No. 20-222

In the Supreme Court of the United States

GOLDMAN SACHS GROUP, INC., ET AL., PETITIONERS

v.

ARKANSAS TEACHER RETIREMENT SYSTEM, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT APPENDIX
(VOLUME 2; PAGES 401-804)

KANNON K. SHANMUGAM
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

Counsel of Record for Petitioners

THOMAS C. GOLDSTEIN
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Avenue Suite 850
Bethesda, MD 20814
(202) 362-0636
tg@goldsteinrussell.com

Counsel of Record for Respondents

PETITION FOR A WRIT OF CERTIORARI FILED: AUGUST 21, 2020
CERTIORARI GRANTED: DECEMBER 11, 2020

TABLE OF CONTENTS

Page

VOLUME 1

Court of appeals docket entries (No. 18-3667) 1

Court of appeals docket entries (No. 16-250) 5

District court docket entries (No. 10-3461) 8

Goldman Sachs 2007 Form 10-K: Conflicts Warning (D. Ct. Dkt. No. 78-6) 23

Goldman Sachs 2007 Annual Report: Business Principles (D. Ct. Dkt. No. 143-16) 30

Financial Times, Markets & Investing, "Goldman's risk control offers right example of governance," Dec. 5, 2007 (D. Ct. Dkt. No. 193-20) 34

Dow Jones Business News, "13 Reasons Bush's Bailout Won't Stop Recession," Dec. 11, 2007 (D. Ct. Dkt. No. 170-24) 37

The Wall Street Journal, "How Goldman Won Big on Mortgage Meltdown," Dec. 14, 2007 (front page) (D. Ct. Hearing Ex. T) 42

The New York Times, Off the Shelf, "Economy's Loss Was One Man's Gain," Dec. 6, 2009 (D. Ct. Hearing Ex. II) 54

Goldman Sachs Press Release, "Goldman Sachs Responds to The New York Times on Synthetic Collateralized Debt Obligations," Dec. 24, 2009 (D. Ct. Dkt. No. 143-28) 58

The New York Times, "Banks Bundled Debt, Bet Against It and Won," Dec. 24, 2009 (front page) (D. Ct. Hearing Ex. JJ).. 61

Complaint, *SEC* v. *Goldman, Sachs & Co.*, Civ. No. 10-3229 (S.D.N.Y. Apr. 16, 2010) (D. Ct. Dkt. No. 155-3) 74

Goldman Sachs E-mail Re: GS and Peers (After the Bell), Apr. 16, 2010 (D. Ct. Dkt. No. 197-8)................ 99

Page

SEC Litigation Release No. 21489, "Goldman, Sachs & Co. and Fabrice Tourre," Apr. 16, 2010 (D. Ct. Dkt. No. 155-4) 101

Reuters, Business News, "Goldman Sachs charged with fraud by SEC," Apr. 16, 2010 (D. Ct. Hearing Ex. FFF) 104

Chicago Tribune, "SEC lawsuit alleges Goldman Sachs fraud," Apr. 17, 2010 (D. Ct. Dkt. No. 155-6) 113

The Associated Press, Business News, "Fraud charge deals big blow to Goldman's image," Apr. 18, 2010 (D. Ct. Dkt. No. 155-5) 116

The Wall Street Journal, "Where's the Goldman Sachs That I Used to Know," Apr. 21, 2010 (D. Ct. Dkt. No. 155-7) 122

The Wall Street Journal, "Criminal Probe Looks Into Goldman Trading," Apr. 30, 2010 (D. Ct. Dkt. No. 170-63) 127

The Wall Street Journal, "How Goldman Gets Its Premium Back," May 21, 2010 (D. Ct. Dkt. No. 201-11) 131

Financial Times, "US Regulators step up probe of second Goldman mortgage deal," June 10, 2010 (D. Ct. Hearing Ex. PPPP) 136

Consent of Defendant Goldman, Sachs & Co., *SEC* v. *Goldman, Sachs & Co.,* Civ. No. 10-3229 (S.D.N.Y. July 14, 2010) (D. Ct. Dkt. No. 197-4) 138

Consolidated class action amended complaint, *Arkansas Teacher Retirement System, et al.* v. *Goldman Sachs Group, Inc., et al.*, Civ. No. 10-3461 (S.D.N.Y. July 25, 2011) (D. Ct. Dkt. No. 68) 150

Page

Opinion and order granting in part and denying in part defendants' motion to dismiss, June 21, 2012 (D. Ct. Dkt. No. 85)..306

Memorandum and order denying defendants' motion for reconsideration, June 23, 2014 (D. Ct. Dkt. No. 122)..339

Viniar testimony, Oct. 28, 2014 (D. Ct. Dkt. No. 197-9) 350

Finnerty deposition testimony (excerpts), Mar. 19, 2015 (D. Ct. Dkt. No. 193-68) 352

Porten deposition testimony (excerpts), May 1, 2015 (D. Ct. Dkt. No. 155-8) 355

Finnerty expert report (excerpts), May 22, 2015 (D. Ct. Dkt. No. 170-10) 366

VOLUME 2

Gompers expert report, July 2, 2015 (D. Ct. Dkt. No. 170-1) 401

Choi expert report (excerpts), July 2, 2015 (D. Ct. Dkt. No. 170-2) 517

Starks expert report (excerpts), July 2, 2015 (D. Ct. Dkt. No. 170-3) 584

Finnerty rebuttal report (excerpts), Aug. 7, 2015 (D. Ct. Dkt. No. 170-11) 637

Gompers deposition testimony (excerpts), Sept. 9, 2015 (D. Ct. Dkt. No. 155-1) 660

Starks deposition testimony (excerpts), Sept. 22, 2015 (D. Ct. Dkt. No. 201-16) 666

Finnerty deposition testimony (excerpts), Oct. 1, 2015 (D. Ct. Dkt. No. 193-69) 670

Chart: Public Allegations of Goldman Sachs Client Conflicts on 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates, Apr. 13, 2018 (D. Ct. Dkt. No. 193-2) 689

Page

Plaintiffs' Analysis of Defendants' News Articles on the 36 Dates Purportedly Reporting on Goldman's Conflicts of Interest, Apr. 27, 2018 (D. Ct. Dkt. No. 201-1) 695

Evidentiary Hearing: Finnerty direct examination and cross examination (excerpts), July 25, 2018 (D. Ct. Dkt. No. 233) 746

Evidentiary Hearing: Gompers cross examination (excerpts), July 25, 2018 (D. Ct. Dkt. No. 233) 791

<u>VOLUME 3</u> (Supplemental Joint Appendix)

CIBC World Markets, Equity Research Earnings Update, Goldman Sachs Group, Jan. 29, 2007 (D. Ct. Dkt. No. 201-5) 805

Merrill Lynch Company Update, Goldman Sachs Group, Mar. 13, 2007 (D. Ct. Dkt. No. 201-6) 819

The Buckingham Research Group, Goldman Sachs Rating, June 17, 2008 835

Merrill Lynch Company Update, Goldman Sachs Group, July 28, 2008 (D. Ct. Dkt. No. 201-7) 840

Macquarie (USA) Equities Research, Goldman Sachs Group, Apr. 19, 2010 (D. Ct. Dkt. No. 201-12) 852

Wells Fargo, Equity Research, The Goldman Sachs Group, Inc., Apr. 19, 2010 (D. Ct. Dkt. No. 201-14) 858

Citi Report, Goldman Sachs Group, Inc. (GS), May 2, 2010 (D. Ct. Dkt. No. 201-13) 865

Bernstein Research, Goldman Sachs: Management Speaks Frankly About the Future of the Firm, May 4, 2010 (D. Ct. Dkt. No. 201-15) 881

Plaintiffs' class certification hearing opening argument demonstratives, July 25, 2018 (D. Ct. Dkt. No. 215) 891

Page

Finnerty direct examination demonstratives, July 25, 2018 (D. Ct. Dkt. No. 215-1) 924

Lead plaintiffs' summary of argument in further support of class certification, July 26, 2018 (D. Ct. Dkt. No. 215-2) 952

The following opinions and orders have been omitted in printing the joint appendix because they appear as appendices to the petition for certiorari as follows:

Appendix A:	Court of appeals opinion, April 7, 2020
Appendix B:	District court opinion, August 14, 2018
Appendix C:	Court of appeals opinion, January 12, 2018
Appendix D:	District court opinion, September 24, 2015
Appendix E:	Court of appeals order denying rehearing, June 15, 2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 1:10-cv-03461-PAC

ECF Case

In re GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

This Document Relates To: ALL ACTIONS

REPORT OF PAUL GOMPERS, Ph.D.

July 2, 2015

Table of Contents

I. Qualifications 1

II. Assignment and Compensation 2

III. Summary of Opinions................................. 3

IV. Background... 8

A. Allegations... 8

B. Event Study Analysis 11

1. Summary of My Regression Model ... 13

2. Summary of Dr. Finnerty's Regression Models 14

V. Dr. Finnerty Fails to Establish Loss Causation.. 16

A. Goldman's Stock Price Movements on the 18 Alleged Misstatement Dates Do

Not Establish that the Alleged Misstatements Introduced Inflation into Goldman's Stock Price 20

B. Goldman's Stock Price Movements on the Alleged Corrective Disclosure Dates Do Not Establish that the Alleged Misstatements Introduced Inflation into Goldman's Stock Price 23

1. An Event Study Demonstrates that Information About Goldman's Business Conflicts and Conflicts of Interest Related to Goldman's CDO and Mortgage Businesses Was Known Well Before the First Alleged Corrective Disclosure Date and Did Not Affect Goldman's Stock Price. 24

2. On Other Days, Prior to the Alleged Corrective Disclosures, Allegations of Conflicts of Interest at Goldman Were Publicly Discussed Without a Statistically Significant Residual Stock Price Movement 42

3. Dr. Finnerty Fails to Link the Information Released on the Alleged Corrective Dates to the Alleged Misstatements 44

4. Dr. Finnerty's Analysis of the Alleged Corrective Disclosure Days Does Not Establish Loss Causation .. 46

VI. Dr. Finnerty's Damages Methodology Is Flawed, Unreliable, and It Overstates Damages 66

A. Calculating Damages in a Securities Class Action and Dr. Finnerty's Approach 67

B. Dr. Finnerty's Damages Methodology Is Flawed and Unreliable 68

1. Goldman's Residual Stock Price Movement on April 16, 2010, April 30, 2010, and June 10, 2010 Cannot Be Used to Measure Damages Because Dr. Finnerty Fails to Remove the Impact of Non-Allegation-Related Confounding Information 68

2. Dr. Finnerty's Allocation of Damages Across the Four CDOs Is Arbitrary, Unscientific, and Without Basis 72

3. Dr. Finnerty's Damages Model Is Also Unreliable Because It Incorrectly Assumes Constant Inflation Throughout the Class Period 74

I. Qualifications

1. I am the Eugene Holman Professor of Business Administration and Faculty Chair of the M.B.A. Elective Curriculum at the Harvard Business School. I teach courses and conduct research in corporate finance, the structure and governance of public and private companies, valuation of companies, the behavior of institutional investors, and entrepreneurial finance and management. I teach these courses to Ph.D., M.B.A., and Executive Education students. In addition to my teaching responsibilities, I am a Research Associate at the National Bureau of Economic Research. Before joining the Harvard faculty in 1995, I was a member of the faculty at the University of Chicago Graduate School of Business, where I taught entrepreneurial finance from 1993 to 1995. I received an A.B. in Biology from Harvard College in 1987, an M.Sc. in Economics from Oxford University in 1989, and a Ph.D. in Business Economics from Harvard University in 1993.

2. In my career, I have written numerous case studies and technical notes, and published articles in peer-reviewed finance and economics journals on valuation, venture capital and private equity industries, and entrepreneurial finance. Many of these case studies, notes, and research articles have directly examined financial and valuation issues relating to business entities. I am the coauthor of three books: *The Venture Capital Cycle* (Editions 1 and 2) published by MIT Press, *The Money of Invention* published by Harvard Business School Press, and *Entrepreneurial Finance: A Casebook* published by John Wiley & Sons, Inc. I am an Associate Editor of the *Journal of Finance*, *Small Business Economics*, and the *Journal of Private Equity*, and a referee for a number of

academic journals, including the *Journal of Financial Economics*, the *Journal of Political Economy*, the *Quarterly Journal of Economics*, the *Review of Financial Studies*, and the *Journal of Law and Economics*. I have also served on the boards of directors of several companies, including ZEFER, Mercanteo, and OnTheFrontier.com. In addition, I have advised firms on fundraising, future projections, and valuation. I have also been a member of the advisory boards of a number of venture capital funds where my duties included valuation of companies. My curriculum vitae, which contains a list of my publications from the last 10 years, is included as Appendix A.

3. I have served as an expert in numerous cases concerning the following topics: factors affecting public company securities prices, the valuation of public and private companies, whether securities traded in efficient markets, the custom and practice of venture capital and private equity organizations, and the terms and conditions of employment agreements at entrepreneurial firms, as well as multiple matters in which I have been asked to analyze alleged damages. Courts have cited my findings favorably in rendering their opinions, such as in *IBEW Local 90 Pension Fund* v. *Deutsche Bank AG et al*. and *Fener* v. *Belo Corp. et al*. I have been qualified to serve as an expert witness in securities and valuation cases, and to provide testimony as to alleged damages in a variety of industries. A list of matters in which I have testified in the last four years is attached as Appendix B to this report.

