

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

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In the matter of)
GOLDMAN, SACHS & CO.,)
Respondent.)

ADMINISTRATIVE CONSENT ORDER
File Number 10032

WHEREAS, Goldman, Sachs & Co. ("Goldman Sachs" or "Respondent") is a broker-dealer registered in the State of South Carolina; and

WHEREAS, the Securities Commissioner of the State of South Carolina (the "Securities Commissioner") has been a part of coordinated investigations into Goldman Sachs' activities in connection with the marketing and sale of auction rate securities ("ARS"); and

WHEREAS, Goldman Sachs has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations; and

WHEREAS, Goldman Sachs has advised regulators of its agreement to resolve the investigations relating to its marketing and sale of ARS to individual investors; and

WHEREAS, Goldman Sachs agrees to take certain actions described herein and to make certain payments; and

WHEREAS, Goldman Sachs admits to the jurisdiction of the Securities Commissioner and consents to the entry of this Administrative Consent Order (the "Order" or "Consent Order"); and

WHEREAS, Goldman Sachs elects to permanently waive any right to a hearing and appeal under the South Carolina Uniform Securities Act of 2005 (the "Act") and to judicial review of this Consent Order; and

**S.C. ATTORNEY
GENERAL'S OFFICE**

AUG 06 2010

SECURITIES DIVISION

1 are potentially stuck holding long-term investments, not money market instruments. As discussed
2 below, starting in the Fall of 2007, the auction rate securities market faced dislocation and an
3 increased risk of auction failure.

4 6. Since it began participating in the auction rate securities market, Goldman Sachs
5 submitted “cover” bids, purchase orders for the entirety of an auction rate security issue for which
6 it acted as the sole or lead auction manager. Such “cover” bids were Goldman Sachs proprietary
7 orders that would be filled, in whole or in part, if there was otherwise insufficient demand in an
8 auction. When Goldman Sachs purchased auction rate securities through “cover” bids, those
9 auction rate securities were then owned by Goldman Sachs and the holdings were recorded on
10 Goldman Sachs’ balance sheet. For risk management purposes, Goldman Sachs imposed limits on
11 the amounts of securities its Municipal Money Markets unit could hold (which included Goldman
12 Sachs’ auction rate securities holdings).

13 7. Because many investors could not ascertain how much of an auction was filled
14 through Goldman Sachs “cover” bids, those investors could not determine if auctions were clearing
15 because of normal marketplace demand, or because Goldman Sachs was making up for the lack of
16 demand through “cover” bids. Many investors were also not aware that the liquidity of the auction
17 rate securities was dependent upon Goldman Sachs’ continued use of “cover” bids. While
18 Goldman Sachs could track its own inventory as a measure of the supply and demand for its
19 auction rate securities, many investors had no comparable ability to assess the operation of the
20 auctions. There was no way for those investors to monitor supply and demand in the market or to
21 assess when broker-dealers might decide to stop supporting the market, which could cause its
22 collapse.

23 8. In August of 2007, the credit crisis and other deteriorating market conditions began
24 to strain the auction rate securities market. Some institutional investors withdrew from the market,
25 decreasing demand for auction rate securities.

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1 in their accounts with Goldman Sachs, net of margin loans, as determined by the client's
2 aggregate household position(s) at Goldman Sachs as of August 31, 2008, or, if the client
3 was not a client of Goldman Sachs as of August 31, 2008, as of the date that the client
4 terminated its client relationship with Goldman Sachs. Notwithstanding any other
5 provision, "Small Businesses" does not include broker-dealers or banks acting as conduits
6 for their customers.

7 26. Goldman Sachs shall have offered to purchase, at par plus accrued and unpaid
8 dividends/interest, from Eligible Investors their Eligible ARS that since February 11, 2008, have
9 not been auctioning ("Buyback Offer"), and explain what Eligible Investors must do to accept, in
10 whole or part, the Buyback Offer. The Buyback Offer shall have remained open until at least
11 November 12, 2008 ("Offer Period"). Goldman Sachs may extend the Offer Period beyond this
12 date.

