

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

BEFORE THE COMMISSIONER OF THE OFFICE OF FINANCIAL AND INSURANCE REGULATION

In the matter of)
GOLDMAN, SACHS & CO.,)
Respondent.) **ADMINISTRATIVE CONSENT ORDER**

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

WHEREAS, the Michigan Office of Financial and Insurance Regulation ("OFIR") 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 OFIR and consents to the entry of this Administrative Consent Order (the "Order" or "Consent Order"); and

WHEREAS, Goldman Sachs waives compliance with the provisions of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.*; and

WHEREAS, Goldman Sachs elects to permanently waive any right to a hearing and appeal under the provisions of the Administrative Procedures Act of 1969, 1969 PA 306, as amended,

1 MCL 24.201 *et seq.*, and the Michigan Uniform Securities Act of 1964, 1964 PA 265, as amended,
2 MCL 451.501 *et seq.* (the "Act") and to judicial review of this Consent Order; and

3 WHEREAS, Goldman Sachs acknowledges, without admitting or denying the Findings of
4 Fact and Conclusions of Law contained in this Order, and consents to the entry of this Order by
5 OFIR.

6 NOW, THEREFORE, OFIR as administrator of the Act, hereby enters this Order.

7 **FINDINGS OF FACT**

8 1. Auction rate securities are long-term bonds issued by municipalities, corporations,
9 and student loan companies, or perpetual equity instruments issued by closed-end mutual funds that
10 pay an interest rate that resets periodically through a bidding process known as a Dutch auction.

11 2. Goldman Sachs participated in the marketing and sale of ARS.

12 3. Goldman Sachs acted as an underwriter and as the auction broker-dealer for certain
13 issues of auction rate securities. When acting as sole manager, Goldman Sachs was the only firm
14 that could submit bids into the auction on behalf of its clients and/or other broker-dealers who
15 wanted to buy and/or sell any auction rate securities in such auctions. When acting as lead
16 manager, Goldman Sachs was the primary firm that could submit bids into the auction, but other
17 auction broker-dealers were able to submit orders on behalf of their clients as well. Goldman
18 Sachs received revenue in connection with auction rate securities, including an underwriting fee
19 representing a percentage of total issuance and a fee for managing the auctions.

20 4. Goldman Sachs conveyed to certain clients that ARS were secure, liquid securities
21 that were a suitable alternative for cash management purposes. It did so through its sales force,
22 some of whom represented to certain investors that auction rate securities were highly liquid, safe
23 investments for cash management purposes.

24 5. These representations were misleading as to certain investors. Auction rate
25 securities were in fact different from cash and money market funds. As discussed above, the
26 liquidity of an auction rate security relied on the successful operation of the Dutch auction process.

1 In the event of a failed auction, investors cannot sell their auction rate securities in that auction and
2 are potentially stuck holding long-term investments, not money market instruments. As discussed
3 below, starting in the Fall of 2007, the auction rate securities market faced dislocation and an
4 increased risk of auction failure.

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

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

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

1 iv. Small Businesses that purchased Eligible ARS from Goldman Sachs. For
2 purposes of this provision, "Small Businesses" shall mean Goldman Sachs clients not
3 otherwise covered in paragraphs 25(i) and (ii) above that had \$10 million or less in assets in
4 their accounts with Goldman Sachs, net of margin loans, as determined by the client's
5 aggregate household position(s) at Goldman Sachs as of August 31, 2008, or, if the client
6 was not a client of Goldman Sachs as of August 31, 2008, as of the date that the client
7 terminated its client relationship with Goldman Sachs. Notwithstanding any other
8 provision, "Small Businesses" does not include broker-dealers or banks acting as conduits
9 for their customers.

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

16 27. Goldman Sachs shall have undertaken its best efforts to identify and provide notice
17 to Eligible Investors who invested in Eligible ARS that since February 11, 2008, have not been
18 auctioning, of the relevant terms between Goldman Sachs and OFIR.

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

1 that the bidding rights associated with the Eligible Auction Rate Securities will be transferred to
2 Goldman Sachs and transfer of the Eligible ARS.

3 29. No later than December 31, 2009, any Eligible Investor who for good cause
4 (including but not limited to incapacity or failure to receive the notice provided for in paragraph
5 27) did not accept the Buyback Offer pursuant to paragraph 28 above, shall be entitled to sell their
6 Eligible ARS, at par, to Goldman Sachs for (30) days after establishing such good cause, and
7 Goldman Sachs shall purchase such Eligible Investor's Eligible ARS promptly.