II. Assignment and Compensation

4. I have been retained by counsel for The Goldman Sachs Group, Inc. ("Goldman"), Lloyd C. Blankfein, David A. Viniar, and Gary D. Cohn (collectively, "Defendants") to review and respond to the report of Plaintiffs' expert, Dr. John Finnerty, dated May 22, 2015 concerning loss causation and damages ("Finnerty Report").[1]

5. I am being compensated at my standard billing rate of $900 per hour. I have been assisted in this matter by staff of Cornerstone Research, who worked under my direction. I have received and anticipate that I may receive future compensation from Cornerstone Research that reflects, among other things, my relationship with that firm as an expert on this and other corporate and client matters. Neither

---

[1] Expert Report of John D. Finnerty, Ph.D. in Support of Loss Causation and Damages, filed May 22, 2015. Previously, Dr. Finnerty submitted a declaration in support of Plaintiffs' Motion for Class Certification, filed on January 30, 2015 (Declaration of John D. Finnerty, Ph.D. in Support of Lead Plaintiff's Motion for Class Certification, filed January 30, 2015 ("Finnerty Declaration")). I submitted a response to the Finnerty Declaration on April 6, 2015 (Declaration of Paul Gompers, Ph.D., filed April 6, 2015 ("Gompers Declaration")). Dr. Finnerty submitted a rebuttal declaration on May 15, 2015 (Rebuttal Declaration of John D. Finnerty, Ph.D. in Support of Lead Plaintiffs' Motion for Class Certification, filed May 15, 2015 ("Finnerty Rebuttal Declaration")). I submitted a surreply declaration on June 23, 2015 (Reply Declaration of Paul Gompers, Ph.D., filed June 23, 2015 ("Gompers Surreply Declaration")). Dr. Finnerty testified in a deposition on March 19, 2015 (Deposition of John D. Finnerty, Ph.D. on March 19, 2015 ("Finnerty Deposition")) and I testified in a deposition on April 30, 2015 (Deposition of Paul A. Gompers, Ph.D. on April 30, 2015 ("Gompers Deposition")).

my compensation in this matter nor my compensation from Cornerstone Research is in any way contingent or based on the content of my opinion or the outcome of this or any other matter.

6. A list of documents, data, and other information that I have considered in forming the opinions set forth in my report is attached hereto as Appendix C. My work on this matter is ongoing. The opinions presented in this report are a result of the information available to me as of the report date, and I reserve the right to revise or supplement my opinions in response to further information or documents.

III. Summary of Opinions

7. Based on my review of Dr. Finnerty's loss causation and damages report, I conclude:

- Dr. Finnerty fails to establish loss causation—i.e., that the alleged misstatements directly caused Goldman's shareholders' economic losses, either by causing Goldman's stock price to increase or by preventing Goldman's stock price from declining.
    - Dr. Finnerty fails to show that Goldman's stock price was inflated (or increased) as a result of the alleged misstatements on the 18 misstatement days. In fact, Dr. Finnerty concedes that Goldman's stock price did not increase due to the alleged misstatements.
    - Rather, under Dr. Finnerty's theory of loss causation, the impact of the alleged fraud did not become evident until it was disclosed in April and June 2010. Dr.

Finnerty's assertion is flawed and unreliable because he merely observes residual stock price declines on those dates and makes an unsupported assumption that all news released on those days constituted new allegation-related information. Dr. Finnerty does not distinguish between allegation and non-allegation information and does not establish whether the alleged corrective information was actually new to the marketplace. Specifically:

- Dr. Finnerty baselessly dismisses compelling evidence contradicting his assertion. I find that (a) the information regarding Goldman's potential conflicts of interest and Goldman's alleged collateralized debt obligations ("CDO") practices that Dr. Finnerty claims Goldman failed to disclose to investors was publicly known in the marketplace prior to the first alleged corrective disclosure on April 16, 2010; and (b) when such information was discussed publicly, it did not cause Goldman's stock price to decline.
    - Dr. Finnerty's claim that Goldman's "denials" on those days "thwarted" any stock price effect is without basis. For many of those days, Dr. Finnerty does not indicate that Goldman "denied" wrongdoing and yet Goldman's residual stock price movement was not statistically significant on those

days either. Dr. Finnerty also ignores that Goldman denied wrongdoing on April 16, 2010, one of the days that Dr. Finnerty claims revealed the partial truth about Goldman's alleged misstatements. Dr. Finnerty further offers no reliable methodology to distinguish denials that were effective from those that were not.

- Dr. Finnerty fails to link the alleged corrective information released on the four alleged corrective disclosure dates back to specific statements or disclosures that Goldman allegedly should have made to its equity investors on the alleged misstatement dates. Thus, Dr. Finnerty has not established that the informationthat was released on the alleged corrective disclosures rendered the alleged misstatements to be false.

- In analyzing the alleged corrective disclosure dates on which Goldman's residual stock price movements were statistically significant, he fails to account for confounding information also released on those dates—information that could not reasonably have been released or predicted on the alleged misstatement dates.

  - On April 16, 2010, an unusually aggressive U.S. Securities and Exchange Commission ("SEC")

enforcement action against Goldman was announced.

- ▫ On April 30, 2010, there was public discussion of a purported U.S. Department of Justice ("DOJ") investigation into Goldman's "mortgage-related transactions."
- ▫ On June 10, 2010, there was public discussion of a purported SEC investigation into the Hudson Mezzanine Funding 2006-1, Ltd. ("Hudson") CDO.

- ▪ Dr. Finnerty fails to explain how Goldman's residual stock price movement on April 26, 2010 is consistent with the removal of inflation. On that day—a day that Plaintiffs' Complaint alleges included the release of new information about Goldman's alleged misconduct—Goldman's residual stock price movement was not statistically significant (i.e., could not be distinguished from random price movements). The fact that Goldman's stock did not react to what, according to Plaintiffs, was important new information correcting the alleged misstatements—on the only alleged corrective disclosure date without an announcement of a governmental action or investigation—provides further evidence that Goldman's stock price declines on the other three corrective disclosure dates were caused

by information about governmental enforcement actions or investigations and not a correction of the alleged misstatements.

- Dr. Finnerty ignores that, with regard to April 30, 2010 and June 10, 2010, there was no new information about Goldman's alleged misconduct released into the marketplace on those days, and, therefore, the alleged misstatements could not have been corrected on those dates.
  - On April 30, 2010, Dr. Finnerty points only to a news article that describes a purported DOJ investigation in general terms and as related to "mortgage-related transactions."
  - On June 10, 2010, Dr. Finnerty identifies only news of an SEC investigation into the Hudson CDO but he does not identify any new information or allegations about Goldman's conduct with respect to the Hudson CDO subsequent to e-mail releases and Senate testimony, all of which was known prior to April 27, 2010.

- Dr. Finnerty's damages model is flawed, unscientific, and, even assuming liability, it overstates damages.
  - Dr. Finnerty's damages model is flawed and overstates damages because it is based entirely on Goldman's residual

stock price movements on the three corrective disclosure dates on which Goldman's residual stock price movement was statistically significant—April 16, 2010, April 30, 2010, and June 10, 2010—and assumes that 100 percent of Goldman's residual stock price movement on each day is due to the correction of the alleged misstatements. Dr. Finnerty fails to exclude the effects on Goldman's stock price of non-allegation-related information also released on those days.

- With respect to April 30, 2010, Dr. Finnerty arbitrarily, and without providing any basis, bases his damages calculation on attributing one-third of Goldman's residual stock movement on that day to the Hudson CDO, one-third to the Anderson Mezzanine Funding 2007-1, Ltd. ("Anderson") CDO, and one-third to the Timberwolf I, Ltd. ("Timberwolf") CDO, without making any effort to explain why these CDO offerings are sufficiently similar so as to deserve identical weighting.

- With respect to April 30, 2010 and June 10, 2010, Dr. Finnerty not only fails to exclude the impact of non-allegation-related information released on those days, he fails to show that any specific new allegation-related information about Goldman's alleged misconduct was introduced into the market. Without new allegation-related information being released, there is no

basis for calculation of economic losses on these days.

- Finally, even putting aside Dr. Finnerty's failure to establish that some inflation was removed from Goldman's stock price on the alleged corrective disclosure days, his methodology incorrectly assumes that any inflation attributable to a given CDO would have been constant on a dollars-per-share basis going back to February or June 2007 (depending on the CDO). This approach is flawed because it assumes that the investors would have valued information about Goldman's alleged misconduct identically throughout the three years between February 5, 2007 and June 10, 2010 (the "Class Period"), notwithstanding that the Class Period included the global financial crisis and a changing regulatory environment.

IV. Background

8. In the following section, I provide background on Plaintiffs' allegations (Section IV.A) and event study analysis (Section IV.B), including a description of my regression model (Section IV.B.1) and Dr. Finnerty's regression models (Section IV.B.2).

A. Allegations

9. Plaintiffs assert that Defendants made representations about Goldman's business practices and management of conflicts of interest that were allegedly false or misleading due to Goldman's role

and conduct in four CDO transactions.[2, 3] The four CDOs, which closed between December 5, 2006 and April 26, 2007, are Abacus 2007-AC1, Ltd. ("Abacus"), Hudson, Anderson, and Timberwolf.[4]

10. Specifically, Plaintiffs allege that Goldman made misrepresentations on 18 dates between February 5, 2007 and June 10, 2010 (the "Class Period").[5]

11. Plaintiffs allege that, on five dates during the Class Period,[6] Goldman made false and misleading statements regarding its procedures and controls designed to identify and address conflicts of interest with clients ("Conflict Management Statements").[7] For example, Plaintiffs allege that the following

---

[2] Lead Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Class Certification, *In re Goldman Sachs Group, Inc. Securities Litigation*, filed January 30, 2015 ("Lead Plaintiffs' Memorandum"), p. 2.

[3] A CDO is a security collateralized by a referenced asset or group of assets ("reference portfolio"), such as loans, bonds, or asset-backed securities ("ABS"), including residential mortgage-backed securities ("RMBS").

[4] Consolidated Class Action Complaint for Violations of Federal Securities Laws, *In re Goldman Sachs Group, Inc. Securities Litigation*, filed July 25, 2011 ("Complaint"), ¶¶9, 78, 164, 189, 202, 213; Lead Plaintiffs' Memorandum, p. 2.

[5] Complaint, p. 1; Finnerty Declaration, Exhibit 8.

[6] Plaintiffs identify the following dates in the Complaint: February 6, 2007, January 29, 2008, January 27, 2009,

December 24, 2009, and February 26, 2010 (Complaint, ¶¶123–124, 134–135).

[7] Complaint, ¶132.

statements in Goldman's annual 2006, 2007, 2008, and 2009 SEC Form 10-Ks were false and misleading:[8]

- "Conflicts of interest are increasing and a failure to appropriately deal with conflicts of interest could adversely affect our businesses."

- "Our reputation is one of our most important assets. As we have expanded the scope of our businesses and our client base, we increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interests of another client.

  …

  We have extensive procedures and controls that are designed to [identify and] address conflicts of interest, including those designed to prevent the improper sharing of information among our businesses. However, appropriately [identifying and] dealing with conflicts of interest is complex and difficult, and our reputation could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to [identify and] deal appropriately with conflicts of interest. In addition, potential or

---

[8] Complaint, ¶¶134–137, 275–276, 284–287, 293–297, 302–304; *see also* The Goldman Sachs Group, Inc. Form 10- K, filed February 6, 2007, January 29, 2008, January 27, 2009, and February 26, 2010.

> perceived conflicts could give rise to litigation or enforcement actions."[9]

12. Plaintiffs also allege that, on 17 dates,[10] Goldman made false and misleading statements regarding its business principles, including its honesty, integrity, and commitment to putting its clients' interests first above all else ("Business Principles Statements").[11] For example, Plaintiffs allege that Goldman made the following misrepresentations in its annual reports:[12]

- "Our clients' interests always come first. Our experience shows that if we serve our clients well, our own success will follow."
- "Our assets are our people, capital and reputation. If any of these is ever diminished, the last is the most difficult to restore. We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard."

---

[9] Complaint, ¶134, quoting The Goldman Sachs Group, Inc. Form 10-K, filed February 6, 2007 and January 29, 2008.

[10] Plaintiffs identify the following dates in the Complaint: February 6, 2007, February 21, 2007, March 13, 2007, June 14, 2007, November 13, 2007, December 18, 2007, January 29, 2008, March 7, 2008, March 18, 2008, September 16, 2008, January 27, 2009, April 6, 2009, July 14, 2009, November 10, 2009, January 21, 2010, February 26, 2010, and April 7, 2010 (Complaint, ¶¶121, 127, 134, 277–306).

[11] Complaint, ¶¶21–24, 149.

[12] Complaint, ¶¶277, 289–290, 299–300, 305–306.

- "Integrity and honesty are at the heart of our business."

13. Dr. Finnerty claims that the two categories of alleged misstatements—that is, the Conflict Management Statements and the Business Principles Statements—are inextricably linked and cannot be analyzed in isolation.[13]

14. Plaintiffs allege that Goldman's Conflict Management and Business Principles Statements were revealed to be false and misleading on four separate dates in 2010—April 16, April 26, April 30, and June 10—when certain information about Goldman's conduct related to the four CDOs was made public, and that this revelation caused a decline in Goldman's stock price.[14] Moreover, Plaintiffs allege that this revelation caused losses, claiming that "investors purchased Goldman stock at these inflated prices and suffered damages when the price of Goldman stock declined upon the revelations of the truth, in contrast to earlier misstatements."[15]

15. Plaintiffs have not specified precisely what they believe Goldman's statements to the market should have been on each of the 18 alleged misrepresentation dates during the Class Period. However, Dr. Finnerty notes five misstatements Goldman allegedly made throughout the Class Period: "(1) the Company's clients' interests always come first, (2) the Company has extensive procedures and controls that are designed to identify and address conflicts of interest

[13] Finnerty Report, ¶20.

