Attorney General of the State of New York and the Illinois Securities Department (on behalf of the North American Securities Administrators Association) regarding auction rate securities. On June 2, 2009, GS&Co. entered into an Assurance of Discontinuance with the Office of Attorney General of the State of New York. Under the agreement, Goldman Sachs agreed, among other things, (i) to offer to repurchase at par the outstanding auction rate securities that its private wealth management clients purchased through the firm prior to February 11, 2008, with the exception of those auction rate securities where auctions are clearing, (ii) to continue to work with issuers and other interested parties, including regulatory and governmental entities, to expeditiously provide liquidity solutions for institutional investors, and (iii) to pay a \$22.5 million fine. The settlement, which is subject to definitive documentation and approval by the various states, other than New York, does not resolve any potential regulatory action by the SEC. On June 2, 2009, GS&Co. entered into an Assurance of Discontinuance with the New York Attorney General.

* * *

Private Equity-Sponsored Acquisitions Litigation

Group Inc. and “GS Capital Partners” are among numerous private equity firms and investment banks named as defendants in a federal antitrust action filed in the U.S. District Court for the District of Massachusetts in December 2007. As amended, the complaint generally alleges that the defendants have colluded to limit competition in bidding for private equity-sponsored acquisitions of public companies, thereby resulting in lower prevailing bids and, by extension, less consideration for shareholders of those companies in violation of Section 1 of the U.S. Sherman Antitrust Act and common law. Defendants moved to dismiss on August 27, 2008. By an order dated November 19, 2008, the district court dismissed claims relating to certain transactions that were the subject of releases

as part of the settlement of shareholder actions challenging such transactions, and by an order dated December 15, 2008 otherwise denied the motion to dismiss.

Washington Mutual Securities Litigation

GS&Co. is among numerous underwriters named as defendants in a putative securities class action amended complaint filed on August 5, 2008 in the U.S. District Court for the Western District of Washington. As to the underwriters, plaintiffs allege that the offering documents in connection with various securities offerings by Washington Mutual, Inc. failed to describe accurately the company's exposure to mortgage-related activities in violation of the disclosure requirements of the federal securities laws. The defendants include past and present directors and officers of Washington Mutual, the company's former outside auditors, and numerous underwriters. By a decision dated May 15, 2009, the district court granted in part and denied in part the underwriter defendants' motion to dismiss, with leave to replead, and on June 15, 2009, plaintiffs filed an amended complaint. By a decision dated October 27, 2009, the federal district court granted and denied in part the underwriters' motion to dismiss.

* * *

Britannia Bulk Securities Litigation

GS&Co. is among the underwriters named as defendants in numerous putative securities class actions filed beginning on November 6, 2008 in the U.S. District Court for the Southern District of New York arising from the June 17, 2008 \$125 million initial public offering of common stock of Britannia Bulk Holdings, Inc. The complaints name as defendants the company, certain of its directors and officers, and the underwriters for the offering. Plaintiffs allege that the offering materials violated the disclosure requirements of the federal securities laws and seek compensatory damages. By a decision dated October 19, 2009, the district court granted the underwriter defendants' motion to dismiss, and plaintiffs have elected not to appeal, disposing of the matter.

* * *

IndyMac Pass-Through Certificates Litigation

GS&Co. is among numerous underwriters named as defendants in a putative securities class action filed on May 14, 2009 in the U.S. District Court for the Southern District of New York. As to the underwriters, plaintiffs allege that the offering documents in connection with various securitizations of mortgage-related assets violated the disclosure requirements of the federal securities laws. The defendants include IndyMac-related entities formed in connection with the securitizations, the underwriters of the offerings, certain ratings agencies which evaluated the credit quality of the securities, and certain former officers and directors of IndyMac affiliates. On November 2, 2009, the underwriters moved to dismiss the complaint. The motion was granted in part on February 17, 2010 to the extent of dismissing claims based on offerings in which no plaintiff purchased, and the court reserved judgment as to the other aspects of the motion.

* * *

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.

131. Incredibly, as is painfully apparent from the above paragraph, Defendants saw fit to disclose no less than twenty areas of legal proceedings (or potential legal proceedings) the Company was subject to, which spanned approximately ten pages in the Company's most recent Annual Report, yet they failed to even mention that the Company had become the subject of an SEC investigation and had received a Wells Notice in July 2009.

132. Notably, Defendants' critical omission came at the same approximate time that the Company became subject to intense public scrutiny (and shareholder outrage) relating to its planned 2009 executive compensation. *See, e.g.*, Colin Barr, *Goldman Sachs: Your tax dollars, their big bonuses*, CNN MONEY (October 16, 2009); Graham Bowley, *Bonuses Put Goldman in Public Relations Bind*, NEW YORK TIMES (October 15, 2009); Evan Weinberger and Brendan Pierson, *Pension Fund Slaps Goldman Sachs Over Bonuses*, LAW360, December 14, 2009 (discussing the "[o]utcry from Goldman's shareholders over the company's proposed record-setting bonus payments this year"). Under virtually any scenario, but particularly this one, Defendants' explanation that they did not disclose the existence of the Wells Notice before April 2010 because it was "immaterial" strains credulity.

133. Accordingly, the above-statements were false and misleading when made because Defendants knew and failed to disclose that: (1) they were not actually looking out for all of their clients' best interests; and (2) the Company had become the subject of an SEC investigation and had received a Wells Notice in July 2009.

The Truth Begins to Emerge

134. On December 23, 2009, the *New York Times* published an article entitled "Banks

Bundled Bad Debt, Bet Against It and Won,” which specifically “outed” the bets against Goldman’s own clients and Defendants’ breaches of fiduciary duties, and particularly in connection with the ABACUS deals. The *Times* article stated, in pertinent part:

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.”

* * *

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.

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.

135. In response to the *New York Times*' December 23, 2009 article, Defendants caused the Company to issue a press release the very next day (December 24, 2009) entitled "Goldman Sachs Responds to *The New York Times* on Synthetic Collateralized Debt Obligations." Notably, the Board conducted no internal investigation into the matters raised by the December 23, 2009 *New York Times* article (nor caused such an internal investigation to take place) before or after issuing this blanket denial of wrongdoing.

136. Perhaps worse still (particularly in light of the fact that the *New York Times* had now revealed that multiple governmental and regulatory investigations, including one by the SEC, had begun), in addition to denying any misconduct at Goldman, the Board chose to continue to conceal that the Company had received a Wells Notice months earlier, or that the SEC was investigating misconduct at Goldman. Defendants' press release stated, in relevant part:

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.

137. Several months later, on or about April 7, 2010, in a letter to Goldman shareholders published as part of the Company's Annual Report on Form 10-K, defendants Blankfein and Cohn again denied any wrongdoing. Specifically, Blankfein and Cohn stated: "Although Goldman Sachs held various positions in residential mortgage-related products in 2007, our short positions were not a 'bet against our clients.'"

138. This was a lie. As the *New York Times* would later report in an article entitled "Goldman Cited 'Serious' Profits On Mortgages" published on April 24, 2010, certain of the defendants and other top Goldman insiders, including Blankfein, Cohn, and Viniar, traded e-mail messages in 2007 saying that they would make "some serious money" betting against the housing markets. These emails, as noted by the *New York Times*, "**contradict statements by Goldman that left the impression that the firm lost money on mortgage-related investments.**" Specifically, the *New York Times* reported:

In late 2007, as the mortgage crisis gained momentum and many banks were suffering losses, Goldman Sachs executives traded e-mail messages saying that they would make "some serious money" betting against the housing markets.

The messages, released Saturday by the Senate Permanent Subcommittee on Investigations, appear to contradict statements by Goldman that left the impression that the firm lost money on mortgage-related investments.

In the messages, Lloyd C. Blankfein, the bank's chief executive, acknowledged in November 2007 that the firm had lost money initially. But it later recovered by making negative bets, known as short positions, to profit as housing prices plummeted. "Of course we didn't dodge the mortgage mess," he wrote. "***We lost money, then made more than we lost because of shorts.***" He added, "It's not over, so who knows how it will turn out ultimately."

In another message, dated July 25, 2007, David A. Viniar, Goldman's chief financial officer, reacted to figures that said the company had made a \$51 million profit from bets that housing securities would drop in value. "***Tells you what might be happening to people who don't have the big short,***" he wrote to Gary D. Cohn, now Goldman's president.

* * *

Goldman on Saturday denied it made a significant profit on mortgage-related products in 2007 and 2008. It said the subcommittee had “cherry-picked” e-mail messages from the nearly 20 million pages of documents it provided. This sets up a showdown between the Senate subcommittee and Goldman, which has aggressively defended itself since the Securities and Exchange Commission filed a security fraud complaint against it nine days ago. On Tuesday, seven current and former Goldman employees, including Mr. Blankfein, are expected to testify at a Congressional hearing.

Carl Levin, Democrat of Michigan and head of the Permanent Subcommittee on Investigations, said that the e-mail messages contrasted with Goldman’s public statements about its trading results. **“The 2009 Goldman Sachs annual report stated that the firm ‘did not generate enormous net revenues by betting against residential related products,’”** Senator Levin said in a statement Saturday. **“These e-mails show that, in fact, Goldman made a lot of money by betting against the mortgage market.”**

The messages appear to connect some of the dots at a crucial moment of Goldman history. They show that in 2007, as most other banks hemorrhaged money from plummeting mortgage holdings, Goldman prospered.

At first, Goldman openly discussed its prescience in calling the housing downfall. In the third quarter of 2007, the investment bank reported publicly that it had made big profits on its negative bet on mortgages.

But by the end of 2007, the firm curtailed disclosures about its mortgage trading results. Its chief financial officer told analysts that they should not expect Goldman to reveal whether it was long or short on the housing market. By late 2008, Goldman was emphasizing its losses, rather than its profits, pointing regularly to write-downs of \$1.7 billion on mortgage assets in 2008 and not disclosing the amount it made on its negative bets.

Goldman and other firms often take positions on both sides of an investment. Some are long, which are bets that the investment will do well, and some are shorts, which are bets the investment will do poorly.

Goldman has said it added shorts to balance its mortgage book, not to make a directional bet on a market collapse. But **the messages released by the subcommittee Saturday appear to show that in 2007, at least, Goldman’s short bets were eclipsing the losses on its long positions.**

In May 2007, for instance, Goldman workers e-mailed one another about losses on a bundle of mortgages issued by Long Beach Mortgage Securities. Though the firm lost money on those, a worker wrote, there was “good news”: “we own 10 mm in protection.” That meant Goldman had enough of a bet against the bond that, over all, it profited by \$5 million.

On Oct. 11, 2007, one Goldman manager in the trading unit wrote to another, **“Sounds like we will make some serious money,”** and received the response, **“Yes we are well positioned.”**

Documents released by the Senate subcommittee appear to indicate that *in July 2007, Goldman's accounting showed losses of \$322 million on positive mortgage positions, but its negative bet — what Mr. Viniar called "the big short" — brought in \$373 million.*

As recently as a week ago, a Goldman spokesman emphasized that the firm had tried only to hedge its mortgage holdings in 2007.

The firm said in its annual report this month that it did not know back then where housing was headed, a sentiment expressed by Mr. Blankfein the last time he appeared before Congress.

"We did not know at any minute what would happen next, even though there was a lot of writing," he told the Financial Crisis Inquiry Commission in January.

It is not known how much money in total Goldman made on its negative housing bets. Neither Goldman nor the panel issued information about Goldman's mortgage earnings in 2009

In its response Saturday, Goldman Sachs released an assortment of internal e-mail messages. They showed workers disagreeing at some junctures over the direction of the mortgage market. In 2008, Goldman was stung by some losses on higher-quality mortgage bonds it held, when the crisis expanded from losses on risky bonds with subprime loans to losses in mortgages that were given to people with better credit histories.

Still, *in late 2006, there are messages that show Goldman executives discussing ways to get rid of the firm's positive mortgage positions by selling them to clients. In one message, Goldman's chief financial officer, Mr. Viniar, wrote, "Let's be aggressive distributing things."*

Goldman also released detailed financial statements for its mortgage trading unit. Those statements showed that a group of traders in what was known as the structured products group made a profit of \$3.69 billion as of Oct. 26, 2007, which more than covered losses in other parts of Goldman's mortgage unit. Several traders from that group will testify on Tuesday.

The messages released by Goldman included many written by Fabrice Tourre, the executive who is the only Goldman employee named in the S.E.C. complaint. They reveal his skepticism about the direction of the subprime mortgage market in 2007. In a March 7 message to his girlfriend, he wrote, "According to Sparks, that business is totally dead, and the poor little subprime borrowers will not last so long." He was referring to Dan Sparks, then the head of Goldman's mortgage trading unit.

* * *

139. A little over a week after defendants specifically denied that Goldman personnel had placed bets against the Company's clients, on April 16, 2010, the SEC Action was filed against Goldman and defendant Tourre. The SEC Action charged Goldman and Tourre with

defrauding investors by misstating and omitting key facts about the products described herein.

140. Later that day, in a hastily-assembled press release, Defendants (including the Board) once again, as usual, flatly denied the SEC's allegations or any allegations of wrongdoing at Goldman. Specifically, Defendants defiantly claimed that "[t]he SEC's charges are completely unfounded in law and fact and we will vigorously contest them and defend the firm and its reputation." Further, Defendants arrogantly added that "[they] are disappointed that the SEC would bring this action." Defendants stated, in part:

We want to emphasize the following four critical points which were missing from the SEC's complaint.

- **Goldman Sachs Lost Money On The Transaction.** Goldman Sachs, itself, lost more than \$90 million. Our fee was \$15 million. We were subject to losses and we did not structure a portfolio that was designed to lose money.
- **Extensive Disclosure Was Provided.** IKB, a large German Bank and sophisticated CDO market participant and ACA Capital Management, the two investors, were provided extensive information about the underlying mortgage securities. The risk associated with the securities was known to these investors, who were among the most sophisticated mortgage investors in the world. These investors also understood that a synthetic CDO transaction necessarily included both a long and short side.
- **ACA, the Largest Investor, Selected The Portfolio.** The portfolio of mortgage backed securities in this investment was selected by an independent and experienced portfolio selection agent after a series of discussions, including with Paulson & Co., which were entirely typical of these types of transactions. ACA had the largest exposure to the transaction, investing \$951 million. It had an obligation and every incentive to select appropriate securities.
- **Goldman Sachs Never Represented to ACA That Paulson Was Going To Be A Long Investor.** The SEC's complaint accuses the firm of fraud because it didn't disclose to one party of the transaction who was on the other side of that transaction. As normal business practice, market makers do not disclose the identities of a buyer to a seller and vice versa. Goldman Sachs never represented to ACA that Paulson was going to be a long investor.

141. Immediately following the filing of the SEC Action, the price of the Company's stock fell 13% from \$184.27 per share to close at \$160.70 per share on April 16, 2010. This represented a one-day market capitalization loss of over **\$10 billion**.

142. The news for Goldman and its stockholders has only continued to worsen in the

wake of the filing of the SEC Action as the financial press got a hold of the story and investigated further. Despite Defendants' blanket denials, the financial press has not been kind.

143. For instance, in a April 17, 2010 article entitled "For Goldman, a Bet's Stakes Keep Growing" the *New York Times* reported that, according to former Goldman employees, "*[a]s the housing market began to fracture in 2007, senior Goldman executives began overseeing the mortgage department closely...[and] routinely visited the unit. Among them were David A. Viniar, the chief financial officer; Gary D. Cohn, then the co-president; and Pablo Salame, a sales and trading executive, these former employees said. Even Goldman's chief executive, Lloyd C. Blankfein, got involved.*" The *New York Times* also noted in this article that "[r]ecent public statements made by Mr. Blankfein seem to conflict with the S.E.C. account." Specifically, the *New York Times* reported:

For Goldman Sachs, it was a relatively small transaction. But for the bank — and the rest of Wall Street — the stakes couldn't be higher.

Accusations that Goldman defrauded customers who bought investments tied to risky subprime mortgages have only just begun to reverberate through the financial world.

The civil lawsuit that the Securities and Exchange Commission filed against Goldman on Friday seemed to confirm many Americans' worst suspicions about Wall Street: that the game is rigged, the odds stacked in the banks' favor. It is the first big case — but probably not the last, legal experts said — to delve into a Wall Street firm's role in the mortgage fiasco.

* * *

The S.E.C.'s action could also hit Wall Street where it really hurts: the wallet. It could prompt dozens of investor claims against Goldman and other Wall Street titans that devised and sold toxic mortgage investments.

On Saturday, several European banks that lost money in the deal said they were reviewing the matter. They could try to recoup the money from Goldman.

And it raises new questions about Goldman, the bank at the center of more concentric circles of economic and political power than any other on Wall Street. Goldman — whose controversial success has leapt from the financial pages to the cover of Rolling Stone — has fiercely defended its actions before, during and after the financial crisis. On Friday, it called the S.E.C.'s accusations "unfounded."

* * *

The public outcry against the bank bailouts was driven in part by suspicions that a heads-we-win, tails-you-lose ethos pervades the financial industry. To many, that Goldman and others are once again minting money — and paying big bonuses to their employees — is evidence that Wall Street got a sweet deal at taxpayers' expense. The accusations against Goldman may only further those suspicions.

“The S.E.C. suit against Goldman, if proven true, will confirm to people their suspicions about the total selfishness of these financial institutions,” said Steve Fraser, a Wall Street historian and author of “Wall Street: America’s Dream Palace.” “There’s nothing more damaging than that. *This is way beyond recklessness. This is way beyond incompetence. This is cynical, selfish exploiting.*”

On Friday, Goldman’s stock took a beating, falling 13 percent and wiping out more than \$10 billion of the company’s market value. It was a possible sign that investors fear that the S.E.C. complaint will damage Goldman’s reputation and its ability to keep its hands on so many sides of a trade — a practice that is immensely profitable for the firm.

* * *

As the housing market began to fracture in 2007, senior Goldman executives began overseeing the mortgage department closely, said four former Goldman Sachs employees, who spoke on the condition they not be identified because of the sensitivity of the matter.

Senior executives routinely visited the unit. Among them were David A. Viniar, the chief financial officer; Gary D. Cohn, then the co-president; and Pablo Salame, a sales and trading executive, these former employees said. Even Goldman’s chief executive, Lloyd C. Blankfein, got involved.

Top executives met routinely with Dan Sparks, the head of the mortgage trading unit, who retired in spring 2008. Managers instructed several traders to sell housing-related investments. Indeed, they urged Mr. Tourre and a colleague, Jonathan Egol, to place more bets against mortgage investments, the former employees said.

A Goldman spokesman said Saturday that the top executives were not involved in the approval process for Abacus, the deal cited by the S.E.C., and that their involvement with the mortgage department in 2007 was related to their desire to counterbalance the positive bets on housing the banks had already made.

Mr. Blankfein has already been questioned by a Congressional commission about the toxic vehicles Goldman devised and sold, even as the bank realized the housing market was in trouble.

Recent public statements made by Mr. Blankfein seem to conflict with the S.E.C. account.

In testimony in January before the Financial Crisis Inquiry Commission, the panel appointed by Congress to examine the causes of the crisis, for example, he

described Goldman's approach to dealing with its clients: "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."

But the S.E.C. complaint says Goldman misled investors who bought one of the bank's Abacus deals. The bank failed to tell them the mortgage bonds underpinning the investment had been selected by a hedge fund manager who wanted to bet against the investment, the S.E.C. says. Those bonds were especially vulnerable, the commission says.

144. The *New York Times* further confirmed the involvement of top Goldman insiders, including Blankfein, in an April 18, 2010 article entitled "Senior Executives at Goldman Had a Role in Mortgage Unit." The article specifically states that "***executives up to and including Lloyd C. Blankfein, the chairman and chief executive, took an active role in overseeing the mortgage unit as the tremors in the housing market began to reverberate through the nation's economy.***" This article additionally stated as follows:

Mortgage specialists like those at Goldman were, in a sense, the mad scientists of the subprime era. They devised investments by bundling together bonds backed by home loans, a process that enabled mortgage lenders to make even more loans.

While this sort of financing helped make loans available, the most exotic creations also spread the growing risks inside the American housing market throughout the financial world. When the boom went bust, the results were disastrous.

By early 2007, Goldman's mortgage unit had become a hive of intense activity. By then, the business had captured the attention of senior management. In addition to Mr. Blankfein, Gary D. Cohn, Goldman's president, and David A. Viniar, the chief financial officer, visited the mortgage unit frequently, often for hours at a time.

Such high-level involvement was unusual elsewhere on Wall Street, where many executives spent little time learning the workings of their mortgage businesses or how those businesses might endanger their companies.

The decision to get rid of positive bets on mortgages turned out to be prescient. Unlike most other Wall Street banks, Goldman profited from its mortgage business as the housing bubble was inflating and then again when the bubble burst.

145. In a further attempt to flatly deny any wrongdoing, on April 19, 2010, Defendants caused the Company to yet again issue a "response" to the SEC Action. In their April 19, 2010 press release, Defendants again issued strong denials of any wrongdoing and revealed that the

SEC investigation had been ongoing for the past year and a half:

On Friday, April 16, the US Securities and Exchange Commission brought a civil action against Goldman Sachs in relation to a single transaction in 2007 involving two professional institutional investors, IKB and ACA Capital Management (ACA). We believe the SEC's allegations to be completely unfounded both in law and fact, and will vigorously contest this action.

The core of the SEC's case is based on the view that one of our employees misled these two professional investors by failing to disclose the role of another market participant in the transaction, namely Paulson & Co., and that the employee thereby orchestrated the creation of materially defective offering materials for which the firm bears responsibility.

Goldman Sachs would never condone one of its employees misleading anyone, certainly not investors, counterparties or clients. We take our responsibilities as a financial intermediary very seriously and believe that integrity is at the heart of everything that we do.

Were there ever to emerge credible evidence that such behavior indeed occurred here, we would be the first to condemn it and to take all appropriate actions.

This particular transaction has been the subject of SEC examination and review for over eighteen months. Based on all that we have learned, we believe that the firm's actions were entirely appropriate, and will take all steps necessary to defend the firm and its reputation by making the true facts known.

The SEC does not contend that the two professional institutional investors involved did not know what they were buying, or that the securities included in this privately placed transaction were in any way improper. These institutions were very experienced in the CDO market.

In this private transaction, Goldman Sachs essentially acted as an intermediary, helping to facilitate the investing objectives of two clients. Extensive disclosures as to each of the securities in the reference portfolio, similar to those required by the SEC in public transactions, were contained in the offering documents which provided all the information needed to understand and evaluate the portfolio.

In the process of selecting the reference portfolio, ACA Capital Management, who was both the portfolio selection agent and the overwhelmingly largest investor in the transaction (\$951 million, with the other professional investor's exposure being \$150 million), evaluated every security in the reference portfolio using its own proprietary models and methods of analysis. 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.

In summary, the SEC's complaint is an issue of disclosure on a single transaction involving professional investors in a market in which they had extensive experience. Critical points missing from the SEC's complaint include:

Goldman Sachs Lost Money on the Transaction. The firm lost more than \$90 million arising from this transaction. Our fee was \$15 million. We certainly did not wish to structure an investment that was designed to lose money.

Objective Disclosure Was Provided. The transaction at issue involved a static portfolio of securities, and was marketed solely to sophisticated financial institutions. IKB, a large German Bank and leading CDO market participant and ACA Capital Management, the two investors, were provided extensive information about those securities and knew the associated risks. 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.

Goldman Sachs Never Represented to ACA That Paulson Was Going To Be A Long Investor. The SEC's complaint in part accuses the firm of potential fraud because it didn't disclose to one party of the transaction the identity of the party on the other side. As normal business practice, market makers do not disclose the identities of a buyer to a seller and vice versa. Goldman Sachs never represented to ACA that Paulson was to be a long investor.

ACA, the Largest Investor, Selected and Approved the Portfolio. The portfolio of mortgage backed securities was selected by an independent and experienced portfolio selection agent after a series of discussions, including with IKB and Paulson & Co. ACA had an obligation and, as by far the largest investor, every incentive to select appropriate securities.

In 2006, Paulson & Co. indicated its interest in positioning itself for a decline in housing prices. The firm structured a synthetic CDO through which Paulson could benefit from a decline in the value of the underlying reference securities. Those on the other side of the transaction, IKB and ACA Capital Management, the portfolio selection agent, could benefit from an increase in the value of the securities. ACA had a long established track record as a CDO manager. As of May 31, 2007, ACA was managing 26 outstanding CDOs with underlying portfolios consisting of \$17.5 billion of assets.

IKB, ACA and Paulson all provided their input regarding the composition of the underlying securities. ACA ultimately and independently approved the selection of 90 Residential Mortgage Backed Securities (RMBS), which it stood behind as the portfolio selection agent and the largest investor in the transaction. The offering documents for the transaction included every underlying reference mortgage security.

The offering documents for each of these RMBS in turn disclosed detailed information concerning the mortgages held by the trust that issued the RMBS. Any investor losses resulted from the massive decline of the broader subprime mortgage market, not because of which particular securities ended up in the reference portfolio or how they were selected.

The transaction was not created as a way for Goldman Sachs to short the subprime market. To the contrary, Goldman Sachs retained a substantial long position in the transaction and lost money as a result.

Questions and Answers

Who were the investors in this transaction?

The investors in the transaction were ACA Capital Management, a well-recognized collateral manager and investor in CDOs, and IKB, then believed to be one of the most highly-sophisticated CDO investors in the world.

What is a synthetic CDO?

A synthetic CDO has characteristics much like that of a futures contract, requiring two counterparties to take different views on the forward direction of a market or particular financial product, one short and one long. A CDO is a debt security collateralized by debt obligations, including mortgage-backed securities in many instances. These securities are packaged and held by a special purpose vehicle (SPV), which issues notes that entitle their holders to payments derived from the underlying assets. In a synthetic CDO, the SPV does not own the portfolio of actual fixed income assets that govern the investors' rights to payment, but rather enters into CDSs that reference the performance of a portfolio. The SPV does hold some separate collateral securities which it uses to meet its payment obligations.

What are the implications of this SEC action for the overall CDO market?

The SEC complaint is related to a single transaction in 2007 and involves a highly particularized set of alleged facts. It would not appear to have broad ramifications for the CDO market generally.

Who selected the securities that ended up in this particular portfolio?

ACA had the sole right and responsibility to select the portfolio and it in fact did so. As part of the process, ACA received input from other transaction participants. ACA had served as portfolio selection agent or collateral manager for numerous other transactions, and no doubt was accustomed to an interactive selection process. ACA used its own expertise and models in scrutinizing and approving the referenced securities. ACA subjected the securities proposed for inclusion in the portfolio to its own proprietary models and analysis.

What is the firm's role in facilitating such transactions?

Goldman Sachs acts as a market intermediary through which its clients can take long or short positions on the reference securities. Goldman Sachs will often assume the opposite side of a client's position to complete a transaction. As fully disclosed to investors in the offering materials in this transaction, the firm can then hold or sell that position to increase, reduce or eliminate its own exposures.

Did investors have adequate disclosure?

Extensive, objective disclosures were contained in the offering documents. Investors had all the information they needed to understand and evaluate the reference securities.

What was the role of ABN Amro/RBS in this transaction?

ABN intermediated a \$909 million credit default swap referencing the portfolio between Goldman Sachs and ACA. ABN assumed the credit risk that ACA might not be able to pay if its obligations under the credit default swap came due. When the portfolio suffered writedowns, ACA ultimately was not able to pay the amount due on the credit default swap, and ABN made payment.

146. Notwithstanding Defendants' claims that no wrongdoing ever occurred, the Board has specifically come under fire (and rightfully so) for its failure to investigate and properly

inform itself in the face of such serious allegations. For instance, in an April 19, 2010 article published by *Bloomberg* entitled “Goldman Sachs Stock, Board Under Pressure Amid Probe,” James Post, a professor of corporate governance and ethics at Boston University, took the Board to task for its apparent inaction and failure to investigate, and noted that defendants’ strong and swift public denials of any wrongdoing have compromised the Board’s ability to investigate or take any meaningful action. Moreover, this article also indicated that the total costs to Goldman in connection with the SEC Action could amount to **\$2 billion**. The *Bloomberg* article, in pertinent part, states:

April 19 (Bloomberg) — Goldman Sachs Group Inc.’s stock price may fall and the board could come under pressure to change managers after European politicians followed a U.S. fraud suit with plans to scrutinize the firm, investors said.

Prime Minister Gordon Brown called yesterday for the U.K. Financial Services Authority to start a probe, saying he was “shocked” at the “moral bankruptcy” indicated in the Securities and Exchange Commission suit against Goldman Sachs. Germany’s financial regulator, Bafin, asked the SEC for details on the suit, a spokesman for Chancellor Angela Merkel said.

The escalating rhetoric adds urgency to efforts by Chairman and Chief Executive Officer Lloyd Blankfein and the rest of his board to stem negative publicity. Although Goldman Sachs vowed to fight the SEC case, calling it “unfounded in law and fact,” the stock plunged 13 percent on April 16. The shares rose 1.6 percent to \$163.32 at 4:50 p.m. in New York Stock Exchange composite trading.

“The lynch-mob mentality that is prevailing right now against Goldman is such that you don’t know where this thing could go, so I think the stock is going to be under continuing pressure,” said Michael Holland, who oversees more than \$4 billion as chairman of New York-based Holland & Co. “The board actually has to pay attention not only to the legal niceties of this thing but also to the franchise viability as well.”

Michael Fair, president and founder of Washington-based Farr, Miller & Washington LLC, said he sold his Goldman Sachs stock on April 16 because the SEC suit brought the controversy over Wall Street’s dealings in collateralized debt obligations and credit-default swaps to a new level.

‘Investors Understand Fraud’

“Investors understand that something complicated and errant happened with CDOs and CDSs but they’re not sure entirely what, because these collateralized debt obligations and credit- default swaps are complicated and somewhat arcane,” said Farr, whose firm manages more than \$700 million in assets. “But investors understand fraud. They get fraud really clearly.”

Samuel Robinson, a spokesman for Goldman Sachs, declined to comment.

The SEC said that in early 2007, as the U.S. housing market teetered, Goldman Sachs created and sold a CDO linked to subprime mortgages without disclosing that hedge fund Paulson & Co. helped pick the underlying securities and bet against the vehicle, known as Abacus 2007-AC1.

Goldman Sachs, whose \$13.4 billion profit last year was the highest ever for a Wall Street securities firm, is facing an unprecedented level of public opprobrium because of the perception that it profited from practices that led to the biggest financial crisis since the Great Depression.

‘The Bogey Man’

“Goldman Sachs will now become the bogey man for all financial ills, and I think it’s a story that’s not going away, it is only likely to increase,” said Matt McCormick, an analyst at Bahl & Gaynor Inc. in Cincinnati, which manages about \$2.8 billion. “If you buy it at these levels you are hoping that this is the worst of the bad news, and I don’t believe that’s the case.”

Steve Stelmach, an analyst at FBR Capital Markets in Arlington, Virginia, today removed Goldman from his “Top Picks” list, citing the SEC suit. He still reiterated his outperform rating because of the bank’s “strong fundamentals.”

“The market appears to be overly discounting the potential earnings impact from the SEC charges,” he wrote in a note to clients today. The stock’s drop implies the suit may cost the bank \$2 billion before tax, twice the \$1 billion the SEC says investors lost in the transaction, he wrote.

‘Answer Questions’

Of the 29 analysts that track Goldman Sachs, 22 rate the stock a buy, seven mark it a hold and none recommend investors sell, data compiled by Bloomberg show.

Politicians that were forced to bail out their nations’ banks are turning on Goldman Sachs. The firm, which paid its employees \$16.2 billion last year, has become a target for politicians like the U.K.’s Brown who are running in elections or who, in the U.S., are battling over new financial regulation.

“It is individuals in Goldman Sachs that are going to have to answer questions,” Brown said at an event in London today. “We are determined to root out any malpractice.”

The European Union is probing Goldman Sachs’s role in arranging swaps for Greece that may have masked the country’s budget deficit. Congress has also examined the company’s relationship with American International Group Inc., which got a \$182.3 billion U.S. rescue.

Federal Case Assigned

The SEC case against Goldman Sachs was assigned to U.S. District Judge Barbara Jones in New York who presided over the case of former WorldCom Inc.

CEO Bernard Ebbers. Ebbers, who was convicted in 2005 of overseeing one of the biggest frauds in U.S. history, is serving a 25-year prison term.

Goldman Sachs's first-quarter profit, due to be published tomorrow, probably won't help even though analysts expect earnings to rise 41 percent from a year earlier, McCormick said.

"They're going to probably come out with great earnings, at least that's the expectation, but that is going to be quickly discounted and drowned out," he said.

Goldman Sachs's board of directors should conduct its own investigation to ensure that it understands what senior management knew about the issues raised by the SEC's complaint, said James Post, a professor of corporate governance and ethics at the Boston University School of Management.

'How Long?'

"The board has got to be insisting on a much deeper level of internal investigation that reports only to them, not to Blankfein," Post said. "They've got to be asking the question 'how long can we continue going with Blankfein before we've got to clean house and put a new group of people in there?'"

William W. George, a Harvard Business School professor who has served on Goldman Sachs's board since 2002, referred a request for an interview to the company's press office. His Twitter account, which lauded JPMorgan Chase & Co. CEO Jamie Dimon for his firm's better-than-expected earnings on April 14, remained silent on the controversy surrounding Goldman Sachs.

Boston University's Post said he wouldn't expect the board to take any immediate action to change the firm's management because it would seem to contradict the defiant position the company took on April 16.

"I'm pretty sure that the board at Goldman is having a bad weekend," Post said yesterday. "They may be praying for some news out of the Vatican or a new volcano to get them off the front pages."

Management Changes?

Bahl & Gaynor's McCormick said changing senior management could add fuel to critics' complaints instead of mollifying them. A better course, he said, would be to bring in a well-respected Wall Street veteran, even someone like billionaire Warren Buffett, to serve as a chairman or adviser to Blankfein. Buffett's Berkshire Hathaway Inc. is already one of the largest investors in Goldman Sachs.

"I could see them bringing in an outside person, somebody who is viewed by the Street as a wise sage that could come in and give an outsider's perspective" to advise Blankfein, McCormick said. ***"Nobody's going to believe Goldman is going to take care of this on their own."***

147. Defendants' blanket denials and cover-up of the Wells Notice have effectively compromised the Board's ability to investigate these events, and remedy them. The Board has

consistently either issued or sanctioned other Defendants' denials of wrongdoing. Accordingly, at this point, the Board cannot effectively investigate or prosecute any claims related to this chain of events because, by doing so, it runs the substantial risk of reaching conclusions that would contradict prior statements issued, which could further expose Goldman.

148. The timing of events here is critical — Goldman and its stockholders needed a Board that would quickly and effectively respond to Company concerns. Instead, the Board became parties to the cover-up by allowing other Defendants to issue blanket denials on the Company's behalf before it had conducted any meaningful inquiry to ascertain the veracity of those statements. Clearly, the Board should have taken decisive action when it first became aware of the SEC's inquiry (certainly, the Board had the opportunity to), but because it failed to do so, its ability to effectively act now has been eviscerated

149. Also on April 19, 2010, *Reuters* published an article entitled "Goldman May Face Backlash For Staying Mum On Probe," which strongly criticized the facts that not only did Defendants learn of the likelihood of charges in July 2009 with the receipt of a Wells Notice, but that Defendants' blanket denials and silence may further hurt the Company. The article, in relevant part, stated:

NEW YORK, April 19 (Reuters) — Freshly branded a "vampire squid," Goldman Sachs Group Inc (GS.N) last summer contended with a backlash over its ballooning bonus pool and a controversy over the "special sauce" that made its high-frequency trading operation go.

At the same time, another concern quietly lurked in the background.

In August, the U.S. Securities and Exchange Commission notified Goldman through an official "Wells Notice" that it was facing civil liability in the Abacus collateralized debt obligation case. Goldman did not disclose its SEC quandary to investors until charges were filed against the company on Friday.

SEC rules mandate that companies must report material events to shareholders within 10 days.

Wells Notices often are disclosed because companies want to avoid to shareholder lawsuits. When the news of the charges against Goldman broke on Friday, shares tumbled more than 12 percent.

