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**OKLAHOMA DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102**

In the matter of)
) **ODS File No. 10-082**
GOLDMAN, SACHS & CO.,)
) **CONSENT ORDER**
)
Respondent.)
)

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

WHEREAS, the Oklahoma Department of Securities (“Department”) 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 Department and consents to the entry of this Consent Order (the “Order”); and

WHEREAS, Goldman Sachs waives compliance with the provisions of the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250-323 (Supp. 2010); and

WHEREAS, Goldman Sachs elects to permanently waive any right to a hearing and appeal under the Oklahoma Uniform Securities Act of 2004 (“Act”), 71 O.S. §§ 1-101 through 1-701 (Supp. 2010) and to judicial review of this Order; and

1 below, starting in the Fall of 2007, the auction rate securities market faced dislocation and an
2 increased risk of auction failure.

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

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

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

25 9. The resulting market dislocation should have been evident to Goldman Sachs.
26 When client demand for its auction rate securities declined, Goldman Sachs’ “cover” bids filled the

1 increasing shortfall, thereby sustaining the impression for certain investors that auctions managed
2 by Goldman Sachs were functioning. As a result, Goldman Sachs' auction rate securities inventory
3 grew significantly, requiring Goldman Sachs to raise its risk management limits for its Municipal
4 Money Markets business (which included auction rate securities) several times.

5 10. From the Fall of 2007 through early February of 2008, demand for auction rate
6 securities continued to erode and Goldman Sachs' auction rate securities inventory increased
7 significantly. Goldman Sachs was aware of the increasing strains in the auction rate securities
8 market, and increasingly questioned the viability of the auction rate securities market. Goldman
9 Sachs did not disclose these increasing risks of owning or purchasing auction rate securities to all
10 of its clients.

11 11. In February of 2008, Goldman Sachs and other firms stopped supporting auctions.
12 Without the benefit of "cover" bids, the auction rate securities market collapsed, leaving certain
13 investors who had been led to believe that these securities were liquid, safe investments appropriate
14 for managing short-term cash needs, holding long-term or perpetual securities that could not be
15 sold at par value until and if the auctions cleared again.

16 **Failure to Supervise**

17 12. Goldman Sachs did not adequately supervise certain of its salespeople to ensure that
18 all of the firm's clients would be sufficiently apprised of ARS, the mechanics of the auction
19 process, and the potential illiquidity of ARS, including the fact that Goldman Sachs may stop
20 submitting "cover" bids, as discussed above.

21 **II.**

22 **CONCLUSIONS OF LAW**

23 13. The Department has jurisdiction over this matter pursuant to the Act.

24 14. The Administrator finds that the above conduct subjects Goldman Sachs to
25 sanctions under Sections 1-411(D)(13) (unethical practice in the offer and sale of securities) and
26 (D)(9) (failure to supervise) of the Act.

1 amount of Twenty-Two Million, Five Hundred Thousand Dollars (\$22,500,000.00), which shall be
2 payable to the Department within ten (10) days of the date on which this Order is entered.

3 22. In the event another state securities regulator determines not to accept Goldman
4 Sachs' settlement offer, the total amount of the payment to the Department shall not be affected.

5 **Requirement to Repurchase ARS from Retail ARS Investors**

6 23. Goldman Sachs shall have provided liquidity to Eligible Investors by offering to buy
7 back Eligible ARS that since February 11, 2008, have not been auctioning, at par, in the manner
8 described below.

9 24. "Eligible ARS," for the purposes of this Order, shall mean auction rate securities
10 purchased from Goldman Sachs on or before February 11, 2008.

11 25. "Eligible Investors," for the purposes of this Order, shall mean:

12 i. Natural persons (including their IRA accounts, testamentary trust and estate
13 accounts, custodian UGMA and UTMA accounts, and guardianship accounts);

14 ii. Legal entities forming investment vehicles for closely related individuals
15 including, but not limited to, IRA accounts, Trusts, Family Limited Partnerships, and other
16 legal entities performing a similar function;

17 iii. Charities and non-profits with Internal Revenue Code Section 501(c) status
18 that purchased Eligible ARS from Goldman Sachs; and

19 iv. Small Businesses that purchased Eligible ARS from Goldman Sachs. For
20 purposes of this provision, "Small Businesses" shall mean Goldman Sachs clients not
21 otherwise covered in paragraphs 25(i) and (ii) above that had \$10 million or less in assets in
22 their accounts with Goldman Sachs, net of margin loans, as determined by the client's
23 aggregate household position(s) at Goldman Sachs as of August 31, 2008, or, if the client
24 was not a client of Goldman Sachs as of August 31, 2008, as of the date that the client
25 terminated its client relationship with Goldman Sachs. Notwithstanding any other
26

1 provision, "Small Businesses" does not include broker-dealers or banks acting as conduits
2 for their customers.

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

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

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

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

1 **Claims for Consequential Damages**

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

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

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

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

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

22 **Institutional Investors**

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

1 **Additional Considerations**

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

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

12 45. To the extent applicable, this Order hereby waives any disqualification from relying
13 upon the registration exemptions or registration safe harbor provisions that may be contained in the
14 federal securities laws, the rules and regulations thereunder, the rules and regulations of self
15 regulatory organizations or any states' or U.S. Territories' securities laws. In addition, this Order
16 is not intended to form the basis for any such disqualifications. In addition, this Order is not
17 intended to form the basis of a statutory disqualification under Section 3(a)(39) of the Securities
18 Exchange Act of 1934.