[14] Complaint, ¶¶307–323.

[15] Complaint, ¶¶329.

with its clients as well as among clients, (3) reputational capital is one of its most important assets, (4) integrity and honesty are the essence of its business, and (5) the Company focuses on protecting its valuable franchise."[16]

16. Dr. Finnerty then adds that Goldman also "failed to disclose that the Company, in fact, had conflicts of interest with its clients in connection with the synthetic CDOs Goldman structured and sold, e.g., Abacus 2007-AC1, Hudson 2006-1, Anderson 2007-1, and Timberwolf 1 CDOs."[17]

17. Dr. Finnerty appears to have concluded that the corrective disclosures revealed CDO specific misrepresentations that, in turn, rendered Goldman's general Business Principles Statements or Conflict Management Statements false or misleading.

B. Event Study Analysis

18. Generally, stock prices move in response to information about a company's future cash flows, or

[16] Finnerty Report, ¶43.

[17] Finnerty Report, ¶44. In addition, without specifying whether Goldman should have disclosed such information, Dr. Finnerty adds that "Goldman allegedly structured and sold to clients these synthetic CDOs, which were structured to fail, while the Company took short positions on these CDOs, without disclosing its short positions to Goldman's clients. Moreover, by engaging in the Abacus 2007-AC1 transaction in particular, Goldman allegedly created conflicts of interest by allowing one client, Paulson, to benefit at the expense of other clients and issued misleading marketing and offering materials to other clients" (Finnerty Report, ¶45).

the risk of these cash flows.[18] In order to analyze a company's stock price movement, it is necessary to consider the various factors that could have revealed new information about these cash flows. On a given date, a company's stock price is affected by numerous factors, some of which may be new company-specific information related to the alleged misrepresentations, but some of which may be in response to new market developments, industry developments, or company-specific information unrelated to the alleged misrepresentations.[19] A company's stock price may also move due to random fluctuations.

19. An event study is a commonly used and widely accepted technique that, if used correctly, provides an objective measure of whether there has been a significant change in the price of a company's stock that is attributable to firm-specific news. An event study seeks to isolate the firm-specific component of a company's stock price movement from movements due to market- wide or industry-wide information.[20] In an event study, the financial economist will (a) remove the stock price movements attributable to market and

---

[18] *See*, *e.g.*, Bodie, Z., A. Kane, and A. Marcus (2014), *Investments*, Tenth Edition, New York, NY: McGraw-Hill, pp. 595–612.

[19] "When the purchaser subsequently resells such shares, even at a lower price, that lower price may reflect, not the earlier misrepresentation, but changed economic circumstances, changed investor expectations, new industryspecific or firm-specific facts, conditions, or other events, which taken separately or together account for some or all of that lower price" (*Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 342–343 (2005)).

[20] MacKinlay, A. C. (1997), "Event Studies in Economics and Finance," *Journal of Economic Literature*, 35(1), 13–39 ("MacKinlay"), at pp. 13–16.

industry factors and calculate the stock's "residual" or "abnormal" price movement on the event date, and (b) examine whether the residual price movement is outside the range of typical random stock price fluctuations observed for that stock.[21] If the residual price movement on the event date falls sufficiently outside the range of typical random stock price fluctuations, it is deemed to be statistically significant, that is, unlikely to represent a random movement.[22] But if the residual price movement is not statistically distinguishable from random movements in the stock price, it cannot be attributed to any company-specific information announced on the event date.

20. An event study can be used to evaluate whether an alleged misrepresentation affected a company's stock price by isolating the firm-specific component of a security's price movement from other, non-firm-specific factors such as those that impact the broad economy or the industry as a whole.[23] An event study can be used to examine stock price movements on any

---

[21] MacKinlay, at p. 15.

[22] *See*, *e.g.*, National Research Council (2000), "Reference Manual on Scientific Evidence," *Federal Judicial Center*, pp. 124, 128–129; Mitchell, M. L., and J. M. Netter (1994), "The Role of Financial Economics in Securities Fraud Cases: Applications at the Securities and Exchange Commission," *Business Lawyer*, 49, 545–590, at p. 564, for a discussion that five percent is the typical threshold for statistical significance. The residual stock price movement is deemed statistically significant at the five percent significance level if there is less than a five percent chance that the value of the residual is actually zero. The five percent significance level is also referred to as the "95 percent confidence interval." Unless otherwise specified, I use the five percent significance level for evaluating statistical significance in this report.

[23] *See*, *e.g.*, MacKinlay, at pp. 13–14.

date during the Class Period, including the alleged misrepresentation dates and the alleged corrective disclosure dates. Both Dr. Finnerty and I use event studies to examine Goldman's stock price movement on days during the Class Period.

21. A standard event study approach uses a statistical method called a regression model to measure the changes in a company's stock price that may be related to company-specific information. Market and industry indices, if properly selected, capture the stock price movements of a broad cross-section of companies in the market as a whole and the industry in which the company operates. Using a regression model, a financial economist estimates the typical relationship between movements in a company's stock price and movements in market and industry indices.[24] The period over which this relationship is estimated, and over which the typical level of daily random fluctuations in the stock price is measured, is termed the "control period."[25] It is important to choose a control period that is similar to, and therefore representative of, the period during which the event being analyzed occurred.

1. Summary of My Regression Model

22. My regression model analyzes daily pricing data for Goldman's stock and the factors in my model, namely (a) the New York Stock Exchange ("NYSE")/ American Stock Exchange ("AMEX")/NASDAQ/ ArcaEx Composite Index ("Market Index") provided by

---

[24] MacKinlay, at p. 18.

[25] The typical daily random fluctuation in the stock price is measured by the volatility of residual stock price movements during the control period.

the Center for Research in Security Prices ("CRSP") (this is a broad market index that captures companies' stocks trading on these four U.S. stock exchanges), and (b) a group of comparable companies ("Industry Index").[26] In order to isolate the period of high volatility of Goldman's stock during the Class Period due to the financial crisis, I performed my regression analysis over three different sub-periods: (a) from February 5, 2007—the start of the Class Period—to the trading day prior to the bankruptcy of Lehman Brothers on September 15, 2008 ("Volatility Period A"); (b) from the bankruptcy of Lehman Brothers on September 15, 2008 to the trading day prior to the Federal Reserve Stress Test announcement on February 25, 2009 ("Volatility Period B"); and (c) from the Federal Reserve Stress Test announcement on February 25, 2009 to the end of the Class Period on June 10, 2010 ("Volatility Period C").[27] My regression estimates the residual stock price movements of

---

[26] To objectively select the appropriate Industry Index, I considered several potential industry indices. I estimated linear, two-factor regression models using the stock price movements of the market index and each of 15 potential industry indices for each of the three volatility sub-periods, and compared the average adjusted R2 (a measure of the "fit" of a regression) for each industry index. After evaluating the indices, I determined that the S&P Supercomposite Investment Banking and Brokerage Industry Index GICS Level 4—with no fewer than 11 members during the Class Period—is the Industry Index most appropriate for my regression analysis. For additional details, see Gompers Declaration, Appendix D.

[27] I identified these sub-periods and deemed them appropriate based on the results of a statistical test—called a Levene test. A Levene test is a statistical test that examines whether there is a difference in variance between data series. *See*, *e.g.*, Baum, C. (2006), *An Introduction to Modern Econometrics Using Stata*. College Station, TX: Stata Press, p. 150.

Goldman's stock on each day during the Class Period. Exhibit 1 shows Goldman's stock price movements, its residual stock price movements, and the statistical significance of the residuals on each day during the class period. A detailed description of my regression model is provided in the Gompers Declaration.[28]

23. In conducting an event study, I also review news items, such as public press and equity analyst reports, to understand what factors may have caused a company's stock price movements on a given day.[29] Equity analysts are important market participants who provide research reports and investment recommendations on companies that they are covering. Equity analysts rely on various sources of information including company press releases, conference calls, SEC filings, annual reports, and interviews with company management to identify what factors may affect, or have affected, the value of a company. When new information is released, I consider the reaction by analysts and discussion in public press in my assessment of the information and its potential impact on a company's stock price. A qualitative news analysis allows a researcher to determine whether a cause-and-effect relationship exists between certain information and stock price movements.

---

[28] Gompers Declaration, ¶¶22–24.

[29] For each date analyzed in this report, I reviewed public press and analyst reports from the trading day prior to the analysis date through the trading day following the analysis date. For alleged corrective disclosure dates, I extend my review of analyst reports to three trading days after the analysis date.

2. Summary of Dr. Finnerty's Regression Models

24. Dr. Finnerty uses a regression model to estimate the relationship between Goldman's stock price movements and movements in the market index, the industry index, and the movements of two other stock portfolios over the Class Period. Specifically, Dr. Finnerty uses a modified version of the so-called Fama-French Three-Factor Model—a regression model commonly used in academia that examines the relationship between companies' stock price movements and three factors known to be correlated with stock price movements for all stocks.[30] In his regression analysis, Dr. Finnerty examines Goldman's stock price movements using four factors:

- A market factor equal to the price movement of all NYSE, AMEX, and NASDAQ stocks.[31]
- An industry factor identified as the Standard & Poor's 500 Investment Banking and Brokerage Index, excluding Goldman.[32]
- A factor accounting for the difference in price movements between small and big market capitalization stocks ("SMB").[33]

---

[30] Finnerty Report, ¶52; Fama, E. F., and K. R. French (1993), "Common Risk Factors in the Returns on Stocks and Bonds," *Journal of Financial Economics*, 33, 3–56.

[31] Dr. Finnerty models Goldman's stock price movement net of the risk-free interest rate, and uses the market index movement net of the risk-free interest rate (Finnerty Report, ¶52).

[32] Finnerty Report, ¶61.

[33] Finnerty Report, ¶52.

- A factor accounting for the difference in price movements between stocks with high and low book-to-market[34] ratios, commonly referred to as value and growth stocks ("HML").[35]

25. Dr. Finnerty uses the Class Period as the period over which he estimates his regression model.[36] Dr. Finnerty states that Goldman stock price's historical volatility—which is often used as a proxy for the level of uncertainty of stock prices—was elevated during the Class Period relative to the periods before and after the Class Period.[37, 38] However, he does not address the changing stock price volatility *during* the Class Period—particularly, the spike in volatility during the financial crisis.[39]

26. In addition to the above model, following my criticism of this model in the Gompers Declaration,

---

[34] Book-to-market ratio is the ratio of a company's book value, based on historical cost, and market value, based on market capitalization. Firms with a low book value relative to market value are generally referred to as growth companies, while those with a high book value are referred to as value companies (Bodie, Z., A. Kane, and A. Marcus (2014), *Investments*, Tenth Edition, New York, NY: McGraw Hill, pp. 112, 592–593).

[35] Finnerty Report, ¶52.

[36] Dr. Finnerty excluded the trading dates of alleged misrepresenations and alleged corrective disclosures from his estimation period (Finnerty Report, ¶¶57, 59).

[37] A stock's historical volatility is a measure of the variance of the stock price movements over a specific time period. *See, e.g.*, Hull, J. (2002), *Options, Futures & Other Derivatives*, Fifth Edition, Upper Saddle River, NJ: Prentice Hall, pp. 239–240, 713.

[38] Finnerty Report, ¶57.

[39] I discuss the impact of the changing volatility in Goldman's stock price in Gompers Declaration, ¶¶102–106.

Dr. Finnerty also provides an additional set of regression models using the same Fama-French Three-Factor Model regression model framework but adjusted to the changing volatility in Goldman's stock during the Class Period. He uses the same three volatility periods as I describe above and estimates three Fama-French Three-Factor Model regression models. Dr. Finnerty also estimates damages in this matter using this alternative set of regressions, in addition to his original regression.[40]

V. Dr. Finnerty Fails to Establish Loss Causation

27. Plaintiffs allege that Goldman made false and misleading statements on 18 dates during the Class Period[41] and that these misrepresentations "caused Goldman's stock to trade at artificially inflated levels during the Class Period."[42] It is my understanding that Plaintiffs need to demonstrate loss causation—i.e., that the alleged misstatements directly caused Goldman's shareholders economic losses or "damages." I also understand that, in order to prove loss causation, Plaintiffs must show that (a) the alleged false and misleading statements caused Goldman's stock price to be inflated, and (b) Goldman's stock price declined in response to one or more corrective disclosures that corrected the alleged misstatements and thus removed prior inflation from the stock price. Importantly, any price decline attributable to information that is not corrective of the alleged false and misleading statements cannot represent a

---

[40] Finnerty Report, ¶¶169–170.

[41] Finnerty Declaration, Exhibit 8.

[42] Complaint, ¶29.

removal of inflation and therefore cannot form the basis of economic losses to investors (i.e., basis of loss causation).

