

SECURITIES COMMISSIONER FOR THE  
STATE OF DELAWARE  
OCT 26 2010

**BEFORE THE SECURITIES COMMISSIONER  
OF THE STATE OF DELAWARE**

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

Case No. 10-6-6  
**ADMINISTRATIVE CONSENT ORDER**

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

WHEREAS, the Securities Division of the State of Delaware (the "Division") 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 Division and consents to the entry of this Administrative Consent Order (the "Order" or "Consent Order") by the Securities Commissioner of the State of Delaware (the "Commissioner"); and

WHEREAS, Goldman Sachs waives compliance with the procedural provisions of the Delaware Securities Act (the "Act"), 6 Del.C. §§ 7301 et. seq.; and

WHEREAS, Goldman Sachs elects to permanently waive any right to a hearing and appeal under the Act and to judicial review of this Consent Order; and



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

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

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

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



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.  
13 April 16, 2007), under the auspices of FINRA. Goldman Sachs will pay all applicable forum and  
14 filing fees. Any Eligible Investors who choose to pursue such claims in the Arbitration shall bear  
15 the burden of proving that they suffered consequential damages and that such damages were caused  
16 by 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  
23 February 11, 2008. Nothing in this Order precludes the Division from pursuing any other civil  
24 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 not a party to this Order, this Order does not limit or create any private right against Goldman  
2 Sachs including, without limitation with respect to the use of any e-mails or other documents of  
3 Goldman Sachs or of others concerning the marketing and/or sales of auction rate securities, limit  
4 or create liability of Goldman Sachs, or limit or create defenses of Goldman Sachs to any claims.

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

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

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

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

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

25 Goldman Sachs agrees that any statute of limitations or other time related defenses applicable to  
26 the subject of the Order and any claims arising from or relating thereto are tolled from and after the

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

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

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

22             (b) without the necessity of a subpoena, having the current (and making all  
23 reasonable efforts to cause the former) officers, directors, trustees, agents, members,  
24 partners, and employees of Goldman Sachs (and of any of the Goldman Sachs' parent  
25 companies, subsidiaries, or affiliates) attend any Proceedings (as hereinafter defined) in  
26 Delaware or elsewhere at which the presence of any such persons is requested by the

1 Division and having such current (and making all reasonable efforts to cause the former)  
2 officers, directors, trustees, agents, members, partners, and employees answer any and all  
3 inquiries that may be put by the Division to any of them at any proceedings or otherwise,  
4 except to the extent such production would require the disclosure of information protected  
5 by the attorney-client and/or work product privileges; "Proceedings" include, but are not  
6 limited to, any meetings, interviews, depositions, hearings, trials, grand jury proceedings, or  
7 other proceedings;

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

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

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

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

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Dated this 25<sup>th</sup> day of October, 2010.

BY ORDER OF THE COMMISSIONER

  
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PETER O. JAMISON, III  
SECURITIES COMMISSIONER  
STATE OF DELAWARE

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**CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY  
GOLDMAN, SACHS & CO.**

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

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

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

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

DATED this 21st day of October, 2010.

GOLDMAN, SACHS & CO.

By: [Signature]

Title: Managing Director, legal

STATE OF New York

County of New York

SUBSCRIBED AND SWORN TO before me this 21st day of October, 2010.

Norman A. Gerald  
Notary Public

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