“We disclose legal and regulatory matters as required,” Goldman spokesman Samuel Robinson said. “There is no obligation to disclose receipt of a Wells Notice, which can have many potential outcomes — or none.”

But some investors, not surprisingly, are angry and looking to sue Goldman, said Jacob Zamansky, a plaintiffs lawyer, who said he’s been contacted by a number of clients about potential suits against the dominant Wall Street bank.

Zamansky called the failure to disclose the Wells Notice “highly significant.”

“It should have been disclosed and most firms on the Street do, in fact, disclose these,” Zamansky said. “Look at the effect this has had. A case by the SEC is clearly material to their business. I’m sure this isn’t the only deal where they have problems.”

“MATERIAL”

On Friday, the SEC charged Goldman with hiding from institutional investors the involvement of a prominent hedge fund manager in helping it structure a subprime mortgage debt product that he was betting against.

Goldman vowed to vigorously defend itself against the charges and denied that it had structured a portfolio that was designed to lose money, claiming that Goldman itself had invested in the equity portion of the deal.

Ironically, months before the SEC filed its charges, lawyers for Goldman had tried to persuade regulators that there was no need to disclose the hedge fund’s involvement because it wasn’t “material.” That, of course, is much the same argument Goldman is making now about its own decision not to disclose the Wells Notice.

The SEC, as a general rule, does not tell companies when to disclose the receipt of a Wells Notice. The decision is left to the company to decide whether it is something investors would want to know about.

Some companies disclose Wells Notices in regulatory filings shortly after being notified by the SEC. For instance, Dell Inc (DELL.O), Bank of America Corp (BAC.N) and American International Group Inc (AIG.N) have all disclosed Wells Notices that they or their employees have received.

Jill Fisch, a professor at the University of Pennsylvania Law School, said there’s no bright line on when companies report Wells Notices.

“There isn’t a standard approach to this,” Fisch said. “The real question is how big an impact is this case likely to have on Goldman. You can’t necessarily judge that by the market reaction because the market reaction may be an overreaction or a perception that this is the tip of the iceberg.”

In determining whether or not to disclose a Wells Notice, some companies will only do so if the regulatory action implicates a division that's responsible for either 10 percent of its assets or revenues.

In the case of Goldman, the Abacus CDO deal, at most, put the company on the hook for paying about \$1 billion in damages. In 2009, Goldman's net income was about \$12 billion.

A BUSY SUMMER

When Goldman received the Wells Notice, it was already fending off other PR hits.

There was a backlash against its pay practices and the fact that it had already set aside billions of dollars to pay its employees, soon after taxpayers had committed hundreds of billions to rescue the industry.

Goldman also faced questions about its transactions with American International Group, the giant insurer at the heart of the meltdown — and how Goldman benefited from AIG's rescue.

Further, Goldman's high-frequency trading models came under scrutiny as one of its former employees was charged with stealing its secret computer codes. The saga led to a new line of questions about whether Goldman had special advantages in its trading operations.

And, of course, Rolling Stone writer Matt Taibbi famously described the investment bank as “a great vampire squid wrapped around the face of humanity” — a nickname that has stuck as a punch line.

Some Goldman investors and clients, already incensed at the SEC's allegations, say the company is likely to be full of excuses when it eventually fields questions from investors.

“Of course, they have an obligation to report material facts,” said Michael Vogelzang, president of investment firm Boston Advisors, which owns shares of Goldman Sachs, “But in a very real way, it is Goldman doing what they do.” He added, joking: “I'm sure they will have a wonderful answer when investors ask them about it.”

150. Defendants' failure to disclose the receipt of a Wells Notice was further criticized by Charles Elson in an April 19, 2010 *New York Post* article entitled “Goldman Bosses Hid Feds' Probe.” Specifically, Mr. Elson stated that: *“[i]n an age of heightened transparency...receipt of that [Wells] notice should have been disclosed.”*⁴

⁴ As stated above, this is particularly the case given the ongoing public controversy regarding the Company's executive compensation.

151. In addition to the Company's problems within the U.S., on April 20, 2010, it was revealed that Britain's Financial Services Authority has launched its own probe in the matter.

152. Most recently, on April 24, 2010, as discussed above, the *New York Times* detailed the emails between Blankfein, Cohn, Viniar, and other top Goldman contradicting Defendants' public representations. That same day, as discussed below, the *Journal* published an article revealing the massive illicit insider sales executed by the Insider Selling Defendants while they, but not the public, were aware of the Wells Notice.

153. As a result of defendants' breaches of fiduciary duty and other misconduct, the price of the Company's stock still has not recovered and currently trades at around \$152 per share.

154. Accordingly, the Company has been damaged.

Massive Illicit Insider Selling After Goldman Received the Wells Notice, But Before It Was Disclosed By Defendants

155. As the *Journal* would reveal on April 24, 2010, while in possession of non-public, material, adverse information regarding the Company (specifically, the existence of the Wells Notice which had been served on Goldman in July 2009), beginning on October 16, 2009 and ending on February 26, 2010, the Insider Selling Defendants — including the Company's co-General Counsel, defendant Stecher, and a director of the Company, defendant Bryan, collectively sold over 382,000 artificially inflated shares of Goldman stock into the market and collectively reaped over **\$65.4 million** worth of proceeds, as shown in the following chart:

<u>Insider</u>	<u>Transaction Dates</u>	<u>Shares</u>	<u>Price</u>	<u>Proceeds</u>
Smith	10/16/09	16,129	\$186.57	\$ 3,009,187
Sherwood	11/13/09-11/24/09	182,860	\$171.54-\$178.05	\$31,936,166

Insider	Transaction Dates	Shares	Price	Proceeds
Evans	11/23/09-11/27/09	140,000	\$164.80-\$173.47	\$23,768,000
Stecher	2/8/10-2/26/10	37,558	\$ 152.65-156.69	\$ 5,760,388
Bryan	2/18/10	6,000	\$155.37	\$ 932,220
TOTAL		382,547		\$65,405,961

156. As the *Journal* reported on April 24, 2010 in an article entitled “Insiders Sold Shares As SEC Probed Firm,” the Insider Selling Defendants’ illicit insider sales represented *“the most active spate of insider selling [by Goldman insiders] in three years”*:

Five senior executives of Goldman Sachs Group Inc., including the firm’s co-general counsel, sold \$65.4 million worth of stock after the firm received notice of possible fraud charges, which later drove its stock down 13%.

Sales by three of the five Goldman insiders occurred at prices higher than the stock’s current level. The stock sales by co-general counsel Esta Stecher, vice chairmen Michael Evans and Michael Sherwood, principal accounting officer Sarah Smith and board member John Bryan occurred between October 2009 and February 2010. *It was the most active spate of insider selling in three years*, according to InsiderScore.com in Princeton, N.J., which tracks and analyzes purchases and sales of stocks by top executives and directors.

Goldman received notice of the possible charges last July, but didn’t publicly disclose that fact, later explaining that it didn’t consider such a notice material information investors would have needed to value the stock. A week ago, on April 16, the Securities and Exchange Commission filed civil-fraud charges against Goldman for failing to disclose that a short seller, Paulson & Co., participated in selection of assets in a pool tied to subprime mortgages.

The charges drove Goldman stock down from a closing price of \$184.27 on April 15 to \$160.70 on April 16. The stock hasn’t recovered any of the first-day loss. It closed out the week at \$157.40 in 4 p.m. trading on the New York Stock Exchange.

* * *

Messrs. Bryan and Sherwood and Ms. Stecher sold some or all of their shares after exercising options to buy at lower prices that would have expired between November 2010 and November 2012.

Ms. Smith sold 16,129 shares on Oct. 16 for \$3 million at \$186.57 a share, according to InsiderScore.com.

Mr. Sherwood sold shares between Nov. 13 and 24 for \$31.9 million, or \$174.65 a share, InsiderScore.com said. Mr. Evans sold shares between Nov. 23 and 27 for \$23.7 million, or \$169.56 a share. Ms. Stecher sold shares on Feb. 8 and 26 for \$5.8 million, or \$153.38 a share. And Mr. Bryant sold shares on Feb. 18 for \$932,223, or \$155.37 a share.

Mr. Sherwood, co-chief executive of Goldman Sachs International in London and Mr. Evans, chairman of Goldman Sachs Asia in Hong Kong, are on the Goldman management committee with Ms. Stecher.

Ben Silverman, director of research at InsiderScore.com, said *the insider selling since October “was the most aggressive” at Goldman in three years*, since late 2006 through early 2007.

157. Predictably, the Board has taken no action whatsoever to investigate and/or remedy the improper insider sales described above, and reported on in the *Journal*.

DERIVATIVE AND DEMAND ALLEGATIONS

158. Plaintiff brings this action derivatively in the right and for the benefit of Goldman to redress the breaches of fiduciary duty and other violations of law by Defendants.

159. Plaintiff will adequately and fairly represent the interests of Goldman and its shareholders in enforcing and prosecuting its rights.

160. The Board currently consists of the following twelve (12) individuals: defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons. Plaintiff has not made any demand on the present Board to institute this action because such a demand would be a futile, wasteful and useless act, for the following reasons:

- a. Defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons have clearly demonstrated their unwillingness and/or inability to act in compliance with their fiduciary obligations and/or to sue themselves and/or their fellow directors and allies in the top ranks of the Company for the violations of law complained of herein. Most notably, this is evidenced by the Board’s refusal to properly inform itself by investigating the misconduct that has exposed Goldman to liability, in violation of their fiduciary

duties to the Company and its shareholders. Indeed, the Board has not investigated or caused to be investigated any of the allegations raised in the July 2009 Wells Notice or the recent SEC Action. Each member of the Board is a fiduciary under Delaware law, and as such they owe the corporation and its stockholders a duty of care to inform themselves properly. Indeed, defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro are each duty-bound to inform themselves of all material information reasonably available to them. The Board has failed to do so, as the financial media has specifically highlighted, and under such circumstances Delaware law does not require a stockholder to make a pre-suit demand on a board of directors. Thus, demand is excused.

- b. The Board has demonstrated its hostility to this Action by failing to disclose the existence of the July 2009 Wells Notice and by participating in or permitting the issuance of Defendants' blanket denials of wrongdoing set forth above. Moreover, as described above, Defendants' defiant denials of wrongdoing have compromised the Board's ability to investigate or take any action, and similarly have compromised the Board's ability to independently and disinterestedly consider a demand. Thus, demand is excused.
- c. During the Relevant Period, a majority of the Board members, defendants Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal and Schiro served as members of the Audit Committee. Pursuant to the Company's Audit Committee Charter, members of the Audit Committee are responsible for, *inter alia*, overseeing the integrity of the financial statements of the Company, overseeing its

compliance with legal and regulatory requirements, and overseeing the Company's internal controls. Defendants Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal and Schiro breached their fiduciary duties of due care, loyalty, and good faith, because the Audit Committee, *inter alia*, allowed or permitted the above legal and regulatory violations to occur, as well as failures in the Company's internal controls, and allowed or permitted the above false and misleading statements to be issued, specifically those concealing the existence of the Wells Notice and accompanying SEC Action. Therefore, defendants Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal and Schiro face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile;

- d. While in possession of material, adverse, non-public information, *i.e.* that the Company had been served with a Wells Notice in July 2009, defendant Bryan participated in illegal insider selling by selling 6,000 of his personally held Goldman shares for proceeds of \$932,220. Because defendant Bryan received personal financial benefits from challenged insider trading transactions, Bryan is directly interested in a demand, and any demand upon Bryan would be futile.
- e. The principal professional occupation of defendant Blankfein is his employment with Goldman as its CEO, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits. Thus, defendant Blankfein lacks independence from demonstrably interested directors, rendering him incapable of impartially considering a demand to commence and vigorously prosecute this action;

- f. The principal professional occupation of defendant Cohn is his employment with Goldman as its President and COO, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits. Thus, defendant Cohn lacks independence from demonstrably interested directors, rendering him incapable of impartially considering a demand to commence and vigorously prosecute this action; and
- g. The Board has failed to investigate or remedy the massive illicit insider sales by the Insider Selling Defendants described herein. Under such circumstances Delaware law does not require a stockholder to make a pre-suit demand on a board of directors. Thus, demand is excused.

COUNT I
AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY FOR
DISSEMINATING FALSE AND MISLEADING INFORMATION

161. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

162. As alleged in detail herein, each of the Defendants (and particularly the Audit Committee Defendants) had a duty to ensure that Goldman disseminated accurate, truthful and complete information to its shareholders.

163. Defendants violated their fiduciary duties of care, loyalty, and good faith by causing or allowing the Company to disseminate to Goldman shareholders materially misleading and inaccurate information through, *inter alia*, SEC filings and other public statements and disclosures as detailed herein. These actions could not have been a good faith exercise of prudent business judgment.

164. As a direct and proximate result of Defendants' foregoing breaches of fiduciary

duties, the Company has suffered significant damages, as alleged herein.

COUNT II
AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY
DUTIES FOR FAILING TO MAINTAIN INTERNAL CONTROLS

165. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if fully set forth herein.

166. As alleged herein, each of the Defendants had a fiduciary duty to, among other things, exercise good faith to ensure that the Company's financial statements were prepared in accordance with GAAP, and, when put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

167. Defendants willfully ignored the obvious and pervasive problems with Goldman's internal controls practices and procedures and failed to make a good faith effort to correct the problems or prevent their recurrence.

168. As a direct and proximate result of the Defendants' foregoing breaches of fiduciary duties, the Company has sustained damages.

COUNT III
AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES FOR
FAILING TO PROPERLY OVERSEE AND MANAGE THE COMPANY

169. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

170. Defendants owed and owe Goldman fiduciary obligations. By reason of their fiduciary relationships, Defendants specifically owed and owe Goldman the highest obligation of good faith, fair dealing, loyalty and due care.

171. Defendants, and each of them, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

172. As a direct and proximate result of Defendants' failure to perform their fiduciary obligations, Goldman has sustained significant damages, not only monetarily, but also to its corporate image and goodwill.

173. As a result of the misconduct alleged herein, Defendants are liable to the Company.

174. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

**COUNT IV
AGAINST ALL DEFENDANTS FOR UNJUST ENRICHMENT**

175. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

176. By their wrongful acts and omissions, the Defendants were unjustly enriched at the expense of and to the detriment of Goldman.

177. Plaintiff, as a shareholder and representative of Goldman, seeks restitution from these Defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by these Defendants, and each of them, from their wrongful conduct and fiduciary breaches.

**COUNT V
AGAINST ALL DEFENDANTS FOR ABUSE OF CONTROL**

178. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

179. Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence Goldman, for which they are legally responsible. In particular, Defendants abused their positions of authority by causing or allowing Goldman to misrepresent material facts regarding its financial position and business prospects.

180. As a direct and proximate result of Defendants' abuse of control, Goldman has

sustained significant damages.

181. As a result of the misconduct alleged herein, Defendants are liable to the Company.

182. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

**COUNT VI
AGAINST ALL DEFENDANTS FOR GROSS MISMANAGEMENT**

183. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

184. Defendants had a duty to Goldman and its shareholders to prudently supervise, manage and control the operations, business and internal financial accounting and disclosure controls of Goldman.

185. Defendants, by their actions and by engaging in the wrongdoing described herein, abandoned and abdicated their responsibilities and duties with regard to prudently managing the businesses of Goldman in a manner consistent with the duties imposed upon them by law. By committing the misconduct alleged herein, Defendants breached their duties of due care, diligence and candor in the management and administration of Goldman's affairs and in the use and preservation of Goldman's assets.

186. During the course of the discharge of their duties, Defendants knew or recklessly disregarded the unreasonable risks and losses associated with their misconduct, yet Defendants caused Goldman to engage in the scheme complained of herein which they knew had an unreasonable risk of damage to Goldman, thus breaching their duties to the Company. As a result, Defendants grossly mismanaged Goldman.

**COUNT VII
AGAINST ALL DEFENDANTS FOR WASTE OF CORPORATE ASSETS**

187. Plaintiff incorporates by reference and realleges each and every allegation

contained above, as though fully set forth herein.

188. As a result of the misconduct described above, and by failing to properly consider the interests of the Company and its public shareholders, Defendants have caused Goldman to incur (and Goldman may continue to incur) significant legal liability and/or legal costs to defend itself as a result of Defendants' unlawful actions.

189. As a result of this waste of corporate assets, Defendants are liable to the Company.

190. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

**COUNT VIII
AGAINST THE INSIDER SELLING DEFENDANTS FOR BREACH OF FIDUCIARY
DUTIES**

191. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

192. At the time of the stock sales set forth herein, the Insider Selling Defendants were in possession of material, non-public, adverse information described above, and sold Goldman common stock on the basis of such information.

193. The information described above (the July 2009 Wells Notice served on the Company by the SEC) was non-public information which the Insider Selling Defendants used for their own benefit when they sold Goldman common stock.

194. Since the use of material, adverse, non-public information about Goldman for their own pecuniary gain constitutes a breach of their fiduciary duties, the Company is entitled to the imposition of a constructive trust on any profits the Insider Selling Defendants obtained thereby.

**COUNT IX
AGAINST THE DIRECTOR DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES**

FOR FAILING TO INVESTIGATE AND/OR REMEDY IMPROPER INSIDER SALES

195. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

196. Each Director Defendant was and is required to act with the utmost loyalty and good faith to the Company. Each Director Defendants has violated these core duties by failing to investigate and/or remedy the improper insider sales made by the Insider Selling Defendants while they, but not the public, knew of the July 2009 Wells Notice served on the Company by the SEC.

197. As a direct and proximate result of the Director Defendants' foregoing breaches of fiduciary duties, the Company has suffered significant damages, as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Against all Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of Defendants' breaches of fiduciary duties;

B. Directing Goldman to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect the Company and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board

C. Directing the Board to immediately disclose the existence of any as-yet undisclosed Wells Notices which have been issued to the Company or to any of the Defendants by the SEC;

D. Awarding to Goldman restitution from Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by the Defendants;

E. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: April 26, 2010

HARWOOD FEFFER LLP

/s/ ROBERT I. HARWOOD

ROBERT I. HARWOOD

488 Madison Avenue

New York, NY 10022

Telephone (212) 935-7400

Facsimile: (212) 753-3630

THE WEISER LAW FIRM, P.C.

ROBERT B. WEISER

BRETT D. STECKER

JEFFREY J. CIARLANTO

121 N. Wayne Avenue, Suite 100

Wayne, PA 19087

Telephone: (610)225-2677

Facsimile: (610) 225-2678

THE WEISER LAW FIRM, P.C.

KATHLEEN A. HERKENHOFF

12707 High Bluff Drive, Suite 200

San Diego, CA 92130

Telephone: (858) 794-1441

Facsimile: (858) 794-1450

LAW OFFICE OF ALFRED G. YATES, JR., P.C.

ALFRED G. YATES, JR.

GERALD L. RUTLEDGE

519 Allegheny Building

429 Forbes Avenue

Pittsburgh, PA 15219

Telephone: (412) 391-5164

Facsimile: (412) 471-1033

Counsel for Plaintiff

GOLDMAN SACHS, INC. VERIFICATION

I, Margaret C. Richardson, hereby verify that I am familiar with the allegations in the Complaint, and that I have authorized the filing of the Complaint, and that the foregoing is true and correct to the best of my knowledge, information and belief.

DATE: 4-26-10

/s/ MARGARET C. RICHARDSON
MARGARET C. RICHARDSON

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE THE GOLDMAN SACHS GROUP, INC.
SHAREHOLDER LITIGATION

:
:
: C.A. No. 5215-CC
:

AMENDED SHAREHOLDER DERIVATIVE COMPLAINT

Co-Lead Plaintiffs Southeastern Pennsylvania Transportation Authority and International Brotherhood of Electrical Workers Local 98 Pension Fund (“Plaintiffs”), by and through their undersigned attorneys, allege as follows:

NATURE OF THE ACTION

1. This action challenges the executive compensation practices of the Goldman Sachs Group, Inc. (“Goldman,” “Company,” or “Firm”) and arises from the following: (a) Nearly 50% of Goldman’s net revenues have been and continue to be allocated to the compensation of its management, while public shareholders, whose equity renders possible such revenue-generating, receive declining returns, and (b) Goldman’s trading business, its largest revenue-generating business segment and a primary source of management compensation, has been managed and conducted by Goldman’s senior management in an unethical manner that subjects Goldman to potential civil liability, as reflected in a recent SEC complaint charging Goldman and a trading officer with civil fraud, as well as severe reputational harm that will have long-term impact on the Company.

2. Following heavy fixed-income trading losses for Goldman in the late 1990s, Goldman, under the leadership of Defendant Lloyd C. Blankfein, adopted a corporate mentality driven by a desire to compete with hedge funds and to compensate

Goldman executives in a manner comparable to successful hedge fund managers. The overwhelming majority of Goldman's revenues are derived from its Trading and Principal Investment segment, which invests the firm's assets in debt and equity securities as well as direct investments in real estate. This activity is similar to other investment entities such as hedge funds, which invest and trade in debt and equity securities, yet Goldman's management is paid vastly more than hedge fund managers.

3. This pursuit of huge profits has given rise to an expansion of Goldman's trading business that is a "moral bankruptcy," fraught with conflicts of interest and the systemic breaking of ethical lines. Historically, Goldman was an investment bank that raised money for its clients. Now it resembles a huge hedge fund that trades extensively on its own account, often betting against its own clients. Accentuating its inherent-business conflicts, Goldman encourages and advises its clients to invest in financial products without disclosing that Goldman, using its extensive analytical tools for its own investments, is betting against its clients. As Senator Carl Levin, chairman of the Senate Permanent Subcommittee on Investigations (the "Permanent Subcommittee"), stated:

Our investigation has found that investment banks such as Goldman Sachs were not market makers helping clients. They were self-interested promoters of risky and complicated financial schemes that were a major part of the 2008 crises. They bundled toxic and dubious mortgages into complex financial instruments, got the credit-rating agencies to label them as AAA safe securities, sold them to investors, magnifying and spreading risk throughout the financial systems, and all too often betting against the financial instruments that they sold, and profiting at the expense of their clients.

4. The allocation of almost 50% of net revenues, the majority of which are derived from its Trading and Principal Investment segment, to the managers of the

shareholders' equity is equivalent to paying the managers 2% of net assets plus 45% of investment profits, a compensation scheme almost double the so-called and often criticized "2 and 20" compensation structure (2% of net assets plus 20% of profits) for large successful hedge funds. Goldman's management is paid this enormous allocation of profits even though, historically, its performance has not been due to skill superior to even the average hedge fund advisor but rather due to management's taking far more risks with investors' equity than hedge funds take with their investors' capital. Consequently, Goldman's employees are unreasonably overpaid for the management functions that they undertake, and shareholders are vastly underpaid for the risks taken with their equity.

5. Goldman's Board of Directors (the "Board") routinely allocates an excessive amount of net revenues to compensation without considering or analyzing the extent to which such revenues are the result of the size and availability of shareholder equity or the risks taken with that equity, as opposed to the efforts of management. In light of the risks taken with shareholder equity, and the contribution of that equity to Goldman's results, no reasonable director would approve, year in and year out, of awarding management almost 50% of net revenues as compensation.

6. The amount of compensation set aside for Goldman officers and managers bears no relation to the reasonable value of their services. It substantially exceeds compensation paid to virtually all others providing similar services, even though, on a risk adjusted basis, Goldman's officers and managers have performed over the past several years in a manner that is, at best, only average when compared to comparable

professionals who perform similar services. Since 1999, Goldman's officers and managers have been able to exceed the returns obtained by average hedge funds only by taking substantially greater risks, principally leveraging the firm's assets to speculative levels. On a risk adjusted basis, the performance of Goldman's managers and officers has lagged far behind hedge fund indices.

7. Such speculative leveraging was responsible for the demise of several investment banks, including Lehman Brothers and Bear Stearns, who were forced into bankruptcy, and to a lesser extent, Merrill Lynch, which evaded bankruptcy only when it was acquired by Bank of America. In 2007 and 2008, Goldman was even more highly leveraged than either Lehman or Bear Stearns and would have likely shared the fate of those firms if it had not been allowed to convert to a bank holding company (an option denied Lehman Brothers) and if it had not been the beneficiary of a bail-out by the Federal government and American taxpayers. Goldman's officers and managers, having nearly destroyed the capital of Goldman's equity owners and with little or no risks to themselves, in order to generate their own compensation, have distributed, by comparison, a de minimis amount to the shareholders who shouldered all of the risk. While the managers and officers of Goldman are wealthier than they were in 2008 by tens of billions of dollars, the Firm's shareholders are in a worse position, the dividends hardly compensating for the decline in Goldman's stock price over the past three years.

8. In 2009, the allocation of almost 50% of Goldman's net revenues to compensation is particularly excessive and unfair. As of September 25, 2009, Defendants had reserved almost *\$17 billion* for issuance to Company employees, and

Goldman was reported to be on track to hand out compensation in excess of \$22 billion for the year 2009 alone. This amounts to the most compensation which would ever have been paid to employees in the history of the Firm. Goldman's success this year, however, has been even less the product of the skill and business acumen of the Company's employees than that of prior years. Instead, Goldman's net revenues in 2009 were almost entirely the result of the availability of capital when other competitors had failed, as well as the government bail-out of a financial system that it was determined to preserve. Management should not be compensated for this fortuity of circumstances; the benefit of the presence, size, and survival of Goldman's capital should go to the owners of the Firm, not its managers.

9. Because all of the directors of Goldman's Board were aware, or should have been aware, of Goldman's wrongful conduct in its trading business, and a majority of directors on Goldman's Board are either named executive officers or have extensive financial relationships with Goldman, including, *inter alia*, charitable donations or financing at the discretion of Goldman's management, the Board cannot make independent decisions with respect to decisions that affect management's compensation. While the Board has consistently and regularly approved paying management almost 50% of net revenues, it has returned very little of the net revenues to the shareholders in the form of dividends. While management regularly receives almost 50% of net revenues, shareholders have consistently, with very few exceptions, received less than 2% of net revenues as dividends. Thus, the Board hoards the portion of the net revenues that it does not give away to management, which has the effect of increasing shareholder

equity, and in turn increases future net revenues from which management takes almost 50%. This endless cycle benefits Goldman's management unfairly at the expense of its shareholders, and breaches the Defendants' duties of good faith, loyalty and due care.

10. Plaintiffs bring this action to remedy the Defendants' failure to act in the interests of Goldman and its shareholders, to remedy their breaches of fiduciary duty in failing to monitor its operations, allowing the Firm to manage and conduct the Firm's trading segment in an grossly unethical manner, subjecting Goldman to potential civil liability and severe reputational harm, which will have a long-term impact on the Company, and granting management a grossly excessive share of the Company's net revenues while withholding all but a negligible percentage of those revenues from shareholders, and to assure that any prospective fees, fines or taxes imposed by any federal or state regulator or governmental unit (including, but not limited to, the federal tax on large financial institutions proposed by President Barack Obama on January 14, 2010) on Goldman related to its abusive compensation practices be borne solely by Goldman management from their future compensation.

THE PARTIES

11. Plaintiff Southeastern Pennsylvania Transportation Authority has continuously held Goldman stock at all times material hereto.

12. Plaintiff International Brotherhood of Electrical Workers Local 98 Pension Fund has continuously held Goldman stock at all times material hereto.

13. Defendant Goldman is a Delaware corporation headquartered at 85 Broad Street, New York, NY 10004. Goldman is a leading global financial services firm

providing investment banking, securities, and investment management services to a diversified client base that includes corporations, financial institutions, governments, and high-net-worth individuals.

14. Defendant Lloyd C. Blankfein (“Blankfein”) has served as the Chairman and CEO of Goldman since June 2006. Blankfein has worked for Goldman Sachs and its predecessor, Goldman Sachs Group, L.P., since 1994, and has served as a director of the Company since April 2003.

15. Defendant Gary D. Cohn (“Cohn”) has served as a director and as President and co-chief operating officer of the Company since April 2006. Cohn has worked for Goldman Sachs and its predecessor since 1996.

16. Defendant John H. Bryan (“Bryan”) has served as a director of the Company since November 1999. In addition, Bryan has served as a member of the Board’s Audit Committee (the “Audit Committee”) and Compensation Committee during the Relevant Period. Bryan is the retired chairman and chief operating officer of Sara Lee Corporation.

17. Defendant Claes Dahlback (“Dahlback”) has served as a director of the Company since June 2003. Dahlback is a member of both the Audit Committee and the Compensation Committee. Dahlback is a citizen of Sweden.

18. Defendant Stephen Friedman (“Friedman”) has served as a director of the Company since April 2005. In addition, Defendant Friedman has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. Friedman is a New York citizen.

19. Defendant William W. George (“George”) has served as a director of the Company since December 2002. In addition, Defendant George has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. George is a Massachusetts citizen.

20. Defendant Rajat K. Gupta (“Gupta”) has served as a director of the Company since November 2006. In addition, Defendant Gupta has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. Gupta is a Connecticut citizen.

21. Defendant James A. Johnson (“Johnson”) has served as a director of the Company since May 1999. In addition, Defendant Dahlback has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. Johnson is a Washington, DC citizen.

22. Defendant Lois D. Juliber (“Juliber”) has served as a director of the Company since March 2004. In addition, Defendant Juliber has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. Juliber is a New York citizen.

23. Defendant Lakshmi N. Mittal (“Mittal”) has served as a director of the Company since June 2008. In addition, Defendant Mittal has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. Mittal is a New York citizen.

24. Defendant James J. Schiro (“Schiro”) has served as a director of the Company since May 2009. In addition, Defendant Schiro has served as a member of

both the Audit Committee and the Compensation Committee during the Relevant Period.

25. Defendant Ruth J. Simmons (“Simmons”) has served as a director of the Company since January 2000. In addition, Defendant Simmons has served as a member of the Compensation Committee during the Relevant Period.

26. Defendant David A. Viniar (“Viniar”) has served as Executive Vice President and CFO of the Company since 1999.

27. Defendant J. Michael Evans (“Evans”) has served as a Vice Chairman of Goldman since February 2008 and chairman of Goldman Sachs Asia since 2004.

28. Defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, Simmons, Viniar, and Evans shall be referred to herein as the “Defendants.”

29. Blankfein, Cohn, Viniar, and Evans shall be referred to as the “Executive Officer Defendants.”

30. Defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons shall be referred to as the “Director Defendants.”

31. Defendants Byran, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, and Schiro shall be referred to herein as the “Audit Committee Defendants.”

32. Defendants Byran, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons shall be referred to herein as the “Compensation Committee Defendants.”

SUBSTANTIVE ALLEGATIONS

Background of the Company

33. Goldman began over 140 years ago when Marcus Goldman opened a one room office and began trading promissory notes. Shortly thereafter, it expanded into a partnership in which its partners provided all of the equity capital, took all of the financial risk, and shared in all of the Company's profits.

34. Goldman remained a private partnership for almost 130 years until its initial public offering ("IPO") in 1999. Goldman decided to access the public capital markets and raise capital through an initial public offering. In its IPO, the Company offered just 12% of its stock to the public, retaining 48% held by the Firm's partners, 22% held by non-partner Firm employees, and 18% held by two long term investors. Since then, however, the Firm's partners and employees have sold their equity interests to the public shareholders, who now own over 88% of the Company's equity, leaving insiders with just over 11% of the Company's outstanding shares.

35. When it went public in 1999, Goldman's common shareholder equity was \$10 billion, and it had \$258 billion of assets under management (not including client assets). Its shareholder equity as of December 2009 was \$65.5 billion, and it had \$871 billion in assets under management. Additionally, its shareholder equity as of March 31, 2010 was \$72.94 billion, and it had \$881 billion in assets under management.

36. Goldman operates in three business segments: investment banking, trading and principal investments, and asset management and securities services. By far the largest business segment, and the segment to which Goldman commits the largest

amount of capital, is the trading and principal investment segment. That segment currently generates over 75% of Goldman's revenue and income in any given year.

37. The Investment Banking segment is divided into two components, financial advisory and underwriting. The financial advisory segment includes advising clients with respect to mergers and acquisitions, divestitures, corporate defense activities, restructurings, and spin-offs. The underwriting segment includes public offerings and private placements of a wide range of securities and other financial instruments.

38. For the year ended December 2009, Goldman's Investment Banking segment generated \$4.8 billion in revenues and had pre-tax earnings of \$1.27 billion. The Investment Banking segment employed assets of \$1.48 billion in December 2009. Additionally, for the first three months ended March 31, 2010 Goldman's Investment Banking segment generated \$1.18 billion in revenues and had pre-tax earnings of \$823 million.

39. The Asset Management and Securities Services segment is divided into two components. The Asset Management component provides investment advisory and financial planning services and offers investment products, through separately managed accounts and "commingled vehicles," such as mutual funds and private investment funds, to institutions and individuals worldwide. It primarily generates revenues from management and incentive fees. Assets under management generate fees typically as a percentage of asset value, but Goldman also has numerous fee arrangements in which it receives incentive fees based on a percentage of a fund's return or exceeding specified benchmark returns or performance targets. The Securities Services component provides

prime brokerage services, financings services and securities lending services to institutional clients, including hedge funds, mutual funds, pension funds and foundations, and to high-net-worth individuals worldwide. It generates revenues primarily in the form of interest rate spreads and fees.

40. In the year ended December 2009, the Asset Management and Securities Services segment generated revenues of \$6.0 billion, including net interest income of \$1.93 billion, and had pre-tax earnings of \$1.34 billion. The segment employed assets of \$184.7 billion as of December 2009. Additionally, in the first three months ended March 31, 2010, the Asset Management and Securities Services segment generated net revenues of \$1.34 billion and had pre-tax earnings of \$989 million.

41. The Trading and Principal Investments segment is divided into three areas, FICC, Equities, and Principal Investments. In FICC, Goldman makes markets in and trades interest rate and credit products, mortgage-related securities and other asset backed instruments, currencies and commodities. It also structures and enters into a wide variety of derivative transactions and engages in proprietary trading and investing. In Equities, Goldman makes markets in and trades equities and equity related products, structures and enters into equity derivative transactions and engages in proprietary trading. In Principal Investments, Goldman makes real estate and corporate principal investments, including its investment in the ordinary shares of ICBC. Goldman's inventory in Trading and Principal Investments is marked-to-market daily, and, therefore, its value and Goldman's net revenues are subject to fluctuations based on market movements. Goldman regularly enters into large transactions as part of its trading businesses, and the number and size of

those transactions may affect its results in any given period.

42. In the year ended December 2009, Trading and Principal Investments generated net revenues of \$34.37 billion, including \$5.49 billion in net interest income, and had pre-tax earnings of \$17.32 billion. The segment employed \$662.75 billion of the firm's \$849 billion in assets as of December 2009. In addition, for the first three months ended March 31, 2010, Trading and Principal Investments generated net revenues of \$10.25 billion, and had pre-tax earnings of \$5.71 billion.

43. The Trading and Principal Investments segment generated the overwhelming majority of Goldman's net revenues — 76.1% — in the year ending December 2009, just as it had in previous years. The segment also used the overwhelming majority of the firm's assets — \$662.75 billion — in generating that revenue and income. Additionally, for the first three months ended March 31, 2010, the Trading and Principal Investments segment continued to generate the overwhelming majority of Goldman's net revenues — 80.2%.

44. The amount of revenue and income that Trading and Principal Investments has generated for Goldman has increased from approximately 40%, when the firm went public and in the early part of the decade, to approximately 70% today, with the exception of 2008 when Goldman had to write down the value of its huge bet on mortgage-related securities.

45. The Trading and Principal Investments segment is similar to a hedge fund. It utilizes shareholder equity, \$72.94 billion as of March 2010, to produce returns. The returns are the result of the massive risks that Goldman takes with the shareholders'

equity and the leveraging of that equity. Goldman employs far more leverage, and therefore exposes shareholder equity to far more risk, than almost all hedge funds. On a risk adjusted basis, Goldman's return on capital has trailed the recognized hedge fund indices.

Goldman's Trading History

46. Although outwardly Goldman Sachs is an investment bank with a wide variety of operations, the focus of its business has increasingly been on trading, through its Trading and Principal Investments segment. Trading is high-level, high-stakes betting. In the early 1990s, while still a privately-held company, Goldman suffered large trading losses. Those losses resulted in the depletion of large sums of partner capital and a corresponding exodus of numerous top partners.