28. Dr. Finnerty's claim that the alleged misstatements regarding Goldman's Business Principles Statements and/or Conflict Management Statements caused inflation in Goldman's stock price can be empirically tested using an event study of Goldman's stock price reaction on each of the 18 alleged misstatement dates and the four alleged corrective disclosure dates. In order for inflation to have been present in Goldman's stock price during the Class Period, the alleged misstatements must have either (a) caused Goldman's stock price to increase, or (b) prevented Goldman's stock price from reflecting decreases (that would otherwise have occurred on those dates) until the dates of the alleged corrective disclosures. Dr. Finnerty has not established that either of these two theories of inflation is true.

29. In order to prove inflation under the first theory—that the alleged misstatements caused inflation by causing Goldman's stock price to increase—one would need to show that on alleged misstatement dates with positive residual stock price movements, these price movements can be directly attributed to the alleged misstatements. However, as I discuss below, Dr. Finnerty fails to provide any evidence of such stock price reactions. In fact, Dr. Finnerty concedes that the alleged misstatements did not cause any statistically significant residual stock price increases.[43] Nevertheless, I performed my own analysis and my event study results indicate that

[43] Finnerty Report, ¶18.

Goldman's stock price did not react to any of these 18 alleged misstatements.

30. Under the second theory, if the alleged misstatements did not cause an increase in Goldman's stock price, then in order to demonstrate price inflation, Plaintiffs would need to prove that the alleged misstatements maintained Goldman's existing stock price—or, in other words, that the alleged misstatements prevented Goldman's stock price from declining. Dr. Finnerty fails to prove this theory of inflation as well. In order to demonstrate inflation under this theory, it is necessary to show that Goldman's stock price would have decreased had Goldman made the disclosures that Plaintiffs allege Goldman should have made, and to show that these disclosures would have caused a contemporaneous decline in Goldman's stock price. However, Dr. Finnerty merely asserts, without providing an adequate basis, that Goldman's residual stock price declines on four alleged corrective disclosure dates represent the removal of inflation in Goldman's stock price. Dr. Finnerty's blanket reliance on the stock price declines on the alleged corrective disclosure days is inadequate to establish that the alleged misstatements caused Goldman's stock price to be inflated for the reasons described below.

31. First, when I examined numerous dates, apart from the four alleged corrective disclosure dates identified by Plaintiffs, on which information was released into the marketplace alleging that Goldman was prioritizing its own interests over those of its clients and favoring certain clients over others (both in general and specifically with respect to Goldman's CDO or mortgage practices), there was no statistically significant reaction in Goldman's stock price. This

information also included allegations that Goldman had failed to disclose conflicts of interest to its customers. Again, this information describes the similar transaction structures or business arrangements that Plaintiffs argue were allegedly revealed to the marketplace on the alleged corrective disclosure dates. The finding that (a) information mirroring the alleged corrective disclosures was released prior to the alleged corrective disclosure dates, and (b) this information did not cause a statistically significant residual stock price movement in Goldman's stock undermines Dr. Finnerty's assertion that the alleged misstatements caused Goldman's stock price declines on the four alleged corrective disclosure dates.

32. Second, on the four alleged corrective disclosure dates, there was confounding information released to the marketplace that could not possibly have been disclosed earlier in the Class Period—information such as the inception of a new SEC enforcement action and the rumors of a purported DOJ investigation. The revelation that the Business Principles Statements or Conflict Management Statements were false could not alone have fully allowed market participants to anticipate an SEC enforcement action or subsequent government investigations, as Dr. Finnerty's analysis assumes. Dr. Finnerty fails to disentangle this non-allegation-related information—the new SEC enforcement action and rumors of a purported DOJ investigation—from the information supposedly correcting the alleged misstatements and, as such, fails to demonstrate that the price declines on the alleged corrective disclosure dates are attributable to a correction of the alleged misstatements.

33. Third, according to Dr. Finnerty's own model, Goldman's residual stock price movement on April 26, 2010 was not statistically significant.[44] A statistically insignificant residual stock price movement cannot be reliably differentiated from no stock price movement at all. Dr. Finnerty recognizes there is no basis to conclude that Goldman's investors experienced losses linked to the alleged corrective disclosures on that date, as he excludes the April 26, 2010 residual stock price movement from his damages calculation. Moreover, as described below, Plaintiffs' Complaint alleges that additional new information about Goldman's conflicts of interest was revealed on this day, including through the release of internal Goldman e-mails.[45] Unlike the other three alleged corrective disclosure dates, there are no alleged new reports of governmental enforcement actions or investigations on this date. The absence of a statistically significant residual stock price movement on this date thus contradicts Dr. Finnerty's assertion that when new reports related to the same alleged conflicts were released on the subsequent alleged corrective disclosure dates, the information caused economic losses to investors. In fact, unlike April 26, 2010, the only new information on the subsequent disclosure dates concerned the possibility of governmental enforcement actions or investigations, not new information about the alleged misstatements.

---

[44] According to Dr. Finnerty's model, Goldman's residual stock price movement was -1.68 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -1.96 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[45] Complaint, ¶333.

34. Fourth, on April 30, 2010 and June 10, 2010, Dr. Finnerty is unable to point to any new information about Goldman's alleged misconduct with respect to conflicts of interests in its CDO business. Rather, Dr. Finnerty refers to general information released days, or even months, earlier. The only new information Dr. Finnerty points to on those dates relates to purported new investigations into Goldman by governmental entities.

A. Goldman's Stock Price Movements on the 18 Alleged Misstatement Dates Do Not Establish that the Alleged Misstatements Introduced Inflation into Goldman's Stock Price

35. Dr. Finnerty provides no evidence that the alleged misstatements caused a statistically significant reaction in Goldman's stock price, thereby introducing inflation into Goldman's stock price during the Class Period. In fact, Dr. Finnerty agrees that it is a "fact" that the alleged misstatements did not cause a reaction in Goldman's stock price when those statements were made, and instead simply dismisses that fact as not alone sufficient to conclude that the alleged misstatements did not cause Goldman's stock price to be inflated.[46] Nevertheless, I conducted my own analysis of the alleged misstatements and evaluated whether those statements are associated with statistically significant increases in Goldman's stock price and thus whether these price movements provide potential evidence of

---

[46] "The fact that Goldman's stock price did not increase in a statistically significant manner on the dates of the alleged false statements does not necessarily mean there was no inflation on that day from the misstatements" (Finnerty Report, ¶18).

stock price inflation. Based on my analysis, as described in more detail in the Gompers Declaration paragraphs 28–49, I determined that the information related to the alleged misstatements released on the 18 alleged misstatement dates did not cause an increase in Goldman's stock price and thus the residual stock price movements on those days do not provide evidence of inflation.

36. I found that for 14 of these 18 misstatement dates, Goldman's residual stock price movements were not statistically significant. On days on which the residual stock price movement is not statistically significant, one cannot conclude that Goldman's price reacted to any company-specific news and, by extension, one cannot conclude that the alleged false and misleading statements introduced inflation into Goldman's stock based on these price movements.[47]

37. On two of the alleged misstatement days—June 14, 2007 and December 18, 2007—Goldman's residual stock price movement was negative and statistically significant (in other words, the stock price went down, after controlling for market and industry movements, notwithstanding the alleged misstatements).[48] Based

---

[47] Plaintiffs have not shown that there was negative information on any of these dates that could have offset a stock price increase associated with the alleged misstatements. Exhibit 4 summarizes the information released on the 14 misstatement dates on which Goldman's residual stock price movement was not statistically significant.

[48] According to Dr. Finnerty's model, on June 14, 2007, Goldman's residual stock price movement was -3.73 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on June 14, 2007, Goldman's residual stock price movement was -3.80 percent and was statistically significant (Finnerty Report, Exhibit 9). According to Dr. Finnerty's model, on December 18, 2007,

on my event study analysis, I found that there was negative information disclosed on this day separate from the alleged misstatements and that this information did not obscure a price impact of the alleged misstatements. Specifically, on June 14, 2007, market participants discussed Goldman's exposure to subprime mortgages,[49] while on December 18, 2007, market participants discussed comments by Goldman's CFO David Viniar warning of a challenging environment.[50] Moreover, I found no market commentary about the Conflict Management Statements or Business Principles Statements on these two dates. Therefore, I did not find evidence that

---

Goldman's residual stock price movement was -2.08 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on December 18, 2007, Goldman's residual stock price movement was -2.37 percent and was statistically significant (Finnerty Report, Exhibit 9).

[49] On June 12, 2007, Lehman Brothers "blew through estimates." As a result, many analysts expected Goldman to "do the same" when it announced earnings on June 14, 2007 ("Goldman Net Rises; Shares Drop As Profit Growth Slows (Update 4)," *Bloomberg News*, June 14, 2007). In other words, "Lehman Brothers' results raised expectations that [Goldman's] earnings didn't meet" ("Business Week: Goldman's Big Quarter Leaves Street Cold," *Bloomberg News*, June 15, 2007).

[50] "[I]nvestors chose to focus on comments from David Viniar, Goldman chief financial officer, indicating that if brutal conditions [seen in the credit markets in November] continued, it could be very difficult for Goldman to continue its record-shattering run. . . . [Mr. Viniar's] comments helped drive Goldman's share down as much as 5 per cent in early New York trading as investors began to fear that the investment bank's earnings had peaked, at least in the near term" ("Goldman Encounters Hard-To-Please Investors," *Financial Times*, December 18, 2007).

the alleged false and misleading statements on these dates introduced inflation into Goldman's stock.[51]

38. On two alleged misstatement dates—November 13, 2007 and March 18, 2008—Goldman's residual stock price movement was positive and statistically significant.[52] As I described in detail in the Gompers Class Certification Declaration, my review of the public press and equity analyst reports indicates that Goldman's positive residual stock price movements on these dates were due to positive news other than Goldman's Conflict Management Statements and/or Business Principles Statements.[53] On November 13, 2007, market participants attributed the stock price increase on this day to positive news including Goldman's announcements that (a) despite the market's expectations of significant write-downs, it would not take write-downs on its subprime mortgage portfolio; and (b) it retained a hedged position in subprime mortgages. On March 18, 2008, I found that market participants attributed the stock price increase on this day to positive news unrelated to the alleged misstatement including (a) Goldman's

---

[51] Gompers Declaration, ¶30.

[52] According to Dr. Finnerty's model, on November 13, 2007, Goldman's residual stock price movement was 4.12 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on November 13, 2007, Goldman's residual stock price movement was 3.60 percent and was statistically significant (Finnerty Report, Exhibit 9). According to Dr. Finnerty's model, on March 18, 2008, Goldman's residual stock price movement was 3.90 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on March 18, 2008, Goldman's residual stock price movement was 3.11 percent and was statistically significant (Finnerty Report, Exhibit 9).

[53] Gompers Declaration, ¶¶31–47.

better-than-expected earnings announcement, and (b) Goldman's stronger-than-expected liquidity position. Equity analysts also upgraded or reiterated their highest recommendations for Goldman's stock based on this news. Therefore, I did not find evidence that the alleged false and misleading statements on these dates introduced inflation into Goldman's stock price.

39. In sum, there is no evidence to support the first theory of price inflation: that the alleged misstatements introduced inflation by causing Goldman's stock price to increase. Indeed, Dr. Finnerty reaches the same conclusions.[54] I now address the alternative theory that the alleged misstatements improperly maintained Goldman's existing stock price at an inflated level.

B. Goldman's Stock Price Movements on the Alleged Corrective Disclosure Dates Do Not Establish that the Alleged Misstatements Introduced Inflation into Goldman's Stock Price

40. Under Dr. Finnerty's theory of loss causation, "the impact of the alleged fraud on the price of Goldman's common stock did not become evident until the fraud was disclosed in April and June 2010."[55] In other words, the alleged misstatements supposedly maintained Goldman's existing stock price, whereas, had the alleged "truth" been known, the stock price would have declined. Dr. Finnerty's assertion is based entirely on Goldman's residual stock price movements on the four alleged corrective disclosure dates. This

[54] Finnerty Report, ¶18.

[55] Finnerty Report, ¶42.

assertion is flawed and unreliable because, as set forth below, merely observing residual stock price declines on those dates and improperly designating all news as new allegation-related information—without distinguishing between allegation and non-allegation information and without establishing whether the alleged corrective information was new to the marketplace—does not establish that the alleged misstatements inflated Goldman's stock price for the reasons described below.

41. First, Dr. Finnerty baselessly dismisses evidence contradicting his assertion. Specifically, my analysis finds that (a) information that Goldman allegedly failed to disclose to investors was publicly known in the marketplace prior to the first alleged corrective disclosure on April 16, 2010; and (b) when such information was discussed publicly, the price of Goldman's stock did not decline in a statistically significant manner.

42. Second, Dr. Finnerty fails to link the alleged corrective information directly to the alleged misstatements and fails to disentangle the impact of confounding non-allegation information on the alleged corrective disclosure days, rendering his analysis flawed and insufficient to demonstrate loss causation. Specifically, on April 16, 2010, an unusually aggressive SEC enforcement action against Goldman was announced.[56] Dr. Finnerty asserts that the full residual stock price impact of this announcement should be attributed to Goldman's alleged misstatements because the SEC enforcement

---

[56] *See* Declaration of Stephen Choi, Ph.D., filed April 6, 2015 ("Choi Declaration"), ¶¶33–37.

action pertained to the Abacus CDO.[57] However, as I address below, the SEC enforcement action itself conveyed information to the investors separate and apart from Goldman's allegedly undisclosed misconduct. It is my understanding that the remaining allegations in this case do not include an allegation that Goldman failed to disclose an SEC enforcement action, nor would it have been possible for Goldman to have made such a disclosure any earlier in the Class Period. Therefore, the stock price impact of the SEC enforcement action itself should not be attributed to any losses to Goldman's equity investors due to the alleged misstatements. In addition, on April 30, 2010 information about a purported, non-specific DOJ investigation was released to the marketplace and on June 10, 2010 an expanded SEC investigation into the Hudson CDO was announced. Based on my event study, no new information concerning Goldman's alleged misconduct was released into the marketplace on either of these days, nor did Dr. Finnerty provide evidence that any such new information was in fact released. For the same reasons as the SEC enforcement action, the impact of the purported DOJ investigation and the expanded SEC investigation into the Hudson CDO on Goldman's stock price should not be attributed to the alleged misstatements.