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

1 47. This Order and any dispute related thereto shall be construed and enforced in
2 accordance with, and governed by, the laws of the state of Oklahoma without regard to any choice
3 of law principles.

4 48. Evidence of a violation of this Order proven in a court of competent jurisdiction
5 shall constitute prima facie proof of a violation of the Act in any civil action or proceeding
6 hereafter commenced by the Administrator against Goldman Sachs.

7 49. Should the Administrator prove in a court of competent jurisdiction that a material
8 breach of this Order by Goldman Sachs has occurred, Goldman Sachs shall pay to the Department
9 the cost, if any, of such determination and of enforcing this Order including without limitation
10 legal fees, expenses, and court costs.

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

15 51. If in any proceeding, after notice and opportunity for a hearing, a court of competent
16 jurisdiction, including an administrative proceeding by a state securities administrator, finds that
17 there was a material breach of this Order, the Administrator, at his sole discretion, may terminate
18 the Order. If Goldman Sachs defaults on any other obligation under this Order, the Administrator
19 may, at his sole discretion, pursue legal remedies to enforce the Order or pursue an administrative
20 action including, but not limited, an action to revoke Goldman Sachs' registration within the state.
21 Goldman Sachs agrees that any statute of limitations or other time related defenses applicable to
22 the subject of the Order and any claims arising from or relating thereto are tolled from and after the
23 date of this Order. In the event of such termination, Goldman Sachs expressly agrees and
24 acknowledges that this Order shall in no way bar or otherwise preclude the Administrator from
25 commencing, conducting, or prosecuting any investigation, action, or proceeding, however
26 denominated, related to the Order, against Goldman Sachs, or from using in any way any

1 statements, documents, or other materials produced or provided by Goldman Sachs prior to or after
2 the date of this Order, including, without limitation, such statements, documents, or other
3 materials, if any, provided for purposes of settlement negotiations, except as may otherwise be
4 provided in a written agreement with the Administrator.

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

12 (a) production, voluntarily and without service of subpoena, upon the request of
13 the Administrator, of all documents or other tangible evidence requested by the
14 Administrator and any compilations or summaries of information or data that the
15 Administrator requests that Goldman Sachs (or the Goldman Sachs' parent companies,
16 subsidiaries, or affiliates) prepare, except to the extent such production would require the
17 disclosure of information protected by the attorney-client and/or work product privileges;

18 (b) without the necessity of a subpoena, having the current (and making all
19 reasonable efforts to cause the former) officers, directors, trustees, agents, members,
20 partners, and employees of Goldman Sachs (and of any of the Goldman Sachs' parent
21 companies, subsidiaries, or affiliates) attend any Proceedings (as hereinafter defined) in
22 Oklahoma or elsewhere at which the presence of any such persons is requested by the
23 Administrator and having such current (and making all reasonable efforts to cause the
24 former) officers, directors, trustees, agents, members, partners, and employees answer any
25 and all inquiries that may be put by the Department to any of them at any proceedings or
26 otherwise, except to the extent such production would require the disclosure of information

1 protected by the attorney-client and/or work product privileges; "Proceedings" include, but
2 are not limited to, any meetings, interviews, depositions, hearings, trials, grand jury
3 proceedings, or other proceedings;

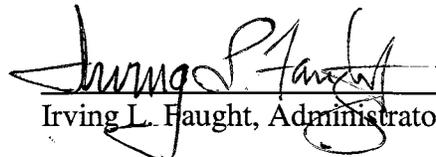
4 (c) fully, fairly, and truthfully disclosing all information and producing all
5 records and other evidence in its possession, custody, or control (or the possession, custody,
6 or control of the Goldman Sachs parent companies, subsidiaries, or affiliates) relevant to all
7 inquiries made by the Department concerning the subject matter of the Order, except to the
8 extent such inquiries call for the disclosure of information protected by the attorney-client
9 and/or work product privileges; and

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

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

16 54. The Administrator has agreed to the terms of this Order based on, among other
17 things, the representations made to the Administrator by Goldman Sachs, its counsel, and the
18 Department's own factual Investigation. To the extent that any material representations are later
19 found to be materially inaccurate or misleading, this Order is voidable by the Administrator in his
20 sole discretion.

21 Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 20th
22 day of MARCH, 2012.

23
24
25 
26 Irving L. Faught, Administrator

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
4 with a copy of the foregoing Order, has read the foregoing Order, is aware of its right to a hearing
5 and appeal in this matter, and has waived the same.

6 Goldman Sachs admits the jurisdiction of the Department, neither admits nor denies the
7 Findings of Fact and Conclusions of Law contained in the Order, and consents to entry of the Order
8 by the Administrator as settlement of the issues contained in the 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 the Order and that it has entered into the Order voluntarily.

11 Michael C. Keats 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 the Order for and on
13 behalf of Goldman Sachs.

14 DATED this 24th day of February, 2012.

15
16 GOLDMAN, SACHS & CO.

17 

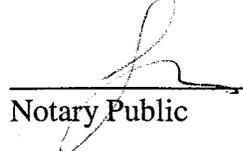
18 By: _____

19 Title: MANAGING DIRECTOR

20 STATE OF New York)

21 County of New York)

22 SUBSCRIBED AND SWORN TO before me this 24 day of February, 2012.

23
24 
Notary Public

25 My commission expires:

26 July 27, 2015

JOANNA M. LANE
NOTARY PUBLIC-STATE OF NEW YORK
No. 02LA6244131
Qualified in New York County
My Commission Expires July 27, 2015