47. Into a resulting leadership vacuum stepped Jon Corzine, a fixed-income trading partner, who was a strong believer that Goldman should be public. By 1998, Goldman's partners were persuaded to take the bank public, but before the IPO could come to market, the \$4.6 billion hedge fund Long Term Capital Management melted down, causing a crisis on Wall Street, including heavy fixed-income trading losses for Goldman. Corzine was forced out and Henry Paulson, who had an investment banking background, replaced him.

48. Goldman went public in 1999. No longer was Goldman playing with its partners' capital, but with shareholders' money. Paulson was CEO from 1999 to 2006; he was replaced by Defendant Blankfein. During the latter years of Paulson's tenure, Goldman traders became wealthier and more powerful in the bank. Defendant Blankfein,

the head of Goldman's trading business, was appointed in 2003 as co-chief operating officer by Paulson, along with John Thain. Thain was recruited to become the head of the New York Stock Exchange later that year and Blankfein became the heir apparent.

49. Blankfein became CEO in 2006 and surrounded himself with other traders, like-minded "Lloyd loyalists" including his chief operating officer Defendant Gary Cohn, and remade Goldman. The corporate mentality was driven by a desire to compete with hedge funds and to compensate Goldman executives in a manner comparable to successful hedge fund managers. This pursuit of huge profits has given rise to an expansion of Goldman's trading business that is fraught with conflicts of interest and fuzzy ethical lines:

Under Blankfein, Goldman continued to grow exponentially: by 2007 the firm's revenues were \$46 billion, nearly three times that of 2000. In large part, this was the result of a strategy, begun under Paulson but embraced by Blankfein, in which Goldman no longer sat on the sidelines, dispensing advice, but rather invested its own money alongside its clients'. Goldman now has a money-management business; a large private-equity business, meaning that while big buyout funds are Goldman's clients they are also its competitors; and a proprietary trading business, which exists specifically to trade Goldman's capital on Goldman's behalf — so hedge-fund clients are also competitors. Across Goldman's many trading businesses, the line is fuzzy as to when the firm is acting for itself and when it is acting on behalf of clients.

(Jan. 2010 *Vanity Fair*, pp. 124).

50. Banking has now become an adjunct of the trading business, where the real money is made. While Goldman employs 31,000 people, in businesses ranging from money management to traditional investment banking, the bank makes the bulk of its profits from trading. The trading-dominated culture at Goldman has caused its other banking sectors to come under scrutiny that has resulted in belt-tightening measures and

revenue-generating measurements that are not imposed on the trading business. Having learned hard lessons of the trading business and losses it incurred in the 1990s, Goldman executives were able to develop strategies that essentially marginalized its trading losses. Goldman accomplished this by developing a system of counter-party trading that pitted Goldman against its clients and those to whom it dispensed investment advice.

51. Defendant Blankfein has stated that Goldman no longer seeks to avoid conflicts. Instead, the Company seeks to “manage” them. Goldman often views its customers as trading counterparties, that is, the traders on the other side of Goldman’s own bets in the markets. Defendants Blankfein and Cohn have embraced this idea, arguing that the bank’s goal should be to wear several hats at once. Goldman hopes to advise a client, finance that client, invest in that client’s deal — and make money at every step along the way.

52. Perhaps no more graphic example of this trading strategy at work was the mortgage and housing crisis that became publicly apparent in late 2007. Goldman was well aware of the impending subprime mortgage market collapse and sought to take advantage of it, at the expense of their clients. A full year earlier, in December 2006, Goldman’s senior executives began to personally oversee the mortgage department. In late 2006, Dan Sparks, the head of Goldman’s mortgage unit, wrote to Goldman’s top executive that the “subprime market [was] getting hit hard,” with the firm losing \$20 million in one day.

53. On December 14, 2006, Defendant Viniar, Goldman’s CFO, called Goldman’s mortgage traders and risk managers into a meeting to discuss investing

strategy, concluding that they would reduce the Firm's overall exposure to the subprime mortgage market. Goldman executives instructed Goldman traders to sell housing-related investments to its clients while directing that Goldman capital be bet against mortgage investments. Defendant Viniar stated in a December 15, 2006 email "On ABX, the position is reasonably sensible but just too big. Might have to spend a little to size it appropriately. On everything else my basic message was let's be aggressive distributing things because there will be very good opportunities as the markets goes into what is likely to be even great distress and we want to be in position take advantage of them." By early 2007, Goldman's mortgage unit had become a hive of intense activity, which included the structuring of synthetic collateralized debt obligation ("CDOs").

54. A synthetic CDO is a security that rather than containing actual financial assets, contains derivatives, or contracts referencing the performance of other financial assets. In the case of many of the deals created by Goldman, the financial assets were mortgages. Bonds backed by the mortgages were bundled together in a process which enabled mortgage lenders to make even more loans, called credit default swaps. The synthetic CDOs consisted of these credit default swaps, which operated like insurance policies written on these mortgages bonds. If the bonds performed well, those who bought the credit default swaps would make a steady stream of small payments - much like insurance premiums — to investors who bought the synthetic CDO notes. If the bonds performed poorly, those who bought the credit default swaps would receive potentially large payouts.

55. A synthetic CDO by its very design has long and short parties. One party takes the short position betting on the fact that the underlying mortgages will fail. The other party takes the long position betting on the fact that the underlying mortgages will do well. Thus, a synthetic CDO is a financial instrument that lets investors bet on the future value of certain mortgages backed securities without actually owning them and when the defaults spread and the bond plunged, it generated billions of dollars of loss for the synthetic CDO investors and billions in profit for the investors of the credit default swaps.

56. Not only was Goldman structuring the synthetic CDOs in a way that made them destined to fail, but in connection with the creation of these synthetic CDOs, Goldman was going to the rating agencies to persuade them to give these deals an investment rating. Goldman hired the rating agencies, who began as market researchers selling assessments of corporate debt to people considering whether to buy that debt, to give the debt Goldman was selling — these synthetic CDOs — a seal of approval. This system not only produced huge conflicts of interest but also rendered the rating agencies' criteria devoid of meaning. Goldman could choose among several rating agencies, enabling them to direct their business to whichever agency was most likely to give a favorable verdict, and threaten to pull business from an agency that tried too hard to do its job. A Standard & Poor's ("S&P") analyst stated that, "[t]he bankers [at Goldman] would say anything to get what they needed in their deals." Goldman would look at every deal and every CDO that has ever been issued and would look for "inconsistencies

across different deals and use that to strong-arm Moody's, Fitch and S&P to change their criteria.”

57. After an 18-month probe conducted by the Senate Permanent Subcommittee, it concluded that the Moody's Investors Service (“Moody”) and S&P's were influenced by Wall Street, had conflicts of interest and ignored signs that fraud and lax lending had infected the housing market when grading mortgage securities which ultimately blew up when the U.S. housing market collapsed in 2007. According to the Permanent Subcommittee, Moody's and S&P deferred to investment banks that were paying them to assign ratings to securities composed of pooled mortgages. “Credit-rating agencies allowed Wall Street to impact their analysis, their independence and their reputation for reliability,” Senator Carl Levin, the Michigan Democrat who leads the investigative panel, told reporters in Washington on April 26, 2010: “They did it for the big fees that they got.” S&P's residential mortgage-backed securities group had “become so beholden to their top issuers for revenue they have all developed Stockholm syndrome which they mistakenly tag as customer value creation,” an unidentified S&P employee wrote in an August 2006 e-mail. Stockholm syndrome describes hostages who have developed positive feelings for their captors.

58. As the housing market began to fracture in early 2007, a committee of senior Goldman executives began overseeing the mortgage department more closely. Senior executives, including Defendants Viniar, Cohn, and Blankfein and those helping to manage Goldman's mortgage, credit and legal operations, took an active role in overseeing the mortgage unit, including by making routine visits to the mortgage unit,

often for hours at a time. The committee's job was to vet potential new products and transactions, being wary of deals that exposed Goldman to too much risk. With the mortgage market primed for a meltdown, there was much to discuss at any given meeting.

59. It was this committee, comprised of Goldman's top leadership that finally ended the dispute on the mortgage desk by siding with those who believed home prices would decline, making the decision to get rid of positive bets on mortgages. This decision to make negative bets on mortgages allowed Goldman to profit from its mortgage business as the housing bubble was inflating and then again when the bubble burst.

60. In at least 2007, and as acknowledged by Defendants Blankfein, Viniar and Cohn, Goldman's short bets were eclipsing the losses on its long positions, rendering any losses suffered by Goldman due to the subprime mortgage market collapse a mere fiction due to their short positions, and enabling Goldman to profit as housing prices fell and homeowners defaulted on their mortgages. Defendant Blankfein stated "[o]f course we didn't dodge the mortgage mess. We [Goldman] lost money, then made more than we lost because of shorts." In a March 6, 2007 email, Defendant Cohn stated "a Big plus could hurt the Mortgage business but Justin thinks he has a big trade lined up for morning to get us out of a bunch of our short risk." In a July 25, 2007 email to Defendant Cohn, Defendant Viniar, Goldman's CFO, remarked on figures that showed the company had made a \$51 million profit in a single day from bets that the value of mortgage-related securities would drop, stating: "[t]ells you what might be happening to people who don't

have the big short.” Documents released by the Senate Permanent Subcommittee appear to indicate that in July 2007, Goldman’s accounting showed losses of \$322 million on positive mortgage positions, but its negative bet — what Defendant Viniar called “the big short” — brought in \$373 million.

61. Additionally, the Goldman Board was also aware of Goldman taking short positions. A summary of a Goldman Board Meeting during the relevant time period said that “although broader weakness in the mortgage market resulted in significant losses in cash positions, we were overall net short the mortgage market and thus had very strong results.”

62. With its conduct with respect to the housing and mortgage markets, Goldman had crossed a clear line. It was not only using its extensive analytical tools to direct its own Firm’s and partners’ capital investments, but was advising and urging its clients to put their money in investment vehicles that Goldman’s analyses showed were likely to collapse.

63. Goldman has clearly lost its way and has violated the first of its so-called “principles”: “Our clients’ interests always come first. Our experience shows that if we serve our clients well, our own success will follow.”

Goldman Sachs and The Abacus Deals

64. Goldman structured a deal by the name of Abacus in early 2007, helping one of its clients, hedge fund Paulson & Co., to design a security known as a collateralized debt obligation (“CDO”), which was built out of a set of risky mortgage assets that the fund and founder John Paulson helped select. Paulson then placed a

“short” bet that the mortgages contained in the Abacus CDO, Abacus 2007-AC1, would fall in value. Goldman marketed long positions, *i.e.* bets that the mortgage portfolio would increase in value, to other clients without disclosing Paulson’s involvement in creating the portfolio and his bearish bet.

65. The ABACUS 2007-AC1 deal was presented to the committee of senior executives which oversaw the mortgage department in a routine meeting and quickly approved the same day it was presented to the group of roughly a dozen senior executives in a routine meeting. Abacus 2007-AC1, was one of 25 deals that Goldman created, worth \$10.9 billion, so the Firm and select clients could bet against the housing market.

66. American International Group (“AIG”) insured \$6 billion of the Abacus securities issued by Goldman. AIG’s participation was crucial to the success of many Abacus securities issued by Goldman Sachs. In the Abacus deals, a type of derivative known as credit default swaps were linked to mortgage bonds; those firms underwriting the swaps, like AIG, were essentially insuring that the mortgage bonds would perform well. When they did not, the swaps created enormous losses for those who sold them. As the Abacus deals plunged in value, Goldman and certain hedge funds made money on their negative bets, while the Goldman clients who bought the \$10.9 billion in investments lost billions of dollars.

67. Since the government rescued AIG in September 2008, AIG has posted \$2 billion in losses on the Abacus securities. AIG received a taxpayer commitment of \$180 billion to keep it from failing and causing havoc in the market worldwide.

68. Goldman has claimed that it made “only” \$15 million in fees from its role

in Abacus 2007-AC 1 and, further, that it, too, lost money — \$90 million — on its own investment in that synthetic CDO. However, Goldman invested the money only because sales of the deal did not play out as planned, forcing Goldman to step up with its own money. Further, what Goldman fails to mention, however, (a) how it came to lose \$90 million; (b) that it purchased, for pennies on the dollar, approximately \$6 billion of credit default swaps on all of the Abacus financial instruments, including Abacus 2007-AC 1, and therefore, whatever investment loss it may have suffered was a ruse that was insured by, among others, AIG, and (c) in any case, such loss was dwarfed by the billions Goldman profited by in protecting its investments in Abacus and other similar CDOs. Goldman's clients who took long positions in ABACUS 2007-AC1 lost their entire \$1 billion investment.

69. Not only was Goldman structuring the synthetic CDOs in a way that made them destined to fail, but as was consistent with its practice, after creating these synthetic CDOs, Goldman went to the rating agencies to persuade them to give these deals a rating Goldman believed it deserved. Indeed, a trader at one point complained to an investor who was buying into Abacus that he was having trouble persuading Moody's to give the deal the rating he deserved. Nevertheless, McGraw-Hill Cos.' Standard and Poor's unit placed their once-revered triple-A ratings on the Abacus deal. Notably, by October 24, 2007, six out of seven of the mortgages underlying ABACUS 2007-AC1 had been downgraded; three months later, almost all of the mortgages had been downgraded; and as of the filing of this Amended Shareholder Derivative Complaint, more than half of the

500,000 mortgages from forty-eight states underlying the Abacus deal were in default or foreclosure.

70. In or around July 2009, Goldman received a Wells notice from the Securities and Exchange Commission (“SEC”) relating to the ABACUS 2007-AC1 transaction and issues relating to its practices in the mortgage market.

71. On April 16, 2010, the SEC charged Goldman and a 31 year-old vice president, Fabrice Tourre, a London-based Goldman trader, with fraud in their roles in creating and marketing the ABACUS 2007-AC1 financial instruments, and in concealing from ACA Management LLC (the third party collateral manager hired by Goldman to ostensibly select the portfolio assets) and the investors material facts relating to the selection process and adverse economic interests of Goldman and Paulson with respect to those long positions.

72. The Abacus deals were not unique. The Permanent Subcommittee, in its April 26, 2010 report, shed light on other similar transactions where Goldman packaged and created synthetic CDOs to sell to its clients with the expectation that those financial vehicles would fail, thereby providing Goldman with an opportunity to garner huge and ill-gotten profits on its shorting of those investments, at the expense of their clients. These ill-gotten profits would not only be funneled in large part to the compensation of Goldman’s employees, who had engaged in the disloyal and unethical trading practices which led to these profits, but also these profits came about by virtue of the disloyal and unethical trading practices which have subjected the Firm to civil liability, via, *inter alia*, an SEC investigation and lawsuit, which will result in hundreds of millions of dollars

spent to defend themselves and potentially even more paid in damages; and severe reputational harm which will have a long-term and detrimental financial impact on the Company. The Permanent Subcommittee's report states:

“Conflict Between Proprietary and Client Trading. After Goldman Sachs decided to reduce its mortgage holdings, the sales force was instructed to try to sell some of its mortgage related assets, and the risks associated with them, to Goldman Sachs clients. In response, Goldman Sachs personnel issued and sold to clients RMBS and CDO securities containing or referencing high risk assets that Goldman Sachs wanted to get off its books. Three examples demonstrate how Goldman Sachs continued to sell mortgage related products to its clients, while profiting from the decline of the mortgage market.

Hudson Mezzanine 2006-1 (“Hudson 1”) was a synthetic CDO that referenced \$2 billion in subprime BBB-rated RMBS securities. This CDO was underwritten and sold by Goldman Sachs in December 2006. Goldman Sachs selected the referenced assets, collaborating with its mortgage traders to identify BBB rated assets on its books. About \$800 million in subprime RMBS securities and \$1.2 billion in ABX index contracts were referenced in the CDO. Goldman executives told the Subcommittee that the company was trying to remove BBB assets from the company books during this period of time. Goldman Sachs was the sole short investor in this proprietary deal, buying protection on all \$2 billion in referenced assets and essentially placing a bet that the assets would lose value. Goldman Sachs personnel placed a high priority on selling the Hudson securities. Evidence of this is illustrated by the Hudson 1 deal being pushed ahead of a client transaction. One Goldman Sachs employee noted that a client was “upset that we are delaying their deal. They know that Hudson Mezz (GS prop deal) is pushing their deal back.” Less than 18 months later, the AAA securities had been downgraded to junk status. Goldman Sachs as the sole short investor would have been compensated for these losses, and investors who purchased the Hudson securities would have lost an equivalent amount. Goldman Sachs profited from the loss in value of the very CDO securities it had sold to its clients.

Anderson Mezzanine Funding 2007-1 was a synthetic CDO referencing about \$300 million in subprime RMBS BBB securities. Goldman Sachs structured the deal and participated as one of the short investors, buying loss protection for \$140 million, or nearly 50 percent, of the referenced assets. During the first calendar quarter of 2007, Goldman

Sachs underwrote and sold the Anderson CDO securities. Most of the referenced assets were subprime RMBS securities, backed by high risk mortgages. The largest originator of the high risk mortgages was New Century Mortgage, a lender which was known for poor quality loans and which Goldman Sachs knew was in poor financial condition. Goldman senior managers directed their sales force to sell the Anderson securities quickly due to “poor subprime news.” In fact, Goldman manager Jonathan Egol advised Goldman personnel to sell the Anderson securities before completing an Abacus deal: “Given risk priorities, subprime news and market conditions, we need to discuss side-lining this deal ([Abacus 2007-]ACI) in favor of prioritizing Anderson in the short term.” The top rating given to the Anderson securities was BBB; about 7 months after the securities were sold, Anderson was downgraded to junk status.

A third example involves Timberwolf I, a hybrid cash/synthetic \$1 billion CDO squared, which Goldman Sachs underwrote and sold in the first calendar quarter of 2007. A significant portion of the referenced assets were CDO securities backed by subprime RMBS mortgages. Some of the referenced assets were backed by Washington Mutual Option ARM mortgages, high risk mortgages whose value was dropping as housing prices declines. A memorandum sent to the Goldman Sachs Mortgage Capital Committee indicated that the Timberwolf CDO would contain 50 percent CDO securities and 50 percent collateralized loan obligation (“CLO”) securities, but Goldman Sachs told the Subcommittee that, since the value of the CLOs had improved, the firm had sold the best-performing CLO securities separately. In the end, Timberwolf referenced assets consisted of 94 percent CDO securities, including about \$15 million in Abacus CDO securities. Goldman Sachs was the short investor for many of the Timberwolf referenced assets, including the Abacus securities, betting that they would decline in value.

A senior executive in Goldman Sachs sales expressed concern about what representations might be made to clients about the Timberwolf CDO squared, but other Goldman personnel urged the sales force to treat Timberwolf securities as a priority. An email from Dan Sparks, head of the Goldman Sachs mortgage department, urged Goldman personnel working on a potential Korean sale to [g]et ‘er done,” and sent a mass email to the sales force promising “ginormous credits” for selling the securities. A congratulatory email was sent to an employee who sold a number of the securities: “Great job... trading us out of our entire Timberwolf Single-A position.” In mid-spring, Goldman Sachs sold about \$300 million of Timberwolf during the summer. Within five months of issuance, the CDO lost 80 percent of its value, and was later liquidated in 2008. The AAA securities issued in March 2007, were downgraded to

junk status in just over a year. The Goldman trader responsible for managing the deal later characterized the day that Timberwolf was issued as “a day that will live in infamy.” A senior Goldman executive described the deal as follows: “Boy that timberwof [sic] was one shi**y deal.”

(footnotes omitted).

73. The Abacus 2007-AC1 transaction and its ilk raise much broader issues than the SEC’s claims that Goldman may have committed civil fraud in marketing these synthetic CDOs without disclosure of material facts. The broader issues include:

- (a) Why was Goldman creating and selling to its clients what fundamentally was a gambling vehicle?
- (b) Why was Goldman creating and selling deals that served no purpose for the capital markets?
- (c) Why was Goldman creating and selling deals that served no purpose for society?

74. As a regulated bank, Goldman was not in the casino wagering business. Even if its clients understood (which it is likely they did not) that they were making wagers, and not investments, when they purchased interests in synthetic CDOs, why would Goldman create and recommend such “investments” to their clients?

75. Additionally, these synthetic CDOs did not raise capital for any useful purpose. Once you take away the ratings arbitrage, the foundation of many of these synthetic CDOs disappears altogether. Even Tourre, the creator of Abacus, recognized that these synthetic CDOs had no purpose. As the subprime boom was nearing an end, even as Tourre arranged to sell mortgage products to the firm’s clients, in January 2007, he described creating a thing “which has no purpose, which is absolutely conceptual and

highly theoretical.” Something is fundamentally amiss in a company’s financial culture that thrives on “products” that create nothing and produce nothing except new ways to make bigger bets and stack the deck in favor of the house.

76. On April 16, 2010, when the market opened, Goldman had a \$96.6 billion market capitalization. Upon the revelation to the market of this latest information regarding Goldman’s trading practices, including the SEC’s allegations and the extent to which Goldman was suffering from a “moral bankruptcy,” when the market closed, Goldman, had an \$84.6 billion market capitalization, losing more than 12% of its value in a single day.

77. Additionally, investors that lost money on these mortgage securities transaction, like AIG, have stated that they were reviewing their options, including possibly bringing lawsuits.

78. For decades, Goldman’s platinum reputation has attracted top investors and stock underwriting deals. Goldman’s relentless focus on profit has allowed it to beef up its financial capital in the wake of the crisis. However, this focus has created a deficit when it comes to Goldman’s political and public capital, putting its sterling reputation, a foundation of its financial success, on the line. The Firm’s insistence, for example, that it can take many sides of a trade on behalf of different clients and yet manage the inherent conflicts is increasingly untenable, rather than putting considerations of fairness and transparency on par with profitability. Goldman is engaging in increasingly risky practices in the name of profit and paying big bonuses to their employees, all at the expense its shareholders, its clients, and the public taxpayers. Indeed, even Goldman’s

bottom line has suffered as a result, losing more than 12% of its value in a single day.

79. The Company's Audit Committee is charged with assisting the Board in its oversight of "the Company's management of market, credit, liquidity and other financial and operational risks." In so doing, the members of the Audit Committee are required "[t]o review generally with management the type and presentation of any financial information and earnings guidance provided to analysts and rating agencies" and "[t]o discuss with management periodically management's assessment of the Company's market, credit, liquidity and other financial and operational risks, and the guidelines, policies and processes for managing such risks."

80. In Goldman's letter to its shareholders accompanying its 2009 Annual Report, filed on March 1, 2010, Defendants Blankfein and Cohn emphasized that "[o]ur duty to shareholders is to protect and grow our client-focused franchise by remaining true to our team work and performance-driven cultures." Reiterating Goldman's commitment to their client's interests, Defendants Blankfein and Cohn ended their letter by stating:

Our clients look to us to advise, evaluate and co-invest on their most significant transactions, translating into strong market shares. And our people remain as committed as ever to our culture of teamwork, to the belief in their responsibility to held allocate capital for the benefit of clients, and to the firm's tradition of service and philanthropy.

...

We are keenly aware that our legacy of client service and performance, which every person at Goldman Sachs is charged with protecting and advancing, must be continually nurtured and passed on from one generation to the next.

81. Despite Goldman's lip service to its dedication to its clients, Goldman's price-fixing and game-rigging of its synthetic CDO products allowed it to ring up huge

“trading” profits at the expenses of these very same clients. Further, since AIG was insuring Goldman’s investments, the “losses” that Goldman suffered from these synthetic CDO were only mere temporary paper losses as a result of Goldman’s resulting contractual payments from AIG-issued credit-default swaps, any supposed “risk” that Goldman was taking on was a mere fiction and these payments were ill-gotten gains obtained as a result of its disloyal conduct.

82. Goldman engaged in disloyal and unethical conduct by, *inter alia*:

- Creating a financial product at the urging of Paulson, a favored client, for the purpose of allowing Paulson to short it at the time that Goldman was going to urge its clients to purchase the product;
- Selling the financial product knowing that Paulson had put an extraordinary amount of research into the likely failure of that product while Goldman urged its clients to purchase the product, knowing that those clients, despite being institutional investors, had not done any appreciable due diligence with respect to the investment and instead were relying on Goldman’s advice and on purportedly “independent” rating agency ratings of the financial product;
- Selecting ACA as the Abacus CDO manager knowing that ACA was unwilling, unable or incompetent to assess the synthetic CDO that it was going to manage for Firm’s clients;

- Urging, cajoling, strong-arming and directing the rating agencies to give the synthetic CDO financial vehicles an investment-grade rating. Goldman's relationship with the rating agencies was rife with conflicts of interest and lack of independence such that outwardly the rating agencies appeared to be at arm's-length from Goldman when, in fact, the rating agencies were beholden to Goldman for a significant stream of income thereby allowing Goldman to coerce, influence and direct the rating agencies' actions with respect to the synthetic CDO market. As a result of Goldman's systemic and undue influence on the rating agencies, the ABACUS 2007 AC-1 financial product was rated Triple-A;
- Professing that it, too, was "long" on the CDO financial product when in fact Goldman hedged its investments through (a) proprietary trading and investments that more than offset that long position and (b) purchased insurance in the form of credit default swaps from AIG, to protect Goldman in the likely event the financial product's value eroded. Although Goldman protected itself in this manner, Goldman did not advise its clients to protect their investments in these synthetic CDO financial products; and
- Recognizing the "moral bankruptcy" of its position with respect to its conduct, Goldman has explained to Japanese clients that it did

not sell synthetic CDOs in Japan, rather than try and justify such sales in the first place.

83. Given the nearly \$11 billion in securities Goldman issued in the inherently risky subprime mortgage market, financial information regarding which would be provided to analysts and rating agencies, and the widespread discussion with respect to the housing bubble, it is clear that the Director Defendants stood by while Goldman advised and allowed its clients to invest good dollars after bad. The Company's Board of Directors utterly failed to monitor its operations, allowing the Firm to manage and conduct the Firm's trading segment in a grossly unethical manner, subjecting Goldman to potential civil liability and severe reputational harm. Instead, the Board remained supine and took no substantive action to address its exposure to risky practices. In short, those responsible for ensuring that Goldman not mortgage the future and the reputation of the Company for short-term gains utterly failed to fulfill properly their duties.

Goldman's Purported "Pay For Performance" Philosophy

84. Hand in hand with Goldman's pursuit of huge profits in its trading strategy is the grossly excessive compensation it awards to its senior executives, who have been instrumental in creating and operating Goldman's "casino." Notwithstanding the fact that Goldman's revenues and earnings are the result of the vast amount of capital that Goldman has available to employ, the Board compensates the managers of that capital — its employees, and in particular, its senior executives — with an extravagant and disproportionate share of Goldman's revenue and earnings. In the guise of a purported "pay for performance" philosophy, the Board has overcompensated Goldman's

employees and senior executives, paying them far more than even hedge managers receive, for managing the shareholders' equity. At the same time, the Board has returned only a very small proportion of Goldman's earnings to its shareholders, retaining the vast majority of earnings to add to its capital base and generate more earnings, the vast majority of which are paid to the employees.

85. Goldman's operating expenses are primarily influenced by compensation, headcount and levels of business activity, and a significant portion of its compensation expense represents discretionary bonuses. In every year since Goldman went public, compensation expense has constituted over 70% of Goldman's operating expenses, except in 2008, when compensation expense represented just under 60% of operating expenses and 2009, when compensation expense represented just under 65% of operating expenses. Since Goldman went public, it has been paying its employees between 44% and 49% of its net revenues, which are its revenues after interest expense, except in 2009 when Goldman paid its employees nearly 36% of its net revenues.

86. Goldman describes its practice of paying its employees almost half of its net revenues as linking pay to performance. The Company's 2006 Proxy Statement, Defendants represented that Goldman's compensation program:

was designed to permit the Compensation Committee to provide our executive officers and Management Committee members *with total compensation that is linked to Goldman Sachs' performance to reinforce the alignment of employee and shareholder interests.*

87. The discretionary bonuses that represent a significant portion of Goldman's compensation expense are particularly important at the senior executive level. According to Goldman's 2007 Proxy Statement, the Company's "compensation programs

have closely aligned pay and performance, particularly at senior level.” The 2007 Proxy Statement stated that:

our shareholder-approved plan that is designed to pay bonuses that are tied to the performance of the firm, in order to align the interests of senior management with the interests of shareholders and to tie the compensation of our senior executives to the success of the firm.

88. The Company’s Compensation Committee is charged with the responsibility “in consultation with senior management, to make recommendations to the board as to the Company’s general compensation philosophy and to oversee the development and implementation of compensation programs” and “to review and approve the annual compensation of the Company’s executives.” In doing so, however, the Compensation Committee receives information from Goldman’s management concerning the management’s projections of net revenues and the ratio of compensation and benefits expense to net revenues (compensation ratio). The Compensation Committee is also presented with information from Company management relating to the compensation ratio of the Company’s “core competitors that are investment banks (Bear Stearns, Lehman Brothers, Merrill Lynch, and Morgan Stanley).” No analysis is made by the Compensation Committee of the extent to which those firms’ earnings are derived from activities such as the Trading and Principal Investments segment. Nor does the Compensation Committee receive information or consider the extent to which Goldman’s net revenues and earnings are the result of availability of the Firms’ capital, as opposed to the efforts of management in appropriately allocating it. Finally, in setting the compensation ratio, the Company does not compare the cost of managing the Firm’s capital to the management costs of hedge funds or other enterprises that similarly

generate the majority of their revenues and earnings by taking trading and principal risks with their investors' capital.

89. While the Compensation Committee is actively involved in the determination of the compensation of the senior executives, it appears consistently to approve, without any analysis, Company management's determination of the compensation ratio, which governs the total amount of funds available to compensate all employees, including the senior executives. The determination of that ratio, which ultimately determines the available bonus pool for the senior executives, appears to be made by management and provided to the Compensation Committee as a projection for its use in determining the compensation of the senior executives

90. Far from linking pay to performance, Goldman's practice of paying almost 50% of its net revenues as compensation does nothing more than compensate employees for results produced by the vast amounts of shareholder equity that Goldman has available to be deployed. Moreover, compensation does not appear to be linked to actual profitability or to acknowledge in any way the risk undertaken by the owners of the equity. In 2008, for example, the Trading and Principal Investments segment produced \$9.06 billion in net revenue, but, as a result of discretionary bonuses paid to employees, lost more than \$2.7 billion for the owners of the Company.

**Defendants Report Stellar Financial "Results" That Were Only Achieved By
Excessive Risk-Taking With Shareholder Capital For Short Term Gains
Rather Than the Company's Long-Term Health**

91. The recent liquidity crisis and recession demonstrates that Goldman's net revenues, of which management claims almost half as compensation, were generated by

excessive risk taking for short term gain rather than the long term health of the Company and its shareholders.

92. Defendants reported that the Company's revenue grew from \$29 billion in 2004 to \$87 billion in 2007. Further, Defendants reported that the Company's net income increased from \$4.5 billion in 2005 to \$11 billion in 2007 and earnings per share increased from \$8.92 per share in 2004 to \$24.73 per share in 2007.

93. This growth was achieved through extreme leverage and significant uncontrolled exposure to risky loans and credit risks. In 2007, Goldman's leverage of 25:1 exceeded that of Lehman Brothers and Bear Stearns, two competitors that subsequently collapsed into bankruptcy. As a result of imprudent leverage and investments in risky mortgage backed securities and other related financial instruments, Goldman reported that net income plummeted by \$9.3 billion, or over 80%, in 2008, and that earnings per share collapsed by \$20.26 per share, or over 80%. Contributing to that collapse was the \$2.7 billion loss in Trading and Principal Investments, which bore the brunt of the write downs in investments from which the Company had reported its spectacular growth in the preceding years.

94. Goldman's excessive leverage and risk taking almost led to its demise. In 2008, as subprime mortgages financed by the mortgage backed securities sold by Goldman and the other large investment banks began to default, causing the world economy to descend into a liquidity crisis and recession, Goldman asked to be allowed to convert itself into a bank holding company. As a bank holding company, it was then allowed to borrow money from the federal government at advantageous rates. The

Federal Deposit Insurance Company (“FDIC”) enabled Goldman to generate \$29 billion in cash by issuing FDIC insured debts through the Temporary Liquidity Guarantee Program. That program sought to create liquidity by insuring debt issued by certain financial institutions such as the bank holding company into which Goldman was permitted to convert. More directly, in the fall of 2008, Goldman appealed to the federal government and accepted a \$10 billion TARP loan to ensure its survival. Because corporations such as Goldman that accepted TARP dollars were subject to oversight by the federal government, were restricted on their ability to pay out generous compensation, and were required to provide shareholders with an advisory vote on compensation policies (so-called “say-on-pay”), Defendants announced the Company’s intention to pay back the TARP loan as soon as it could do so.

95. Goldman’s management thus received federal assistance, shoring up Goldman’s over-leveraged balance sheet and putting it in a position to generate revenues as the world economy emerged from the liquidity crisis and recession. Goldman’s net revenues were also directly subsidized by the federal government through its provision of assistance to AIG, from which Goldman received \$13 billion in satisfaction of certain financial contracts that AIG had with the Company. This \$13 billion in revenues, paid entirely from federal funds provided to AIG, created a material percentage of the Company’s 2009 net revenues from which the 2009 compensation would be determined and paid.

96. Government funding was critical to the very survival of Goldman. On December 5, 2009, U.S. Treasury Secretary Timothy Geithner revealed that Goldman

would not have survived without the generous financial assistance of the government: “None of the [largest banks] would have survived” had the government stood aside and let the crisis run its course. “The entire U.S. financial system and all the major firms in the country... were at that moment at the middle of a classic run, a classic bank run.” But for the intervention, shareholders would have suffered the consequences of the excessive risks that Goldman’s officers and managers placed upon shareholders equity

97. Unlike its competitors, Bear Stearns and Lehman Brothers, Goldman did not fail. Instead, as a result of the massive government bailout of the excessive risks that Goldman had been taking with its shareholder equity for the past several years, Goldman was placed in the fortuitous position by the federal funding of simply “being there” when the economy began to recover. Its massive shareholder equity, supplemented by the government’s TARP capital infusion and the FDIC loan guarantees, put it in a position to generate substantial net revenues in 2009. That shareholder equity had been the prime driver behind Goldman’s profits is demonstrated by the fact that return on equity in 2009 was only half that in 2007. Without excessive and speculative leverage of the shareholders’ capital, Goldman’s managers and officers could not produce a return on equity in 2009 that was comparable to prior years.

98. As of September 25, 2009, Goldman had generated net revenues of \$35 billion, \$28 billion of which were from Trading and Principal Investments. Of that, the Defendants had reserved almost \$17 billion, or 49%, to be paid as compensation. While the shareholders’ equity contributed far more to the generous of revenues in 2009 than in the past, the Defendants increased the proportion of net revenues that they were going to

take from shareholders and give to themselves and the Company's employees.

99. On December 14, 2009, in response to a public outcry over its pay, Goldman announced that its top 30 executives would receive no cash bonuses for 2009 and would be awarded only stock that cannot be sold for five years. However, the changes are only for 2009 and do not necessarily affect more than 31,000 other Goldman employees, consultants and temporary workers, which includes traders and other employees who are fueling most of this year's revenue and profit surge, putting them in line for sharply higher bonuses early next year. In addition, Goldman gave no indication that it will rein in overall pay levels.

**Goldman Overpays Management and Employees Based on Revenues
Generated By Risks Taken With Shareholder Capital**

100. Since its IPO, Goldman Sachs has become increasingly dependent on its Trading and Principal Investments segment to generate firm revenues. For example, in 1999, revenue from Trading and Principal Investment accounted for just 43% of the Company's total revenues. By 2009, that segment's revenue accounted for over 76% of Goldman Sachs's revenues:

Net Revenues	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Investment Banking		5.5	3.8	2.8	2.7	3.3	3.6	5.6	7.5	5.1	4.8
Asset Management		4.5	5.6	5.9	2.8	3.8	4.7	6.4	6.4	7.9	6.0
Trading and Principal Investments	5.7	6.5	9.3	5.2	10.4	13.3	16.3	25.5	31.2	9.1	34.4
Total Net Revenues	13.3	16.6	15.8	13.9	16.0	20.9	25.2	37.6	45.9	22.2	45.2

101. Goldman Sachs' reliance on revenues generated from Trading and Principal Investments has at least one significant implication. Assets held by Goldman Sachs pursuant to its trading and principal investments strategy are valued on a mark-to-market basis, meaning the market value of the assets is continually assessed. Where the asset increases in value, revenue for Goldman Sachs increases, and where the asset decreases in value, Goldman Sachs must book a loss.