---

[57] Finnerty Report, ¶93.

1. An Event Study Demonstrates that Information About Goldman's Business Conflicts and Conflicts of Interest Related to Goldman's CDO and Mortgage Businesses Was Known Well Before the First Alleged Corrective Disclosure Date and Did Not Affect Goldman's Stock Price

43. As an initial matter, it is important to note that large investment banks such as Goldman are exposed to a wide variety of potential conflicts of interest, given the nature of the diverse business lines in which they operate and the client and counterparty relationships they maintain in financial markets. In an article titled "Investment Banks, Scope, and Unavoidable Conflicts of Interest," Erik Sirri, former Director of the Division of Trading and Markets at the SEC,[58] states, "[t]he conflicts are a consequence of the function of investment banks, which intermediate the interaction between issuers and investors in capital markets." For any bank that chooses to offer a comprehensive set of investment banking services, "[t]hese conflicts are unavoidable."[59]

44. A financial economist can test empirically whether information about Goldman's general business conflicts or CDO-specific conflicts of interest would have caused a decline in Goldman's stock value by examining Goldman's stock price movement on days where such information was released into the

---

[58] Biography of Erik R. Sirri, Babson College, http://faculty.babson.edu/sirri/.

[59] Sirri, E. (2004), "Investment Banks, Scope, and Unavoidable Conflicts of Interest," *Federal Reserve Bank of Atlanta Economics Review*, Fourth Quarter 2004, 23–35, at pp. 23–24.

marketplace. Dr. Finnerty has performed no such analysis beyond considering the four alleged corrective disclosure days, three of which contained confounding information of reports of governmental enforcement actions and/or investigation (*see* detailed discussion below). I, however, empirically tested Dr. Finnerty's unsupported assertion that information about conflicts of interests at Goldman, including information that CDO investors may have been unaware of or misled about such conflicts, would have affected Goldman's stock price.

45. Using an event study, I examined days during the Class Period on which information about Goldman's behavior—information mirroring the information released on the four alleged disclosure dates but for news of governmental enforcement actions and/or investigations—was released into the marketplace. Specifically, my event study analyzed public statements prior to April 16, 2010, containing allegations that Goldman prioritized its interests over those of its clients or prioritized the interests of one client over those of another client.[60] These statements include (a) allegations of conflicts in Goldman's business lines outside the mortgage and CDO market, such as in general proprietary trading, private equity, and other Goldman business areas ("Business Conflicts"); and (b) allegations of conflicts related to the mortgage or CDO market in particular ("Mortgage/CDO Conflicts"). The information in these statements mirrors the information released on the corrective disclosure dates that Plaintiffs allege revealed the "truth" regarding the alleged

---

[60] My event study analysis was also discussed in the Gompers Declaration, ¶¶48–60.

misstatements—for example, that Goldman "plac[ed] the Company's interests above its own clients" and "collaborated with a favored client" at the expense of other clients.[61]

46. In conducting my event study, I employed an objective and replicable methodology. This is consistent with accepted practice in academic research and is scientifically valid. The approach has been used in peer-reviewed publications and has a known error rate.[62] I have previously employed this approach in my own academic research and in other litigation assignments.

47. Specifically, I searched the *Factiva* database's major business publications and newswires—a commonly used database of public press—for articles about Goldman that contained certain keywords. I reviewed those articles to determine which ones discussed a specific event or events that had been characterized as an alleged conflict of interest, as opposed to articles that provided general commentary on Goldman and conflicts, discussion of potential alleged conflicts of interest that had been avoided due to actions taken by Goldman, or articles that mentioned the keywords in an unrelated context. I then performed an additional review of public press to

---

[61] Complaint, QQ330–331.

[62] "We measure the impact of an event by estimating the abnormal return on a stock (or group of stocks) at the moment the information about the event becomes known to the market" (Bodie, Z., A. Kane, and A. Marcus (2014), *Investments*, Tenth Edition, New York, NY: McGraw-Hill, p. 360). Other academic studies employ *ex-ante* news analysis in an event study. *See, e.g.*, Faccio, Mara, and David Parsley (2009), "Sudden Deaths: Taking Stock of Geographic Ties," *Journal of Financial and Quantitative Analysis* 44(3), 683–718.

identify the first public statement that may have contained these allegations. In identifying news related to general Business Conflicts, I searched for articles about Goldman containing the word "conflict." In identifying news related to Goldman's Mortgage/CDO Conflicts, I searched for articles about Goldman that (a) contained the word "conflict," (b) contained search terms related to discussion of a short position in mortgages, or (c) contained search terms related to discussion of John Paulson or Paulson and Company in conjunction with CDOs. I reviewed these articles and other sources the articles referenced in order to identify relevant discussion of conflicts of interest in the mortgage and CDO markets.

48. I analyzed 34 dates on which allegations about Goldman's Business Conflicts or Mortgage/CDO Conflicts were discussed prior to the first alleged corrective disclosure on April 16, 2010.[63] I found that on each and every one of the 11 dates on which new allegations about Goldman's Business Conflicts were discussed, Goldman's residual stock price movements were not statistically significant. Similarly, on each and every one of the 23 dates on which allegations about Goldman's Mortgage/CDO Conflicts were discussed, Goldman's residual stock price movements were not statistically significant. On none of those days did I find confounding information related to SEC or DOJ actions or investigations. In sum, when information that Goldman allegedly misstated or failed to disclose to investors on the alleged misstatement dates was released to the marketplace

[63] I also analyzed additional dates when the effective trading date of an allegation was unclear, or if I found full discussion of the facts relating to an allegation prior to the allegation itself. *See* Exhibits 2 and 3.

prior to the alleged disclosure dates (and absent confounding information related to SEC and DOJ actions or investigations), one cannot conclude that there was any effect on Goldman's stock price. As such, there is no basis to conclude that on future dates when similar allegedly corrective information was released in combination with confounding information, that the resulting residual stock price movement is attributable to the alleged misrepresentations as opposed to the confounding information. Because there is no basis to conclude that the price declines on the future dates were in fact a correction, there is therefore no basis on which to conclude that the alleged misstatements introduced inflation into Goldman's stock price, as Dr. Finnerty claims.

a) When Allegations Regarding Goldman's Business Conflicts Were Discussed in the Marketplace, They Did Not Affect Goldman's Stock Price

49. I reviewed public press from the start of the Class Period through April 15, 2010 to identify statements that contained allegations of Goldman's Business Conflicts.[64] I found 11 event dates when Goldman's Business Conflicts were discussed (*see* Exhibit 2). This information includes public discussion of allegations that (a) Goldman distributed different information to, or distributed information first to, the Company's proprietary traders or preferred clients;

[64] Exhibit 2 provides a review of the statements I identified relating to allegations of Goldman's Business Conflicts. The exhibit also summarizes my responses to the "implications" noted in the Finnerty Rebuttal Declaration Exhibit 6, which are also discussed in V.B.1.c).

(b) Goldman's investing activity, including trading and private equity investing, led to conflicts of interest; and (c) Goldman's services to one client led to conflicts of interest against another client. I also reviewed public press and analyst reports surrounding these dates to understand the factors potentially impacting the stock price on each of these dates. I found that Goldman's residual stock price movement on each of these 11 dates was not statistically significant, indicating that when allegations of Goldman's Business Conflicts were made in the marketplace, the allegations did not cause Goldman's stock price to decline.

50. First, I identified two dates that were accompanied by public discussion of allegations that Goldman distributed different information to, or distributed information first to, the Company's proprietary traders or preferred clients. Specifically:

- On August 24, 2009, *The Wall Street Journal* reported that Goldman held "trading huddles" with top clients to provide advice on "short-term developments" to traders that sometimes differed from its long-term research, creating concerns that Goldman's publicly available research is sometimes at odds with its analysts' privately held views and that this practice "hurts other customers who aren't given the opportunity to trade on the information."[65,66]

---

[65] "Goldman's Trading Tips Reward Its Biggest Clients," *The Wall Street Journal,* August 24, 2009.

[66] Goldman's residual stock price movement on this date was -0.51 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock

- On January 12, 2010, *The New York Times* reported that Goldman disclosed in an email to clients that its Fundamental Strategies Group might have shared investment ideas with Goldman's proprietary trading desk and certain clients before sharing those ideas with other clients. This discussion "demonstrates the various conflicts that Goldman and other firms face in balancing the interest[s] of its various clients and its own trading operation."[67,68]

51. Second, I identified four dates that were accompanied by public discussion of allegations that Goldman's investing activity, including trading and private equity investing, led to conflicts of interest. For example:

- On May 17, 2007, *The Economist* reported that Goldman would likely "provide the third-biggest equity portion" in a bid for TXU while it had been retained as an advisor by the other

---

price movement on this date was -0.31 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -0.37 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[67] "Goldman Acknowledges Conflicts with Clients," *The New York Times*, January 12, 2010.

[68] Goldman's residual stock price movement on this date was -0.83 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was -0.53 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -0.35 percent and was not statistically significant (Finnerty Report, Exhibit 9).

buyers; as such, the article stated, "[a]t times it was hard to tell whether it was Goldman's deal or that of its clients."[69, 70]

- On May 13, 2009, *The Wall Street Journal* reported that a "Whitehall" fund, "[o]ne of [Goldman's] premier real-estate funds," was in discussions with its lenders—including Goldman—to restructure debt. The article notes that "Goldman is in an especially tricky position when acting as both a borrower and lender to itself, critics say. Concessions granted by Whitehall may benefit Goldman, the lender, at the expense of Whitehall investors, the critics add."[71,72]

52. Third, I identified five dates that were accompanied by public discussion of allegations that

---

[69] "Merchants of Boom," *The Economist*, May 17, 2007.

[70] Goldman's residual stock price movement on this date was 0.18 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was 0.07 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.17 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[71] "Goldman Takes Heat for Conflicts at Whitehall," *The Wall Street Journal*, May 13, 2009.

[72] Goldman's residual stock price movement on this date was -0.60 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was -1.05 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -0.98 percent and was not statistically significant (Finnerty Report, Exhibit 9).

Goldman's services to one client led to conflicts of interest against another client. For example:

- On May 6, 2007, a Sunday, an article in *The New York Times* noted that Goldman, "which has been a longtime banker" to the News Corporation, was advising the board of Dow Jones & Company on a bid Dow Jones had received for an acquisition by the News Corporation. This article asked rhetorically, "[h]ow hard do you really think Goldman is going to push the News Corporation, considering that if a deal is ever struck, Goldman will want to make Mr. Murdoch's company [News Corporation] a client again?"[73, 74]
- On June 10, 2007, a Sunday, the *Financial Times* reported that minority investors in Arcelor threatened legal action against Goldman on the grounds that Goldman and other banks that had provided a fairness opinion related to Mittal's acquisition of Arcelor in July 2006 "have all had advisory

[73] "What to Do When Rupert Calls?" *The New York Times*, May 6, 2007.

[74] Goldman's residual stock price movement on May 7, 2007 was 0.13 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was -0.02 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.17 percent and was not statistically significant (Finnerty Report, Exhibit 9).

and/or financing mandates from either Mittal or Arcelor during the past two years."[75, 76]

- On February 12, 2010, *The New York Times* reported that Goldman, "a primary Airgas adviser," faced an alleged conflict in relation to a takeover bid of Airgas by Air Products because Goldman had recently served as an adviser to Air Products.[77, 78]

b) Allegations of Conflicts of Interest Related to Goldman's CDO and Mortgage Businesses Were Known to Market Participants and They Did Not Affect Goldman's Stock Price

---

[75] "Arcelor Minorities Prepare for a Fight," *Financial Times*, June 10, 2007.

[76] Goldman's residual stock price movement on June 11, 2007 was 0.34 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was 0.21 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.31 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[77] "Air Products Revises Its Airgas Lawsuit," *The New York Times*, February 12, 2010.

[78] Goldman's residual stock price movement on this date was -0.27 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was 0.24 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.02 percent and was not statistically significant (Finnerty Report, Exhibit 9).

53. I reviewed public press from the start of the Class Period through April 15, 2010 to identify statements that contained allegations of Goldman's Mortgage/CDO Conflicts.[79] I found that, on 23 dates, such information was discussed in the marketplace (*see* Exhibit 3). This information includes public discussion of allegations that (a) Goldman took positions in CDOs opposite to those taken by its clients; (b) Goldman might have profited by selling mortgage-backed securities and CDOs to its clients, who lost money on these securities; and (c) CDO investor John Paulson assisted Goldman in designing a CDO which his firm intended to short. On several of the 23 dates, I found items discussing issues relevant to more than one of the above categories. In addition, some of the articles included explicit discussion of allegations that conflicts of interest were not disclosed to CDO investors. I also reviewed public press and analyst reports surrounding these dates to understand the factors potentially impacting the stock price on each of these dates. I found that Goldman's residual stock price movement on each of these 23 dates was not statistically significant, indicating that when allegations of Goldman's Mortgage/CDO Conflicts were made in the marketplace, they did not cause a decline in Goldman's stock price.