8 30. No later than October 20, 2008, Goldman Sachs shall have established a dedicated
9 toll-free telephone assistance line, with appropriate staffing, to provide information and to respond
10 to questions from clients concerning the terms of the settlement between Goldman Sachs and
11 OFIR.

12 **Review of Client Accounts**

13 31. For a period of two years from the date of this Order, upon request from any firm
14 that is repurchasing auction rate securities, upon receipt from the repurchasing firm of (i) the names
15 of any Goldman Sachs clients that may hold ARS subject to the repurchasing firm's repurchase
16 offer, (ii) the CUSIPs of the Eligible ARS, (iii) the clients' Goldman Sachs' account number(s) (if
17 known to the repurchasing firm), and (iv) the date those ARS were transferred to Goldman Sachs
18 (if known to the repurchasing firm), Goldman Sachs shall take reasonable steps to provide notice to
19 those clients of the repurchasing firm's repurchase offer.

20 **Relief for Investors Who Sold Below Par**

21 32. By November 12, 2008, Goldman Sachs shall have undertaken its best efforts to
22 identify any Eligible Investor who sold Eligible ARS below par between February 11, 2008, and
23 August 21, 2008, and shall have paid any such Eligible Investor the difference between par and the
24 price at which the Eligible Investor sold the Eligible ARS.

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Reimbursement for Related Loan Expenses

33. Goldman Sachs shall have made best efforts to identify Eligible Investors who took out loans from Goldman Sachs, between February 11, 2008, and March 19, 2010, that were secured by Eligible ARS that were not successfully auctioning at the time the loan was taken out from Goldman Sachs, and paid interest associated with the auction rate securities based portion of those loans in excess of the total interest and dividends received on the auction rate securities during the duration of the loan. Goldman Sachs shall have reimbursed such clients for the excess expense, plus reasonable interest thereon. Such reimbursement shall have occurred no later than March 31, 2010.

Claims for Consequential Damages

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

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

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

1 between February 11, 2008, and the date of this Order, where Goldman Sachs acted as underwriter
2 for the initial primary offering of the auction rate securities between August 1, 2007, and February
3 11, 2008. Nothing in this Order precludes OFIR from pursuing any other civil action that may
4 arise with regard to auction rate securities other than the marketing and sale of auction rate
5 securities to retail investors.

6 42. Goldman Sachs agrees to waive any right to indemnification and/or claims of
7 contribution, and/or other similar remedies with respect to any costs, expenses, or losses in
8 connection with this Order that Goldman Sachs may have against any municipal issuers that issued
9 securities through Goldman Sachs in the primary market, including any student loan authority.

10 Additional Considerations

11 43. Nothing herein shall preclude the state of Michigan, its departments, agencies,
12 boards, commissions, authorities, political subdivisions and corporations, other than OFIR and only
13 to the extent set forth in paragraph 17 above (collectively, "State Entities"), and the officers, agents
14 or employees of State Entities from asserting any claims, causes of action, or applications for
15 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief
16 against Goldman Sachs in connection with certain auction rate securities practices at Goldman
17 Sachs.

18 44. This Order shall not disqualify Goldman Sachs or any of its affiliates or current or
19 former employees from any business that they otherwise are qualified or licensed to perform under
20 applicable state law and this Order is not intended to form the basis for any disqualification.

21 45. To the extent applicable, this Order hereby waives any disqualification from relying
22 upon the registration exemptions or registration safe harbor provisions that may be contained in the
23 federal securities laws, the rules and regulations thereunder, the rules and regulations of self
24 regulatory organizations or any states' or U.S. Territories' securities laws. In addition, this Order
25 is not intended to form the basis for any such disqualifications. In addition, this Order is not
26

1 intended to form the basis of a statutory disqualification under Section 3(a)(39) of the Securities
2 Exchange Act of 1934.

3 46. Except in an action by OFIR to enforce the obligations of Goldman Sachs in this
4 Order, this Order may neither be deemed nor used as an admission of or evidence of any alleged
5 fault, omission, or liability of Goldman Sachs in any civil, criminal, arbitration, or administrative
6 proceeding in any court, administrative agency, or tribunal. For any person or entity not a party to
7 this Order, this Order does not limit or create any private right against Goldman Sachs including,
8 without limitation with respect to the use of any e-mails or other documents of Goldman Sachs or
9 of others concerning the marketing and/or sales of auction rate securities, limit or create liability of
10 Goldman Sachs, or limit or create defenses of Goldman Sachs to any claims.