102. Goldman's revenue in Trading and Principal Investments, therefore, is a function of the amount of assets that Goldman has available to commit to the segment, which is in turn determined by the leveraging of Goldman's shareholder equity. Goldman has been able to increase its revenues in Trading and Principal Investments by increasing its shareholder equity and correspondingly increasing the assets that are committed to that segment. Goldman is able to generate increasing net revenues and compensation from Trading and Principal Investments by deploying an ever increasing amount of shareholder capital to the segment. In 2009, almost all of the Company's assets — \$662.75 billion — were committed to the Trading and Principal Investments segment.

103. Notwithstanding the fact that an increasing amount of Goldman's net revenue and earnings result from the increasing and risky deployment of shareholder equity and assets in the Trading and Principal Investments segment, the proportion that Goldman has taken from net revenues to compensate the managers of the shareholder equity has remained consistent. In both good years and bad years, that proportion has stayed within a narrow range between 44% and 48% of net revenue. Thus, for example,

in 2007, when the Company generated record revenues by taking excessive risks with shareholders' equity, the managers and officers of Goldman were paid 44% of net revenue. In 2008, as the consequences of this speculative risk taking manifested itself, with the value of Goldman's investments having plummeted and its share price having fallen, at one point, by 75%, the Firm's managers and officers were paid the identical 44% of revenue. This year, in the face of an increasing amount of net revenues and earnings resulting from the employment of shareholder equity, including capital provided by the taxpayers, in the Trading and Principal Investments segment, the Company had retained the allocation of net revenue to compensation at 47%, and it was only upon public outcry that it determined its top 30 executives would only receive stock bonuses for 2009 rather than a mix of stock and cash, that the percent of net revenues paid as compensation was reduced to nearly 36%. The table below sets forth the percentage of net revenues allocated to compensation in each year that Goldman was public.

	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u> (initial)	<u>2009</u> (actual)
Net Revenue (bn)	13.3	16.6	15.8	14.0	16.0	21.0	25.2	37.7	46.0	22.2	35.5	45.2
Comp.	6.5	7.8	7.7	6.7	7.4	9.5	11.7	16.5	20.2	10.9	16.7	16.2
Comp as %of Rev.	48%	47%	49%	48%	46%	46%	47%	44%	44%	48%	47%	36%

104. The amount of profit that Goldman allocates to compensation is even higher after taking into account non-compensation expenses. The following table sets forth Goldman's profit before compensation expenses (*i.e.*, net revenues less non-compensation related expenses) and the percentage of profit taken by management as compensation expense:

	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u> (initial)	<u>2009</u> (actual)
Net Revenue (bn)	13.3	16.6	15.8	14.0	16.0	20.5	25.2	37.7	46.0	22.2	35.5	45.2
Non-comp expenses	4.9	3.8	4.4	4.1	4.1	4.4	5.3	6.6	8.2	8.9	6.4	9.2
Profit before comp	8.4	12.8	11.4	9.9	11.9	16.1	19.9	31.1	37.8	13.3	29.1	36
Comp	6.5	7.8	7.7	6.7	7.4	9.5	11.7	16.5	20.2	10.9	16.7	16.2
Pre-Tax profit	1.9	5.0	3.6	3.2	4.4	6.6	8.2	14.6	17.6	2.4	12.4	19.8
Comp as % of Profit before comp	77%	60%	70%	68%	62%	59%	55%	53%	53%	82%	57%	45%

105. The consistent allocation of almost 50% of net revenue to the compensation of the managers of shareholder capital vastly overcompensates the employees for net revenues and earnings that are produced by the assets of the Company, rather than the particular skill of its managers. The majority of Goldman's revenue producing activity in Trading and Principal Investments is similar to that of a hedge fund. Hedge fund managers have been criticized as being overcompensated through the "2 and 20" compensation scheme — 2% of net assets plus 20% of the net income that they produce. Goldman's initial compensation allocation is equivalent to compensating hedge fund managers at 2% of net assets plus 45% of net income, before considering that compensation for hedge funds under the "2 and 20" structure includes all of the overhead expenses for which Goldman shareholders pay separately. Stated another way, Goldman

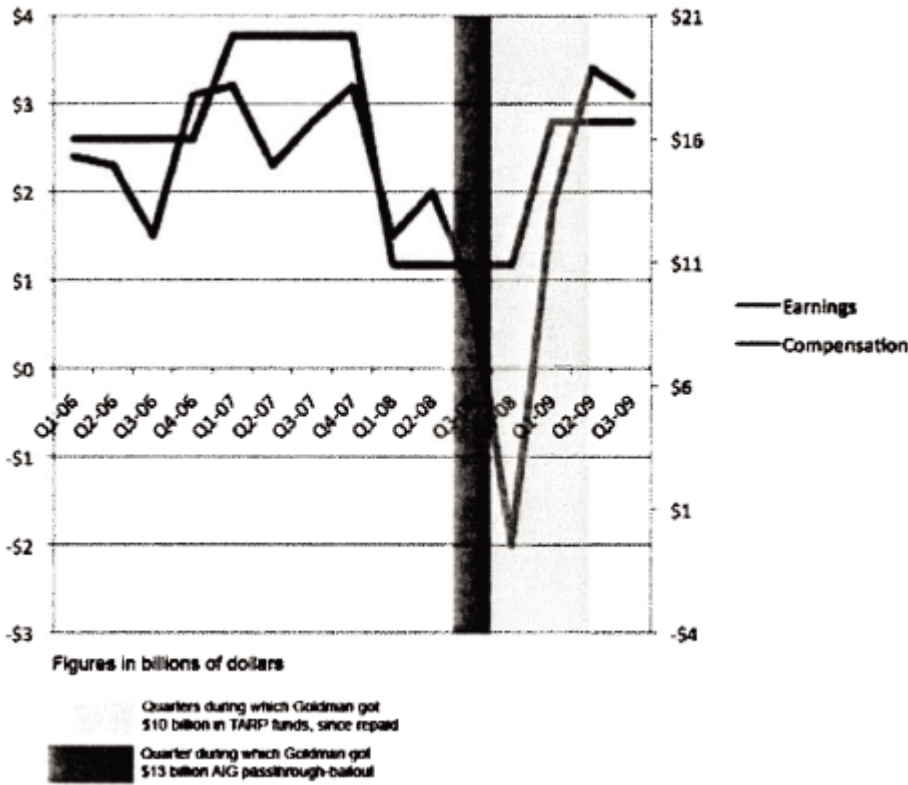
is managing the shareholder's equity at the equivalent annual rate of 30% of net assets.

106. In today's market, no hedge fund manager may command compensation for managing assets at the annual rate of 2% of net assets and 45% of net revenues. The only hedge funds that have such compensation schemes are a few funds that have long since closed to new investors and now consist almost exclusively of equity owned by the managers themselves. To the extent that any hedge fund was ever able to command such a compensation scheme, it did so only because it was able to outperform other hedge funds to such a degree as to compensate for the higher fee structure.

107. No reasonable investor would commit funds to any manager, especially one that undertakes the leverage and risk that Goldman undertakes, for a fee of 2% of net assets and 45% of net revenue, and no reasonable director would approve any compensation scheme that provided the managers of shareholder capital with compensation equivalent to that. This is particularly so because the managers and officers of Goldman have not performed at a level even remotely sufficient to justify such a fee. To the contrary, since its initial public offering in 1999, Goldman has been able to outperform the hedge fund indices only by engaging in excessive leverage. On a risk adjusted basis, during this period, Goldman's performance has, in fact, been inferior to the indices of hedge funds, and, as a consequence, the excessive share of Goldman's profits that its managers and officers take as compensation bears no reasonable relation to their actual performance. There is no basis the Director Defendants to pay the Company officers and managers a portion of net revenues that is more than double that paid to professionals performing comparable services when such officers and managers are

performing at an inferior standard.

108. This excessive risk taking by Goldman's managers and officers, with shareholder equity rather than their own, benefits them to a far greater degree than it does shareholders, notwithstanding the purported effort by Goldman's Board to align the interest of management with that of the shareholders. As the graph below graph reflects, the interests of the two groups are not aligned, with shareholders bearing all of the risks, yet reaping little reward.



109. Since January 1, 2007, the share price of Goldman common stock has declined. Nevertheless, in two of the three years during which the value of shareholders' investment had diminished, Goldman's managers and officers were awarded record bonuses.

110. Further, while generously gifting enormous and unjustifiable proportions of the net revenues earned by the shareholder's assets to the managers of those assets, the Director Defendants returned little of those revenues to the owners of the assets themselves. In doing so, they have accumulated shareholder equity, which in turn is used to produce ever increasing net revenues and compensation for management. The following table sets forth the amount of net revenues returned to the shareholders in the form of dividends, in comparison to the amount paid to management as compensation:

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Net Revenue (bn)	13.3	16.6	15.8	14.0	16.0	21.0	25.2	37.7	46.0	22.2	45.2
Comp	6.5	7.8	7.7	6.7	7.4	9.5	11.7	16.5	20.2	10.9	16.2
Comp as % of Net Rev.	48%	47%	49%	48%	46%	46%	47%	44%	44%	48%	36%
Dividends (bn)	0.11	0.21	0.23	0.23	0.35	0.50	0.49	0.61	0.64	0.64	.55
Dividends as % of net rev.	0.8%	1.2%	1.4%	1.6%	2.2%	2.4%	1.9%	1.6%	1.4%	2.9%	1.2%

111. By failing to distribute any reasonable proportion of net revenues to the owners of the equity that generates those revenues, Defendants have favored and benefitted management over the interest of the shareholders. Any amounts of net revenues that are not paid to shareholders increase the capital of the Company, and increase the ability of the Company to generate net revenues, from which the Defendants pay an exorbitant and unreasonable amount as compensation to management. This endless cycle of allocating far too great a proportion of net revenues to management, and returning little or none of it to shareholders, has created an ever increasing pool from which management is increasingly over-compensated year after year.

Goldman Decides To Give Away Yet More Shareholder Money

112. Goldman's revelation in November 2009, that it intended to set aside \$17 billion in net revenues for the first three quarters as compensation for management prompted widespread criticism from shareholders, the government, and the public.

113. In mid-November, Defendant Blankfein defended Goldman's enormous profits and intended compensation by asserting that Goldman "was doing God's work." A week later, he apologized for Goldman, stating "[w]e participated in things that were clearly wrong and have reason to regret...we apologize." As part of that apology, Goldman committed to spending \$500 million to help small businesses recover from the recession.

114. Goldman's management, as part of its apology for taking enormous bonuses resulting from its fortuitous revenues in 2009, has determined to give away yet more shareholder money. While this \$500 million came from the compensation pool,

instead of keeping the money in the Company or declaring additional dividends to the shareholders, this commitment of shareholder funds constitutes a waste of the shareholder's equity.

115. The excessive compensation of Goldman management has inflamed the public and resulted in increased government scrutiny not just of compensation practices but of the Company's activities in general. As a result of the proposed excessive compensation, the government is now proposing to impose a fee aimed at raising \$90 billion over ten years from the nation's 50 largest banks. It is projected that Goldman will be required to pay \$1.17 billion annually to the government, more than it has ever paid in dividends to its own shareholders. This fee will tax Goldman's profits even further, thus punishing the shareholders for the actions taken by Defendants to over-compensate management.

DERIVATIVE AND DEMAND ALLEGATIONS

116. Plaintiffs bring this action derivatively, in the right and for the benefit of Goldman, to redress the breaches of fiduciary duty and other violations of law by Defendants. Plaintiffs will adequately and fairly represent the interests of Goldman and its shareholders in enforcing and prosecuting its rights.

117. Plaintiffs have not made a demand upon the Board of Goldman to take remedial action on behalf of Goldman against the Defendants, because the Board participated in, approved, and/or permitted the wrongs alleged herein and is not disinterested and lacks sufficient independence to exercise business judgment.

118. The Board currently consists of the following twelve (12) individuals:

Defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons. Of these, all twelve Director Defendants are either named executive officers who took an active role in overseeing the Firm's trading segment, including its mortgage unit which employed an unethical trading strategy for its benefit and to the detriment of its clients (Blankfein and Cohn), or were members of the Audit Committee charged in assisting the Board in its oversight of the Company's management of market, credit, liquidity and other financial and operational risks (Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons).

119. The entire Board is also disabled from acting on a demand because each Director Defendant was fully aware of, or should have been aware, in breach of their fiduciary duties, the details of the trading business of Goldman and failed to take appropriate action based on such actual or constructive knowledge. According to a Memorandum dated April 26, 2010 from Senators Carl Levin and Tom Coburn to the Members of the Permanent Subcommittee on Investigations and entitled "Wall Street and the Financial Crisis: The Role of Investment Banks" ("Permanent Subcommittee Report") the Goldman Board was fully aware of the extent of Goldman's RMBS and CDO securities market activities:

In addition to RMBS securities, Goldman Sachs was active in the CDO market. A September 2007 internal presentation to its Board of Directors listed Goldman Sachs as the fourth largest CDO underwriter in the country, with 14 CDO transactions in 2006 involving \$16 billion, and 12 deals in the first half of 2007, involving \$8.3 billion. These transactions included about 16 CDOs on the Abacus platform, involving over \$10 billion in referenced assets; Hudson CDO involving \$2 billion, a \$300 million Anderson CDO, and a \$1 billion Timberwolf CDO.

Report at p. 7, citing to Presentation to GS Board of Directors, Residential Mortgage Business, 9/17/07.

120. At that same September 17, 2007 Presentation to the Board, the Board was informed of “a number of actions taken during the year, including ‘shorted synthetics’ and ‘Shorted CDOs and RMBS.’” *Id.* These actions were “an intensive effort to not only reduce its mortgage risk exposure, but profit from high risk RMBS and CDO Securities incurring losses.” *Id.*

121. Therefore, the Board was aware that Goldman’s trading activities involved intensive shorting of the residential mortgage and synthetic financial products markets. The Board also understood that these efforts involved very large amounts of Goldman’s capital that exceeded the Company’s Value-at-Risk measures:

At times, the net short position accumulated by Goldman Sachs was as large as \$13.9 billion. The short positions held by the firm’s mortgage department became so large that according to the Goldman Sachs risk measurements, the positions comprised 53 percent of the firm’s overall risk, according to Goldman Sachs own Value-at-Risk (VaR) measures. Senior management had to repeatedly allow the mortgage department to exceed the VaR limits that had been established by the firm.

Id. At p. 8, citing Goldman Sachs Market Risk Report, 8/14/07

122. The Board also countenanced the issuance of substantively false and misleading statements by Goldman’s executives about the Company’s conduct with respect to the synthetic CDO products. The Permanent Subcommittee Report, at page 8, states:

The 2009 Goldman Sachs annual report states that the firm “did not generate enormous net revenues by betting against residential related products.” Documents obtained by the Subcommittee, however, indicate otherwise. Two top Goldman mortgage traders, Michael Swenson and

Joshua Birnbaum, discussed in their 2007 performance self-evaluations the “Very profitable year” and “extraordinary profits” that came from shorting the mortgage market that year. One bragged about “aggressively” entering into “efficient shorts in both the RMBS and CDO space,” while the other reported that “contrary to the prevailing opinion” that the firm needed only to “get close to home.” He “concluded that we should not only get flat, but get VERY short.” Goldman Sachs documents show that the firm was short in the mortgage market throughout 2007, and that, twice in 2007, it established and then cashed in very large short positions in mortgage related securities, generating billions of dollars in gross revenues.

123. The Board either knew or, in breach of its fiduciary duties, should have been aware of the following conduct, which the Permanent Subcommittee’s investigation concluded as its findings of fact:

“(1) **Securitizing High Risk Mortgages.** From 2004 to 2007, in exchange for lucrative fees, Goldman Sachs helped lenders like Long Beach, Fremont, and New Century, securitize high risk, poor quality loans, obtain favorable credit ratings for the resulting residential mortgage backed securities (RMBS), and sell the RMBS securities to investors, pushing billions of dollars of risky mortgages into the financial system.

(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.

(4) **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.

(5) **Conflict Between Client 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, creating a conflict between the firm's proprietary interests and the interests of its clients.

(6) **Abacus Transaction.** Goldman Sachs structured, underwrote, and sold a synthetic CDO called Abacus 2007-AC1, did not disclose to the Moody's analyst overseeing the rating of the CDO that a hedge fund client taking a short position in the CDO had helped to select the referenced assets, and also did not disclose that fact to other investors.

(7) **Using Naked Credit Default Swaps.** Goldman Sachs used credit default swaps (CDS) on assets it did not own to bet against the mortgage market through single name and index CDS transactions, generating substantial revenues in the process.

Permanent Subcommittee Report, at pp. 12-13.

124. As a result of the Director Defendants' utter failure to monitor and oversee the Firm's operations, allowing the Firm to manage and conduct the Firm's trading segment in an grossly unethical manner, subjecting Goldman to potential civil liability and severe reputational harm, the Director Defendants are subject to liability for breaching their fiduciary duties to Goldman by, *inter alia*, failing to act in any manner whatsoever to detect, prevent and/or halt these practices.

125. Moreover, a majority of the Director Defendants also have significant financial relationships with Goldman and therefore cannot act independently of its management in making determinations concerning the compensation of management or decisions that ultimately affect the compensation of management, such as the determination of the amount of dividends to distribute to shareholders. Of the twelve Director Defendants, eight, or a majority, are either management employees (Blankfein and Cohn), or have excessive financial relationships with the private Goldman Sachs Foundation (the "Foundation"), controlled by Goldman management, and therefore

cannot act independently in decisions affecting management's compensation.

126. The Foundation is a New York not-for-profit corporation that was organized by the Company in 1999, and since then has been funded only by the Company. The Foundation is an exempt organization under 26 U.S.C. § 501(c)(3), but it is not a public charity subject to any meaningful outside oversight.

127. The Foundation is controlled by the Company's management, and its funding comes solely from the Company. The Foundation maintains its offices in the Company's principal place of business at 85 Broad Street, New York, New York. The Foundation's president, Stephanie Bell-Rose, is a managing director of the Company. The Foundation's board of trustees has eight members. According to its filing with the New York Attorney General's Charities Bureau on October 20, 2008, the members of that board are John C. Whitehead, Thomas W. Payzant, Frank H. T. Rhodes, Neil Rudenstine, Josef Joffe, Stuart Rothenberg, John F. W. Rogers, and Glenn Earle. Four of these trustees are or were managing directors of the Company.

128. Six of the ten non-employee directors on the Company's Board, Defendants Bryan, Friedman, Gupta, Johnson, Juliber, and Simmons, are members of boards of exempt organizations to which the Foundation has made substantial donations as alleged below.

129. In 1994, 1997, and 2000, Defendant Bryan was co-chairman of the annual meetings of the World Economic Forum. He chaired a successful campaign to raise \$100 million to renovate the Chicago Lyric Opera House and Orchestra Hall, to which the Company has made substantial contributions. He is a life trustee of the University of

Chicago, to which the Foundation donated \$200,000 in 2006 and allocated another \$200,000 in 2007. As a trustee of the University, it is part of his job to raise money for it.

130. Defendant Johnson is and was in 2006 an honorary trustee of the Brookings Institution, to which the Foundation donated \$100,000 in 2006. As an honorary trustee, it was part of Johnson's job to raise money.

131. Defendant Gupta is the chairman of the board of the Indian School of Business in Hyderabad, India. Since 2002, the Foundation has donated at least \$1,600,000 to the Friends of the Indian School of Business. Defendant Gupta is also a member of the dean's advisory board of Tsinghua University School of Economics and Management in Beijing, China. Since 2002, the Foundation has donated at least \$3,500,000 to the Friends of Tsinghua School of Economics and Management. Mr. Gupta is a member of the United Nations Commission on the Private Sector and Development, and he is a special adviser to the UN Secretary General on UN Reform. Since 2002, the Foundation has donated at least \$1,665,000 to the Model UN program. As a member of these boards and this commission, it is part of Gupta's job to raise money for these institutions.

132. The Company has invested at least \$670 million in funds managed by Defendant Friedman. In addition, Defendant Friedman is an emeritus trustee of Columbia University. As such, it is part of his job to raise money for the university. Since 2002, the Foundation has donated at least \$640,000 to support an MBA business plan competition and education program at Columbia University. In 2007, the Foundation allocated another \$125,000 to Columbia University.

133. Defendant Juliber is a member of the board of Girls Incorporated, to which the Foundation allocated \$400,000 in donations and paid \$200,000 in 2006 and 2007. As a member of its board, it is part of Juliber's job to raise money for it.

134. As president of Brown University, it is part of Defendant Simmon's job to raise money for the university. The Foundation has pledged funding in an undisclosed amount to share in the support of a position of Program Director at The Swearer Center for Public Service at Brown University. The Foundation allocated \$100,000 in 2006 and paid \$100,000 in 2007 to this project.

135. Defendants Bryan, Friedman, Gupta, Johnson, Juliber, and Simmons have all been assisted in their charitable fund raising responsibilities by contributions from the Foundation, which is funded by the Company and controlled by the Company's management. The Foundation's contributions to their fund raising responsibilities were material. The SEC views a contribution for each director to be material if it equals or exceeds \$10,000 per year. 17 C.F.R. § 229.402(k)(2)(vii) and Instruction 3 thereto. They, too, are interested and lack independence. A total of eleven of the twelve Board members are interested and lack independence.

136. In addition, two of the ten non-employee directors have substantial financial relationships with Goldman that prevents them from acting independently in any decision concerning compensation of management.

137. Defendant Dahlback has a degree in economics and is a senior adviser to Investor AB, based in Sweden, and was an executive director of Thisbe AB, an

investment company owned by the Wallenberg Foundations. The Company has invested more than \$600 million in funds to which Mr. Dahlback is an adviser.

138. Defendant Mittal is the chairman and chief executive officer of ArcelorMittal. Goldman has arranged or provided billions of euros in financing to his company. During 2007 and 2008 alone, the Company had made loans to ArcelorMittal in the aggregate amount of 464 million euros.

139. As a consequence, ten of the twelve members of the Board either are management or have financial relationships with Goldman that prevent them from acting independently on any decision that affects compensation of management.

140. A majority of the Board, therefore, is not independent and cannot act independently with respect to the claims made in this action. Demand on the Board, therefore, would be futile.

COUNT I

DERIVATIVELY AGAINST DIRECTOR DEFENDANTS FOR WASTE

141. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

142. The Defendants are liable for waste for approving a compensation ratio to Goldman employees in an amount so disproportionately large to the contribution of management, as opposed to capital as to be unconscionable.

143. No person acting in good faith on behalf of Goldman consistently could approve the payment of between 44% and 48% of net revenues to Goldman's employees year in and year out when those revenues were generated predominantly by the

shareholders' equity and not by the work or diligence of management. Thus, to consistently allocate 44% to 48% of net revenues to compensation constitutes waste.

144. In particular, the initial allocation of 47% of net revenues to and ultimate payment of 36% of net revenues for compensation for 2009, a year in which those revenues were generated largely because of the size and availability of Goldman's capital, and in spite of the inappropriate and unjustified risk and leverage undertaken by its management over the last several years, is unconscionable. No reasonable director would approve such a massive allocation of net revenues to the compensation of management in these circumstances.

145. Goldman and its stockholders have suffered and will continue to suffer harm as a result of the Defendants' wasteful conduct.

COUNT II

DERIVATIVELY AGAINST DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES

146. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

147. The Defendants owed and owe Goldman fiduciary obligations. By reason of their fiduciary relationships, the Defendants owed and owe Goldman the highest obligation of loyalty to act in good faith.

148. Defendants violated and breached their fiduciary duties of loyalty, reasonable inquiry, oversight, good faith and supervision.

149. The Director Defendants also each owed a duty to Goldman to test, oversee and monitor its practices and to ensure that they were functioning in an effective

and ethical manner.

150. Given the nearly \$11 billion in securities Goldman issued in the inherently risky subprime mortgage market and the widespread discussion with respect to the housing bubble, it is clear that the Director Defendants stood by while Goldman advised and allowed its clients to invest good dollars after bad. The Company's Board of Directors utterly failed to monitor its operations, allowing the Firm to manage and conduct the Firm's trading segment in an grossly unethical manner, resulting in excessive payment of Goldman's ill-gotten profits to its employees and subjecting Goldman to potential civil liability, severe reputational harm, and long-term and detrimental financial harm. Instead, the Board remained supine and took no substantive action to address its exposure to grossly unethical practices. In short, those responsible for ensuring that Goldman not mortgage the future and the reputation of the Company for short-term gains utterly failed to properly fulfill their duties.

151. Thus, the Director Defendants' utter lack of proper supervision and oversight of Goldman's unethical trading operations' practices, in the face of its multi-billion of dollar securities created and sold, caused the Company to suffer significantly reduced market capitalization, outrage from the general public and government officials, withering criticism from industry analysts, and significantly reduced reputational capital.

152. Consequently, the Director Defendants are liable to the Company for abandoning and abdicating their responsibilities and fiduciary duties with regard to prudently managing the assets and business of Goldman in a manner consistent with the operations of a publicly held corporation; causing damage to the Company's reputational

capital; and exposing the Company to civil liability.

153. Defendants also had a fiduciary duty to assess continually Goldman's compensation scheme to ensure that it reasonably compensated employees and reasonably allocated the profit of Goldman's activities according to the contributions of shareholder capital and the employees of the Company.

154. As Goldman's business has evolved into one that is dominated by the direct investment of shareholder assets into various debt and equity securities, as well as real estate, the Defendants have never analyzed or assessed the extent to which management performance, as opposed to the ever-growing shareholder equity and assets available for investment, has contributed to the generation of net revenues. Nor have Defendants ever assessed how other comparable managers of shareholder funds, such as hedge fund managers, are compensated in comparison to Goldman's management. When compared to such comparable investment operations, Goldman allocates an excessive and exorbitant proportion of its net revenues to compensation.

155. Rather than assess Goldman's compensation practices in the face of the increasing contribution of shareholder equity to the generation of net revenues, Defendants have simply applied the traditional compensation ratio to allocate net revenues to management. Moreover, by failing to pay any significant part of net revenues to the shareholders in the form of dividends, Defendants have further breached their duty of loyalty and good faith and have exacerbated the overcompensation of Goldman's management.

156. Defendants' failure to assess and analyze the compensation of

management in light of the changing nature of its business, but rather to continue practices that overcompensate management and in fact exacerbate the overcompensation, constitutes an abdication of Defendants' fiduciary duty to the harm of the shareholders.

157. As a further result of Defendants' breach of fiduciary duty, the shareholders of Goldman will be further charged by Goldman's contribution of \$500 million to a small business program as an "apology" for the over-compensation of management.

158. In addition, on January 14, 2010, President Barack Obama announced his proposal for a new tax on the nation's largest financial institutions, saying he wanted "to recover every single dime the American people are owed" for bailing out the economy. The President's proposal was spurred by and coincided with large financial institutions', including Goldman's, much-publicized plans to pay "themselves huge bonuses." The estimated annual fee that Goldman will pay under the President's proposal is nearly \$1.2 billion.

159. The President also told Goldman's executives, among others, that "[i]nstead of sending a phalanx of lobbyists to fight this proposal or employing an army of lawyers and accountants to evade the fee, I suggest you might want to consider simply meeting your responsibilities" — including rolling back bonuses.

160. Goldman and its stockholders have suffered and will continue to suffer irreparable harm as a result of the Defendants' breach of fiduciary duty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demands judgment as follows:

- A. Determining that its suit is a proper derivative action and certifying Plaintiffs as appropriate representatives of Goldman for said action;
- B. Declaring that each of the Director Defendants have breached his or her fiduciary duties to Goldman in connection with their duty of oversight;
- C. Ordering the Director Defendants, and those under their supervision and control, to implement and enforce policies, practices and procedures on behalf of Goldman and its stockholders that are designed to detect and prevent illegal and unethical conduct by Goldman's employees and representatives;
- D. Declaring that each of the Director Defendants has breached his or her fiduciary duties to Goldman in connection with the allocation of between 44% and 49% of the Company's net revenues to compensation of its employees, and that such allocations vastly over-compensate management and constitute corporate waste;
- E. Enjoining the Director Defendants from allocating 47% of the net revenues from 2009 to compensation, requiring Defendants to analyze the contributions of the shareholder equity and firm assets as compared to management efforts in the production of those net revenues, and prohibiting the allocation of net revenues to compensation on any basis that is in excess of such allocation for comparable tasks in the comparable management of investor funds;

F. Requiring the Director Defendants to ensure that the cost of any charitable contributions committed by Goldman to “apologize” for the enormous compensation of its employees and the cost of any fee imposed by the government on banks are borne by the management of Goldman, rather than the shareholders;

G. Directing each of the Director Defendants to account to the Company for all damages sustained or to be sustained by the Company as a result of the Director Defendants’ breaches of fiduciary duties and waste of corporate assets;

H. Awarding damages, together with pre- and post-judgment interest to the Company, against the Director Defendants resulting from the overpayment of compensation from net revenues of the Company;

I. Awarding damages, together with pre- and post-judgment interest to the Company, against the Director Defendants to make shareholders whole for any charitable contributions that Goldman makes to “apologize” for its compensation policies and any fee imposed by the federal government on Goldman as a result of the attention that its over-compensation of employees in 2009 has attracted;

J. Awarding to Plaintiffs the costs and disbursements of the action, including reasonable attorneys’ fees, accountants’ and experts’ fees, costs, and expenses; and

K. Granting such other and further relief as the Court deems just and proper.

Dated: April 28, 2010

CHIMICLES & TIKELLIS LLP

/s/ Pamela S. Tikellis

Pamela S. Tikellis (#2172)

Robert J. Kriner. (#2546)

Tiffany J. Cramer (#4998)

222 Delaware Avenue, Suite 1100

P.O. Box 1035
Wilmington, DE 19801
Phone: (302) 656-2500
Fax: (302) 656-9053

Co-Lead Counsel for Plaintiffs

OF COUNSEL:

CHITWOOD HARLEY HARNES LLP

John F. Harnes
2300 Promenade II
1230 Peachtree Street
Atlanta, GA 30309
(404) 873-3900

Co-Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

JAMES CLEM, Derivatively on Behalf of THE
GOLDMAN SACHS GROUP, INC.,

Plaintiff,

vs.

LLOYD C. BLANKFEIN, GARY D. COHN,
MICHAEL S. SHERWOOD, J. MICHAEL
EVANS, ESTA E. STECHER, SARAH G. SMITH,
DAVID A. VINIAR, JOHN H. BRYAN, JAMES A.
JOHNSON, RUTH J. SIMMONS, WILLIAM W.
GEORGE, CLAES DAHLBACK, LOIS D.
JULIBER, STEPHEN FRIEDMAN, RAJAT K.
GUPTA, LAKSHMI N. MITTAL, and JAMES J.
SCHIRO,

Defendants,

-and-

THE GOLDMAN SACHS GROUP, INC., a
Delaware corporation,

Nominal Defendant.

X

Case No. 10 CIV 3578

VERIFIED SHAREHOLDER DERIVATIVE
COMPLAINT FOR BREACH OF
FIDUCIARY DUTY, WASTE OF
CORPORATE ASSETS, AND UNJUST
ENRICHMENT

DEMAND FOR JURY TRIAL

Plaintiff, by his attorneys, submits this Verified Shareholder Derivative Complaint against the defendants named herein.

NATURE AND SUMMARY OF THE ACTION

1. This is a derivative action brought by a shareholder of The Goldman Sachs Group, Inc, (“Goldman” or the “Company”) on behalf of the Company against certain of its officers and directors. Plaintiff seeks to remedy defendants’ violations of state law, including breaches of fiduciary duties, waste of corporate assets, and unjust enrichment that have caused substantial monetary losses to Goldman and other damages, such as to its reputation and goodwill.

2. Goldman is a global investment banking, securities, and investment management firm that provides a wide range of financial services. Its clients include corporations, financial institutions, governments, and high-net-worth individuals. Goldman is a bank holding company and a financial holding company regulated by the Board of Governors of the Federal Reserve System under the U.S. Bank Holding Company Act of 1956. Goldman’s activities are divided into three segments: (i) Investment Banking; (ii) Trading and Principal Investments and (iii) Asset Management and Securities Services.

3. On April 16, 2010, the U.S. Securities and Exchange Commission (“SEC”) filed an action against Goldman, Sachs & Co. and its employee Fabrice Tourre (“Tourre”) for violating the U.S. federal securities laws in the U.S. District Court for the Southern District of New York (the “SEC Action”). The SEC Action arises out of Goldman’s role in creating and selling a synthetic collateralized debt obligation (“CDO”) offering in early 2007. The CDO structure at issue in the SEC Action is known as Abacus 2007-AC1. Beginning in 2004, Goldman created or engaged in 23 Abacus transactions, each based at least in part upon highly leveraged synthetic CDOs. According to the SEC Action, a committee comprised of senior-level management at Goldman, the Mortgage Capital Committee, approved Abacus 2007-AC1.

4. The gravamen of the SEC Action is that Goldman did not reveal to Abacus 2007-AC1 investors that Paulson & Co., Inc. (“Paulson”) played a large role in picking the underlying securities that would be bundled in the CDO and that Paulson would be taking a short position against the

CDO. In particular, the SEC Action alleges that Paulson approached Goldman to make a market through a structured transaction consistent with Paulson's negative view on the residential mortgage backed securities ("RMBS") market. The structure of the deal allowed Paulson to pick and short what it believed were the riskiest assets.

5. Goldman created the marketing materials for Abacus 2007-AC1. The disclosure documents prepared by Tourre and Goldman only represented that ACA Capital Management LLC ("ACA") selected the Abacus 2007-AC1 portfolio. ACA is a third party company known for bundling mortgages and similar securities. ACA's reputation allowed Goldman to entice other investors to participate in the transaction. Notably, IKB Deutsche Industriebank AG ("IKB") invested approximately \$150 million in Abacus 2007-AC1. Goldman's marketing documents said nothing about Paulson's participation, even though its senior management knew Paulson's involvement was material. Moreover, the SEC Action states that Goldman represented to ACA that Paulson was investing in Abacus 2007-AC1 and thus their interests were aligned.

6. 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 lost over \$1 billion. Paulson made approximately \$900 million. Goldman made approximately \$15 million as a result of Abacus 2007-AC1, but has suffered significant repercussions for its involvement in Abacus 2007-AC1 including significant damage to the Company's market capitalization.

7. Due to the statements by its top executives denying any wrongdoing during the subprime crisis, the public and Goldman's shareholders were shocked that the SEC filed an action against the Company and by the contents of the SEC Action. The same cannot be said for Goldman's executives and Board of Directors ("Board") members. The SEC asked Goldman for information on this transaction in August of 2008. During the investigation, Goldman met with the SEC officials trying to fend off the civil lawsuit. According to the *Washington Post*, the SEC informed Goldman in writing that it planned on bringing a civil action against the Company. Nevertheless, Goldman did not disclose that it had received a Wells Notice in July 2009 regarding the Abacus 2007-AC1

transaction, that it was producing documents to the SEC, or that an SEC action was imminent until after the SEC Action was filed. Even after the SEC filed its action, executives at Goldman claimed they were “blindsided.”

8. The Individual Defendants (as defined herein) concealed their wrongdoing because of the intense public scrutiny placed on Goldman because of the TARP funds and public suspicion of their role in the collapse. According to Brad Hintz of Bernstein Research, Goldman could lose over \$700 million, or \$1.20 per share, over the next two years as a result of charges that it misled investors. In addition to the SEC Action, investors in the Abacus 2007-AC1 will likely file direct claims against Goldman seeking to recoup their losses and any available punitive damages.