54. First, I identified 22 dates that were accompanied by public discussion of allegations that

---

[79] Exhibit 3 provides a review of the statements I identified relating to allegations of Goldman's Mortgage/CDO Conflicts. The exhibit also summarizes my responses to the "implications" noted in the Finnerty Rebuttal Declaration Exhibit 6, which are also discussed in V.B.1.c).

Goldman took positions in CDOs opposite to those taken by its clients. For example:

- On December 14, 2007, *The Wall Street Journal* reported that "Goldman's success at wringing profits out of the subprime fiasco, however, raises questions about how the firm balances its responsibilities to its shareholders and to its clients. . . . The question now being raised: Why did Goldman continue to peddle CDOs to customers early this year while its own traders were betting that CDO values would fall?"[80, 81]An article in the July 9, 2009 issue of *Rolling Stone* stated that "[Goldman] was taking short positions in [CDOs], in essence betting against the same crap it was selling. Even worse, Goldman bragged about it in public."[82, 83]

---

[80] "How Goldman Won Big on Mortgage Meltdown – A Team's Bearish Bets Netted Firm Billions; A Nudge from the CFO," *The Wall Street Journal,* December 14, 2007.

[81] Goldman's residual stock price movement on this date was 1.78 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was 1.39 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 1.63 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[82] "The Great American Bubble Machine," *Rolling Stone*, July 9, 2009. This article was publicly available on June 24, 2009 ("Goldman Sachs: 'Engineering Every Major Market Manipulation Since the Great Depression'," *Zero Hedge*, June 24, 2009).

[83] Goldman's residual stock price movement on June 24, 2009 was 0.16 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price

55. Second, I identified 11 dates that were accompanied by public discussion of allegations that Goldman might have profited by selling mortgage-backed securities and CDOs to its clients, who lost money on these securities. For example:

- On December 16, 2007, a Sunday, *Reuters* reported, "Goldman will face questions on how it once again profited when everyone else, including clients, suffered. More than any other firm, Goldman under Blankfein has deployed its capital boldly, pursuing strategies that can sometimes run contrary to what clients are doing . . . . Another trouble spot could be how Goldman's underwriters issued collateralized debt obligations . . . through May, several months after it turned bearish on mortgages. 'You've got two departments not communicating, which are sent out to go make money,' said analyst Richard Bove of Punk Ziegel & Co. 'One part of the firm's underwriting CDOs and the other is shorting the hell out of them.' For most firms that would be chalked up to independence. For Goldman, it may only convince rivals and conspiracy theorists that the firm is utterly conflicted."[84, 85]

---

movement on this date was 0.55 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.56 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[84] "Analysis-Goldman Success Brings Unwanted Attention," *Reuters News*, December 16, 2007.

[85] Goldman's residual stock price movement on December 17, 2007 was 0.38 percent and was not statistically significant

56. Third, I identified four dates that were accompanied by public discussion of allegations that CDO investor John Paulson assisted Goldman in designing a CDO which his firm intended to short. For example:

- An October 31, 2009 article in *The Wall Street Journal* reported that "[Paulson & Co.] met with bankers at Bear Stearns, Deutsche Bank, Goldman Sachs, and other firms to ask if they would create [CDOs] that Paulson & Co. could wager against. The investment banks would sell the CDOs to clients who believed the value of the mortgages would hold up. Mr. Paulson would buy CDS [credit default swap] insurance on the CDO mortgage investments—a bet that they would fall in value. This way, Mr. Paulson could wager against $1 billion or so of mortgage debt in one fell swoop. Paulson & Co. wasn't doing anything new. A few other hedge funds also worked with banks to short CDOs the banks were creating. Hundreds of other CDOs were being created at the time. Other bankers, including those at Deutsche Bank and Goldman Sachs, didn't see anything wrong

---

(Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was -0.15 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 0.32 percent and was not statistically significant (Finnerty Report, Exhibit 9).

with Mr. Paulson's request and agreed to work with his team."[86, 87]

- On November 3, 2009, *The Greatest Trade Ever* was released. This book noted that "Paulson's team would pick a hundred or so mortgage bonds for the CDOs, the bankers would keep some of the selections and replace others." Although a Bear Stearns trader "worried that Paulson would want especially ugly mortgages for the CDOs" and "suspected that [he] would push for combustible mortgages and debt to go into any CDO . . . [f]or his part, Paulson [said] that investment banks . . . didn't need to worry about including only risky debt for the CDOs because 'it was a negotiation; we threw out some names, they threw out some names, but the bankers ultimately picked the collateral.'" Similarly, Mr. Paulson acknowledged that he "'provided the collateral' for the CDOs . . . '[b]ut the deals weren't created for us, we just facilitated it; we proposed recent vintages of mortgages' to the banks." The book also noted that "other bankers including . . . Goldman Sachs, didn't see anything wrong with

---

[86] "Profiting from the Crash," *The Wall Street Journal*, October 31, 2009.

[87] Goldman's residual stock price movement on November 2, 2009 (the next trading day) was 0.27 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was 0.89 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was 1.00 percent and was not statistically significant (Finnerty Report, Exhibit 9).

> Paulson's request and agreed to work with his team."[88, 89]

57. In sum, my event study analysis shows that information mirroring the information allegedly correcting the alleged misstatements was publicly discussed in the marketplace prior to the first alleged corrective disclosure on April 16, 2010. In addition, my event study also indicates that Goldman's residual stock price movements were not statistically significant on any of the 34 dates on which this information was released. Both of these findings support the conclusion that there is no basis to conclude that when similar information was released on future dates (i.e., the alleged corrective disclosure dates) in conjunction with confounding information, that the resulting residual stock price movement is attributable to the alleged misrepresentations. Therefore, contrary to Dr. Finnerty's assertion, there is no basis to conclude that the alleged misstatements introduced inflation into Goldman's stock price.

c) Dr. Finnerty Incorrectly Dismisses Evidence that the Market Knew About the Alleged Corrective

---

[88] Zuckerman, G. (2009), The Greatest Trade Ever: The Behind-the-Scenes Story of How John Paulson Defied Wall Street and Made Financial History, New York, NY: Crown Business, pp. 179–182.

[89] Goldman's residual stock price movement on this date was 0.07 percent and was not statistically significant (Exhibit 1). According to Dr. Finnerty's model, Goldman's residual stock price movement on this date was -0.32 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -0.68 percent and was not statistically significant (Finnerty Report, Exhibit 9).

Information Prior to the First Alleged Corrective Disclosure and that Such Information Did Not Affect Goldman's Stock Price

58. Dr. Finnerty apparently rejects the above evidence that the market knew about the alleged corrective information prior to the first alleged corrective disclosure and that such information did not affect Goldman's stock price based on four arguments: (a) that Goldman "denied" wrongdoing and thereby negated a stock price movement on those dates;[90] (b) that a discrete piece of new information, not previously disclosed, was released on April 16, 2010;[91] (c) that Plaintiffs' allegations in this matter are not actually alleged misstatements regarding Goldman's Business Principles Statements and/or Conflict Management Statements, but alleged misstatements that Goldman had committed fraudulent conduct;[92] and (d) that various other "implications" of the articles I cite in the Gompers Declaration apparently distinguish the information released on the 34 days from the information released on the alleged corrective disclosure dates.[93] Each of Dr. Finnerty's arguments is either illogical or simply factually incorrect (or both).

59. First, Dr. Finnerty attempts to explain the lack of any price impact on any of the 34 dates during the Class Period with public allegations of Goldman's conflicts with its clients by arguing that Goldman "denied" that it engaged in inappropriate conduct and

---

[90] Finnerty Report, ¶70.

[91] Finnerty Report, ¶71.

[92] Finnerty Report, ¶73.

[93] Finnerty Rebuttal Declaration, Exhibit 6.

that these denials "thwarted" any potential price impact.[94] Dr. Finnerty identifies denials on just 10 of the 34 dates, less than 30 percent of the dates identified in my analysis. Dr. Finnerty provides no basis to conclude that these 10 denials somehow "thwarted" the price impact of the reports of conflicts, especially given that Goldman's stock price did not decline in response to the 24 instances of conflicts allegations where he identified no such denial. Moreover, Dr. Finnerty provides no methodology to distinguish effective denials from ineffective ones, or to explain how or why these denials precisely offset the price impact that (supposedly) would otherwise have occurred from the conflicts allegations.

60. Further, Dr. Finnerty's "denial" theory does not address, and is directly contradicted by, what took place on April 16, 2010 (the first alleged corrective disclosure date). In his initial declaration, Dr. Finnerty acknowledged that Goldman publicly denied the allegations of the SEC enforcement action

---

[94] Finnerty Rebuttal Declaration, ¶184. In his Exhibit 6, under the heading "Implications," Dr. Finnerty explicitly references denials on 10 days based on the following variants: "Goldman Denied Anything Improper" or "Goldman Denied Any Wrong Doing" or "Author Conveyed that Goldman Denied Any Wrong Doing." In addition, Dr. Finnerty asserts in Exhibit 6 the following "Implications" on three additional days, but does not specify whether he considers them "denials": "Goldman Represented that CDO Products Were Fueled by Client Demand" or "Goldman Conveyed That Its Interests Are Aligned With Clients" or "Goldman Affirmed Its Stock Tips Are Consistent with Fundamental Analysis" or "Goldman Conveyed That It Appropriately Managed Conflicts of Interest." My opinions are unchanged regardless of whether Dr. Finnerty has identified 10 or 13 "denials." I also note that Dr. Finnerty has noted multiple "implications" for certain days (Finnerty Rebuttal Declaration, Exhibit 6).

that day, stating that they were "completely unfounded."[95] Dr. Finnerty provides no explanation as to why this denial was ineffective in "thwarting" price impact, whereas the denials in response to 10 of the earlier allegations of Goldman conflicts were wholly effective. Apparently, Dr. Finnerty assumes his own conclusion—namely, that whenever public discussions about allegations of Goldman's conduct are not associated with statistically significant residual stock price movements, Goldman's denials "thwarted" the effect, but on some days where Goldman's residual stock price reaction was statistically significant, no such "thwarting" occurred. I thus find that Dr. Finnerty's "denial" theory is inconsistent and lacks foundation.

61. Second, Dr. Finnerty argues that new information was disclosed on April 16, 2010, specifically that Goldman "misled investors by failing to disclose Paulson's role in selecting the reference portfolio of the Abacus 2007-AC1 CDO, and the fact that Goldman had misled ACA [Financial Guaranty Corp.] by telling ACA that Paulson was a sponsor of the CDO transaction and would have an equity interest in the transaction."[96] However, contrary to Dr. Finnerty's assertion, information about the allegation that Goldman had failed to disclose Paulson's positions in the CDO was discussed publicly

---

[95] For example, Dr. Finnerty notes that Goldman stated that the "SEC's charges are completely unfounded in law and fact and we will vigorously contest them and defend the firm and its reputation" (Finnerty Declaration, ¶60). *See also* Finnerty Rebuttal Declaration, ¶¶3, 186 (stating that April 16, 2010 was the date that the "truth" was revealed to the market about Goldman's alleged conflicts).

[96] Finnerty Report, ¶71.

as early as November 2009. For example, *The Greatest Trade Ever,* a book released on November 3, 2009, specifically noted:

> But some [CDO] investors later would complain that they wouldn't have purchased the CDO investments had they known that some of the collateral behind them was chosen by Paulson and that he would be shorting it.[97]

62. Similarly, a December 6, 2009 book review in *The New York Times* reported:

> Mr. Paulson persuaded Goldman Sachs and Deutsche Bank to put together securitized collateralized debt obligations (known as C.D.O.'s), which were filled with nasty mortgages that he could then short. Of course, nobody told the suckers—er, investors—who bought those C.D.O.'s that they were designed to help a man who wanted the most toxic mortgages imaginable so he could profit when they went sour.[98]

63. Goldman's residual stock price movements on November 3, 2009 and December 7, 2009, two days on which those allegations were publicly discussed, were not statistically significant.[99]

---

[97] Zuckerman, G. (2009), The Greatest Trade Ever: The Behind-the-Scenes Story of How John Paulson Defied Wall Street and Made Financial History, New York, NY: Crown Business, p. 182.

[98] "Economy's Loss Was One Man's Gain," *The New York Times*, December 6, 2009.