13 27. Goldman Sachs shall have undertaken its best efforts to identify and provide notice
14 to Eligible Investors who invested in Eligible ARS that since February 11, 2008, have not been
15 auctioning, of the relevant terms between Goldman Sachs and the Securities Commissioner.

16 28. Eligible Investors may have accepted the Buyback Offer by notifying Goldman
17 Sachs at any time before midnight, Eastern Time, November 12, 2008, or such later date and time
18 as Goldman Sachs may extend the Offer Period. For Eligible Investors who accepted the Buyback
19 Offer within the Offer Period, Goldman Sachs shall have purchased the Eligible ARS on or before
20 November 17, 2008 (or a later date if an offer period is extended). For Eligible Investors who
21 accepted the Buyback Offer within the Offer Period but custodied their Eligible ARS away from
22 Goldman Sachs, Goldman Sachs shall repurchase the Eligible ARS upon receipt of assurance
23 reasonably satisfactory to Goldman Sachs from the Eligible Investor's current financial institution
24 that the bidding rights associated with the Eligible Auction Rate Securities will be transferred to
25 Goldman Sachs and transfer of the Eligible ARS.

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1 Goldman Sachs, and paid interest associated with the auction rate securities based portion of those
2 loans in excess of the total interest and dividends received on the auction rate securities during the
3 duration of the loan. Goldman Sachs shall have reimbursed such clients for the excess expense,
4 plus reasonable interest thereon. Such reimbursement shall have occurred no later than March 31,
5 2010.

6 **Claims for Consequential Damages**

7 34. Goldman Sachs shall consent to participate in a special arbitration (“Arbitration”)
8 for the exclusive purpose of arbitrating any Eligible Investor’s consequential damages claim arising
9 from their inability to sell Eligible ARS. Goldman Sachs shall have provided written notice to
10 Eligible Investors of the terms of the Arbitration process on or before November 12, 2008.

11 35. The Arbitration shall be conducted by a single public arbitrator (as defined by
12 section 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes, eff. April
13 16, 2007), under the auspices of FINRA. Goldman Sachs will pay all applicable forum and filing
14 fees. Any Eligible Investors who choose to pursue such claims in the Arbitration shall bear the
15 burden of proving that they suffered consequential damages and that such damages were caused by
16 their inability to access funds invested in Eligible Auction Rate Securities.

17 36. In the Arbitration, Goldman Sachs shall be permitted to defend itself against such
18 claims; provided, however, that Goldman Sachs shall not contest in these arbitrations liability
19 related to the sale of auction rate securities, or use as part of its defense any decision by an Eligible
20 Investor not to borrow money from Goldman Sachs.

21 37. Eligible Investors seeking consequential damages who elect to use the special
22 arbitration process provided for herein shall not be eligible for punitive or special damages.

23 38. Eligible Investors who elect to utilize the special arbitration process set forth above
24 are limited to the remedies available in that process and may not bring or pursue a claim against
25 Goldman Sachs or in any case where Goldman Sachs is an underwriter relating to Eligible Auction
26 Rate Securities in another forum.

1 **Institutional Investors**

2 39. Goldman Sachs shall endeavor to work with issuers and other interested parties,
3 including regulatory and governmental entities, to expeditiously provide liquidity solutions for
4 institutional investors not covered by paragraph 23 above that purchased auction rate securities
5 from Goldman Sachs prior to February 11, 2008 ("Institutional Investors").

6 40. Beginning November 12, 2008, and within 45 days of the end of each Goldman
7 Sachs fiscal quarter thereafter, Goldman Sachs shall have submitted a written report to the Illinois
8 Securities Department or other representative specified by the North American Securities
9 Administrators Association ("NASAA") outlining Goldman Sachs' progress with respect to its
10 obligations pursuant to this Order. Goldman Sachs shall have, at the option of the Illinois
11 Securities Department or other representative specified by NASAA, conferred with such
12 representative on a quarterly basis to discuss Goldman Sachs' progress to date. Such quarterly
13 reports and conferences shall have continued until December 31, 2009. Following every quarterly
14 report, the representative shall have advised Goldman Sachs of any concerns regarding Goldman
15 Sachs' progress, and, in response, Goldman Sachs shall have discussed how Goldman Sachs plans
16 to address such concerns. The reporting or meeting deadlines may be amended with written
17 permission from the Illinois Securities Department or other representative specified by NASAA.