9. Notably, while defendants (but not the public) knew of the Wells Notice issued to Goldman, certain of them, including Esta E. Stecher (“Stecher”), Goldman’s co-General Counsel, and John H. Bryan (“Bryan”), a Board member, took advantage of their possession of material, adverse, non-public information and collectively sold approximately **\$65.4 million** worth of Goldman shares between October 2009 and February 2010. As the *Wall Street Journal* (the “*Journal*”) reported on April 24, 2010, this was “the most active spate of insider selling [at Goldman] in three years.”

10. The conduct that was the subject of the SEC Action first came to light publicly on December 23, 2009 (four months after the SEC issued a Wells Notice to Goldman, which defendants had not disclosed), when *The New York Times* published an article entitled “Banks Bundled Bad Debt, Bet Against It and Won,” which specifically “outed” defendants’ breaches of fiduciary duties and bets against Goldman’s clients, and particularly in connection with the Abacus deals. *The New York Times* article stated, in pertinent part:

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."

* * *

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.

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.

[Jonathan] 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.

11. In response to *The New York Times*' December 24, 2009 article, defendants caused the Company to issue a press release the same day specifically denying any wrongdoing by any Goldman personnel entitled "Goldman Sachs Responds to The New York Times on Synthetic Collateralized Debt Obligations." Among other things, defendants represented that it was "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."

12. Notably, the Board conducted no internal investigation into the matters raised by the December 24, 2009 *The New York Times* article (nor caused such an internal investigation to take place) before or after issuing this blanket denial of wrongdoing.

13. Perhaps worse still (particularly in light of the fact that *The New York Times* had now revealed that multiple governmental and regulatory investigations, including one by the SEC, had begun), in addition to denying any misconduct at Goldman, the Board chose to continue to conceal that the Company had received a Wells Notice months earlier, or that the SEC was investigating misconduct at Goldman. Defendants' press release stated, in relevant part:

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.

14. Several months later, on or about April 7, 2010, in a letter to Goldman shareholders published as part of the Company's Annual Report on Form DEF 14A, defendants Lloyd C. Blankfein ("Blankfein"), Goldman's Chairman and Chief Executive Officer ("CEO"), and Gary D. Cohn ("Cohn"), the Company's President and Chief Operating Officer ("COO") again denied any wrongdoing. Specifically, Blankfein and Cohn stated: "Although Goldman Sachs held various

positions in residential mortgage-related products in 2007, our short positions were not a bet against our clients,”

15. This was a lie. As *The New York Times* would later report in an article entitled “Goldman Cited ‘Serious’ Profit on Mortgages” published on April 24, 2010, certain of the defendants (and other top Goldman insiders), including Blankfein, Cohn, and David A. Viniar (“Viniar”), the Company’s Chief Financial Officer (“CFO”), traded e-mail messages in 2007 saying, among other things, that they would make “some serious money” betting against the housing markets. These e-mails, as noted by *The New York Times*, “**contradict statements by Goldman that left the impression that the firm lost money on mortgage-related investment.**”

16. A little over a week after defendants specifically denied that Goldman personnel had placed bets against the Company’s own clients, on April 16, 2010, the SEC filed the SEC Action against Goldman and Tourre in this Court captioned *Securities and Exchange Commission v. Goldman Sachs & Co. and Fabrics Tourre*, Case No. 1:10-cv-03229-BSJ. The SEC Action charged Goldman and Tourre with defrauding investors by misstating and omitting key facts about the products described herein.

17. Later that day, in a hastily-assembled press release, defendants (including the Board) once again, as usual, flatly denied the SEC’s allegations or any allegations of wrongdoing at Goldman. Specifically, defendants defiantly claimed that “[t]he SEC’s charges are completely unfounded in law and fact and we will vigorously contest them and defend the firm and its reputation.” Further, defendants arrogantly added that “[they] are disappointed that the SEC would bring this action.

18. Immediately following the filing of the SEC Action, the price of the Company’s stock fell 13% from \$184.27 per share to close at \$160.70 per share on April 16, 2010. This represented a one-day market capitalization loss of over **\$10 billion**.

19. The news for Goldman and its stockholders has only continued to worsen in the wake of the filing of the SEC Action as the financial press got a hold of the story and investigated further.

20. For instance, in a April 17, 2010 article entitled “For Goldman, a Bet’s Stakes Keep Growing,” *The New York Times* reported that, according to former Goldman employees, “[a]s the housing market began to fracture in 2007, senior Goldman executives began overseeing the mortgage department closely ... [and] routinely visited the unit. Among them were David A. Viniar, the chief financial officer; Gary D. Cohn, then the co-president; and Pablo Salame, a sales and trading executive, these former employees said. Even Goldman’s chief executive, Lloyd C. Blankfein, got involved.” *The New York Times* also noted in this article that “[r]ecent public statements made by Mr. Blankfein seem to conflict with the S.E.C. account.”

21. *The New York Times* further confirmed the involvement of top Goldman insiders, including defendant Blankfein, in an April 18, 2010 article entitled “Senior Executives at Goldman Had a Role in Mortgage Unit.” This article specifically states that “*executives up to and including Lloyd C. Blankfein, the chairman and chief executive, took an active role in overseeing the mortgage unit as the tremors in the housing market began to reverberate through the nation’s economy.*”

22. Notwithstanding these revelations, defendants (including the Board) have continued to issue unequivocal denials of wrongdoing and have refused to conduct any type of internal investigation. For instance, on April 19, 2010, defendants caused the Company to state that “we believe that the firm’s actions were entirely appropriate.”

23. The Board has specifically come under fire (and rightfully so) for its failure to investigate and properly inform itself in the face of such serious allegations. For instance, in an April 19, 2010 article published by *Bloomberg* entitled “Goldman Sachs Stock, Board Under Pressure Amid Probe,” James Post, a professor of corporate governance and ethics at Boston University, took the Board to task for its apparent inaction and failure to investigate, and noted that defendants’ strong and swift public denials of any wrongdoing have compromised the Board’s ability to investigate or take any meaningful action. Moreover, this article also indicated that the total costs to Goldman in connection with the SEC Action could amount to **\$2 billion**. The *Bloomberg* article, in pertinent part, states:

Prime Minister Gordon Brown called yesterday for the U.K. Financial Services Authority to start a probe, saying he was “shocked” at the “moral bankruptcy” indicated in the Securities and Exchange Commission suit against Goldman Sachs. Germany’s financial regulator, Bafin, asked the SEC for details on the suit, a spokesman for Chancellor Angela Merkel said.

The escalating rhetoric adds urgency to efforts by Chairman and Chief Executive Officer Lloyd Blankfein and the rest of his board to stem negative publicity. Although Goldman Sachs vowed to fight the SEC case, calling it “unfounded in law and fact,” the stock plunged 13 percent on April 16. The shares fell 1.9 percent to \$157.61 at 9:47 a.m. in New York Stock Exchange trading.

“The lynch-mob mentality that is prevailing right now against Goldman is such that you don’t know where this thing could go, so I think the stock is going to be under continuing pressure,” said Michael Holland, who oversees more than \$4 billion as chairman of New York-based Holland & Co. “The board actually has to pay attention not only to the legal niceties of this thing but also to the franchise viability as well.”

* * *

Steve Stelmach, an analyst at FBR Capital Markets in Arlington, Virginia, today removed Goldman from his “Top Picks” list, citing the SEC suit. He still reiterated his outperform rating because of the bank’s “strong fundamentals.”

“The market appears to be overly discounting the potential earnings impact from the SEC charges,” he wrote in a note to clients today. The stock’s drop implies the suit may cost the bank \$2 billion before tax, twice the \$1 billion the SEC says investors lost in the transaction, he wrote.

* * *

Goldman Sachs’s board of directors should do its own investigation to ensure that it understands what senior management knew about the issues raised by the SEC’s complaint, said James Post, a professor of corporate governance and ethics at the Boston University School of Management.

‘How Long?’

“The board has got to be insisting on a much deeper level of internal investigation that reports only to them, not to Blankfein,” Post said. “They’ve got to be asking the question ‘how long can we continue going with Blankfein before we’ve got to clean house and put a new group of people in there?’”

William W. George, a Harvard Business School professor who has served on Goldman Sachs’s board since 2002, referred a request for an interview to the company’s press office. His Twitter account, which lauded JPMorgan Chase & Co. CEO Jamie Dimon for his firm’s better-than-expected earnings on April 14, remained silent on the controversy surrounding Goldman Sachs.

Boston University’s *Post* said he wouldn’t expect the board to take any immediate action to change the firm’s management because it would seem to contradict the defiant position the company took on April 16.

“I’m pretty sure that the board at Goldman is having a bad weekend,” Post said on April 18. “They may be praying for some news out of the Vatican or a new volcano to get them off the front pages.”

24. Defendants (including the Board) have similarly faced strong criticism for their failure to disclose the Company’s receipt of a Wells Notice. For example, on April 19, 2010, *Reuters* published an article entitled “Goldman May Face Backlash For Staying Mum on Probe,” which stated that not only did defendants learn of the likelihood of charges against Goldman in July 2009 with the issuance of a Wells Notice, but that defendants’ blanket denials and silence since that time may further hurt the Company. Defendants’ decision to conceal the Wells Notice issued to Goldman has further been criticized by Charles Elson,¹ in an April 19, 2010 *New York Post* article entitled “Goldman Bosses Hid Feds’ Probe.” Specifically, Mr. Elson stated “[i]n an age of heightened transparency ... receipt of that [Wells] notice should have been disclosed.”

25. In addition to the Company’s problems within the U.S. as a result of these events, on April 20, 2010, it was revealed that Britain’s Financial Services Authority has now launched its own probe in the matter.

26. On April 24, 2010, *The New York Times* published its article “Goldman Cited ‘Serious’ Profit on Mortgages” which revealed the contradiction between defendants’ public statements and their private communications. Specifically, *The New York Times* reported:

In late 2007, as the mortgage crisis gained momentum and many banks were suffering losses, Goldman Sachs executives traded e-mail messages saying that they would make “some serious money” betting against the housing markets.

The messages, released Saturday by the Senate Permanent Subcommittee on Investigations, appear to contradict statements by Goldman that left the impression that the firm lost money on mortgage-related investments.

In the messages, Lloyd C. Blankfein, the bank’s chief executive, acknowledged in November 2007 that the firm had lost money initially. But it later recovered by making negative bets, known as short positions, to profit as housing prices plummeted, “Of course we didn’t dodge the mortgage mess,” he wrote. “**We lost money, then made more than we lost because of shorts.**”

He added, “It’s not over, so who knows how it will turn out ultimately.”

¹ Mr. Elson is the Edgar S. Woolard, Jr., Chair in Corporate Governance and the Director of the John L. “Weinberg Center for Corporate Governance at the University of Delaware.

In another message, dated July 25, 2007, David A. Viniar, Goldman's chief financial officer, reacted to figures that said the company had made a \$51 million profit from bets that housing securities would drop in value. ***"Tells you what might be happening to people who don't have the big short,"*** he wrote to Gary D. Cohn, now Goldman's president.

* * *

Goldman on Saturday denied it made a significant profit on mortgage-related products in 2007 and 2008. It said the subcommittee had "cherry-picked" e-mail messages from the nearly 20 million pages of documents it provided. This sets up a showdown between the Senate subcommittee and Goldman, which has aggressively defended itself since the Securities and Exchange Commission filed a security fraud complaint against it nine days ago. On Tuesday, seven current and former Goldman employees, including Mr. Blankfein, are expected to testify at a Congressional hearing.

Carl Levin, Democrat of Michigan and head of the Permanent Subcommittee on Investigations, said that the e-mail messages contrasted with Goldman's public statements about its trading results, ***"The 2009 Goldman Sachs annual report stated that the firm 'did not generate enormous net revenues by betting against residential related products,' "*** ***Senator Levin said in a statement Saturday. " These e-mails show that, in fact, Goldman made a lot of money by betting against the mortgage market"***

The messages appear to connect some of the dots at a crucial moment of Goldman history. They show that in 2007, as most other banks hemorrhaged money from plummeting mortgage holdings, Goldman prospered.

At first, Goldman openly discussed its prescience in calling the housing downfall. In the third quarter of 2007, the investment bank reported publicly that it had made big profits on its negative bet on mortgages.

But by the end of 2007, the firm curtailed disclosures about its mortgage trading results. Its chief financial officer told analysts that they should not expect Goldman to reveal whether it was long or short on the housing market. By late 2008, Goldman was emphasizing its losses, rather than its profits, pointing regularly to write-downs of \$1.7 billion on mortgage assets in 2008 and not disclosing the amount it made on its negative bets.

Goldman and other firms often take positions on both sides of an investment. Some are long, which are bets that the investment will do well, and some are shorts, which are bets the investment will do poorly.

Goldman has said it added shorts to balance its mortgage book, not to make a directional bet on a market collapse. ***But the messages released by the subcommittee Saturday appear to show that in 2007, at least, Goldman's short bets were eclipsing the losses on its long positions.***

In May 2007, for instance, Goldman workers e-mailed one another about losses on a bundle of mortgages issued by Long Beach Mortgage Securities. Though the firm lost money on those, a worker wrote, there was "good news": "we own 10 mm in protection." That meant Goldman had enough of a bet against the bond that, over all, it profited by \$5 million.

On Oct. 11, 2007, one Goldman manager in the trading unit wrote to another, “*Sounds like we will make some serious money,*” and received the response, “*Yes we are well positioned.*”

Documents released by the Senate subcommittee appear to indicate that *in July 2007, Goldman’s accounting showed losses of \$3 22 million on positive mortgage positions, but its negative bet — what Mr. Viniar called “the big short” — brought in \$373 million.*

As recently as a week ago, a Goldman spokesman emphasized that the firm had tried only to hedge its mortgage holdings in 2007.

The firm said in its annual report this month that it did not know back then where housing was headed, a sentiment expressed by Mr. Blankfein the last time he appeared before Congress.

“We did not know at any minute what would happen next, even though there was a lot of writing,” he told the Financial Crisis Inquiry Commission in January.

It is not known how much money in total Goldman made on its negative housing bets. Neither Goldman nor the panel issued information about Goldman’s mortgage earnings in 2009.

In its response Saturday, Goldman Sachs released an assortment of internal email messages. They showed workers disagreeing at some junctures over the direction of the mortgage market. In 2008, Goldman was stung by some losses on higher-quality mortgage bonds it held, when the crisis expanded from losses on risky bonds with subprime loans to losses in mortgages that were given to people with better credit histories.

Still, *in late 2006, there are messages that show Goldman executives discussing ways to get rid of the firm’s positive mortgage positions by selling them to clients. In one message, Goldman’s chief financial officer, Mr. Viniar, wrote, “Let’s be aggressive distributing things.”*

Goldman also released detailed financial statements for its mortgage trading unit. Those statements showed that a group of traders in what was known as the structured products group made a profit of \$3.69 billion as of Oct. 26, 2007, which more than covered losses in other parts of Goldman’s mortgage unit.

Several traders from that group will testify on Tuesday.

The messages released by Goldman included many written by Fabrice Tourre, the executive who is the only Goldman employee named in the S.E.C. complaint. They reveal his skepticism about the direction of the subprime mortgage market in 2007. In a March 7 message to his girlfriend, he wrote, “According to Sparks, that business is totally dead, and the poor little subprime borrowers will not last so long.” He was referring to Dan Sparks, then the head of Goldman’s mortgage trading unit.

27. That same day, the *Journal* published its article “Insiders Sold Shares As SEC Probed Firm,” detailing defendants’ illicit insider sales made while they, but not the public, knew of the Wells Notice that had been issued to Goldman by the SEC.

28. Defendants' attitude and actions in the face of a firestorm of criticism in the wake of the recent global financial crisis are consistent with their knee-jerk, strong denials of wrongdoing and their failure to disclose the Wells Notice. For instance, one needs to look no further than the now-infamous comment defendant Blankfein made to *The Times of London* in November 2009, "***I'm doing God's work***, in response to the recent public scrutiny over the Company's excessive executive compensation practices,² to understand defendants' "circle the wagons" mentality.

29. Indeed, rather than investigate the serious allegations of wrongdoing raised by *The New York Times*, or later in the SEC Action, or take any other steps to properly inform themselves, the Board has brashly stated that the "SEC's charges are completely unfounded in law and fact." Clearly, defendants, including the Board, have consistently and repeatedly taken the hard-line stance that no wrongdoing could have possibly occurred at Goldman. Accordingly, it would be wholly impossible to expect that the Board would be able to consider a stockholder demand in good faith.

30. Most recently, on April 27, 2010, Goldman executives appeared before Congress to testify and continued to deny any wrongdoing. Moreover, upon direct questioning, they side-stepped the question of whether they were and are obligated to "put clients first," As the *New York Times* reported:

Even before the first question was leveled inside the Senate chamber, Tuesday was going to be uncomfortable for Goldman Sachs.

But then the questions kept coming — and coming and coming.

Through the day and into the evening, Goldman Sachs officials met with confrontation and blunt questioning as senators from both parties challenged them over their aggressive marketing of mortgage investments at a time when the housing market was already starting to falter.

In an atmosphere charged by public animosity toward Wall Street, ***the senators compared the bankers to bookies and asked why Goldman had sold investments that its own sales team had disparaged with a vulgarity.***

² That the SEC issued a Wells Notice to the Company at the same time that Goldman was already publicly under fire for its executive compensation practices and policies only underscores the impropriety of defendants' failure to disclose the Wells Notice.

“The idea that Wall Street came out of this thing just fine, thank you, is just something that just grates on people,” said Senator Edward E. Kaufman Jr., a Democrat from Delaware. “They think you didn’t just come out fine because it was luck. They think you guys just really gamed this thing real well.”

But throughout a subcommittee hearing lasting more than 10 hours, current and former Goldman officials insisted that they had done nothing to mislead their clients. Time and again, the senators and the Goldman executives, among them the chairman and chief executive, Lloyd C. Blankfein, seemed to be talking past each other.

* * *

A Republican member, Senator Susan M. Collins of Maine, turned from one witness to the next as she asked repeatedly whether they felt a duty to act in the best interest of their clients. Only one of the four witnesses she questioned seemed to affirm such a duty outright.

In what almost added up to a light moment, Senator Mark L. Pryor, Democrat of Arkansas, said the public wanted to know what went wrong and “how we can fix it,” adding (that Americans feel that Wall Street contributed to the financial crisis. “People feel like you are betting with other people’s money and other people’s future,” he said. “Instead of Wall Street, it looks like Las Vegas.”

Senator Ensign said he took offense at the comparison, saying that in Las Vegas the casinos do not manipulate the odds while you are playing the game. The better analogy, he said, would be to someone playing a slot machine while the “guys on “Wall Street” were “tweaking the odds in their favor.”

The gap between Wall Street and the rest of the country was a recurring theme, with senators occasionally pointing out how much Goldman, and indeed the witnesses, had profited as the overall economy was headed for a plunge.

Senator Claire McCaskill, Democrat of Missouri, mentioned during her questioning that she was trying to “home in on why I have so many unemployed people” and lost money in pensions.

The questioning Tuesday put the Goldman witnesses on the defensive, with the senators expressing exasperation that they were deliberately dodging questions or stalling for time.

It was at 10:01 a.m., one minute late, when the session began with opening remarks from subcommittee chairman, Senator Carl Levin, Democrat of Michigan. The public galleries, accommodating roughly 100 people, were full and included four people dressed in mock striped prison jumpsuits who jeered at the Goldman officials.

“How do you live with yourself, Fab?” one shouted as Mr. Tourre was ushered out of the chamber after his testimony.

A tone of confrontation was set at the beginning, with Senator Levin's opening remarks, He said the questioning would focus on the role of investment banks in the financial crisis, and particularly on the activities of Goldman Sachs in 2007, which "contributed to the economic collapse that came full blown the following year."

While the hearing had ramifications for the entire sector and the activities of lenders to make more money from risky mortgage loans, Senator Levin added, it was focusing on Goldman as an "active player in building this mortgage machinery."

He said that while the S.E.C. suit and the courts would address the legality of its activities, "the question for us is one of ethics and policy: were Goldman's actions in 2007 appropriate, and if not, should we act to bar similar actions in the future?"

In addition to Mr. Turre and Mr. Sparks, Goldman executives testifying included Joshua S. Bimbaum, a former managing director in the structured products group trading, and Michael J. Swenson, another managing director in that group.

A second panel included David A. Viniar., executive vice president and chief financial officer, and Craig W. Broderick, the chief risk officer.

At one point Mr. Viniar prompted a collective gasp when Mr. Levin asked him how he felt when he learned that Goldman employees had used vulgar terms to describe the poor quality of certain Goldman deals. Mr. Viniar replied, "I think that's very unfortunate to have on e-mail."

Senator Levin then berated Mr. Viniar for not saying that he was appalled that Goldman employees even thought their deals were of poor quality, much less put it in e-mail. Mr. Viniar later apologized.

As the hearing stretched into the evening, Mr. Blankfein, Goldman's chief, entered the chamber with an almost angry demeanor, in a brief prepared statement, he held tight to Goldman's defenses.

Later, asked if he knew the housing market was doomed, Mr. Blankfein replied, "I think we're not that smart."

Mr. Blankfein was asked repeatedly whether Goldman sold securities that it also bet against, and whether Goldman treated those clients properly.

"You say betting against," Mr. Blankfein said in a lengthy exchange. But he said the people who were coming to Goldman for risk in the housing market got just that: exposure to the housing market. "The unfortunate thing," he said, "is that the housing market went south very quickly."

Senator Levin pressed Mr. Blankfein again on whether his customers should know what Goldman workers think of deals they are selling, and Mr. Blankfein

reiterated his position that sophisticated investors should be allowed to buy what they want.

Mr. Blankfein was also pressed on the deal at the center of the S.E.C. case. He said the investment was not meant to fail, as the S.E.C. claims, and in fact, that the deal was a success, in that it conveyed “risk that people wanted to have, and in a market that’s not a failure.”

To which Senator Jon Tester, Democrat of Montana, replied, “It’s Like we’re speaking a different language here.”

31. As a result of defendants’ breaches of fiduciary duty and other misconduct, the price of the Company’s stock still has not recovered and currently trades at around \$157 per share — a plummet of approximately 15% in approximately two weeks.

32. Accordingly, the Company has been damaged.

JURISDICTION AND VENUE

33. This Court has jurisdiction over all claims asserted herein pursuant to 28 U.S.C. §1332(a)(2) because complete diversity exists between the plaintiff and each defendant, and the amount in controversy exceeds \$75,000. This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

34. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by the District courts permissible under traditional notions of fair play and substantial justice.

35. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) because: (i) Goldman maintains its principal place of business in the District; (ii) one or more of the defendants either resides in or maintains executive offices in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including the defendants’ primary participation in the wrongful acts detailed herein, and aiding and abetting and conspiracy in violation of fiduciary duties owed to Goldman occurred in this District; and (iv) defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

THE PARTIES

36. Plaintiff James Clem was a shareholder of Goldman at the time of the wrongdoing complained of, has continuously been a shareholder since that time and is a current Goldman shareholder. Plaintiff is a citizen of California.

37. Nominal defendant Goldman is a Delaware corporation with its principal executive offices located at 200 West Street, New York, New York. Goldman is a global investment banking, securities, and investment management firm that provides a wide range of financial services.

38. Defendant Blankfein is Goldman's Chairman of the Board and CEO and has been since June 2006. Blankfein is also a Goldman director and has been since April 2003. Blankfein was Goldman's President and Chief Operating Officer from January 2004 to June 2006; Vice Chairman from April 2002 to January 2004; co-head of Fixed Income, Currency and Commodities Division ("FICC") from 1997 to April 2002; and head or co-head of the Currency and Commodities Division from 1994 to 1997. Goldman paid defendant Blankfein the following compensation as an executive:

Fiscal Year	Salary	All Other Compensation
2009	\$600,000	\$262,657

Defendant Blankfein is a citizen of New York.

39. Defendant Cohn is Goldman's President and has been since June 2006. Cohn is also Goldman's COO and has been since April 2009. Cohn was Goldman's Co-Chief Operating Officer from June 2006 to March 2009 and co-head of global securities businesses from January 2004 to June 2006. Cohn also served in various other positions at Goldman from 1996 to January 2004, including as co-head of Equities, co-head of FICC, co-chief operating officer of FICC; and global head of the commodities business. Goldman paid defendant Cohn the following compensation as an executive:

Fiscal Year	Salary	All Other Compensation
2009	\$600,000	\$225,156

Defendant Cohn is a citizen of New York.

40. Defendant Michael S. Sherwood (“Sherwood”) is a Goldman Vice Chairman and has been since February 2008 and co-CEO of Goldman Sachs International and has been since 2005. Sherwood was also global co-head of Goldman’s securities business from 2003 to February 2008 and head of the Fixed Income, Currency and Commodities Division in Europe from 2001 to 2003. While in possession of material non-public information concerning Goldman’s true business health, defendant Sherwood sold 182,860 of his Goldman shares for \$31,936,166 in proceeds. Defendant Sherwood is a citizen of England.

41. Defendant J. Michael Evans (“Evans”) is a Goldman Vice Chairman and has been since February 2008 and chairman of Goldman Sachs Asia and has been since 2004. Evans was also global co-head of Goldman’s securities business from 2003 to February 2008 and co-head of the Equities Division from 2001 to 2003. While in possession of material non-public information concerning Goldman’s true business health, defendant Evans sold 140,000 of his Goldman shares for \$23,768,000 in proceeds, Goldman paid defendant Evans the following compensation as an executive:

Fiscal Year	Salary	All Other Compensation
2009	\$600,000	\$1,024,448

Defendant Evans is a citizen of Hong Kong.

42. Defendant Stecher is a Goldman Executive Vice President, General Counsel and co-head of the Legal Department and has been since December 2000. Stecher was also head of Goldman’s Tax Department from 1994 to 2000, over which she continues to have senior oversight responsibility. While in possession of material non-public information concerning Goldman’s true business health, defendant Stecher sold 37,558 of her Goldman shares for \$5,760,388 in proceeds. Defendant Stecher is a citizen of New York.

43. Defendant Sarah G. Smith (“Smith”) is Goldman’s Principal Accounting Officer and has been since at least March 1999. While in possession of material non-public information concerning Goldman’s true business health, defendant Smith sold 16,129 of her Goldman shares for \$3,009,187 in proceeds. Defendant Smith is a citizen of Colorado.

44. Defendant Viniar is a Goldman Executive Vice President and CFO and has been since May 1999. Viniar is also Goldman's head of Operations, Technology, Finance and Services Division and has been since December 2002. Viniar was Goldman's head of the Finance Division and co-head of Credit Risk Management and Advisory and Firmwide Risk from December 2001 to December 2002, and co-head of Operations, Finance and Resources from March 1999 to December 2001. Viniar also served in various other positions at Goldman Sachs Group, L.P., Goldman's predecessor, from 1992 to May 1999, including as Chief Financial Officer; Deputy Chief Financial Officer; head of Finance; head of Treasury; and part of the Structured Finance Department of Investment Banking. Goldman paid defendant Viniar the following compensation as an executive:

Fiscal Year	Salary	All Other Compensation
2009	\$600,000	\$237,365

Defendant Viniar is a citizen of New Jersey.

45. Defendant Bryan is Goldman's Presiding Director and has been since at least February 2007 and a director and has been since November 1999. Bryan is also a member of Goldman's Audit Committee and has been since at least November 2008. While in possession of material non-public information concerning Goldman's true business health, defendant Bryan sold 6,000 of his Goldman shares for \$932,220 in proceeds. Goldman paid defendant Bryan the following compensation as director:

Fiscal Year	Total Compensation
2009	\$476,004

Defendant Bryan is a citizen of Illinois.

46. Defendant James A. Johnson ("Johnson") is a Goldman director and has been since May 1999. Johnson is also a member of Goldman's Audit Committee and has been since at least November 2008. Goldman paid defendant Johnson the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$476,004

Defendant Johnson is a citizen of Idaho.

47. Defendant Ruth J. Simmons (“Simmons”) is a Goldman director and has been since January 2000. Simmons announced in February 2010 that she will retire from Goldman’s Board in May 2010. Goldman paid defendant Simmons the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$450,876

Defendant Simmons is a citizen of Rhode Island.

48. Defendant William W. George (“George”) is a Goldman director and has been since December 2002. George is also a member of Goldman’s Audit Committee and has been since at least November 2008. Goldman paid defendant George the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$455,676

Defendant George is a citizen of Massachusetts.

49. Defendant Claes Dahlbäck (“Dahlbäck”) is a Goldman’s director and has been since June 2003. Dahlbäck is also a member of Goldman’s Audit Committee and has been since at least November 2008. Goldman paid defendant Dahlbäck the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$455,676

Defendant Dahlbäck is a citizen of Sweden.

50. Defendant Lois D. Juliber (“Juliber”) is a Goldman director and has been since March 2004. Juliber is also a member of Goldman’s Audit Committee and has been since at least November 2008. Goldman paid defendant Juliber the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$455,676

Defendant Juliber is a citizen of New York.

51. Defendant Stephen Friedman (“Friedman”) is a Goldman director and has been since April 2005. Friedman served in various other positions at Goldman Sachs Group, L.P., Goldman’s predecessor, from 1966 to 1994, including as Senior Partner and Chairman of the Management

Committee. Friedman is also Chairman of Goldman’s Audit Committee and has been since October 2008. Goldman paid defendant Friedman the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$476,004

Defendant Friedman is a citizen of New York.

52. Defendant Rajat K. Gupta (“Gupta”) is a Goldman director and has been since November 2006. Gupta is also a member of Goldman’s Audit Committee and has been since at least November 2008. Gupta announced in March 2010 that he will retire from Goldman’s Board in May 2010. Goldman paid defendant Gupta the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$450,876

Defendant Gupta is a citizen of Connecticut.

53. Defendant Lakshmi N. Mittal (“Mittal”) is a Goldman director and has been since June 2008. Mittal is also a member of Goldman’s Audit Committee and has been since June 2008. Goldman paid defendant Mittal the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$450,876

Defendant Mittal is a citizen of Luxembourg.

54. Defendant James J. Schiro (“Schiro”) is a Goldman director and has been since May 2009. Schiro is also a member of Goldman’s Audit Committee and has been since May 2009. Goldman paid defendant Schiro the following compensation as a director:

Fiscal Year	Total Compensation
2009	\$307,087

Defendant Schiro is a citizen of New Jersey.

55. The defendants identified in ¶¶38, 40-41, 45-54 are referred to herein as the “Director Defendants.” The defendants identified in ¶¶38-40, 42-44 are referred to herein as the “Officer Defendants.” The defendants identified in ¶¶40-43, 45 are referred to herein as the “Insider Selling

Defendants.” Collectively, the Director Defendants, the Officer Defendants, and the Insider Selling Defendants are referred to herein as the “Individual Defendants.”

DUTIES OF THE INDIVIDUAL DEFENDANTS

Fiduciary Duties

56. By reason of their positions as officers, directors, and/or fiduciaries of Goldman and because of their ability to control the business and corporate affairs of Goldman, the Individual Defendants owed Goldman fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage Goldman in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of Goldman so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit.

57. Each director and officer of the Company owes to Goldman the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing. In addition, as officers and/or directors of a publicly held company, the Individual Defendants had a duty to promptly disseminate all material information, in an accurate and truthful manner, including the Company’s receipt of a Wells Notice and ongoing investigation by the SEC, so that the market price of the Company’s stock would be based on truthful and accurate information.

58. The Company’s Corporate Governance Guidelines, in effect since January 2007, state in relevant part:

IX. Board Responsibilities

The business and affairs of the Company are managed by or under the direction of the Board in accordance with Delaware law. The Board’s responsibility is to provide direction and oversight. The Board establishes the strategic direction of the Company and oversees the performance of the Company’s business and management. The management of the Company is responsible for presenting strategic plans to the Board for review and approval and for implementing the Company’s strategic direction. In performing their duties, the primary responsibility of the directors is to exercise their business judgment in the best interests of the Company.

* * *

4. *Reviewing and Approving Significant Transactions.* Board approval of a particular transaction may be appropriate because of several factors, including:

- legal of regulatory requirements,
- the materiality of the transaction to the Company's financial performance, risk profile or business,
- the terms of the transaction, or
- other factors, such as the entering into of a new line of business or a variation from the Company's strategic plan.

To the extent the Board determines it to be appropriate, the Board shall develop standards to be utilized by management in determining types of transactions that should be submitted to the Board for review and approval or notification.

X. Expectations for Directors

* * *

6. *Contact with Management and Employees.* All directors shall be free to contact the CEO at any time to discuss any aspect of the Company's business. Directors shall also have complete access to other employees of the Company. The Board expects that there will be frequent opportunities for directors to meet with the CEO and other members of management in Board and Committee meetings, or in other formal or informal settings.

Further, the Board encourages management to bring into Board meetings from time to time (or otherwise make available to Board members) individuals who can provide additional insight into the items being discussed because of personal involvement and substantial knowledge in those areas.

59. Goldman's Code of Business Conduct and Ethics, in effect since May 2009 and substantially similar to the prior version in effect since January 2005, states in relevant part:

This Code of Business Conduct and Ethics (the "Code") embodies the commitment of The Goldman Sachs Group, Inc. and its subsidiaries to conduct our business in accordance with all applicable laws, rules and regulations and the highest ethical standards. All employees and members of our Board of Directors are expected to adhere to those principles and procedures set forth in this Code that apply to them. We also expect the consultants we retain generally to abide by this Code. (For purposes of Section 406 of the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder, Section I of this Code shall be our code of ethics for Senior Financial Officers (as defined below).)

The Code should be read in conjunction with Our Business Principles, which provide in part that, "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 their personal lives.” Our Business Principles are attached to this Code. Each employee, consultant and director should also read and be familiar with the portions of the Compendium of Firmwide Compliance Policies (the “Compendium”) applicable to such employee, consultant or director, which Compendium is not part of this Code.

SECTION I

A. Compliance and Reporting

Employees and directors should strive to identify and raise potential issues before they lead to problems, and should ask about the application of this Code whenever in doubt. Any employee or director who becomes aware of any existing or potential violation of this Code should promptly notify, in the case of employees, an appropriate contact listed in the Directory of Contacts included in the Compendium and, in the case of directors and the Chief Executive Officer, the Chief Financial Officer and the Principal Accounting Officer (the “Senior Financial Officers”), one of the firm’s General Counsel (we refer to such contacts as “Appropriate Ethics Contacts”). The firm will take such disciplinary or preventive action as it deems appropriate to address any existing or potential violation of this Code brought to its attention.

Any questions relating to how these policies should be interpreted or applied should be addressed to an Appropriate Ethics Contact.

B. Personal Conflicts of Interest

A “personal conflict of interest” occurs when an individual’s private Interest improperly interferes with the interests of the firm. Personal conflicts of interest are prohibited as a matter of firm policy, unless they have been approved by the firm. In particular, an employee or director must never use or attempt to use his or her position at the firm to obtain any improper personal benefit for himself or herself, for his or her family members, or for any other person, including loans or guarantees of obligations, from any person or entity.

Service to the firm should never be subordinated to personal gain and advantage.

Conflicts of interest should, to the extent possible, be avoided.

Any employee or director who is aware of a material transaction or relationship that could reasonably be expected to give rise to a conflict of interest should discuss the matter promptly with an Appropriate Ethics Contact.

C. Public Disclosure

It is the firm’s policy that the information in its public communications, including SEC filings, be full, fair, accurate, timely and understandable. All employees and directors who are involved in the company’s disclosure process,

including the Senior Financial Officers, are responsible for acting in furtherance of this policy. In particular, these individuals are required to maintain familiarity with the disclosure requirements applicable to the firm and are prohibited from knowingly misrepresenting, omitting, or causing others to misrepresent or omit, material facts about the firm to others, whether within or outside the firm, including the firm's independent auditors. In addition, any employee or director who has a supervisory role in the firm's disclosure process has an obligation to discharge his or her responsibilities diligently.

D. Compliance with Laws, Rules and Regulations

It is the firm's policy to comply with all applicable laws, rules and regulations. It is the personal responsibility of each employee and director to adhere to the standards and restrictions imposed by those laws, rules and regulations. The Compendium provides guidance as to certain of the laws, rules and regulations that apply to the firm's activities.

Generally, it is both illegal and against firm policy for any employee or director who is aware of material nonpublic information relating to the firm, any of the firm's clients or any other private or governmental issuer of securities to buy or sell any securities of those issuers, or recommend that another person buy, sell or hold the securities of those issuers.