[99] According to Dr. Finnerty's model, on November 3, 2009, Goldman's residual stock price movement was -0.32 percent and

64. Moreover, in paragraphs 44–45 of the Finnerty Report, Dr. Finnerty recognizes that the purported disclosure violation is that Goldman "failed to disclose that the Company, in fact, had conflicts of interest with its clients in connection with the synthetic CDOs Goldman structured and sold, e.g., Abacus 2007-AC1, Hudson 2006-1, Anderson 2007-1, and Timberwolf 1 CDOs."[100] Nowhere in this discussion does Dr. Finnerty state, or even imply, that Plaintiffs' claim is predicated on specific information about what was disclosed specifically to ACA about Paulson's role in Abacus. Dr. Finnerty provides no explanation as to how Goldman's alleged misconduct with respect to ACA "corrected" alleged misstatements regarding "conflicts of interests with its clients," nor an explanation as to how information about the identity

---

was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on November 3, 2009, Goldman's residual stock price movement was -0.68 percent and was not statistically significant (Finnerty Report, Exhibit 9). According to Dr. Finnerty's model, on December 7, 2009, Goldman's residual stock price movement was -0.97 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on December 7, 2009, Goldman's residual stock price movement was -1.19 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[100] Finnerty Report, ¶44. In addition, without specifying whether Goldman should have disclosed such information, Dr. Finnerty adds that "Goldman allegedly structured and sold to clients these synthetic CDOs, which were structured to fail, while the Company took short positions on these CDOs, without disclosing its short positions to Goldman's clients. Moreover, by engaging in the Abacus 2007-AC1 transaction in particular, Goldman allegedly created conflicts of interest by allowing one client, Paulson, to benefit at the expense of other clients and issued misleading marketing and offering materials to other clients" (Finnerty Report, ¶45).

of ACA as an entity that was allegedly misled was a "corrective disclosure" of general statements about conflicts of interest whereas information alleging that investors were misled was not.[101] As I discuss in further detail below, Dr. Finnerty's failure to link alleged "corrective information" to the alleged misstatements throughout his report renders his analysis economically imprecise and unreliable.

65. Third, Dr. Finnerty now argues that the information revealed on the alleged corrective disclosure dates was not just that Goldman "may or did not have conflicts of interest, but, instead, that Goldman had committed fraudulent conduct, misleading its clients and failing to disclose to its investors that it did not effectively manage its conflicts of interest for the Abacus 2007-AC1 transaction."[102] Again, Dr. Finnerty ignores the fact that the allegations (a) that Goldman had conflicts of interest with its CDO investors; and (b) that Goldman misled, or hid those conflicts from, its CDO investors were already known in the marketplace prior to the alleged corrective disclosure dates. For example:

- A *McClatchy Washington Bureau* article published on November 1, 2009 stated: "Despite updating its numerous disclosures to investors in 2007, Goldman never revealed its secret wagers . . . . Another question is whether, by keeping the trades a secret, the company withheld material information that

---

[101] Finnerty Report, ¶44.

[102] Finnerty Report, ¶73.

would enable investors to assess Goldman's motives for selling the bonds."[103]

- A *McClatchy Washington Bureau* article published on December 30, 2009 reported that it had been alleged that "Goldman inserted the credit-default swaps into CDO deals 'like a Trojan Horse—secret bets that the same types of bonds that they were selling to their clients would in fact fail.'"[104]
- An article in *The Wall Street Journal* published on December 14, 2007 noted that "[Goldman's structured-products trading] group also has another mission: If it spots an opportunity, it can trade Goldman's own capital to make a profit. And when it does so, it doesn't necessarily have to share such information with clients, who may be making opposite bets."[105]
- A *Rolling Stone* article published on July 9, 2009 stated: "I ask the manager how it could be that selling something to customers that you're actually betting against—particularly when you know more about the weaknesses of those products than the customer—doesn't amount to securities fraud. 'It's exactly

---

[103] "How Goldman Secretly Bet on the U.S. Housing Crash," *McClatchy Washington Bureau,* November 1, 2009.

[104] "Goldman's Offshore Deals Deepened Global Financial Crisis," *McClatchy Washington Bureau*, December 30, 2009.

[105] "How Goldman Won Big on Mortgage Meltdown — A Team's Bearish Bets Netted Firm Billions; A Nudge From the CFO," *The Wall Street Journal*, December 14, 2007.

> securities fraud,' he says. 'It's the heart of securities fraud.'"[106]

66. In addition to these examples, as discussed above in paragraphs 61–62, allegations that Goldman misled investors specifically in the Abacus CDO transaction were also discussed in the public domain prior to the alleged corrective disclosure dates. Thus, Dr. Finnerty's assertion that, prior to the first alleged corrective disclosure, the public allegations of Goldman's conflicts of interest related to CDOs were limited to the existence of such conflicts is incorrect. Rather, those public discussions included allegations that Goldman's CDO investors were unaware of these conflicts or that Goldman failed to disclose information about these conflicts to its CDO investors.

67. Finally, in Exhibit 6 of his Rebuttal Declaration, Dr. Finnerty identifies additional "implications" of the articles I identified, which he presumably believes invalidate my findings, although he does not reference those specifically in the Finnerty Report. In addition to his "denial" theory as discussed above, Dr. Finnerty describes the following categories of "implications" from the news articles: (a) that the allegations were not directly related to the four CDOs at issue, (b) that the article concerned the four CDOs but did not reveal new information about the specific CDOs at issue, and/or (c) that the article in some way conveyed that Goldman may not have done anything wrong or

[106] "The Great American Bubble Machine," *Rolling Stone*, July 9, 2009. This article was publicly available on June 24, 2009 ("Goldman Sachs: 'Engineering Every Major Market Manipulation Since The Great Depression'," *Zero Hedge*, June 24, 2009).

illegal.[107] These additional "implications" are irrelevant to my conclusions for the reasons set forth below. I will address these categories of "implications" in turns.

68. Dr. Finnerty criticizes my analysis of the 34 days with conflicts allegations and no responsive stock price impact because "many of [the conflicts allegations] had nothing to do with the mortgage market or selling of CDOs."[108] Even where the Goldman conflicts allegations concerned CDOs, Dr. Finnerty argues that many are irrelevant because the news was "not directly related to the four deals at issue."[109] This criticism is baseless. Dr. Finnerty ignores that the alleged misstatements—as stated in the Complaint—are not specific to the four CDOs or Goldman's CDO practices more generally. Dr. Finnerty assumes that the alleged general statements regarding Business Principles and Conflict Management could only be rendered false by revelations about the four CDOs at issue in this case, but that assumption is at odds with the actual language of the alleged misstatements, which cover all of Goldman's many business lines. Notwithstanding the general language of the alleged misstatements, as discussed above, I identified 23 days during the Class Period in which there were public allegations of Goldman having conflicts of interest in connection with its mortgages or CDOs practices, and determined

[107] Finnerty Rebuttal Declaration, Exhibit 6. Note that on some days Dr. Finnerty asserts more than one "implication."

[108] Finnerty Rebuttal Declaration, ¶184, Exhibit 6.

[109] Dr. Finnerty argues that on 31 days the news was "Not Directly Related to the Four Deals At Issue" (Finnerty Rebuttal Declaration, Exhibit 6).

that these public allegations did not cause any stock price impact. Dr. Finnerty does not dispute this finding.

69. Furthermore, Dr. Finnerty attempts to explain the lack of price impact on eight of the 34 days with public allegations of Goldman conflicts on the grounds that on those days "no incremental factual information regarding the four deals was disclosed."[110] This criticism is puzzling, because Dr. Finnerty fails to identify any "incremental factual information regarding the four deals" disclosed on two of the alleged corrective disclosure dates (April 30, 2010 and June 10, 2010). On April 30, 2010, for example, the only new information allegedly released to investors was a news report that the DOJ was investigating unspecified "mortgage trading" at Goldman.[111] This news report did not allege anything new about Goldman conflicts of interest, did not allege anything about any specific CDO, and it did not provide any "incremental factual information regarding the four deals." Dr. Finnerty provides no explanation for his inconsistent theory that the earlier eight conflicts allegations had no stock price impact because of an absence of "incremental" information, whereas an

---

[110] In Exhibit 6 of his Rebuttal Declaration, Dr. Finnerty uses the following variants of this theory on eight days: "No Incremental Factual Information Regarding the Four Deals was Disclosed" or "No Incremental Factual Information Regarding Paulson's Involvement in the Portfolio Selection was Disclosed" or "No Incremental Factual Information Regarding Goldman's Non-disclosure Regarding Paulson's Involvement in the Portfolio Selection was Disclosed" (Finnerty Rebuttal Declaration, Exhibit 6).

[111] "Criminal Probe Looks Into Goldman Trading," *The Wall Street Journal*, April 30, 2010.

absence of "incremental" information on the April 30, 2010 and June 10, 2010 alleged corrective disclosure dates did not similarly result in no stock price impact.

70. Dr. Finnerty also contends that the public reports of Goldman's conflicts of interest on 11 of the 34 days I identified had no price impact because the article "conveyed that Goldman's conduct was legal" or "conveyed that Goldman appropriately managed conflicts of interest."[112] As an initial matter, Dr. Finnerty's theory implicitly recognizes that there were (at least) 23 days during the Class Period with public allegations that Goldman had conflicts that were not "legal" or not "appropriate" and that there was no statistically significant residual stock price movement on these days. Further, Dr. Finnerty does not provide an accurate account of what these 11 reports supposedly "conveyed." For example:

- "Who Needs Wall Street?" *The New York Times Magazine* (March 17, 2010): Dr. Finnerty dismisses this article about Goldman having interests adverse to its clients as "convey[ing] that Goldman appropriately managed conflicts of interest." Far from

---

[112] In Exhibit 6 of his Rebuttal Declaration, Dr. Finnerty describes this theory on 11 days as follows: "Article Conveyed that Goldman Appropriately Managed Conflicts of Interest" or "Writer Did Not Believe Goldman Did Anything Wrong" or "Market Participants Believed that Goldman Appropriately Managed Conflicts of Interest" or "Article Noted That The Public Did Not Believe Goldman Did Anything Wrong" or "Analysts Believed Goldman Appropriately Managed Conflicts of Interest" or "Article Conveyed That Goldman Did Not Violate Any Laws" or "Article Conveyed that Goldman's Conduct Was Legal" or "Article Conveyed that Some or All of the Products and Practices Were Not Illegal" (Finnerty Rebuttal Declaration, Exhibit 6).

praising Goldman, this article, after recapping testimony that Goldman's CEO gave to the Financial Crisis Inquiry Commission, concluded: "[s]o much for putting the customer first."[113, 114]

- "Goldman Looking at an Own Goal," *Financial Times* (March 4, 2010): Dr. Finnerty asserts this article "convey[s] that Goldman appropriately managed conflicts of interest." In fact, the article notes that one of Goldman's clients was "considering severing ties" with Goldman as the result of a conflict of interest. The article also states that "so-called Chinese Walls" that should prevent or mitigate conflicts are "only as sound as the integrity of the banks that erect them."[115]
- "Betting Against All of Us," *The New York Times* (December 29, 2009): From an editorial describing Goldman's mortgages practices, Dr. Finnerty cites a statement that "[i]t may turn out that some or all of the products and practices were not illegal . . . . " That "some" "products and practices" "may turn out" to be

---

[113] Finnerty Rebuttal Declaration, Exhibit 6; "Who Needs Wall Street?" *The New York Times Magazine*, March 17, 2010.

[114] In Exhibit 6 of his Rebuttal Declaration, Dr. Finnerty claims that I "omitted" a quote from this article about what Goldman "epitomized" "from its founding in 1869 through recent decades" (Finnerty Rebuttal Declaration, Exhibit 6) Dr. Finnerty omits the next sentence: "Wall Street's emphasis began to change in the '90s, as financiers devised new securities—the more incomprehensible, or so it seemed—the better" ("Who Needs Wall Street?" *The New York Times Magazine*, March 21, 2010.)

[115] Finnerty Rebuttal Declaration, Exhibit 6; "Goldman Looking at an Own Goal," *Financial Times*, March 4, 2010.

> "not illegal," as well as the editorial headline, does not suggest a view that the conduct was appropriate.[116]

71. Moreover, Dr. Finnerty does not address the multiple reports on the alleged corrective disclosure days that similarly questioned whether Goldman's conduct was actually illegal or inappropriate in spite of the SEC's enforcement action. For example, the *Washington Post* described the SEC's charges as "flimsy,"[117] while a *Financial Times* article noted that "[t]he SEC is on particularly uncertain ground because it has questioned a transaction involving professional investors, rather than the retail clients it most often protects. Sellers owe far fewer obligations to sophisticated investors under US law."[118]

72. In sum, Dr. Finnerty baselessly and incorrectly dismisses evidence both that market participants were already aware of the alleged "corrective information" prior to the first alleged corrective disclosure date and that such information, when previously released, had no effect on Goldman's stock price. Thus, Dr. Finnerty's analysis is incorrect and misleading as it ignores the evidence demonstrating that the alleged misstatements did not introduce inflation in Goldman's stock price.

---

[116] Finnerty Rebuttal Declaration, Exhibit 6; "Betting Against All of Us," *The New York Times*, December 29, 2009.

[117] "Goldman's Non-Scandal," *Washington Post*, April 20, 2010.

[118] "SEC Engages in High Risk Game," *Financial Times*, April 19, 2010.

2. On Other Days, Prior to the Alleged Corrective Disclosures, Allegations of Conflicts of Interest at Goldman Were Publicly Discussed Without a Statistically Significant Residual Stock Price Movement

73. In addition to the 34 news days identified by my search methodology described above, I was asked by counsel to examine several additional days on which allegations of conflicts of interest at Goldman were discussed in public reports as described in Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification.[119] At the request of counsel, I have reviewed two additional news articles—published on November 11, 2008 and November 19, 2009—and examined Goldman's residual stock price movements on those dates.[120] Based on my regression model, I found that Goldman's residual stock price movement on these two dates was not statistically significant.[121] Thus, this finding

---

[119] Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification, *In re Goldman Sachs Group, Inc. Securities Litigation*, filed April 6, 2015, pp. 13–14.