18 **Relief for Municipal Issuers**

19 41. Goldman Sachs shall promptly refund to municipal issuers refinancing fees paid to
20 Goldman Sachs for the refinancing or conversion of their auction rate securities that occurred
21 between February 11, 2008, and the date of this Order, where Goldman Sachs acted as underwriter
22 for the initial primary offering of the auction rate securities between August 1, 2007, and February
23 11, 2008. Nothing in this Order precludes the Securities Commissioner from pursuing any other
24 civil action that may arise with regard to auction rate securities other than the marketing and sale of
25 auction rate securities to retail investors.

1 person or entity not a party to this Order, this Order does not limit or create any private right
2 against Goldman Sachs including, without limitation with respect to the use of any e-mails or other
3 documents of Goldman Sachs or of others concerning the marketing and/or sales of auction rate
4 securities, limit or create liability of Goldman Sachs, or limit or create defenses of Goldman Sachs
5 to any claims.

6 47. This Order and any dispute related thereto shall be construed and enforced in
7 accordance with, and governed by, the laws of the State of South Carolina without regard to any
8 choice of law principles.

9 48. Evidence of a violation of this Order proven in a court of competent jurisdiction
10 shall constitute prima facie proof of a violation of the Act in any civil action or proceeding
11 hereafter commenced by the Securities Commissioner against Goldman Sachs.

12 49. Should the Securities Commissioner prove in a court of competent jurisdiction that a
13 material breach of this Order by Goldman Sachs has occurred, Goldman Sachs shall pay to the
14 Securities Commissioner the cost, if any, of such determination and of enforcing this Order
15 including without limitation legal fees, expenses, and court costs.

16 50. If Goldman Sachs fails to make the payment specified in paragraph 21, the
17 Securities Commissioner may, at his sole discretion, pursue any legal remedies, including but not
18 limited to initiating an action to enforce the Order, revoking Goldman Sachs' registration within
19 the state, or terminating this Order.

20 51. If in any proceeding, after notice and opportunity for a hearing, a court of competent
21 jurisdiction, including an administrative proceeding by a state securities administrator, finds that
22 there was a material breach of this Order, the Securities Commissioner, at his sole discretion, may
23 terminate the Order. If Goldman Sachs defaults on any other obligation under this Order, the
24 Securities Commissioner may, at his sole discretion, pursue legal remedies to enforce the Order or
25 pursue an administrative action, including but not limited to an action to revoke Goldman Sachs'
26 registration within the state. Goldman Sachs agrees that any statute of limitations or other time

1 related defenses applicable to the subject of the Order, and any claims arising from or relating
2 thereto, are tolled from and after the date of this Order. In the event of such termination, Goldman
3 Sachs expressly agrees and acknowledges that this Order shall in no way bar or otherwise preclude
4 the Securities Commissioner from commencing, conducting, or prosecuting any investigation,
5 action, or proceeding, however denominated, related to the Order, against Goldman Sachs, or from
6 using in any way any statements, documents, or other materials produced or provided by Goldman
7 Sachs prior to or after the date of this Order, including, without limitation, such statements,
8 documents, or other materials, if any, provided for purposes of settlement negotiations, except as
9 may otherwise be provided in a written agreement with the Securities Commissioner.

10 52. Goldman Sachs shall cooperate fully and promptly with the Securities
11 Commissioner and shall use its best efforts to ensure that all the current and former officers,
12 directors, trustees, agents, members, partners, and employees of Goldman Sachs (and of any of
13 Goldman Sachs' parent companies, subsidiaries, or affiliates) cooperate fully and promptly with
14 the Securities Commissioner in any pending or subsequently initiated investigation, litigation, or
15 other proceeding relating to auction rate securities and/or the subject matter of the Order. Such
16 cooperation shall include, without limitation, and on a best efforts basis:

17 (a) production, voluntarily and without service of subpoena, upon the request of
18 the Securities Commissioner, of all documents or other tangible evidence requested by the
19 Securities Commissioner and any compilations or summaries of information or data that the
20 Securities Commissioner requests that Goldman Sachs (or the Goldman Sachs' parent
21 companies, subsidiaries, or affiliates) prepare, except to the extent such production would
22 require the disclosure of information protected by the attorney-client and/or work product
23 privileges;

24 (b) without the necessity of a subpoena, having the current (and making all
25 reasonable efforts to cause the former) officers, directors, trustees, agents, members,
26 partners, and employees of Goldman Sachs (and of any of the Goldman Sachs' parent

1 companies, subsidiaries, or affiliates) attend any Proceedings (as hereinafter defined) in the
2 State of South Carolina or elsewhere at which the presence of any such persons is requested
3 by the Securities Commissioner and having such current (and making all reasonable efforts
4 to cause the former) officers, directors, trustees, agents, members, partners, and employees
5 answer any and all inquiries that may be put by the Securities Commissioner to any of them
6 at any proceedings or otherwise, except to the extent such production would require the
7 disclosure of information protected by the attorney-client and/or work product privileges;
8 "Proceedings" include, but are not limited to, any meetings, interviews, depositions,
9 hearings, trials, grand jury proceedings, or other proceedings;

10 (c) fully, fairly, and truthfully disclosing all information and producing all
11 records and other evidence in its possession, custody, or control (or the possession, custody,
12 or control of the Goldman Sachs parent companies, subsidiaries, or affiliates) relevant to all
13 inquiries made by the Securities Commissioner concerning the subject matter of the Order,
14 except to the extent such inquiries call for the disclosure of information protected by the
15 attorney-client and/or work product privileges; and

16 (d) making outside counsel reasonably available to provide comprehensive
17 presentations concerning any internal investigation relating to all matters in the Order and
18 to answer questions, except to the extent such presentations or questions call for the
19 disclosure of information protected by the attorney-client and/or work product privileges.

20 53. In the event Goldman Sachs fails to comply with paragraph 23 of the Order, the
21 Securities Commissioner shall be entitled to specific performance, in addition to any other
22 available remedies.

23 54. The Securities Commissioner has agreed to the terms of this Order based on, among
24 other things, the representations made to the Securities Commissioner by Goldman Sachs, its
25 counsel, and the Securities Commissioner's own factual investigation. To the extent that any
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1 material representations are later found to be materially inaccurate or misleading, this Order is
2 voidable by the Securities Commissioner in his sole discretion.

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5 Dated this 9th day of August, 2010.

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7 BY ORDER OF THE SECURITIES COMMISSIONER

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9 
10 HENRY D. McMASTER
11 SECURITIES COMMISSIONER
12 STATE OF SOUTH CAROLINA
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1 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY**
2 **GOLDMAN, SACHS & CO.**

3 Goldman, Sachs & Co. ("Goldman Sachs") hereby acknowledges that it has been served with
4 a copy of this Consent Order, has read the foregoing Order, is aware of its right to a hearing and
5 appeal in this matter, and has waived the same.

6 Goldman Sachs admits the jurisdiction of the Securities Commissioner, neither admits nor
7 denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to entry of
8 this Order by the Securities Commissioner as settlement of the issues contained in this Order.

9 Goldman Sachs states that no promise of any kind or nature whatsoever was made to it to
10 induce it to enter into this Order and that it has entered into this Order voluntarily.

11 Norman Feit represents that he/she is a Managing Director of Goldman
12 Sachs and that, as such, has been authorized by Goldman Sachs to enter into this Order for and on
13 behalf of Goldman Sachs.

14 DATED this 5th day of August, 2010.

15 GOLDMAN, SACHS & CO.

16
17 By: 

18 Title: Managing Director, Legal

19 STATE OF New York)

20 County of New York)

21
22 SUBSCRIBED AND SWORN TO before me this 5th day of August, 2010.

23 Norman A. Gerald
24 Notary Public

25 **NORMA A. GERALD**
26 **NOTARY PUBLIC STATE OF NEW YORK**
No. 01GE6192086
Qualified in Kings County
My Commission Expires August 15, 2012