11 47. This Order and any dispute related thereto shall be construed and enforced in
12 accordance with, and governed by, the laws of the state of Michigan without regard to any choice
13 of law principles.

14 48. Evidence of a violation of this Order proven in a court of competent jurisdiction
15 shall constitute prima facie proof of a violation of the Act in any civil action or proceeding
16 hereafter commenced by OFIR against Goldman Sachs.

17 49. Should OFIR prove in a court of competent jurisdiction that a material breach of this
18 Order by Goldman Sachs has occurred, Goldman Sachs shall pay to OFIR the cost, if any, of such
19 determination and of enforcing this Order including without limitation legal fees, expenses, and
20 court costs.

21 50. If Goldman Sachs fails to make the payment specified in paragraph 21, OFIR may,
22 at its sole discretion, pursue any legal remedies, including but not limited to initiating an action to
23 enforce the Order, revoking Goldman Sachs' registration within the state, or terminating this Order.

24 51. If in any proceeding, after notice and opportunity for a hearing, a court of competent
25 jurisdiction, including an administrative proceeding by a state securities administrator, finds that
26 there was a material breach of this Order, OFIR may, at its sole discretion, terminate the Order. If

1 Goldman Sachs defaults on any other obligation under this Order, OFIR may, at its sole discretion,
2 pursue legal remedies to enforce the Order or pursue an administrative action, including but not
3 limited to an action to revoke Goldman Sachs' registration within the state. Goldman Sachs agrees
4 that any statute of limitations or other time related defenses applicable to the subject of the Order
5 and any claims arising from or relating thereto are tolled from and after the date of this Order. In
6 the event of such termination, Goldman Sachs expressly agrees and acknowledges that this Order
7 shall in no way bar or otherwise preclude OFIR from commencing, conducting, or prosecuting any
8 investigation, action, or proceeding, however denominated, related to the Order, against Goldman
9 Sachs, or from using in any way any statements, documents, or other materials produced or
10 provided by Goldman Sachs prior to or after the date of this Order, including, without limitation,
11 such statements, documents, or other materials, if any, provided for purposes of settlement
12 negotiations, except as may otherwise be provided in a written agreement with OFIR.

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

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

1 (b) without the necessity of a subpoena, having the current (and making all
2 reasonable efforts to cause the former) officers, directors, trustees, agents, members,
3 partners, and employees of Goldman Sachs (and of any of the Goldman Sachs' parent
4 companies, subsidiaries, or affiliates) attend any Proceedings (as hereinafter defined) in the
5 state of Michigan or elsewhere at which the presence of any such persons is requested by
6 OFIR and having such current (and making all reasonable efforts to cause the former)
7 officers, directors, trustees, agents, members, partners, and employees answer any and all
8 inquiries that may be put by OFIR to any of them at any proceedings or otherwise, except to
9 the extent such production would require the disclosure of information protected by the
10 attorney-client and/or work product privileges; "Proceedings" include, but are not limited
11 to, any meetings, interviews, depositions, hearings, trials, grand jury proceedings, or other
12 proceedings;

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

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

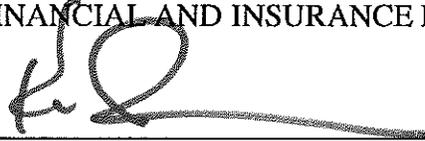
23 53. In the event Goldman Sachs fails to comply with paragraph 23 of the Order, OFIR
24 shall be entitled to specific performance, in addition to any other available remedies.

25 54. OFIR has agreed to the terms of this Order based on, among other things, the
26 representations made to OFIR by Goldman Sachs, its counsel, and OFIR's factual investigation. To

1 the extent that any material representations are later found to be materially inaccurate or
2 misleading, this Order is voidable by OFIR in its sole discretion.

3 Dated this 14th day of January, 2011.
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5 BY ORDER OF THE COMMISSIONER OF THE OFFICE
6 OF FINANCIAL AND INSURANCE REGULATION

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8 Ken Ross, Commissioner
9 Office of Financial and Insurance Regulation
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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 OFIR, neither admits nor denies the Findings of Fact
7 and Conclusions of Law contained in this Order, and consents to entry of this Order by OFIR as
8 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 Fert 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 7th day of January, 2011.

15 GOLDMAN, SACHS & CO.

16
17 By: [Signature]

18 Title: Managing Director, G&C

19 STATE OF New York)

20 County of New York)

21
22 SUBSCRIBED AND SWORN TO before me this 7th day of January, 2011.

23 Norma A. Gerald
24 Notary Public

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