More detailed rules governing the trading of securities by the firm's employees and directors are set forth in the Compendium. Any employee or director who is uncertain about the legal rules involving his or her purchase or sale of any firm securities or any securities in issuers that he or she is familiar with by virtue of his or her work for The firm should consult with an Appropriate Ethics Contact before making any such purchase or sale.

SECTION II

A. Corporate Opportunities

Employees and directors owe a duty to the firm to advance the firm's legitimate business interests when the opportunity to do so arises. Employees and directors are prohibited from taking for themselves (or directing to a third party) a business opportunity that is discovered through the use of corporate property, information or position, unless the firm has already been offered the opportunity and turned it down. More generally, employees and directors are prohibited from using corporate property, information or position for personal gain or competing with the firm.

Sometimes the line between personal and firm benefits is difficult to draw, and sometimes both personal and firm benefits may be derived from certain activities. The only prudent course of conduct for our employees and directors is to make sure that any use of firm property or services that is not solely for the benefit of the firm is approved beforehand through the Appropriate Ethics Contact.

* * *

C. Fair Dealing

We have a history of succeeding through honest business competition. We do not seek competitive advantages through illegal or unethical business practices. Each employee and director should endeavor to deal fairly with the firm's clients, service providers, suppliers, competitors and employees. No employee or director should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any unfair dealing practice.

Specific Audit Committee Fiduciary Duties

60. In addition to these duties, defendants Bryan, Johnson, George, Dahlback, Juliber, Friedman, Gupta, Mittal, and Schiro owe and owed specific duties under the Audit Committee's charter to Goldman to review and ensure the accuracy and appropriateness of the earnings press releases and annual and interim financial statements. During 2009, the Audit Committee met twelve times. In particular, the Audit Committee's charter in effect since at least January 2009 provides, in pertinent part, as follows:

Purpose of Committee

The purpose of the Audit Committee (the "Committee") of the Board of Directors (the "Board") of The Goldman Sachs Group, Inc. (the "Company") is to:

- (a) assist the Board in its oversight of (i) the integrity of the Company's financial statements, (ii) the Company's compliance with legal and regulatory requirements, (iii) the independent auditors' qualifications, independence and performance, (iv) the performance of the Company's internal audit function, (v) the Company's internal control over financial reporting, and (vi) the Company's management of market, credit, liquidity and other financial and operational risks;
- (b) decide whether to appoint, retain or terminate the Company's independent auditors and to pre-approve all audit, audit-related, tax and other services, if any, to be provided by the independent auditors; and
- (c) prepare the report required to be prepared by the Committee pursuant to the rules of the Securities and Exchange Commission (the "SEC") for inclusion in the Company's annual proxy statement.

* * *

Committee Duties and Responsibilities

The following are the duties and responsibilities of the Committee:

* * *

5. To review and discuss with management and the independent auditors the Company's annual audited financial statements and quarterly financial statements, including the Company's specific disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Controls and Procedures," and to discuss with the Company's Chief Executive Officer and Chief Financial Officer (a) their certifications to be provided pursuant to Sections 302 and 906 of the 2002 Act, including whether the financial statements fairly present, in all material respects, the financial condition, results of operations and cash flows of the Company as of and for the periods presented and whether any significant deficiencies and material weaknesses exist in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information, or any fraud has occurred, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting and (b) management's report on internal control over financial reporting pursuant to Section 404 of the 2002 Act. The Committee shall discuss, as applicable: (a) major issues regarding accounting principles and financial statement presentations, including any significant changes in the Company's selection or application of accounting principles, and major issues as to the adequacy of the Company's internal controls and any special audit steps adopted in light of material control deficiencies; (b) analyses prepared by management and/or the independent auditors setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements; and (c) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the Company.

* * *

7. To discuss with management earnings press releases and to review generally the type and presentation of information to be included in earnings press releases (paying particular attention to any use of "pro forma" or "adjusted" non-GAAP, information).
8. To review generally with management the type and presentation of any financial information and earnings guidance provided to analysts and rating agencies.
9. To review with management and, as appropriate, the independent auditors periodically, normally on at least an annual basis:
 - The independent auditors' annual audit scope, risk assessment and plan.

- The form of independent auditors' report on the annual financial statements and matters related to the conduct of the audit under the standards of the Public Company Accounting Oversight Board (United States).
- Comments by the independent auditors on internal controls and significant findings and recommendations resulting from the audit.

* * *

12. review the procedures for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters, and for the confidential, anonymous submission by Company employees of concerns regarding questionable accounting or auditing matters, and to assess compliance with these procedures.

* * *

14. To discuss with management periodically management's assessment of the Company's market, credit, liquidity and other financial and operational risks, and the guidelines, policies and processes for managing such risks.
15. To review and monitor the adequacy of the structures, policies and procedures that the Company has developed to assure the integrity of its investment research, including compliance with the requirements of Sections 1.3 and 1.5 of Addendum A to the global research settlement to which the Company is a party. As part of this process, the Committee shall meet periodically with the Company's investment research ombudsman, senior management of Global Investment Research and such other individuals within the Company who are charged with overseeing the Company's performance with respect to the investment research area as the Committee may determine,
16. To discuss with one of the Company's General Counsel and/or Chief Compliance Officer any significant legal, compliance or regulatory matters that may have a material impact on the Company's business, financial statements or compliance policies.

* * *

Committee Reports

The Committee shall produce the following report and evaluation and provide them to the Board:

1. Any report, including any recommendation, or other disclosures required to be prepared by the Committee pursuant to the rules of the SEC for inclusion in the Company's annual proxy statement.
2. An annual performance evaluation of the Committee, which evaluation shall compare the performance of the Committee with the requirements of this

charter. The performance evaluation shall also include a review of the adequacy of this charter and shall recommend to the Board any revisions the Committee deems necessary or desirable, although the Board shall have the sole authority to amend this charter. The performance evaluation shall be conducted in such manner as the Committee deems appropriate.

Control, Access, and Authority

61. The Individual Defendants, because of their positions of control and authority as directors and/or officers of Goldman, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein, as well as the contents of the various public statements issued by the Company.

62. Because of their advisory, executive, managerial, and directorial positions with Goldman, each of the Individual Defendants had access to adverse, non-public information about the financial condition, operations, and improper representations of Goldman, including information regarding Goldman's standing on both sides of transactions in which it played a significant role.

63. At all times relevant hereto, each of the Individual Defendants was the agent of each of the other Individual Defendants and of Goldman, and was at all times acting within the course and scope of such agency,

64. The Board met twelve times during the 2009 fiscal year.

Reasonable and Prudent Supervision

65. To discharge their duties, the officers and directors of Goldman were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the financial affairs of the Company. By virtue of such duties, the officer and directors of Goldman were required to, among other things:

(a) ensure that the Company complied with its legal obligations and requirements, including acting only within the scope of its legal authority and disseminating truthful and accurate statements to the investing public;

(b) ensure that the Company was operated in a diligent, honest, and prudent manner in compliance with all applicable laws, rules, and regulations

(c) conduct the affairs of the Company in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(d) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time, including making accurate statements about the Company's results;

(e) refrain from acting upon material, non-public information; and

(f) remain informed as to how Goldman conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with securities laws.

Breaches of Duties

66. Each Individual Defendant, by virtue of his or her position as a director and/or officer, owed to the Company the fiduciary duty of loyalty and good faith and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of Goldman, the absence of good faith on their part, and a reckless disregard for their duties to the Company that the Individual Defendants were aware or should have been aware posed a risk of serious injury to the Company. The conduct of the Individual Defendants who were also officers and/or directors of the Company have been ratified by the remaining individual Defendants who collectively comprised all of Goldman's Board.

67. The Individual Defendants breached their duty of loyalty by allowing defendants to cause, or by themselves causing: (i) the Company to misrepresent that it did not stand on both sides of transactions; (ii) failed to disclose it had received a Wells Notice; and (iii) failed to independently investigate the SEC's allegations regarding Goldman's violation of securities law, as detailed herein, and by failing to prevent the Individual Defendants from taking such illegal actions.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

68. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their common plan or design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

69. During all times relevant hereto, the Individual Defendants collectively and individually initiated a course of conduct that was designed to and did: (i) conceal the fact that the Company was standing on both sides of transactions with its customers and had received a Wells Notice; (ii) enhance the Individual Defendants' executive and directorial positions at Goldman and the profits, power, and prestige that the Individual Defendants enjoyed as a result of holding these positions; and (iii) deceive the investing public regarding the Individual Defendants' management of Goldman's conflicted interest that were not disclosed to customers, in particular 1KB. In furtherance of this plan, conspiracy, and course of conduct, the Individual Defendants collectively and individually took the actions set forth herein.

70. The Individual Defendants engaged in a conspiracy, common enterprise, and/or common course of conduct. During this time, the Individual Defendants caused the Company to issue improper statements.

71. The purpose and effect of the Individual Defendants' conspiracy, common enterprise, and/or common course of conduct was, among other things, to disguise the Individual Defendants' violations of law, breaches of fiduciary duty, waste of corporate assets, and unjust enrichment, and to conceal adverse information concerning the Company's operations, financial condition, and future business prospects.

72. The Individual Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company to purposefully, recklessly, or negligently release improper statements. Because the actions described herein occurred under the authority of

the Board, each of the Individual Defendants was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein,

73. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Individual Defendant acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

THE ABACUS TRANSACTION
Goldman's Correlation Trading Desk

74. Goldman'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. Defendants sought to protect and expand this profitable franchise in a competitive market both before and throughout the relevant period.

75. It has been alleged that, according to an internal Goldman 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-ACI] and others like it helps position Goldman to compete more aggressively in the growing market for synthetics written on structured products."

Paulson's Investment Strategy

76. 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,

77. 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 Standard & Poor’s Ratings & Services (S&P) or “Baa2” by Moody’s Investors Services, Inc. (“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.

78. 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).

79. 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.

Under Defendants’ Direction, Goldman and Paulson Discuss a Proposed Transaction

80. It has been alleged that Paulson performed an analysis of recent-vintage Triple B-rated RMBS and identified various bonds it expected to experience credit events. Paulson then asked defendants 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.

81. It has also been alleged that Paulson discussed with defendants 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 defendants 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 Goldman to buy protection on specific layers of the synthetic CDO’s capital structure,

82. It has been alleged that 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.”

83. At the same time, defendants recognized that market conditions were presenting challenges to the successful marketing of CDO transactions backed by mortgage-related securities. For example, it has been alleged that portions of an e-mail in both 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 tirades he created without necessarily understanding all of the implications of those monstrosities!!!”

84. Similarly, it has been alleged that an e-mail dated February 11, 2007 to Tourre from the head of the Goldman structured product correlation trading desk stated in part, “the cdo biz is dead we don’t have a lot of time left.”

Introduction of ACA to the Proposed Transaction

85. Defendants 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.

86. Defendants also knew that at least one significant potential investor, 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.

87. Defendants therefore sought a collateral manager to play a role in the transaction proposed by Paulson. It has been alleged that contemporaneous internal correspondence reflects that defendants 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.”

88. In or about January 2007, defendants 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,

89. It has been alleged that internal Goldman communications emphasized the advantages from a marketing perspective of having ACA associated with the transaction. For example, an internal e-mail 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.”

90. Likewise, it has been alleged that an internal Goldman memorandum to the Goldman 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. “

Paulson’s Participation in the Collateral Selection Process

91. In late 2006 and early 2007, it has been alleged that 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 defendants that it wanted the reference portfolio for the contemplated transaction to include the RMBS it identified or bonds with similar characteristics.

92. It has been alleged that 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.

93. It has also been alleged that, on January 9, 2007, Goldman personnel sent an e-mail to ACA with the subject line, "Paulson Portfolio." Attached to the e-mail 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.

94. It has further been alleged that on January 9, 2007, representatives from Goldman informed ACA that Tourre was "very excited by the initial portfolio feedback."

95. It has also been alleged that on January 10, 2007, Tourre sent an e-mail to ACA with the subject line, "Transaction Summary." The text of Tourre's e-mail 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 e-mail continued in relevant part, "[s]tarting portfolio would be ideally what the Transaction Sponsor shared, but there is flexibility around the names."

96. It has been alleged that on January 22, 2007, ACA sent an e-mail to Tourre and additional Goldman personnel with the subject line, "Paulson Portfolio I-22-10.xls." The text of the e-mail 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."

97. It has been alleged that 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 e-mail to Tourre. Tourre responded via e-mail later that day, “this is confirming my initial impression that [Paulson] wanted to proceed with you subject to agreement on portfolio and compensation structure.”

98. It has further been alleged that 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 Goldman to buy protection on specific layers of the synthetic CDO’s capital structure,

99. Tourre and the defendants, 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 e-mail to another Goldman employee stating, “I am at this aca paulson meeting, this is surreal.” Later that same day, ACA e-mailed Paulson, Tourre, and other Goldman personnel 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.”

100. It has also been alleged that on February 5, 2007, Paulson sent an e-mail 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.

101. Additionally, it has been alleged that on February 5, 2007, an internal ACA e-mail 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.

102. Lastly, it has been alleged that 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.

**Under Defendants' Direction, Goldman Represented that ACA Selected the Portfolio Without
Disclosing Paulson's Significant Role in Determining the Portfolio and Its Adverse
Economic Interests**

103. Goldman's marketing materials for Abacus 2007-AC1, prepared under defendants' direction, were materially 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.

104. For example, a 9-page term sheet for Abacus 2007-AC1 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.

105. Similarly, a 65-page flip book for Abacus 2007-AC1 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.

106. It has been alleged that Toure had primary responsibility for preparing the term sheet and flip book.

107. The Goldman MCC, which included senior-level members of management of Goldman, approved the Abacus 2007-AC1 on or about March 12, 2007. Defendants expected to earn between \$15-\$20 million for structuring and marketing Abacus 2007-AC1.

108. On or about April 26, 2007, defendants 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.

109. It has been alleged that Tourre reviewed at least the Summary section of the offering memorandum before it was sent to potential investors.

110. It has been alleged that although the marketing materials for Abacus 2007-AC1 made no mention of Paulson or its role in the transaction, internal Goldman 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.”

Defendants Misled ACA Into Believing Paulson Was Long Equity

111. Defendants 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.

112. Had ACA been aware that Paulson was taking a short position against the CDO, ACA would have likely 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.

113. It has been alleged that, 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 Goldman. Later that day, ACA sent a Goldman sales representative an e-mail 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?”

114. On January 10, 2007, Tourre e-mailed 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, defendants never intended to market to anyone a “[0]% - [9]%” first loss equity tranche in this transaction.

115. It has been alleged that on January 12, 2007, Tourre spoke by telephone with ACA about the proposed transaction. Following that conversation, on January 14, 2007, ACA sent an e-mail to the Goldman sales representative raising questions about the proposed transaction and referring to Paulson’s equity interest. The e-mail, 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.”

116. It has been alleged that on January 16, 2007, the Goldman sales representative forwarded that e-mail 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-ACI.

117. 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 other Goldman personnel, ACA continued to believe through the course of the transaction that Paulson would be an equity investor in Abacus 2007-ACI.

118. On February 12, 2007, ACA’s Commitments Committee approved the firm’s participation in Abacus as portfolio selection agent. It has been alleged that 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.”

Abacus 2007-AC1 Investors

A. IKB

119. 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.”

120. The identity and experience of those involved in the selection of CDO portfolios was an important investment factor for IKB. It has been alleged that in late 2006 IKB informed a Goldman 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 other Goldman personnel knew that ACA was a collateral manager likely to be acceptable to IKB.

121. In February, March and April 2007, under defendants’ direction, Goldman 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. Defendants did not inform IKB of Paulson’s participation in the collateral selection process and its adverse economic interests.

122. It has been alleged that the first written marketing materials for Abacus 2007-AC1 were distributed on February 15, 2007, when defendants e-mailed a preliminary term sheet and

reference portfolio to the Goldman sales representative covering IKB. Tourre was aware these materials would be delivered to IKB.

123. It has been further alleged that on February 19, 2007, a Goldman sales representative forwarded the marketing materials to IKB, explaining via e-mail: "Attached are details of the ACA trade we spoke about with Fabrice [Tourre] in which you thought the AAAs would be interesting."

124. It has been further alleged that Tourre maintained direct and indirect contact with IKB in an effort to close the deal. This included a March 6, 2007 e-mail to the Goldman sales representative for IKB representing that, "This is a portfolio selected by ACA ..." Tourre subsequently described the portfolio in an internal Goldman e-mail as having been "selected by ACA/Paulson."

125. Abacus 2007-AC1 closed on or about April 26, 2007. It has been alleged that 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 and AAA by 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.

126. It has been alleged that 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- ACI. 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.

127. Within months of closing, Abacus 2007-ACI'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 Goldman and Paulson.

B ACA/ABN AMRO

128. It has been alleged that 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.

129. It has further been alleged that 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.

130. 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.

131. Under defendants' direction, Goldman 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 e-mails 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.

132. 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.

133. 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 Goldman \$840,909,090. Most of this money was subsequently paid by Goldman to Paulson.

IMPROPER STATEMENTS

134. The Individual Defendants by their fiduciary duties of care, good faith, and loyalty owe to Goldman a duty to ensure that the Company’s reporting fairly represents the operations and condition of the Company. In order to adequately carry out these duties, it is necessary for the Individual Defendants to know and understand the material, non-public information that should be either disclosed or omitted from the Company’s public statements.

135. This material, non-public information principally included the investigation into Goldman by the SEC. Furthermore, defendants Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, and Schiro, as members of the Audit Committee, had a special duty to know and understand this material information as set out in the Audit Committee’s charter which provides that the committee is responsible for reviewing and discussing earnings press releases and annual statements filed with the SEC.

136. Defendants Bryan, Johnson, Simmons, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, and Schiro had ample opportunity to discuss this material information with officers at management meetings and via internal corporate documents and reports, as well as at meetings of committees of the Board. Despite these duties, the Individual Defendants recklessly and/or intentionally caused or allowed, by their actions or inactions, the following improper statements to be disseminated by Goldman to the investing public,

137. On December 24, 2009, *The New York Times* ran an article titled “Banks Bundled Bad Debt, Bet Against It and Won.” The article detailed Goldman’s CDO practices which occurred just

as residential home prices were deteriorating and the RMBS was becoming unappealing. The article stated in part:

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 investment, 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. Geitner.

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. Ego 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 over extended 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.

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. C.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.

* * *

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 DBS, the big Swiss bank. Of more than 500 C.D.O.'s analyzed by DBS, 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 foiled, 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.

* * *

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.

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.

* * *

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.

138. On December 24, 2009, Goldman issued a press release titled “Goldman Sachs Responds to The New York Times on Synthetic Collateralized Debt Obligations.” In response to *The New York Times* article, Goldman made improper statements that misled the public as to Goldman’s involvement in the CDO transactions it brokered, Goldman 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.

139. On January 21, 2010, Goldman reported its fourth quarter and year ended December 31, 2009 results in a press release which emphasized the Company's focus on 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."

140. Also on January 21, 2010, the defendants held a conference call with analysts. On the conference call, defendant Viniar improperly stated that:

Many of our core beliefs were also confirmed over the past two years, principally the importance of our client franchise, employees, reputation and our long-term focus on creating shareholder value. These tenets are encapsulated in the Firm's first three business principles, and they remain as relevant today as they did when they were written over three decades ago.

Defendant Viniar went on to state that:

And I would also tell you *if people are focused on things that caused or were real contributors to the crisis, it wasn't traded*. Most trading results were actually pretty good, not just at Goldman Sachs, but at most firms, and that is not really where the problems were.

141. On March 1, 2010, Goldman filed its Form 10-K with the SEC for the year ended December 31, 2009. Defendants Blankfein, Bryan, Cohn, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, Simmons, and Viniar signed the Form 10-K. The Form 10-K disclosed that the Company “received requests for information ... relating to subprime mortgages, and securitizations, collateralized debt obligations and synthetic products related to subprime mortgages.” However, the Form 10-K did not state the seriousness of those inquiries or that the Company had received a Wells Notice from the SEC. Instead, the defendants decided to mislead the public and state the Company is “client-driven” even though it failed to disclose to ACA that Paulson played a significant role that influenced the mortgages in Abacus 2007-AC1. In the Form 10-K the defendants stated that:

In our client-driven businesses, FICC [Fixed Income, Currency and Commodities] and Equities strike 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.

142. Throughout the relevant period, notwithstanding the events described above, defendants repeatedly stated in the Company’s public filings that their goal was to protect their clients’ interests. For instance, in the Company’s Annual Report on Form 10-K filed on January 29, 2008, defendants claimed:

Our current structure, which is organized by regional, industry and product groups, seeks to combine client-focused investment bankers with execution and industry expertise. ***We continually assess and adapt our organization to meet the demands of our clients in each geographic region. Through our commitment to teamwork, we believe that we provide services in an integrated fashion for the benefit of our clients.***

Our goal is to make available to our clients the entire resources of the firm in a seamless fashion, with investment banking serving as “front of the house.” To accomplish this objective, we focus on coordination among our equity and debt

underwriting activities and our corporate risk and liability management activities. ***This coordination is intended to assist our investment banking clients in managing their asset and liability exposures and their capital.***

143. The above-quoted passage was also included *verbatim* in the Company's Annual Report on Form 10-K filed with the SEC on January 27, 2009, which was signed by, among others, defendants Viniar, Blankfein, Bryan, Cohn, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, Simmons, and Smith.

144. Not only have the Individual Defendants repeatedly touted the Company's ability to "manag[e] [their clients] asset and liability exposures and their capital," but they also have failed to disclose any indications that the SEC was investigating Goldman or that the Company received a Wells Notice in July 2009. For instance, in the Company's Annual Report on Form 10-K filed on March 1, 2010, the "Legal Proceedings" section states the following, in pertinent part:

Item 3. Legal Proceedings

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 expenses can be expected to remain high.

IPO Process Matters

Group Inc. and GS&Co. are among the numerous financial services companies that have been named as defendants in a variety of lawsuits alleging improprieties in the process by which those companies participated in the underwriting of public offerings in recent years.

* * *

World Online Litigation

In March 2001, a Dutch shareholders association initiated legal proceedings for an unspecified amount of damages against GSI and others in Amsterdam District Court in connection with the initial public offering of World Online in March 2000, alleging misstatements and omissions in the offering materials and that the market was artificially inflated by improper public statements and stabilization activities. Goldman Sachs and ABN AMRO Rothschild served as joint global coordinators of the approximately €2.9 billion offering. GSI underwrote 20,268,846 shares and GS&Co. underwrote 6,756,282 shares for a total offering price of approximately €1.16 billion.

* * *

Research Independence Matters

GS&Co. is one of several investment firms that have been named as defendants in substantively identical purported class actions filed in the U.S. District Court for the Southern District of New York alleging violations of the federal securities laws in connection with research coverage of certain issuers and seeking compensatory damages. In one such action, relating to coverage of RSL Communications, Inc. commenced on July 15, 2003, GS&Co.'s motion to dismiss the complaint was denied. The district court granted the plaintiffs' motion for class certification and the U.S. Court of Appeals for the Second Circuit, by an order dated January 26, 2007, vacated the district court's class certification and remanded for reconsideration. By a decision dated August 4, 2009, the district court granted plaintiffs' renewed motion seeking class certification. Defendants' petition with the appellate court seeking review of the certification ruling was denied on January 25, 2010.

* * *

Enron Litigation Matters

Goldman Sachs affiliates are defendants in certain actions relating to Enron Corp., which filed for protection under the U.S. bankruptcy laws on December 2, 2001.

* * *

Montana Power Litigation

GS&Co. and Group Inc. have been named as defendants in two actions relating to financial advisory work rendered to Montana Power Company. On November 13, 2009, all parties entered into a settlement and the settlement was preliminarily approved on February 10, 2010. A final hearing has been scheduled for May 20, 2010 to May 21, 2010.

* * *

Adelphia Communications Fraudulent Conveyance Litigation

GS&Co. is among numerous entities named as defendants in two adversary proceedings commenced in the U.S. Bankruptcy Court for the Southern District of New York, one on July 6, 2003 by a creditors committee, and the second on or about July 31, 2003 by an equity committee of Adelphia Communications, Inc. Those proceedings have now been consolidated in a single amended complaint filed by the Adelphia Recovery Trust on October 31, 2007. The complaint seeks, among other things, to recover, as fraudulent conveyances, payments made allegedly by Adelphia Communications, Inc. and its affiliates to certain brokerage firms, including approximately \$62.9 million allegedly paid to GS&Co., in respect of margin calls made in the ordinary course of business on accounts owned by members of the family that formerly controlled Adelphia Communications, Inc. By a decision dated May 4, 2009, the district court denied GS&Co.'s motion to dismiss the claim related to margin payments. GS&Co. moved for reconsideration, and by a decision dated June 15, 2009, the district court granted the motion insofar as requiring plaintiff to amend its complaint to specify the source of the margin payments to GS&Co. By a decision

dated July 30, 2009, the district court held that the sufficiency of the amended claim would be determined at the summary judgment stage.

Specialist Matters

Spear, Leeds & Kellogg Specialists LLC (SLKS) and certain affiliates have received requests for information from various governmental agencies and self-regulatory organizations as part of an industry-wide investigation relating to activities of floor specialists in recent years. Goldman Sachs has cooperated with the requests.

* * *

Treasury Matters

On September 4, 2003, the SEC announced that GS&Co. had settled an administrative proceeding arising from certain trading in U.S. Treasury bonds over an approximately eight-minute period after GS&Co. received an October 31, 2001 telephone call from a Washington, D.C.-based political consultant concerning a forthcoming Treasury refunding announcement. Without admitting or denying the allegations, GS&Co. consented to the entry of an order that, among other things, (i) censured GS&Co.; (ii) directed GS&Co. to cease and desist from committing or causing any violations of Sections 15(c)(1)(A) and (C) and 15(f) of, and Rule 15c1-2 under, the Exchange Act; (iii) ordered GS&Co. to pay disgorgement and prejudgment interest in the amount of \$1,742,642, and a civil monetary penalty of \$5 million; and (iv) directed GS&Co. to conduct a review of its policies and procedures and adopt, implement and maintain policies and procedures consistent with the order and that review. GS&Co. also undertook to pay \$2,562,740 in disgorgement and interest relating to certain trading in U.S. Treasury bond futures during the same eight-minute period.

* * *

Mutual Fund Matters

GS&Co. and certain mutual fund affiliates have received subpoenas and requests for information from various governmental agencies and self-regulatory organizations including the SEC as part of the industry-wide investigation relating to the practices of mutual funds and their customers. GS&Co. and its affiliates have cooperated with such requests.

Refco Securities Litigation

GS&Co. and the other lead underwriters for the August 2005 initial public offering of 26,500,000 shares of common stock of Refco Inc. are among the defendants in various putative class actions filed in the U.S. District Court for the Southern District of New York beginning in October 2005 by investors in Refco Inc. in response to certain publicly reported events that culminated in the October 17, 2005 filing by Refco Inc. and certain affiliates for protection under U.S. bankruptcy laws. The actions, which have been consolidated, allege violations of the disclosure requirements of the federal securities laws and seek compensatory damages. In addition to the underwriters, the consolidated complaint names as defendants Refco Inc. and certain of its affiliates, certain officers and directors of Refco Inc., Thomas H. Lee Partners, L.P. (which held a majority of Refco Inc.'s equity through certain funds it manages), Grant Thornton (Refco Inc.'s outside auditor), and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse

Aktiengesellschaft (BAWAG). Lead plaintiffs entered into a settlement with BAWAG, which was approved following certain amendments on June 29, 2007. GS&Co. underwrote 5,639,200 shares of common stock at a price of \$22 per share for a total offering price of approximately \$124 million.

* * *

Short-Selling Litigation

Group Inc., GS&Co. and Goldman Sachs Execution & Clearing, L.P. are among the numerous financial services firms that have been named as defendants in a purported class action filed on April 12, 2006 in the U.S. District Court for the Southern District of New York by customers who engaged in short-selling transactions in equity securities since April 12, 2000. The amended complaint generally alleges that the customers were charged fees in connection with the short sales but that the applicable securities were not necessarily borrowed to effect delivery, resulting in failed deliveries, and that the defendants conspired to set a minimum threshold borrowing rate for securities designated as hard to borrow. The complaint asserts a claim under the federal antitrust laws, as well as claims under the New York Business Law and common law, and seeks treble damages as well as injunctive relief. Defendants' motion to dismiss the complaint was granted by a decision dated December 20, 2007. On December 3, 2009, the dismissal was affirmed by the U.S. Court of Appeals for the Second Circuit.

Fannie Mae Litigation

GS&Co. was added as a defendant in an amended complaint filed on August 14, 2006 in a purported class action pending in the U.S. District Court for the District of Columbia. The complaint asserts violations of the federal securities laws generally arising from allegations concerning Fannie Mae's accounting practices in connection with certain Fannie Mae-sponsored REMIC transactions that were allegedly arranged by GS&Co. The other defendants include Fannie Mae, certain of its past and present officers and directors, and accountants. By a decision dated May 8, 2007, the district court granted GS&Co.'s motion to dismiss the claim against it. The time for an appeal will not begin to run until disposition of the claims against other defendants.

* * *

Compensation Related Litigation

On March 16, 2007, Group Inc., its board of directors, executive officers and members of its management committee were named as defendants in a purported shareholder derivative action in the U.S. District Court for the Eastern District of New York challenging the sufficiency of the firm's February 21, 2007 Proxy Statement and the compensation of certain employees. The complaint generally alleges that the Proxy Statement undervalues stock option awards disclosed therein, that the recipients received excessive awards because the proper methodology was not followed, and that the firm's senior management received excessive compensation, constituting corporate waste. The complaint seeks, among other things, an injunction against the 2007 Annual Meeting of Shareholders, the voiding of any election of directors in the absence of an injunction and an equitable accounting for the allegedly excessive compensation. On July 20, 2007, defendants moved to dismiss the complaint, and the motion was granted by an order dated December 18, 2008. Plaintiff appealed on January 13, 2009, and the dismissal was affirmed by the U.S. Court of Appeals for the Second Circuit on December 14, 2009.

* * *

Mortgage-Related Matters

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.

* * *

Auction Products Matters

On August 21, 2008, GS&Co. entered into a settlement in principle with the Office of Attorney General of the State of New York and the Illinois Securities Department (on behalf of the North American Securities Administrators Association) regarding auction rate securities. On June 2, 2009, GS&Co. entered into an Assurance of Discontinuance with the Office of Attorney General of the State of New York. Under the agreement, Goldman Sachs agreed, among other things, (i) to offer to repurchase at par the outstanding auction rate securities that its private wealth management clients purchased through the firm prior to February 11, 2008, with the exception of those auction rate securities where auctions are clearing, (ii) to continue to work with issuers and other interested parties, including regulatory and governmental entities, to expeditiously provide liquidity solutions for institutional investors, and (iii) to pay a \$22.5 million fine. The settlement, which is subject to definitive documentation and approval by the various states, other than New York, does not resolve any potential regulatory action by the SEC. On June 2, 2009, GS&Co. entered into an Assurance of Discontinuance with the New York Attorney General.

* * *

Private Equity-Sponsored Acquisitions Litigation

Group Inc., and “GS Capital Partners” are among numerous private equity firms and investment banks named as defendants in a federal antitrust action filed in the U.S. District Court for the District of Massachusetts in December 2007. As amended, the complaint generally alleges that the defendants have colluded to limit competition in bidding for private equity-sponsored acquisitions of public companies, thereby resulting in lower prevailing bids and, by extension, less consideration for shareholders of those companies in violation of Section 1 of the U.S. Sherman Antitrust Act and common law. Defendants moved to dismiss on August 27, 2008. By an order dated November 19, 2008, the district court dismissed claims relating to certain transactions that were the subject of releases as part of the settlement of shareholder actions challenging such transactions, and by an order dated December 15, 2008 otherwise denied the motion to dismiss.

Washington Mutual Securities Litigation

GS&Co. is among numerous underwriters named as defendants in a putative securities class action amended complaint filed on August 5, 2008 in the U.S. District Court for the Western District of Washington. As to the underwriters, plaintiffs allege that the offering documents in connection with various securities offerings by Washington Mutual, Inc. failed to describe accurately the company's exposure to mortgage-related activities in violation of the disclosure requirements of the federal securities laws. The defendants include past and present directors and officers of Washington Mutual, the company's former outside auditors, and numerous underwriters. By a decision dated May 15, 2009, the district court granted in part and denied in part the underwriter defendants' motion to dismiss, with leave to replead, and on June 15, 2009, plaintiffs filed an amended complaint. By a decision dated October 27, 2009, the federal district court granted and denied in part the underwriters' motion to dismiss.

* * *

Britannia Bulk Securities Litigation

GS&Co. is among the underwriters named as defendants in numerous putative securities class actions filed beginning on November 6, 2008 in the U.S. District Court for the Southern District of New York arising from the June 17, 2008 \$125 million initial public offering of common stock of Britannia Bulk Holdings, Inc. The complaints name as defendants the company, certain of its directors and officers, and the underwriters for the offering. Plaintiffs allege that the offering materials violated the disclosure requirements of the federal securities laws and seek compensatory damages. By a decision dated October 19, 2009, the district court granted the underwriter defendants' motion to dismiss, and plaintiffs have elected not to appeal, disposing of the matter.

* * *

IndyMac Pass-Through Certificates Litigation

GS&Co. is among numerous underwriters named as defendants in a putative securities class action filed on May 14, 2009 in the U.S. District Court for the Southern District of New York. As to the underwriters, plaintiffs allege that the offering documents in connection with various securitizations of mortgage-related assets violated the disclosure requirements of the federal securities laws. The defendants include IndyMac-related entities formed in connection with the securitizations, the underwriters of the offerings, certain ratings agencies which evaluated the credit quality of the securities, and certain former officers and directors of IndyMac affiliates. On November 2, 2009, the underwriters moved to dismiss the complaint. The motion was granted in part on February 17, 2010 to the extent of dismissing claims based on offerings in which no plaintiff purchased, and the court reserved judgment as to the other aspects of the motion.

* * *

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.

145. Incredibly, as is painfully apparent from the above paragraph, the Board saw fit to disclose no less than twenty areas of legal proceedings (or potential legal proceedings) the Company was subject to, which spanned approximately ten pages in the Company's most recent Form 10-K, yet they failed to even mention that the Company had become the subject of an SEC investigation and had received a Wells Notice.

146. Notably, defendants' critical omission came at the same approximate time that the Company became subject to intense public scrutiny (and shareholder outrage) relating to its planned 2009 executive compensation. *See, e.g.*, Colin Barr, *Goldman Sachs: Your tax dollars, their big bonuses*, CNN MONEY (October 16, 2009); Graham Bowley, *Bonuses Put Goldman in Public Relations Bind*, THE NEW YORK TIMES (October 15, 2009); Evan Weinberger and Brendan Pierson, *Pension Fund Slaps Goldman Sachs Over Bonuses*, LAW360, December 14, 2009 (discussing the "[o]utcry from Goldman's shareholders over the company's proposed record-setting bonus payments this year"). Under virtually any scenario, but particularly this one, defendants' explanation that they did not disclose the existence of the Wells Notice before April 2010 because it was "immaterial" strains credulity.

147. Accordingly, the above-statements were false and misleading when made because defendants knew and failed to disclose that: (1) they were not actually looking out for all of their clients' best interests; and (2) the Company had become the subject of an SEC investigation and had received a Wells Notice in July 2009.

148. On or about April 7, 2010, Goldman issued its 2009 Annual Report to Shareholders. Included in the report was a letter to shareholders signed by Blankfein and Cohn which stated in part:

The firm's focus on staying close to our clients and helping them to navigate uncertainty and achieve their objectives is largely responsible for what proved to be a year of resiliency across our businesses and, by extension, a strong performance for Goldman Sachs....

* * *

As part of our trading with AIG, we purchased from them protection on super-senior collateralized debt obligation (CDO) risk. This protection was designed to hedge equivalent transactions executed with clients taking the other side of the same trades. In so doing, we served as an intermediary in assisting our clients to express a defined view on the market. The net risk we were exposed to was consistent with our role as a market intermediary rather than a proprietary market participant.

* * *

Through the end of 2006, Goldman Sachs generally was long in exposure to residential mortgages and mortgage-related products, such as residential mortgage-backed securities (RMBS). CDOs backed by residential mortgages and credit default swaps referencing residential mortgage products. In late 2006, we began to experience losses in our daily residential mortgage-related products P&L as we market downed the value of our inventory of various residential mortgage-related products to reflect lower market prices.

In response to those losses, we decided to reduce our overall exposure to the residential housing market, consistent with our risk protocols — given the uncertainty of the future direction of prices in the housing market and the increased market volatility. ***The firm did not generate enormous net revenues or profits by betting against residential mortgage-related products, as some have speculated;*** rather, our relatively early risk reduction resulted in our losing less money than we otherwise would have when the residential housing market began to deteriorate rapidly.

The markets for residential mortgage-related products, and subprime mortgage securities in particular, were volatile and unpredictable in the first half of 2007. Investors in these markets held very different views of the future direction of the U.S. housing market based on their outlook on factors that were equally available to all market participants, including housing prices, interest rates and personal income and indebtedness data....

The investors who transacted with Goldman Sachs in CDOs in 2007, as in prior years, were primarily large, global financial institutions, insurance companies and hedge funds (no pension funds invested in these products, with one exception: a corporate-related pension fund that had long been active in this area made a purchase of less than \$5 million). These investors had significant resources, relationship with multiple financial intermediaries and access to extensive information and research flow, performed their own analysis of the data, formed their own views about trends, and many actively negotiated at arm's length the structure and terms of transactions.

* * *

Although Goldman Sachs held various positions in residential mortgage-related products in 2007, our short positions were not a “bet against our clients.” Rather, they served to offset our long positions. Our goal was, and is, to be in a

position to make markets for our clients while managing our risk within prescribed limits.

THE TRUTH IS REVEALED

149. On April 16, 2010, the SEC filed civil charges against Goldman and Tourre alleging that Goldman had sold mortgage investments without telling the buyer that the securities were crafted with input from Paulson who was betting that the securities would decrease in value. The investors lost nearly \$1 billion while Paulson was able to capitalize on the housing market bust.

150. The SEC is seeking to impose unspecified civil fines against Goldman and Tourre. The SEC says that Paulson paid Goldman approximately \$15 million in 2007 to devise an investment tied to RMBS that the hedge fund viewed as likely to decline in value. The fraud allegations focus on how Goldman sold the securities. Goldman told investors that a third party, ACA, had selected the pools of subprime mortgages it used to create the securities. The SEC alleges that Goldman misled investors by failing to disclose that Paulson also played a role in selecting the mortgage bundles and stood to profit from its decline in value. According to the SEC Action, investors in the CDO lost about \$1 billion while Paulson made a profit of about \$1 billion.

151. Included in the SEC Action is an e-mail from Tourre demonstrating that there was an intent to deceive Abacus 2007-AC1 investors. The e-mail stated “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 monstrosities!!!”

152. In a hastily-assembled reply to the SEC Action, Goldman categorically denied the SEC’s allegations. Specifically, defendants defiantly claimed that “[t]he SEC’s charges are completely unfounded in law and fact and we will vigorously contest them and defend the firm and its reputation.” Further, defendants arrogantly added that “[they] are disappointed that the SEC would bring this action.” Defendants stated, in part:

We want to emphasize the following four critical points which were missing from the SEC’s complaint.

- **Goldman Sachs Lost Money On The Transaction.** Goldman Sachs, itself, lost more than \$90 million. Our fee was \$15 million. We were subject to losses and we did not structure a portfolio that was designed to lose money.

• **Extensive Disclosure Was Provided.** IKB, a large German Bank and sophisticated CDO market participant and ACA Capital Management, the two investors, were provided extensive information about the underlying mortgage securities. The risk associated with the securities was known to these investors, who were among the most sophisticated mortgage investors in the world. These investors also understood that a synthetic CDO transaction necessarily included both a long and short side.

• **ACA, the Largest Investor, Selected The Portfolio.** The portfolio of mortgage backed securities in this investment was selected by an independent and experienced portfolio selection agent after a series of discussions, including with Paulson & Co., which were entirely typical of these types of transactions. ACA had the largest exposure to the transaction, investing \$951 million. It had an obligation and every incentive to select appropriate securities.

• **Goldman Sachs Never Represented to ACA That Paulson Was Going To Be A Long Investor.** The SEC's complaint accuses the firm of fraud because it didn't disclose to one party of the transaction who was on the other side of that transaction. As normal business practice, market makers do not disclose the identities of a buyer to a seller and vice versa. Goldman Sachs never represented to ACA that Paulson was going to be a long investor.

153. On April 16, 2010, a Bank of America Merrill Lynch analyst stated that:

This is clearly a serious charge.... The total alleged losses of \$1bn would, if they were the basis of a settlement, be about \$1/ share.

...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 and for the industry more broadly.

* * *

Potential Settlement amount probably manageable, but reputational hit harder to measure

The case states that GS received a \$15 mm structuring fee and that Paulson earned, and investors lost, about \$1 bn. The extent of GS' direct financial exposure would thus seem to be about \$1bn, or around \$1 per share, assuming a judgment or (more likely in our view) settlement with the SEC were tax-deductible. *However, the 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.

154. Analysts also questioned whether the Abacus 2007-AC1 is the only CDO that had disclosure issues. An April 16, 2010, Citi Investment Research & Analysis analyst stated that: "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." An April 16, 2010, Oppenheimer & Co. analyst report stated that "we believe that GS is probably vulnerable to more charges and

outsized fines.” A UBS Investment Research analyst was also concerned whether this is just the “tip of the iceberg.” The analyst stated “One-off or is this the tip of the iceberg? While this complaint refers to a single transaction, we think there could be others.”

155. On April 19, 2010, *The Guardian* reported that even Bear Stearns saw that creating a CDO at the behest of Paulson and that Paulson would then short would subject them to a “reputation issue.” *The Guardian* stated:

It is fascinating to learn that Bear Stearns turned down the opportunity to work with Paulson. The ill-fated investment bank decided that bringing more mortgage-backed securities into the world, just so that Paulson could bet on their toxicity, was a “reputation issue”. It did not wish to sell an investment to clients without telling them that a bearish hedge fund had inspired the creation.

156. On April 17, 2010, the AP reported that the German government may consider taking legal action against Goldman. IKB stood as a buyer of Abacus 2007-AC1 and was rescued by German state-owned KfW development bank. On April 20, 2010, as a result of the Individual Defendants misdeeds related to CDOs, Great Britain’s Financial Services Authority opened an inquiry into the Company subjecting it to further liability and costs.

157. As the *Journal* reported on April 24, 2010 in an article titled “Insiders Sold Shares As SEC Probed Firm,” the Insider Selling Defendants’ illicit insider sales represented “the most active spate of insider selling [by Goldman insiders] in three years”:

Five senior executives of Goldman Sachs Group Inc., including the firm’s co-general counsel, sold \$65.4 million worth of stock after the firm received notice of possible fraud charges, which later drove its stock down 13%.

Sales by three of the five Goldman insiders occurred at prices higher than the stock’s current level. The stock sales by co-general counsel Esta Stecher, vice chairmen Michael Evans and Michael Sherwood, principal accounting officer Sarah Smith and board member John Bryan occurred between October 2009 and February 2010. ***It was the most active spate of insider selling in three years***, according to InsiderScore.com in Princeton, N.J., which tracks and analyzes purchases and sales of stocks by top executives and directors.

Goldman received notice of the possible charges last July, but didn’t publicly disclose that fact, later explaining that it didn’t consider such a notice material information investors would have needed to value the stock. A week ago, on April 16, the Securities and Exchange Commission filed civil-fraud charges against

Goldman for failing to disclose that a short seller, Paulson & Co., participated in selection of assets in a pool tied to subprime mortgages.

The charges drove Goldman stock down from a closing price of \$184.27 on April 15 to \$160.70 on April 16. The stock hasn't recovered any of the first-day loss. It closed out the week at \$157.40 in 4 p.m. trading on the New York Stock Exchange.

* * *

Messrs. Bryan and Sherwood and Ms. Stecher sold some or all of their shares after exercising options to buy at lower prices that would have expired between November 2010 and November 2012.

Ms. Smith sold 16,129 shares on Oct. 16 for \$3 million at \$186.57 a share, according to InsiderScore.com.

Mr. Sherwood sold shares between Nov. 13 and 24 for \$31.9 million, or \$174.65 a share, InsiderScore.com said. Mr. Evans sold shares between Nov. 23 and 27 for \$23.7 million, or \$169.56 a share. Ms. Stecher sold shares on Feb. 8 and 26 for \$5.8 million, or \$153.38 a share. And Mr. Bryant sold shares on Feb. 18 for \$932,223, or \$155.37 a share.

Mr. Sherwood, co-chief executive of Goldman Sachs International in London and Mr. Evans, chairman of Goldman Sachs Asia in Hong Kong, are on the Goldman management committee with Ms. Stecher.

Ben Silverman, director of research at InsiderScore.com, said *the insider selling since October "was the most aggressive" at Goldman in three years*, since late 2006 through early 2007.

158. *The New York Times* reported in an article entitled "Goldman Cited 'Serious' Profits On Mortgages" published on April 24, 2010, certain of the defendants and other top Goldman insiders, including Blankfein, Cohn, and Viniar, traded e-mail messages in 2007 saying that they would make "some serious money" betting against the housing markets. These e-mails, as noted by *The New York Times*, "**contradict statements by Goldman that left the impression that the firm lost money on mortgage-related investments.**" Specifically, *The New York Times* reported:

In late 2007, as the mortgage crisis gained momentum and many banks were suffering losses, Goldman Sachs executives traded e-mail messages saying that they would make "some serious money" betting against the housing markets.

The messages, released Saturday by the Senate Permanent Subcommittee on Investigations, appear to contradict statements by Goldman that left the impression that the firm lost money on mortgage-related investments.

In the messages, Lloyd C. Blankfein, the bank's chief executive, acknowledged in November 2007 that the firm had lost money initially. But it later recovered by making negative bets, known as short positions, to profit as housing prices plummeted. "Of course we didn't dodge the mortgage mess," he wrote. "***We lost money, then made more than we lost because of shorts.***" He added, "It's not over, so who knows how it will turn out ultimately."

In another message, dated July 25, 2007, David A. Viniar, Goldman's chief financial officer, reacted to figures that said the company had made a \$51 million profit from bets that housing securities would drop in value. "***Tells you what might be happening to people who don't have the big short,***" he wrote to Gary D. Cohn, now Goldman's president.

* * *

Goldman on Saturday denied it made a significant profit on mortgage-related products in 2007 and 2008. It said the subcommittee had "cherry-picked" e-mail messages from the nearly 20 million pages of documents it provided. This sets up a showdown between the Senate subcommittee and Goldman, which has aggressively defended itself since the Securities and Exchange Commission filed a security fraud complaint against it nine days ago. On Tuesday, seven current and former Goldman employees, including Mr. Blankfein, are expected to testify at a Congressional hearing.

Carl Levin, Democrat of Michigan and head of the Permanent Subcommittee on Investigations, said that the e-mail messages contrasted with Goldman's public statements about its trading results. "***The 2009 Goldman Sachs annual report stated that the firm 'did not generate enormous net revenues by betting against residential related products;'***" "***Senator Levin said in a statement Saturday. "These e-mails show that, in fact, Goldman made a lot of money by betting against the mortgage market."***

The messages appear to connect some of the dots at a crucial moment of Goldman history. They show that in 2007, as most other banks hemorrhaged money from plummeting mortgage holdings, Goldman prospered.

At first, Goldman openly discussed its prescience in calling the housing downfall. In the third quarter of 2007, the investment bank reported publicly that it had made big profits on its negative bet on mortgages.

But by the end of 2007, the firm curtailed disclosures about its mortgage trading results. Its chief financial officer told analysts that they should not expect Goldman to reveal whether it was long or short on the housing market. By late 2008, Goldman was emphasizing its losses, rather than its profits, pointing regularly to write-downs of \$1.7 billion on mortgage assets in 2008 and not disclosing the amount it made on its negative bets.

Goldman and other firms often take positions on both sides of an investment. Some are long, which are bets that the investment will do well, and some are shorts, which are bets the investment will do poorly,

Goldman has said it added shorts to balance its mortgage book, not to make a directional bet on a market collapse. But ***the messages released by the subcommittee Saturday appear to show that in 2007, at least, Goldman's short bets were eclipsing the losses on its long positions.***

In May 2007, for instance. Goldman workers e-mailed one another about losses on a bundle of mortgages issued by Long Beach Mortgage Securities. Though the firm lost money on those, a worker wrote, there was “good news”: “we own 10 mm in protection.” That meant Goldman had enough of a bet against the bond that, over all, it profited by \$5 million.

On Oct. 11, 2007, one Goldman manager in the trading unit wrote to another, “*Sounds like we will make some serious money,*” and received the response, “*Yes we are well positioned.*”

Documents released by the Senate subcommittee appear to indicate that *in July 2007, Goldman’s accounting showed losses of \$322 million on positive mortgage positions, but its negative bet— what Mr. Viniar called “the big short” — brought in \$373 million.*

As recently as a week ago a Goldman spokesman emphasized that the firm had tried only to hedge its mortgage holdings in 2007.

The firm said in its annual report this month that it did not know back then where housing was headed, a sentiment expressed by Mr. Blankfein the last time he appeared before Congress.

“We did not know at any minute what would happen next, even though there was a lot of writing,” he told the Financial Crisis Inquiry Commission in January.

It is not known how much money in total Goldman made on its negative housing bets. Neither Goldman nor the panel issued information about Goldman’s mortgage earnings in 2009

In its response Saturday, Goldman Sachs released an assortment of internal e-mail messages. They showed workers disagreeing at some junctures over the direction of the mortgage market. In 2008, Goldman was stung by some losses on higher-quality mortgage bonds it held, when the crisis expanded from losses on risky bonds with subprime loans to losses in mortgages that were given to people with better credit histories.

Still, *in late 2006, there are messages that show Goldman executives discussing ways to get rid of the firm’s positive mortgage positions by selling them to clients. In one message, Goldman’s chief financial officer, Mr. Viniar, wrote, “Let’s be aggressive distributing things.”*

Goldman also released detailed financial statements for its mortgage trading unit. Those statements showed that a group of traders in what was known as the structured products group made a profit of \$3.69 billion as of Oct. 26, 2007, which more than covered losses in other parts of Goldman’s mortgage unit.

Several traders from that group will testify on Tuesday.

The messages released by Goldman included many written by Fabrice Tourre, the executive who is the only Goldman employee named in the S.E.C. complaint. They reveal his skepticism about the direction of the subprime mortgage market in 2007. In a March 7 message to his girlfriend, he wrote, “According to Sparks, that business is totally dead, and the poor little subprime borrowers will not last so long.” He was referring to Dan Sparks, then the head of Goldman’s mortgage trading unit.

159. Also on April 24, 2010, the Senate Permanent Subcommittee on Investigations issued a press release stating that it would be investigating Goldman's role in the financial crisis. In the press release, United States Senator Carl Levin stated:

"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." The 2009 Goldman Sachs annual report stated that the firm "did not generate enormous net revenues by betting against residential related products." ... "These emails show that, in fact, Goldman made a lot of money by betting against the mortgage market.

160. The press release also contained four Goldman internal e-mails related to the RMBS and CDO transactions. An e-mail from defendant Blankfein stated that Goldman had come out ahead of the mortgage crisis. The e-mail stated that "we lost money, then made more than we lost because of shorts."

161. On April 27, 2010, Goldman executives appeared in front of the Senate Permanent Subcommittee on Investigations. Defendant Blankfein was one of those executives that was skewered by the Senate panel. Senator Carl Levin told defendant Blankfein that "they're buying something from you, and you are betting against it. And you want people to trust you? I wouldn't trust you." Senator Levin also stated that it was a "fundamental conflict" in Goldman's selling securities and then betting against the same securities and not telling the buyers,

162. As *The New York Times* reported:

Even before the first question was leveled inside the Senate chamber, Tuesday was going to be uncomfortable for Goldman Sachs. But then the questions kept coming — and coming and coming.

Through the day and into the evening, Goldman Sachs officials met with confrontation and blunt questioning as senators from both parties challenged them over their aggressive marketing of mortgage investments at a time when the housing market was already starting to falter.

In an atmosphere charged by public animosity toward Wall Street, ***the senators compared the bankers to bookies and asked why Goldman had sold investments that its own sales team had disparaged with a vulgarity.***

“The idea that Wall Street came out of this thing just fine, thank you, is just something that just grates on people,” said Senator Edward E. Kaufman Jr., a Democrat from Delaware. “They think you didn’t just come out fine because it was luck. They think you guys just really gamed this thing real well.”

But throughout a subcommittee hearing lasting more than 10 hours, current and former Goldman officials insisted that they had done nothing to mislead their clients. Time and again, the senators and the Goldman executives, among them the chairman and chief executive, Lloyd C. Blankfein, seemed to be talking past each other.

* * *

A Republican member, Senator Susan M. Collins of Maine, turned from one witness to the next as she asked repeatedly whether they felt a duty to act in the best interest of their clients. Only one of the four witnesses she questioned seemed to affirm such a duty outright.

In what almost added up to a light moment, Senator Mark L. Pryor, Democrat of Arkansas, said the public wanted to know what went wrong and “how we can fix it,” adding that Americans feel that Wall Street contributed to the financial crisis. “People feel like you are betting with other people’s money and other people’s future,” he said. “Instead of Wall Street, it looks like Las Vegas.”

Senator Ensign said he took offense at the comparison, saying that in Las Vegas the casinos do not manipulate the odds while you are playing the game. The better analogy, he said, would be to someone playing a slot machine while the “guys on Wall Street” were “tweaking the odds in their favor.”

The gap between Wall Street and the rest of the country was a recurring theme, with senators occasionally pointing out how much Goldman, and indeed the witnesses, had profited as the overall economy was headed for a plunge.

Senator Claire McCaskill, Democrat of Missouri, mentioned during her questioning that she was trying to “home in on why I have so many unemployed people” and lost money in pensions.

The questioning Tuesday put the Goldman witnesses on the defensive, with the senators expressing exasperation that they were deliberately dodging questions or stalling for time.

It was at 10:01 a.m., one minute late, when the session began with opening remarks from subcommittee chairman, Senator Carl Levin, Democrat of Michigan. The public galleries, accommodating roughly 100 people, were full and included four people dressed in mock striped prison jumpsuits who jeered at the Goldman officials.

“How do you live with yourself, Fab?” one shouted as Mr. Tourre was ushered out of the chamber after his testimony.

A tone of confrontation was set at the beginning, with Senator Levin's opening remarks. He said the questioning would focus on the role of investment banks in the financial crisis, and particularly on the activities of Goldman Sachs in 2007, which "contributed to the economic collapse that came full blown the following year."

While the hearing had ramifications for the entire sector and the activities of lenders to make more money from risky mortgage loans, Senator Levin added, it was focusing on Goldman as an "active player in building this mortgage machinery."

He said that while the S.E.C. suit and the courts would address the legality of its activities, "the question for us is one of ethics and policy: were Goldman's actions in 2007 appropriate, and if not, should we act to bar similar actions in the future?"

In addition to Mr. Turre and Mr. Sparks, Goldman executives testifying included Joshua S. Birnbaum, a former managing director in the structured products group trading, and Michael J. Swenson, another managing director in that group.

A second panel included David A. Viniar, executive vice president and chief financial officer, and Craig W. Broderick, the chief risk officer.

At one point Mr. Viniar prompted a collective gasp when Mr. Levin asked him how he felt when he learned that Goldman employees had used vulgar terms to describe the poor quality of certain Goldman deals. Mr. Viniar replied, "I think that's very unfortunate to have on e-mail."

Senator Levin then berated Mr. Viniar for not saying that he was appalled that Goldman employees even thought their deals were of poor quality, much less put it in e-mail. Mr. Viniar later apologized.

As the hearing stretched into the evening, Mr. Blankfein, Goldman's chief, entered the chamber with an almost angry demeanor. In a brief prepared statement, he held tight to Goldman's defenses.

Later, asked if he knew the housing market was doomed, Mr. Blankfein replied, "I think we're not that smart." Mr. Blankfein was asked repeatedly whether Goldman sold securities that it also bet against, and whether Goldman treated those clients properly.

"You say betting against," Mr. Blankfein said in a lengthy exchange. But he said the people who were coming to Goldman for risk in the housing market got just that: exposure to the housing market. "The unfortunate thing," he said, "is that the housing market went south very quickly."

Senator Levin pressed Mr. Blankfein again on whether his customers should know what Goldman workers think of deals they are selling, and Mr. Blankfein reiterated his position that sophisticated investors should be allowed to buy what they want.

Mr. Blankfein was also pressed on the deal at the center of the S.E.C. case. He said the investment was not meant to fail, as the S.E.C. claims, and in fact, that the deal was a success, in that it conveyed “risk that people wanted to have, and in a market that’s not a failure.”

To which Senator Jon Tester, Democrat of Montana, replied, “It’s like we’re speaking a different language here.”

REASONS THE STATEMENTS WERE IMPROPER

163. Goldman’s improper statements failed to disclose and misrepresented the following material adverse facts, which the Individual Defendants knew, consciously disregarded, or were reckless and grossly negligent in not knowing:

- (a) the Company had received a Wells Notice and the SEC would file a civil action against the Company about the Company’s involvement in Abacus 2007-AC1; and
- (b) the Company bet against its clients.

DAMAGES TO GOLDMAN CAUSED BY THE INDIVIDUAL DEFENDANTS

164. As a result of the Individual Defendants’ improprieties, Goldman disseminated improper statements concerning its business prospects as alleged above. These improper statements have devastated Goldman’s credibility as reflected by the Company’s \$12.4 billion, or 12.7%, market capitalization loss in a single day.

165. Further, as a direct and proximate result of the Individual Defendants’ actions, Goldman has expended and will continue to expend significant sums of money. Such expenditures include, but are not limited to:

- (a) costs incurred from the defense and liability faced in the SEC Action;
- (b) costs incurred from damage to the Company’s reputation;
- (c) costs incurred from the defense of the investigation by the Financial Services Authority into Goldman’s London subsidiary; and
- (d) costs incurred from compensation and benefits paid to the defendants who have breached their duties to Goldman.

166. Moreover, these actions have irreparably damaged Goldman’s corporate image and goodwill. For at least the foreseeable future, Goldman will suffer from what is known as the “liar’s

discount,” a term applied to the stocks of companies who have been implicated in illegal behavior and have misled the investing public, such that Goldman’s ability to raise equity capital or debt on favorable terms in the future is now impaired.

INSIDER SELLING

167. Rather than seek to correct Goldman’s public statements, the Insider Selling Defendants sought to use that information to sell their personal holdings while Goldman’s stock was artificially inflated. The following chart details the amount of personal Goldman holdings disposed of by the Insider Selling Defendants from October 16, 2009 to April 26, 2009:

Insider	Transaction Dates	Shares	Price	Proceeds
Smith	10/16/09	16,129	\$186.57	\$3,009,187
Sherwood	11/13/09- 11/24/09	182,860	\$171.54-\$178.05	\$31,936,166
Evans	11/23/09- 11/27/09	140,000	\$164.80-\$173.47	\$23,768,000
Stecher	2/8/10-2/26/10	37,558	\$152.65-156.69	\$5,760,388
Bryan	2/18/10	6,000	\$155.37	\$932,220
TOTAL		382,547		\$65,405,961

168. The Insider Selling Defendants’ proceeds from January 1, 2009 to April 16, 2010 were far greater than the periods that came before and after, as noted in the *Journal*.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

169. Plaintiff brings this action derivatively in the right and for the benefit of Goldman to redress injuries suffered, and to be suffered, by Goldman as a direct result of breaches of fiduciary duty, waste of corporate assets, and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. Goldman is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

170. Plaintiff will adequately and fairly represent the interests of Goldman in enforcing and prosecuting its rights.

171. Plaintiff was a shareholder of Goldman at the time of the wrongdoing complained of, has continuously been a shareholder since that time and is a current Goldman shareholder.

172. The current Board of Goldman consists of the following twelve individuals: defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Simmons, and Schiro.

173. As alleged above, defendant Blankfein, Cohn, Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, Simmons, and Schiro, breached their fiduciary duties of loyalty and good faith by making improper statements regarding Goldman's statements that it put its client's interests first, did not stand on both sides of transactions, and failure to disclose a Wells Notice from the SEC.

174. The SEC's investigation and inquiries are something that must go to the Board level. If the Board was unaware of the SEC investigations and inquiries, then the Board acted in bad faith in not creating a reporting structure that would bring the SEC investigations to its attention. According to the *Washington Post*, the SEC and Goldman were engaged in discussions of a possible settlement for months before the SEC filed its action. SEC officials stated that they told Goldman during the Summer of 2009 that an action was likely. Additionally, the SEC informed Goldman in writing in March 2010 that it was planning to bring an action. Due to the seriousness of the SEC's allegations, the past statements of the Company's executives and that the SEC stood ready to file an action, the Board had a duty to disclose that Goldman was under investigation and that it received a Wells Notice. In fact, during a conference call on April 20, 2010, Goldman's General Counsel Gregory Palm stated that, "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." Thus, the Board was well aware investigations and other regulatory matters are material information that must be disclosed to the Company's shareholders. Nevertheless, the Board approved disclosures that omitted this material information and approved or allowed Goldman to

make additional misleading statements about its role in CDO transactions. Such actions could not be the result of a fully-informed good faith decision, and therefore does not receive the protection of the business judgment rule, excusing a demand. In addition, the Board members face a substantial likelihood of liability due to their roles in misleading the Company's shareholders and violating federal securities law. Accordingly, demand is futile as to the entire Board.

175. Defendants Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal and Schiro (the "Audit Committee Defendants") were members of the Audit Committee. The Audit Committee's charter provides that it is responsible for reviewing and approving earnings press releases and annual financial statements files with the SEC. Thus, the Audit Committee Defendants were responsible for overseeing and directly participating in the dissemination of Goldman improper press releases and financial statements. Despite their knowledge, the Audit Committee Defendants approved the dissemination of the improper statements alleged above. In doing so, the Audit Committee Defendants breached their fiduciary duty of loyalty and good faith because they participated in the preparation of earnings press releases and financial statements that contained improper information, The Audit Committee Defendants now face a substantial likelihood of liability for their breach of fiduciary duties, making any demand upon them is futile.

176. Defendants Blankfein, Cohn, Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons have demonstrated their unwillingness and/or inability to act in compliance with their fiduciary obligations and/or to sue themselves and/or their fellow directors and allies in the top ranks of the Company for the violations of law complained of herein. Most notably, this is evidenced by the Board's refusal to properly inform itself by investigating the misconduct that has exposed Goldman to liability, in violation of their fiduciary duties to the Company and its shareholders. Indeed, the Board has not investigated or caused to be investigated any of the allegations raised in the July 2009 Wells Notice, the recent SEC Action or the illicit insider sales by some of the Company's top executives and directors. Each member of the Board is a fiduciary under Delaware law, and as such they owe the corporation and its stockholders a duty of care to inform themselves properly. Indeed, defendants Blankfein, Cohn, Bryan, Dahlbäck, Friedman, George,

Gupta, Johnson, Juliber, Mittal, Schiro are each duty-bound to inform themselves of all material information reasonably available to them. The Board has failed to do so, as the financial media has specifically highlighted, and under such circumstances Delaware law does not require a stockholder to make a pre-suit demand on a board of directors. Thus, demand is excused.

177. The Board has demonstrated its hostility to this action by failing to disclose the existence of the July 2009 Wells Notice and by participating in or permitting the issuance of defendants' blanket denials of wrongdoing set forth above. Moreover, as described above, defendants' defiant denials of wrongdoing have compromised the Board's ability to investigate or take any action, and similarly have compromised the Board's ability to independently and disinterestedly consider a demand. Thus, demand is excused.

178. The principal professional occupation of defendant Blankfein is his employment with Goldman, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits as alleged above. Accordingly, defendant Blankfein lacks independence from the remaining Director Defendants due to his interest in maintaining his executive positions at Goldman. This lack of independence renders defendant Blankfein incapable of impartially considering a demand to commence and vigorously prosecute this action. Goldman paid defendant Blankfein the following compensation:

Fiscal Year	Salary	All Other Compensation
2009	\$600,000	\$ 262,657

Accordingly, defendant Blankfein is incapable of impartially considering a demand to commence and vigorously prosecute this action because he has an interest in maintaining his principal occupation and the substantial compensation he receives in connection with that occupation. Demand is futile as to defendant Blankfein.

179. The principal professional occupation of defendant Cohn is his employment with Goldman, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits as alleged above. Accordingly, defendant Cohn lacks independence from the remaining Director Defendants due to his interest in maintaining his executive positions at

Goldman. This lack of independence renders defendant Cohn incapable of impartially considering a demand to commence and vigorously prosecute this action. Goldman paid defendant Cohn the following compensation:

Fiscal Year	Salary	All Other Compensation
2009	\$600.000	\$ 225.156

Accordingly, defendant Cohn is incapable of impartially considering a demand to commence and vigorously prosecute this action because he has an interest in maintaining his principal occupation and the substantial compensation he receives in connection with that occupation. Demand is futile as to defendant Cohn.

180. Defendant Bryan sold Goldman stock under highly suspicious circumstances. Defendant Bryan as a director, possessed material, nonpublic company information and used that information to benefit himself. Defendant Bryan sold stock based on his knowledge of material, nonpublic Company information regarding the impending action by the SEC and the impending decrease in the value of his holdings of Goldman. While in possession of material non-public information concerning Goldman's true business health, defendant Bryan sold 6,000 of his Goldman shares for \$932,220 in proceeds. Accordingly, defendant Bryan faces a substantial likelihood of liability for breach of his fiduciary duty of loyalty. Any demand upon defendant Bryan is futile.

181. According to reports, defendant Gupta is being examined by federal prosecutors relating to the Galleon hedge-fund founder Raj Rajaratnam's insider trading. In particular, the *Wall Street Journal* reported that Gupta told Mr. Rajaratnam about Warren Buffet's impending \$5 billion investment in Goldman before the deal was announced. Defendant Gupta has a duty to the Company to withhold sharing information for the benefit of a third party to trade on material, nonpublic Company information. Gupta will not vote to initiate litigation against the Board knowing that it might reveal further details of his illegal and improper acts concerning Galleon or that it might provoke Board members into initiating its own litigation against him. Thus, any demand upon defendant Gupta is futile.

182. Certain defendants are not independent because of their interrelated business, professional and personal relationships, have developed debilitating conflicts of interest that prevent

the Board members of the Company from taking the necessary and proper action on behalf of the Company as requested herein. Specifically, the defendants listed below, are subject to the following prejudicial entanglements:

(a) Defendants Blankfein, Schiro, and Gupta serve on the advisory board to Tsinghua University. These common directorships and loyalties prevent defendants Blankfein, Schiro, and Gupta from bringing causes of action against each other; and

(b) Defendant Friedman and Johnson serve on the board of The Brookings Institution. These directorships and loyalties prevent defendants Friedman and Johnson from bringing causes of action against each other.

183. Defendants Bryan, Johnson, Gupta, Friedman, Juliber, and Simmons are non-employee directors that have excessive financial relationships with the private Goldman Sachs Foundation (the "Foundation"), which is controlled by Blankfein, the Chairman and CEO of the Company. The Foundation is a New York not-for-profit corporation. The Foundation is funded by the Company. The Foundation is an exempt organization under 26 U.S.C. §501(c)(3). Defendants Bryan, Johnson, Gupta, Friedman, and Juliber are all board members of entities that rely on donations. As a result of the Foundation's donations, defendants Bryan, Johnson, Gupta, Friedman, Juliber, and Simmons have all been assisted in their fund raising responsibilities directly by the Foundation and indirectly by Goldman. The Foundation's contributions to their fund raising responsibilities were material. The SEC views a contribution for each director to be material if it equals or exceeds \$10,000 per year. 17 C.F.R. § 229.402(k)(2)(vii) and Instruction 3 thereto.

184. Defendant Bryan is a life trustee of the University of Chicago, to which the Foundation donated \$200,000 in 2006 and allocated another \$100,000 in 2007. As a trustee of the University, it is part of his job to raise money for it. These strong personal and financial ties raise reasonable doubts as to whether he can fairly and objectively consider a demand to sue Blankfein without being conflicted in his loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Bryan.

185. Defendant Johnson is beholden to Blankfein for Goldman's past and future gifts to The Brookings Institution. The Foundation donated \$100,000 to The Brookings Institution in 2006 and \$50,000 in 2007. These strong personal and financial ties raise reasonable doubts as to whether he can fairly and objectively consider a demand to sue Blankfein without being conflicted in his loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Johnson.

186. Defendant Gupta is chairman of the board for the Indian School of Business in Hyderabad, India, member of the advisory board of Tsinghua University School of Economics and Management, and as a member of the United Nations Commission on the Private Sector and Development, as special adviser to the UN Secretary General on UN Reform. Gupta is conflicted due to Blankfein causing Goldman to donate to these various organizations. In particular, the Foundation has donated at least: (i) \$1,600,000 to the Friends of the Indian School of Business; (ii) \$2,500,000 to the Friends of Tsinghua School of Economics and Management; and (iii) \$1,000,000 to the Model UN program. These strong personal and financial ties raise reasonable doubts as to whether he can fairly and objectively consider a demand to sue Blankfein without being conflicted in his loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Gupta.

187. Defendant Friedman is an emeritus trustee of Columbia University. The Foundation donated \$890,000 to Columbia University. These strong personal and financial ties raise reasonable doubts as to whether he can fairly and objectively consider a demand to sue Blankfein without being conflicted in his loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Friedman.

188. Defendant Juliber is on the board of Girls Incorporated. In 2006 and 2007, the Foundation donated \$200,000 each year to Girls Incorporated, for a total of \$400,000. These strong personal and financial ties raise reasonable doubts as to whether she can fairly and objectively consider a demand to sue Blankfein without being conflicted in her loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Juliber.

189. Defendant Simmons is the President of Brown University. In 2006 and 2007, the Foundation donated \$100,000 each year to Brown University, for a total of \$200,000. These strong personal and financial ties raise reasonable doubts as to whether she can fairly and objectively consider a demand to sue Blankfein without being conflicted in her loyalties and with only the best interests of Goldman in mind. Thus, demand is futile as to defendant Simmons.

190. Moreover, the acts complained of constitute violations of the fiduciary duties owed by Goldman's officers and directors and these acts are incapable of ratification.

191. Each of the defendant directors of Goldman authorized and/or permitted the improper statements disseminated directly to the public or made directly to securities analysts and which were made available and distributed to shareholders, authorized and/or permitted the issuance of various of the improper statements and are principal beneficiaries of the wrongdoing alleged herein, and thus could not fairly and fully prosecute such a suit even if such suit was instituted by them.

192. Goldman has been and will continue to be exposed to significant losses due to the wrongdoing complained of herein, yet the Individual Defendants and current Board have not filed any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt to recover for Goldman any part of the damages Goldman suffered and will suffer thereby.

193. If Goldman's current and past officers and directors are protected against personal liability for their acts of mismanagement and breach of fiduciary duty alleged in this complaint by directors' and officers' liability insurance, they caused the Company to purchase that insurance for their protection with corporate funds, *i.e.*, monies belonging to the stockholders of Goldman. However, the directors' and officers' liability insurance policies covering the defendants in this case contain provisions that eliminate coverage for any action brought directly by Goldman against these defendants, known as the "insured versus insured exclusion." As a result, if these directors were to cause Goldman to sue themselves or certain of the officers of Goldman, there would be no directors' and officers' insurance protection and thus, this is a further reason why they will not bring such a suit. On the other hand, if the suit is brought derivatively, as this action is brought, such insurance coverage exists and will provide a basis for the Company to effectuate recovery. If there is no

directors' and officers' liability insurance, then the current directors will not cause Goldman to sue the defendants named herein, since they will face a large uninsured liability and lose the ability to recover for the Company from the insurance.

194. Moreover, despite the Individual Defendants having knowledge of the claims and causes of action raised by plaintiff, the current Board has failed and refused to seek to recover for Goldman for any of the wrongdoing alleged by plaintiff herein.

195. Plaintiff has not made any demand on the other shareholders of Goldman to institute this action since such demand would be a futile and use less act for at least the following reasons:

(a) Goldman is a publicly held company with over 526.8 million shares outstanding, and thousands of shareholders;

(b) making a demand on such a number of shareholders would be impossible for plaintiff who has no way of finding out the names, addresses or phone numbers of shareholders; and

(c) making demand on all shareholders would force plaintiff to incur huge expenses, assuming all shareholders could be individually identified.

COUNT I

Against Defendants Blankfein, Cohn, and Viniar for Breach of Fiduciary Duties of Care and Loyalty

196. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

197. Defendants Blankfein, Cohn, and Viniar owed and owe Goldman fiduciary obligations. By reason of their fiduciary relationships, these defendants owed and owe Goldman the highest obligation of due care and loyalty and good faith.

198. Defendants Blankfein, Cohn, and Viniar violated and breached their fiduciary duties of care and loyalty by making improper statements by stating that the Company was not standing on both sides of transactions with its customers and for failure to disclose that the Company had received a Wells Notice from the SEC.

199. Defendants Blankfein, Cohn, and Viniar's actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

200. As a direct and proximate result of defendants Blankfein, Cohn, and Viniar's failure to perform their fiduciary obligations, Goldman has sustained significant damages. As a result of the misconduct alleged herein, these defendants are liable to the Company.

201. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

COUNT II

Against the Audit Committee Defendants for Breach of Fiduciary Duties of Loyalty for Dissemination of False and Misleading Statements

202. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

203. The Audit Committee Defendants, defendants Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, and Schiro owed and owe Goldman fiduciary obligations. Additionally, the Audit Committee Defendants owed specific duties under the Audit Committee Charter in effect during times relevant hereto to review and discuss Goldman's earnings press releases and financial results. By reason of their fiduciary relationships, these defendants owed and owe Goldman the highest obligation of loyalty, fair dealing, and good faith.

204. The Audit Committee Defendants violated and breached their fiduciary duties of loyalty, reasonable inquiry, oversight, good faith, and supervision by knowingly or recklessly reviewing and approving improper statements included in Goldman's earnings press releases and financial filings. As alleged above, these statements improperly stated and/or omitted to state that Goldman stood on both sides of its client's transactions, failed to disclose that it received a Wells Notice from the SEC, and failed to disclose material information to its clients exposing it to significant liability. These statements were improper, however, because Goldman faced a substantial risk from increased regulation and oversight by regulatory authorities for the credit market crisis.

205. The Audit Committee Defendants' wrongful conduct could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

206. As a direct and proximate result of the Audit Committee Defendants' failure to perform their fiduciary obligations, Goldman has sustained significant damages. As a result of the misconduct alleged herein, the Audit Committee Defendants are liable to the Company.

COUNT III

**Against Defendants Blankfein, Cohn, Bryan, Johnson, George, Dahlback, Juliber,
Friedman, Gupta, Mittal, Simmons, and Schiro for Breach of the Fiduciary Duties of
Loyalty**

207. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

208. Defendants Blankfein, Cohn, Bryan, Johnson, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, Simmons, and Schiro owed and owe Goldman fiduciary obligations. By reason of their fiduciary relationships, these defendants owed and owe Goldman the highest obligation of loyalty, fair dealing and good faith.

209. Defendants Blankfein, Cohn, Bryan, Johnson, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, Simmons, and Schiro violated and breached their fiduciary duties by knowingly and/or recklessly making improper statements regarding Goldman's exposure to the SEC Action, failing to disclose a Wells Notice it received, and for improper statements that it did not stand on both sides of transactions with its clients.

210. Defendants Blankfein, Cohn, Bryan, Johnson, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, Simmons, and Schiro's wrongful conduct could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

211. As a direct and proximate result of defendants Blankfein, Cohn, Bryan, Johnson, George, Dahlbäck, Juliber, Friedman, Gupta, Mittal, Simmons, and Schiro's failure to perform their fiduciary obligations, Goldman has sustained significant damages. As a result of the misconduct alleged herein, these defendants are liable to the Company.

212. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

COUNT IV

**Against Defendants Sherwood, Evans, Stecher, Smith, and Bryan for
Breach of Fiduciary Duties for Insider Selling and Misappropriation of Information**

213. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

214. At the time of the stock sales set forth herein, defendants Sherwood, Evans, Stecher, Smith, and Bryan were in possession of material, non-public, adverse information described above, and sold Goldman common stock on the basis of such information.

215. The information described above (the July 2009 Wells Notice served on the Company by the SEC) was non-public information which defendants Sherwood, Evans, Stecher, Smith, and Bryan used for their own benefit when they sold Goldman common stock.

216. Since the use of material, adverse, non-public information about Goldman for their own pecuniary gain constitutes a breach of their fiduciary duties, the Company is entitled to the imposition of a constructive trust on any profits the Insider Selling Defendants obtained thereby.

217. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

COUNT V

Against All Defendants for Waste of Corporate Assets

218. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

219. As a result of the misconduct described above, the Individual Defendants wasted corporate assets: (i) by making improper statements that failed to disclose they were on both sides of their clients' transactions and that the Company had received a Wells Notice from the SEC; (ii) by failing to properly consider the interests of the Company and its public shareholders; (iii) by failing to conduct proper supervision; (iv) by paying undeserved incentive compensation to certain of its executive officers; and (v) by incurring potentially hundreds of millions of dollars of legal liability and/or legal costs to defend defendants' unlawful actions.

220. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

221. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

COUNT VI

Against All Individual Defendants for Unjust Enrichment

222. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

223. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Goldman. The Individual Defendants were unjustly enriched as a result of the compensation and director remuneration they received while breaching fiduciary duties owed to Goldman.

224. Plaintiff, as a shareholder and representative of Goldman, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

225. Plaintiff, on behalf of Goldman, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands for a judgment as follows:

A. Against all of the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties, waste of corporate assets, and unjust enrichment;

B. Directing Goldman to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Goldman and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote, resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote the following Corporate Governance Policies:

1. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;
2. a provision to permit the shareholders of Goldman to nominate at least three candidates for election to the Board;
3. a provision to create a Board committee to monitor conflicts of interests in financial transactions;

4. a provision to require the Board to disclose that the Company received a Wells Notice and the substance of the Wells Notice; and
5. a proposal to strengthen Goldman's oversight of its disclosure procedures.

C. Extraordinary equitable and/or injunctive relief as permitted by law, equity and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on or otherwise restricting defendants' assets so as to assure that plaintiff on behalf of Goldman has an effective remedy;

D. Awarding to Goldman restitution from the defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the defendants;

E. Awarding to plaintiff reasonable attorneys' fees, consultant and expert fees, costs and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: April 29, 2010

LAW OFFICES OF THOMAS G. AMON

/s/ Thomas G. Amon

THOMAS G. AMON (TGA- 1515)

250 West 57th Street, Suite 1316
New York, NY 10107
Telephone: (212) 810-2430
Facsimile: (212)810-2427

ROBBINS UMEDA LLP
BRIAN J. ROBBINS
GEORGE C. AGUILAR
SHANE P. SANDERS
JULIA M. WILLIAMS
600 B Street, Suite 1900
San Diego, CA 92101
Telephone: (619) 525-3990
Facsimile: (619)525-3991

Attorneys for Plaintiff

VERIFICATION

I, James Clem, hereby declare as follows:

I am a shareholder of The Goldman Sachs Group, Inc. (the "Company"). I was a shareholder at the time of the wrongdoing complained of and I remain a shareholder. I have retained competent counsel and I am ready, willing and able to pursue this action vigorously on behalf of the Company. I have read the Verified Shareholder Derivative Complaint for Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment (the "Complaint"). Based upon discussions with and reliance upon my counsel, and as to those facts of which I have personal knowledge, the Complaint is true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Signed and Accepted:

Dated: 4/29/2010
/s/ James Clem
JAMES CLEM



PARTNERS
 Charles C. Foti, Jr., LA
 Lewis S. Kahn, IA
 Kim E. Miller, NY & CA
 Albert M. Myers, NY & GA
 Kevin L. Oufnac, LA & SC
 Michael A. Swick
OF COUNSEL
 Neil Rothstein, PA
VOLKER LOUISIANA ATTORNEY GENERAL,
 2006-2009

ASSOCIATES
 Paul S. Balanon, LA, MD, & D.C
 Sarah Catherine Boone, CA & MT
 Melissa Ryan Clark, NY
 Michael A. McGuane, NY
 Geoffrey Rodriguez, LA

April 23, 2010

By Overnight Mail and By Fax (w/o Exhibit)

Lloyd C. Blankfein
 Chairman of the Board of Directors
 The Goldman Sachs Group, Inc.
 c/o David H. Braff, Esq.
 Sullivan & Cromwell LLP
 125 Broad Street
 New York, NY 10004

Re: Shareholder Demand Concerning Auction-Rate Securities, SEC Fraud Charges, and “Bonus” Payments

Dear Mr. Blankfein:

This firm represents the Louisiana Municipal Police Employees Retirement System (“MPERS”), an institutional shareholder of The Goldman Sachs Group, Inc. (“Goldman Sachs” or the “Company”). MPERS relies on its holdings of shares of Goldman Sachs and other companies to provide retirement and other benefits to thousands of municipal police personnel throughout the State of Louisiana.

We write on behalf of MPERS concerning the demand we made to Goldman Sachs’s Board of Directors on September 2, 2009 to take action to remedy breaches of fiduciary duties and other misconduct committed by certain officers and directors of the Company.

The Board having failed to respond in any manner to the prior demand, we now renew that demand and, in addition to the breaches of fiduciary duty specified therein, we write to further demand that the Board take action to remedy the additional breaches of fiduciary duties and other misconduct by certain other officers and directors of the Company that have become public since the date of our original demand letter. This later misconduct relates to charges by the United States Securities and Exchange Commission (“SEC”) of fraud in the structuring and marketing of a synthetic collateralized debt obligation (“CDO”) known as ABACUS 2007-AC1 in 2007, as well as from the payment of “bonuses” to Goldman Sachs executives in 2009 and recent revelations regarding the Company’s policies as to disclosure of the receipt of highly material Securities and Exchange Commission “Wells” notices—or the lack thereof.

All of these episodes are discussed at length below.

A. Previous Demand Concerning Auction Rate Securities

In our previous demand letter, dated September 2, 2009 (attached hereto as Exhibit A), we requested that the Goldman Sachs Board of Directors investigate wrongdoing in the market for auction-rate securities (“ARS”) by various current and former directors and officers of the Company. More specifically, these individuals participated in a scheme to manipulate the market for ARS on a very substantial scale, using techniques of concealment that the securities laws have long prohibited. In particular, these individuals caused or allowed Goldman Sachs to deceive its own customers into believing that the ARS market was a “safe” and “liquid” one—when, in fact, the extent to which the ARS market was “safe” and “liquid” was wholly dependent upon the Company’s *undisclosed participation as a counterparty in transactions with customers*.

It has been over six months since this firm heard from the Board’s outside counsel in response to our demand letter. In that response, from Michael Braff, Esq., on September 11, 2009, counsel informed us that the letter had been refiled to the Board and that the Board would give it “appropriate consideration in due course.” We have heard nothing from either you, the Board, or counsel since then.

As you are aware, Delaware law imposes a duty on the Board to respond reasonably to demands from shareholders to take action to remedy harm caused to the Company. A Board may not unreasonably refuse to review a shareholder demand, nor may it simply ignore the demand. Accordingly, this firm will need to hear from you, the Board, or counsel in the immediate future concerning the Board’s formal response to the September 2, 2009, demand, or setting forth a reasonable timeline for when MPERS may expect to obtain such a response.

As you also are aware, the misconduct related to ARS has already been the subject of litigation. *See Louisiana Municipal Police Employees Retirement System v. Blankfein*, No. 08 Civ. 7605 (LBS) {S.D.N.Y. filed Aug. 28, 2009}. That action was dismissed because the Court determined that demand on the Board of Directors would not have been futile. The Board’s refusal to respond to the demand made on September 2, 2009 accordingly constitutes a new set of circumstances not adjudicated by the Court. Thus, if we do not hear from you within ten (10) business days from the date hereof setting forth either a formal response or an expedited timeline for responding, we will file either a new action or a motion with the Court to reopen case No. 08 Civ. 7605 and deem demand to have been unreasonably refused or futile.

B. Demand Concerning SEC Charges of Fraud

Far from acting to investigate and correct the harm from misconduct arising from misrepresentations to customers in the ARS market, it appears that Goldman Sachs executives have determined to “double down” on the misconduct by acting to deceive Company customers in other markets as well.

The latest example of this misconduct concerns derivative securities structured and marketed by Goldman Sachs executives, including Fabrice Tourre, based on portfolios of

subprime mortgages and other subprime obligations. Unbeknownst to the investors, the securities in question, including a synthetic collateralized debt obligation (“CDO”) known as ABACUS 2007-AC1, were created by the Company at the behest of a sophisticated hedge fund customer which specifically wanted to take a short position in the very securities. Thus, Goldman Sachs was caused to market to one set of customers, as an *attractive* investment opportunity, securities which another customer—a large, sophisticated, and influential hedge fund—had specifically paid the Company to create and market, and which was betting billions of dollars would *depreciate* in value. Most importantly, the involvement of this hedge fund in structuring this CDO and its hand selection of the underlying collateral was never disclosed to investors. Rather, according to reports, later investors were told, in a materially misleading fashion, that the underlying collateral was entirely selected by an independent, third-party manager.

Moreover, Goldman Sachs itself was the initial counterparty to the hedge fund on the latter’s short position, and it was the Company’s own long position which it quickly laid off on the unwitting investors, ABN/Amro and IKB Deutsche Industriebank AG. Together, these investors lost over \$1 billion, while favored client Paulson & Company, the hedge fund specified above, profited by in the exact amount. The transaction in question—consisting of credit default swaps (“CDS”) written by the deceived investors in favor of the hedge fund on a reference portfolio of residential mortgage-backed securities (“RMBS”) so as to mimic a CDO in the same RMBS portfolio—was, like all CDS transactions, a “zero sum” game in which any profits experienced by the losing party were exactly offset by the profits made by the gaining party.

According to the SEC complaint, filed on April 15, 2010 in the United States District Court for the Southern District of New York:

GS&Co [a subsidiary of Goldman Sachs] 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”), wife 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”) wife 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.

ABACUS 2007-AC1 was created, designed, structured, and implemented, from the get-go, as a losing investment. The constituent subprime-related securities were specifically selected by Paulson as the most likely, of any he could find, to experience mortgage defaults and to have their value wiped out. Paulson (and Goldman, which was paid by Paulson) thus imitated the two Broadway con artists in the hit musical “The Producers”—they stood to make money, lots of it, composed entirely of the losses of persons to whom they had sold the investment as a potentially money-making one.

The equity and several other tranches of ABACUS were designed to fail, and fail they did. According to the SEC:

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.

* * * *

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.

The *Wall Street Journal* has similarly reported that “it took less than a month (0.8 month) after [ABACUS] was sold before the mortgages experienced write downs, whereas the “Average Time to Writedown” of similar deals was 1.7 months.”

The misconduct of Toure and other Goldman Sachs executives in creating and structuring the ABACUS deal was particularly severe in that, according to the SEC, the executives caused Goldman Sachs to mislead the investors in distinct, highly material ways. First, investors were led to believe that the securities in the ABACUS portfolio had been selected, not by a hedge fund (namely, Paulson), but by ACA, an independent collateral manager which had done 22 previous deals with Goldman Sachs and was a trusted name in the market for CDOs derived from RMBS that were expected to increase in value. Second, the investors were not informed that the person which had actually selected the securities (namely, Paulson) had

hand picked them as the RMBS most likely to depreciate or default—as 99 percent of them eventually did.

As the SEC Complaint alleges:

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.

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.

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.

* * * *

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.

In addition, the SEC has charged Goldman Sachs with misleading ACA, the collateral manager, as to Paulson's short position with respect to the constituent securities in ABACUS. According to the SEC, ACA was under the impression that Paulson would have a long position in most or all of the ABACUS tranches, and Goldman Sachs officers knew this. The SEC Complaint alleges:

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.

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.

The decision to facilitate the ABACUS transaction was not made by Mr. Tourre alone but with the approval of the Company's Mortgage Capital Committee, which approved the transaction on March 12, 2009. As the SEC alleges, that Committee issued a memorandum that day specifically noting that "Goldman is effectively working an order for Paulson to buy protection on specific layers of the [ABACUS 2007-]AC1 capital structure." The Mortgage Capital Committee included Daniel Sparks, Kevin Gasvoda, Peter Aberg, and Jonathan Sobel, as well as several members of the Company's legal and compliance departments. (Specified below is a more complete list of those executives and Board members who are liable for the misconduct related to the ABACUS transaction.)

In addition, evidence was introduced at a hearing of the Senate Permanent Subcommittee on Investigations today that Goldman Sachs officers exerted pressure on ratings agencies to assign top credit ratings to ABACUS and similar transactions despite the inclusion of so many constituent securities that were likely to default or were otherwise of poor quality. One e-mail from a Standard & Poor's rating official to colleagues expressed frustration at having to push Goldman Sachs to improve the quality of the securities in its ABACUS products. "I can't tell you how upset I have been in reviewing these trades," the e-mail began. "And not only have these trades consumed tons of my time, but they have generated an enormous amount of stress since I'm the one that has to break the news that these trades are wrong."

As a direct consequence of these executives' misconduct, the SEC has filed charges of securities fraud against Mr. Tourre as well as the Company itself under Sections 10(b), 20, and 21 of the Securities Exchange Act of 1934. *See SEC v. Goldman Sachs & Co., et al.*, No. 10 Civ. 3229 (S.D.N.Y. filed Apr. 15, 2010). The SEC Complaint seeks injunctive relief, civil monetary

penalties, and an order requiring Goldman Sachs and Mr. Tourre to disgorge all illegal profits they obtained as a result of the misconduct at issue.

The damages from the SEC's revelation of this misconduct have been grave. When the SEC lawsuit was announced, *Goldman Sachs's stock lost \$12 billion in market value*, dropping from \$184.27 per share to \$160.70 per share, or nearly 13 percent, in a single day. Litigation and regulatory proceedings involving the same or highly similar claims are likely to be commenced, including by IKB and ABN/Amro. Existing shareholder class action litigation based on misstatements and omissions in the sale of securities will be significantly strengthened by the revelations. E.g., *NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.*, No. 08 Civ. 10783 (S.D.N.Y. filed Dec. 11, 2008). Both the Financial Services Authority, Britain's securities regulator, and Bafin, German's regulator, have called for investigations into Goldman Sachs's practices. The reputational harm to the Company will be particularly onerous. Britain's Prime Minister termed the Company's actions to be indicative of "moral bankruptcy." In a similar vein, the *New York Times* reported:

The public outcry against the bank bailouts was driven in part by suspicions that a heads-we-win, tails-you-lose ethos pervades the financial industry. To many, that Goldman and others are once again minting money — and paying big bonuses to their employees — is evidence that Wall Street got a sweet deal at taxpayers' expense. The accusations against Goldman may only further those suspicions.

"The S.E.C. suit against Goldman, if proven true, will confirm to people their suspicions about the total selfishness of these financial institutions," said Steve Fraser, a Wall Street historian and author of "Wall Street: America's Dream Palace." "There's nothing more damaging than that. This is way beyond recklessness. This is way beyond incompetence. This is cynical, selfish exploiting."

Louise Story and Gretchen Morgenson, *For Goldman, a Bet's Stakes Keep on Growing*, N.Y. Times, Apr. 17, 2010.

Similarly, the *New York Times* reported:

Marcel Kahan, a law professor at New York University, said the risk to Goldman's reputation was greater than its legal exposure. For instance, he said that Goldman's stock dropped nearly 13 percent on Friday, causing a greater loss in market capitalization than the worst imaginable S.E.C. fine.

"I think the negative P.R. for Goldman is a multiple of the legal one," he said. "It's very bad for business. You don't want to get the impression with your client that you are doing shady things."

Edward Wyatt, *SEC Puis Wall St. on Notice*, N.Y. Times, Apr. 18, 2010.

In the wake of the ABACUS charges, the Company's credibility with investors was even compared unfavorably with that of Bear Steams. As the *Wall Street Journal* reported:

At least one other bank, Bear Steams Cos., turned down working with Mr. Paulson on such a deal, according to people close to the matter. A senior Bear Steams trader met with the Paulson, team in 2007 but turned down the idea, these people said, believing it wasn't proper to sell to investors a deal prompted by another investor who was betting against the securities.

Kate Kelly, *What the Committee Knew: Mortgage Deal That Set Off Case Got Rapid Approval by Goldman Panel*, Wall St. J., Apr. 20, 2010.

The Company itself has acknowledged the significant reputational risk from this episode, as reflected in its press release issued hours after the SEC Complaint was filed and discussed below.

Particularly troubling is the hair-trigger response of top Goldman Sachs officers in responding to the SEC Complaint. The SEC charges were scarcely an hour old, when they caused Company to issue a press release baldly stating, "The SEC's charges are completely unfounded in law and fact and we will vigorously contest them and defend the firm and its reputation." These officers issued, this release without conducting an investigation, without appointing a special committee, and without taking any steps to form a good-faith analysis of the claims. This ill-considered response strongly suggests the existence of an executive suite who, at minimum, are committed to defending themselves "right or wrong," i.e., without any serious examination of the merits of the charges or an attempt to identify culpable or otherwise inappropriate conduct on the part of individual employees.

Later in the day on April 16, 2010, these same officers issued yet another press release suggesting even more strongly their bias and inability to respond objectively to the SEC's charges. Repeating their claim that the SEC charges were "unfounded in law and fact," these officers then proceeded to make inappropriate, purportedly fact-based defenses to the charges. These defenses, however, were so finely worded or factually inapposite that these officers virtually conceded key facts in the SEC's case. In particular;

- **Goldman Sachs Lost Money On The Transaction.** Goldman Sachs, itself, lost more than \$90 million. Our fee was \$15 million. We were subject to losses and we did not structure a portfolio that was designed to lose money.

These points are irrelevant and provide no defense to the SEC's charges. Market participants which issue material misstatements in the issuance of securities may be liable for fraud whether or not they profit from the transactions. The fact that "Goldman Sachs" did not structure the portfolio which was designed to lose money is irrelevant to the chain of events. The

SEC's claims are based on the fact that Paulson structured the portfolio, and that Paulson's role and short position were not disclosed to either ACA Or the investors.

- **Extensive Disclosure Was Provided.** IKB, a large German Bank and sophisticated CDO market participant and ACA Capital Management, the two investors, were provided extensive information about the underlying mortgage securities. The risk associated with the securities was known to these investors, who were among the most sophisticated mortgage investors in the world. These investors also understood that a synthetic CDO transaction necessarily included both a long and short side.

Again, these are irrelevant points. The gravamen of the SEC Complaint is that the investors were misled about Paulson's role in structuring and shorting the portfolio, which were independent, highly material facts irrespective of whether the investors were aware of the securities constituting the portfolio.

- **ACA, the Largest Investor, Selected The Portfolio.** The portfolio of mortgage backed securities in this investment was selected by an independent and experienced portfolio selection agent after a series of discussions, including with Paulson & Co., which were entirely typical of these types of transactions. ACA had the largest exposure to the transaction, investing \$951 million. It had an obligation and every incentive to select appropriate securities.

These defenses evade the SEC's allegations that it was Paulson, not ACA or the investors, which played the primary and decisive role in selecting the constituent securities. ACA's own long position and corresponding incentive to include securities which would appreciate in value is not pertinent in light of the SEC's allegation that had ACA known Paulson was taking a short position it would have been unlikely to allow him to play the primary role in selecting the constituent securities and would not have served as collateral manager.

- **Goldman Sachs Never Represented to ACA That Paulson Was Going To Be A Long Investor,** The SEC's complaint accuses the firm of fraud because it didn't disclose to one party of the transaction who was on the other side of that transaction. As normal business practice, market makers do not disclose the identities of a buyer to a seller and vice versa. Goldman Sachs never represented to ACA that Paulson was going to be a long investor.

This defense evades the SEC's allegation that ACA was acting under a misimpression as to Paulson's role and position, and that Goldman Sachs knew and encouraged it—facts which would support a fraud charge the same as an express misrepresentation of fact. Moreover, the defense pretends that the issue is simple disclosure of the identity of a counterparty. But the SEC's case does not depend on Goldman Sachs failing to divulge Paulson's name, but rather on Paulson's role in selecting the securities, and its short position. Finally, "normal business practices" do not excuse violations of the law, even assuming that practices applicable to routine

buy-sell transactions brokered by Goldman Sachs were properly extended to the unique, “designed to fail” transaction facilitated by the Company.

IKB, ACA and Paulson all provided their input regarding the composition of the underlying securities. ACA ultimately and independently approved the selection of 90 Residential Mortgage Backed Securities, which it stood behind as the portfolio selection agent and the largest investor in the transaction.

In this defense, Goldman Sachs concedes that Paulson played a role in the selection of securities in ABACUS, a key fact in the SEC’s case, and concedes that ACA’s role lay primarily in rubber-stamping the selection process in which it played less than a dominant role—contrary to what the investors were led to believe.

The Goldman Sachs officers’ second press release is additionally problematic because it suggests that the practices followed with respect to ABACUS are typical of countless other transactions in subprime-related CDOs and synthetic CDOs at Goldman Sachs. If so, the problem extends far beyond a single transaction and instead suggests a systematic way of doing business which could affect the Company’s liability for securities fraud as a going concern.

Moreover, facts have come to light since the SEC announced its charges that suggest misrepresentations, not just to the Company’s investor clients, but also to its own shareholders. In particular, although formal charges by the SEC were only brought on April 15, 2010, in actuality the Commission had been investigating since at least July 2009, and had even notified the Company of its intent to bring charges, inviting the Company to respond in a so-called “Wells” notice. This the Company did, filing a 40-page response on September 10, 2010 and a 16-page response on September 25, 2010—*without ever informing its own shareholders of the fact of the SEC’s investigation or receipt of a “Wells” notice*. No mention of these facts was contained in any of the Company’s public filings or statements. Yet high-market-capitalization companies like Bank of America, General Electric, JPMorgan Chase, and UBS routinely make disclosure of such facts in their public filings, and such items are materially important to shareholders—as established in the circumstances here both by the Company’s filing of lengthy responses to defend itself to the SEC and by the sheer magnitude of the price decline in Goldman Sachs’s common stock in response to the SEC Complaint. *See, e.g., In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1425 (3d Cir. 1997).

After due investigation, MPERS believes that, in connection with the Company’s structuring and marketing of subprime-related CDO securities, including ABACUS 2007-AC1, the following current and former officers and directors caused Goldman Sachs to deceive investors and shareholders, otherwise violated their duties, and thereby caused Goldman Sachs to Suffer substantial harm:

- Lloyd C. Blankfein, Chairman of the Board and Chief Executive Officer;

- Gary D. Cohn, President and Chief Operating Officer and a member of the Board since June 2006;
- David A. Viniar, Executive Vice President and Chief Financial Officer;
- Alan M. Cohen, Executive Vice President and Global Head of Compliance;
- Gregory K. Palm, Executive Vice President and General Counsel;
- Esta E. Stecher, Executive Vice President and General Counsel;
- Fabrice Tourre, a registered representative of Goldman, Sachs & Co.;
- Pablo Salame, Co-Head, Sales and Trading;
- Daniel Sparks, Chairman of the Mortgage Capital Committee;
- Kevin Gasvoda, member of the Mortgage Capital Committee;
- Peter Aberg, member of the Mortgage Capital Committee;
- Jonathan Sobel, former Chairman and current member of the Mortgage Capital Committee;
- John H. Bryan, a member of the Board since 1999 and a member of the Audit Committee;
- Claes Dahlbäck, a member of the Board since 2003 and a member of the Audit Committee;
- Stephen Friedman, a member of the Board since 2005 and a member of the Audit Committee;
- William W. George, a member of the Board since 2002 and a member of the Audit Committee;
- Rajat K. Gupta, a member of the Board from 2006 to 2010 and a member of the Audit Committee;
- James A. Johnson, a member of the Board since 1999 and a member of the Audit Committee;

- Lois D. Juliber, a member of the Board since 2004 and a member of the Audit Committee;
- Edward M Liddy, a member of the Board from 2003 to September 2008 and a member of the Audit Committee;
- Lakshmi N. Mittal, a member of the Board since 2008 and a member of the Audit Committee;
- James J. Schiro, a member of the Board since 2009 and a member of the Audit Committee; and
- Ruth J. Simmons, a member of the Board since 2000 and a member of the Audit Committee;

By reason of their positions as officers and/or directors of the Company, and because of their ability to control its business and corporate affairs, Goldman Sachs's officers and directors owe the Company and its shareholders the fiduciary obligations of good faith, loyalty, due care, candor, and oversight. They are required to use their utmost ability to control and manage the Company in a fair, just, honest and equitable manner.

The roles of the above individuals in the ABACUS debacle are clear from the SEC Complaint and from the formal and informal chains of command at Goldman Sachs as reported by the press. Mr. Tourre was named as a defendant in the SEC Complaint. Messrs. Sparks, Gasvoda, Aberg, and Sobel were members of the Mortgage Capital Committee which approved the transaction. Mr. Cohen, and Mr. Palm and Ms. Stecher, as heads of Goldman Sachs's compliance and legal departments, respectively, supervised staff who served on the Mortgage Capital Committee, and these individuals bear ultimate responsibility for the Company's representations to customers and potential investors in ABACUS. Messrs. Blankfein, Cohn, Viniar, and Salame closely supervised the actions and decisions of the Mortgage Capital Committee beginning no later than 2007. *See For Goldman, a Bet's Stakes Keep Growing*, N.Y. Times Dealbook, Apr. 18, 2010 ("As the housing market began to fracture in 2007, senior Goldman executives began overseeing the mortgage department closely, said four former Goldman Sachs employees, who spoke on the condition they not be identified because of the sensitivity of the matter. Senior executives routinely visited the unit. Among them were David A. Viniar, the chief financial officer; Gary D. Cohn, then the co-president; and Pablo Salame, a sales and trading executive, these former employees said. Even Goldman's chief executive, Lloyd C. Blankfein, got involved.").

Accordingly, MPERS hereby demands that the Board take steps to investigate, discipline, and file suit for breach of fiduciary duty against, the above-named Company officers and directors responsible for the ABACUS 2007-AC1 incident. We further demand that the Board investigate the extent to which these officers' practices with respect to ABACUS were duplicated with respect to other CDO, synthetic CDO, and other derivative securities. In

addition, we demand that the Company enact corporate governance reforms designed to avoid a repeat of the culpable conduct at issue, including, but not limited to, putting forward for shareholder vote resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board. These reforms should include measures to afford greater control over the inclusion of material facts such as the Company's receipt of "Wells" notices from the SEC and the determination of material facts to be disclosed to investor clients in CDO, synthetic CDO, and other derivative securities which have been structured at the instance of firm clients with a desire to take a position opposite to those of the investor clients.

Finally, MPERS demands that the Board investigate the actions and roles played by outside parties to the ABACUS fraud, and take steps to remediate the harm from these actions, including commencing claims for aiding and abetting breach of fiduciary duty, unjust enrichment, or other redress as appropriate against those responsible, including Paulson & Co., John Paulson, and Paolo Pellegrini (a member of Paulson & Co.), all of whom received substantial transfers of cash from the Company's investors in connection with the transaction.

C. Demand Concerning "Bonus" Payments Tied to Government Rescue Money and Inflated Revenues from Subprime-Related Trades and Transactions.

On January 21, 2010, Goldman Sachs reported purported profits of \$13.4 billion for 2009, based on purported revenues of \$45.2 billion—"more than double the amount in 2008, reflecting significantly higher net revenues in Trading and Principal Investments." This included revenues of \$34.4 billion in the Trading and Principal Investments segment—which the Company described as "significantly higher" than in 2008, including "a very strong performance in Fixed Income, Currency and Commodities (FICC)." At the same time, the Company reported that it would make \$16.2 billion in "bonus" payments to executives for 2009, or 35.8 percent of revenues.

Goldman Sachs has consistently described its bonus payment philosophy as one which awards pay based on "performance"—both the Company's performance and, in particular, the performance of individual executives and business units, in this way, the Company has promised to "reinforce the alignment of employee and shareholder interests" (2006 Proxy Statement). Similarly, as stated in the 2007 Proxy Statement, the Company's Restricted Partner Compensation Plan "is designed to pay bonuses that are tied to the performance of the firm, in order to align the interests of senior management with the interests of shareholders and to tie the compensation of our senior executives to the success of the firm." Substantively identical goals were stated in the 2008 Proxy Statement and the 2009 Proxy Statement.

The payment of \$16.2 billion to Goldman executives for 2009 was not in any way intended to, nor did it, effectuate a "pay-for-performance" philosophy. The Company's nominal "performance" in 2009, in dollar terms, had very little, if anything, to do with the actual efforts

or business results of Company executives or business units. In fact, these efforts and business results would have sent fee Company into bankruptcy but for the intervention of the federal government. U.S. Treasury Secretary Timothy F. Geithner has stated that “[n]one of the [largest financial firms, including Goldman Sachs] would have survived” if the government had not infused hundreds of billions of dollars into the system in 2008. Goldman Sachs itself received approximately \$23 billion in cash as a direct result of federal intervention. First, it received a \$10 billion payment under the Troubled Asset Relief Program in October 2008. Second, in early 2008 it received \$13 billion in collateral payments from American International Group, Inc. (“AIG”) on credit default swaps on which it was a counterparty, all of which payments were made with funds AIG received from the government’s \$85 billion cash infusion into AIG in late 2008. Thus, over one-half of Goldman Sachs’s total revenues for 2009—and nearly twice its total profits—were entirely accounted for by cash provided by United States taxpayers. But for this rescue package, Goldman Sachs itself, notwithstanding some profitable operations, would not have survived 2008, and its revenues and profits for 2009 would have been nonexistent.

The 2009 “bonus” payments were illegitimate for a different set of reasons as well. As set forth in detail above, the Company reported revenues and profits from trades and transactions in CDOs and synthetic CDOs founded on material misrepresentations and omissions to customers about the creation and selection of the constituent subprime-related securities—including its role as a facilitator for hedge funds and institutional investors which desired tailor-made portfolios which were designed *ab initio* to depreciate in value. The SEC has sued on only one investment, the ABACUS 2007-AC1, but it is likely that that transaction was just the tip of an iceberg of fraudulent marketing undercutting the entirety of the purported revenues and profits of the Trading and Principal Investments segment. Indeed, the SEC, in its complaint, has requested that the Court order the Company to disgorge all the “illegal profits ... obtained as a result of [the] fraudulent conduct” related to ABACUS 2007-AC1. If other instances of misleading failure to disclose conflicted transactions such as ABACUS emerges in the course of the SEC case, the Company will be exposed to a significant monetary liability further rendering “bonuses” for 2009 illegitimate and inappropriate.

Accordingly, MPERS hereby demands that the Board take steps to investigate, discipline, and file suit for breach of fiduciary duty and corporate waste against, the Company officers and directors responsible for the payment of the 2009 “bonuses,” including Messrs. Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons (members of the Board’s Compensation Committee during the relevant period), and to seek repayment from, and file claims for unjust enrichment against, the executives who received those “bonuses,” including Messrs. Blankfein, Cohn, Viniar, J. Michael Evans, and John S. Weinberg (the Company’s most highly compensated named executive officers in 2009).

* * * *

With regard to the claims set forth in our previous demand letter, if we do not hear from you within ten (10) business days from the date hereof setting forth either a formal response or an expedited timeline for responding, we will file either a new action or a motion with the Court

Lloyd C. Blankfein
April 23, 2010
Page 15

to reopen case No. 08 Civ. 7605 and deem demand to have been unreasonably refused or futile. If, with regard to the new claims, within a reasonable period of time after receipt of this letter the Board has not taken action as demanded herein, MPERS will initiate shareholder derivative claims on behalf of the Company seeking appropriate relief.

With kind regards, I remain

Very truly yours,

/s/ Albert M. Myers
Albert M. Myers