[120] Declaration of Jessica P. Stokes, filed April 6, 2015, Exhibits 1 and 2: "Firm Urged Hedge Against State Bonds It Helped Sell," *Los Angeles Times*, November 11, 2008; "GS a Short? And Five Reasons We Hate Goldman Sachs," *MarketWatch,* November 19, 2009. My search methodology relies on the *Factiva* database's major business publications and newswires, which does not include publications by the *Los Angeles Times or MarketWatch*.

[121] According to Dr. Finnerty's model, on November 11, 2008, Goldman's residual stock price movement was 7.25 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on November 11, 2008, Goldman's residual stock price movement was 7.17 percent

further supports my conclusion that allegations of conflicts of interest at Goldman were disseminated months prior to the first alleged corrective disclosure date, and when these allegations were publicly discussed, they did not affect Goldman's stock price.

74. For example, a *Los Angeles Time*s article, published on November 11, 2008, reported that Goldman acted against the interests of a client by urging investors to bet against municipal bonds issued by the State of California, despite having been paid millions of dollars in fees by the State to help structure those bonds. Specifically, the article notes:

> Some experts said the investment bank's actions, while not illegal, might be inappropriate. "That's not a good way to do business," said Geoffrey M. Heal, professor of public policy and business responsibility at Columbia University. "They've got a conflict of interest and they're acting against the interests of their customers . . . . You act in the interests of your clients. You don't screw them, to put it bluntly."[122]

75. In addition, a *MarketWatch* article published on November 19, 2009 reported allegations that Goldman was packaging and marketing derivative securities to

---

and was not statistically significant (Finnerty Report, Exhibit 9). According to Dr. Finnerty's model, on November 19, 2009, Goldman's residual stock price movement was -0.28 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on November 19, 2009, Goldman's residual stock price movement was -0.31 percent and was not statistically significant (Finnerty Report, Exhibit 9).

[122] "Firm Urged Hedge Against State Bonds It Helped Sell," *Los Angeles Times*, November 11, 2008.

investors while simultaneously betting against those same products. Specifically, the article states:

> Goldman was packaging and selling toxic derivatives for hundreds of billions of dollars to investors around the world, telling those investors that such derivatives were safe and smart bets. At the same time, Goldman was out at the AIG casino not just hedging their own exposure to the derivatives while they were packaging them, but Goldman was actually betting against those very products. They were literally selling products that they were so confident would fail that they bet tens of billions of their own money at AIG against those products they were telling investors were safe. We want some perpwalks for this obvious fraud.[123]

76. Moreover, the *MarketWatch* article, as with others cited above, directly contradicts Dr. Finnerty's unsupported assertion that the information released to the market prior to the first alleged corrective disclosure on April 16, 2010 pertained only to whether "Goldman may or did not have conflicts of interest" and not to whether Goldman had committed "fraudulent conduct."[124] In fact, the allegation that Goldman misled its CDO investors about potential conflicts of interest, and that this potentially could be construed as fraudulent, was explicitly discussed in public reports as early as 2009.

---

[123] "GS a Short? And Five Reasons We Hate Goldman Sachs," *MarketWatch,* November 19, 2009.

[124] Finnerty Report, ¶73.

3. Dr. Finnerty Fails to Link the Information Released on the Alleged Corrective Dates to the Alleged Misstatements

77. As an initial matter, it is critical to directly link the alleged corrective disclosures to the alleged misstatements, that is, to specify what Goldman allegedly should have disclosed on the alleged misstatement dates and to show that the subsequent revelation of that information specifically caused a loss to Goldman's equity investors. Dr. Finnerty fully attributes the decline in Goldman's stock price that followed news of regulatory actions and investigations concerning CDOs to the correction of the general alleged misstatements. This approach is predicated on the assumptions that (a) Goldman's general statements about firm-wide business principles and management of conflict of interests are value-relevant for investors in a large business organization, and (b) that the news of government enforcement actions or investigations concerning a handful of CDO transactions is economically equivalent to a revelation that the statements were false on a firm-wide basis. Dr. Finnerty contends that "the regulatory enforcement action by the SEC would not have been brought if there had been no evidence of fraudulent conduct with respect to the Abacus 2007-AC1 CDO transaction, which revealed that Goldman had made alleged false and misleading statements and omissions during the Class Period."[125] Even putting aside Dr. Finnerty's questionable presumption that the SEC's filing a legal complaint is tantamount to proof of facts, Dr. Finnerty incorrectly assumes that

---

[125] Finnerty Report, ¶93.

revelations about alleged conflicts of interest in February and June 2007 would have allowed an investor to anticipate the regulatory enforcement actions and investigations announced or rumored in April and June 2010, and their effects on Goldman's stock price. Dr. Finnerty provides no justification for this assumption.

78. Dr. Finnerty's assumption that investors would predict with 100 percent certainty that an SEC enforcement action would occur, and that investors' expectations as to the specifics of that enforcement action would exactly mimic the actual SEC enforcement action that was ultimately announced on April 16, 2010, is contradicted by the evidence in this matter. Specifically, as I discussed in Section V.B.1, when information about alleged conflicts of interest in Goldman's CDO business—including information that it allegedly misled its CDO investors—entered the marketplace on numerous dates prior to the first alleged corrective disclosure date, Goldman's residual stock price movements were not statistically significant. Consistent with my finding that Goldman's stock price did not react when the alleged conflicts of interest were publicly discussed prior to April 16, 2010, Dr. Stephen Choi concludes in his declaration that the SEC enforcement action against Goldman was not inevitable, and indeed was not reasonably foreseeable.[126] In addition, it had several extraordinary characteristics showing an unusually aggressive stance by the SEC which in turn affected Goldman's stock price.[127]

---

[126] Choi Declaration, ¶19.

[127] Choi Declaration, ¶¶39–40.

79. As I show in the remainder of this section, an analysis of the alleged corrective disclosure dates, including the critical distinction between new misstatement-related and non-misstatement-related information, demonstrates that Dr. Finnerty's loss causation analysis fails to establish that Goldman's stock price was inflated due to the alleged misstatements and that Goldman's equity investors experienced losses directly tied to the correction of those alleged misstatements.

4. Dr. Finnerty's Analysis of the Alleged Corrective Disclosure Days Does Not Establish Loss Causation

80. I analyzed the information released on each of the four alleged corrective disclosure dates and examined Goldman's stock price movement on each of these dates. Using my event study, I determined whether Goldman's residual stock price movement was statistically significant and analyzed the new information that was released on each of these dates and whether it related to Goldman's Conflict Management Statements and/or Business Principles Statements. Based on my analysis, I found that on the four alleged corrective disclosure dates, there is no evidence that a corrective disclosure of the Conflict Management Statements and/or Business Principles Statements removed inflation from Goldman's stock price—i.e., that there is no evidence of loss causation. Importantly, this conclusion is also supported by my finding (detailed in Section V.B.1 above) that the release of information similar to the alleged corrective disclosures—prior to the first alleged corrective

disclosure—did not cause a statistically significant residual stock price decline.[128]

81. On April 26, 2010, my analysis (as well as that of Dr. Finnerty) shows that Goldman's residual stock price movement was not statistically significant.[129] Although Goldman's residual stock prices on April 16, 2010, April 30, 2010, and June 10, 2010 were negative and statistically significant, I found that Goldman's stock price was adversely affected by news other than alleged corrections of the Conflict Management Statements or Business Principles Statements.[130] Dr. Finnerty fails to isolate and measure the impact, if any, of corrections of the alleged misstatements (rather than this confounding information) on Goldman's stock price. With regard to April 30, 2010 and June 10, 2010 in particular, Dr. Finnerty fails to identify any new information released on those days that corrected the alleged misstatements or omissions he highlights in paragraphs 44–45 of the Finnerty Report. Rather, Dr. Finnerty merely points to allegations of misconduct that had been known for days and sometimes months prior, and to the announcement of purported investigations which contained no specific information about Goldman's

---

[128] I note that in a different matter, Dr. Finnerty similarly concluded that an announcement of a "change in accounting" was "not significant and was unlikely to impact [Jennifer Convertibles'] share price" based in part on his conclusion that "the issues behind this accounting change had previously been revealed with no effect on the Company's share price" (Finnerty Deposition Exhibit 4, "Draft Expert Report of John D. Finnerty, Ph.D.," *In Re Jennifer Convertibles Securities Litigation*, filed June 3, 2002, ¶¶11, 29–30).

[129] Finnerty Report, ¶102.

[130] Gompers Declaration, ¶¶12, 62–73, 78–95.

alleged misconduct and therefore cannot be linked to the alleged misstatements and omissions as outlined by Dr. Finnerty. Thus, Dr. Finnerty both fails to establish that Goldman's stock price was inflated during the Class Period and fails to establish loss causation. I will discuss each date in chronological order.

a) April 16, 2010

82. According to Dr. Finnerty:

> [An] SEC Complaint filed on April 16, 2010 revealed that Goldman had been engaged in fraudulent conduct in connection with the Abacus 2007-AC1 CDO transaction, had not adequately disclosed Paulson's involvement in the portfolio selection process, and intentionally misled ACA with respect to the Abacus 2007-AC1 CDO transaction.[131]

83. Goldman's stock price decreased from a closing price of $184.27 on April 15, 2010 to a closing price of $160.70 on April 16, 2010, a decrease of 12.79 percent.[132] After controlling for market and industry movements, Goldman's residual stock price movement was -9.94 percent and was statistically significant.[133]

---

[131] Finnerty Report, ¶76.

[132] Finnerty Report, ¶77.

[133] According to Dr. Finnerty's model, Goldman's residual stock price movement was -9.27 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -9.30 percent and was statistically significant (Finnerty Report, Exhibit 9).

84. On April 16, 2010, the SEC charged Goldman with fraud.[134] The charges included information about Mr. Paulson's role in the transaction, such as that "[o]n January 8, 2007, [Goldman employee Fabrice] Tourre attended a meeting with representatives from Paulson and ACA at Paulson's offices in New York City to discuss the proposed transaction."[135] In addition, the SEC alleged that:

> [Goldman'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.[136]

85. The SEC enforcement action itself directly affected Goldman's stock price, caused reputational damage, signaled potential further government actions against Goldman, and caused analysts to downgrade Goldman stock or increase their risk ratings. Market commentary on this date, described below, is consistent with my event study discussed in Section V.B.1, which showed that there was no impact on Goldman's stock price when similar allegations of Goldman's Business Conflicts and/or Mortgage/CDO Conflicts were made in the marketplace.[137]

---

[134] Complaint, *Securities and Exchange Commission v. Goldman Sachs & Co. and Fabrice Tourre*, 10 Civ. 3229 (BJ) (S.D.N.Y.), filed April 16, 2010 ("SEC Complaint").

[135] SEC Complaint, ¶26.

[136] SEC Complaint, ¶36.

[137] Market commentary on this date also discussed other new information unrelated to Plaintiffs' allegations, including news

86. I reviewed public press and analyst reports surrounding the events of April 16, 2010 and found that market participants attributed Goldman's stock price decline to the SEC's announcement of its enforcement action. For example:

- On April 16, 2010, *Dow Jones News Service* reported, "[t]he SEC's civil lawsuit is one of the biggest moves by authorities in response to the financial crisis of 2007-08, and it sent Goldman shares sharply lower. The firm's shares were down about 11% recently."[138]
- A Deutsche Bank analyst noted on that day that "[Deutsche Bank] expect[s] the SEC charges today against [Goldman], possible follow-on, and financial regulatory reform to weigh on the stock and sector in the near term; however, we think the loss of ~$13B in market cap. . .is an over-reaction."[139]

87. Notably, some market participants were more concerned by the SEC's enforcement action than by

---

about Goldman's investments and business. The *Financial Times* reported that Goldman's international real estate fund, Whitehall Street International, had dropped to $30 million in value from an initial $1.8 billion, citing an annual report that was sent by the fund to investors during the previous month ("Goldman Real Estate Fund Down to $30m," *Financial Times*, April 15, 2010). The *Financial Times* also reported that Goldman was hired by Demand Media Inc. to explore a 2010 IPO estimated at $1.5 billion ("Demand Media Enlists Goldman for IPO," *Financial Times*, April 16, 2010).

[138] "4th Update: SEC Charges Goldman Sachs with Defrauding Investors," *Dow Jones News Service*, April 16, 2010.

[139] "SEC Charges GS," Deutsche Bank, April 16, 2010.

Goldman's alleged conduct. For example, an analyst at Oppenheimer stated:

> In our view, the violations alleged in this complaint would normally have been viewed as relatively minor as the counterparties were large, sophisticated institutional parties on both sides of the transaction that had plenty of resources to do due diligence on the instrument that they were buying. Moreover, we suspect that the fact pattern alleged in the complaint was probably widespread in the industry.[140]

88. Similarly, on April 20, the same analyst reiterated that "[i]t is not so much the facts in the complaint that trouble us, [rather] it is the fact that the SEC seems to be pursuing such a limited and marginal case in a sensational and public manner."[141] A Deutsche Bank analyst noted that "given the details of the charge, the institutional nature of the clients, and the challenges of disclosing client information to another client, the findings are rather inconclusive."[142] Additionally, the *Washington Post* also described the SEC's charges as "flimsy,"[143] and an Argus analyst reported that while "most legal experts agree that the SEC's civil fraud case against Goldman is far [from]

---

[140] "SEC Singles Out GS for Fraud ChargeStepping to Sidelines," Oppenheimer, April 16, 2010.

[141] "1Q Review: Life Is Not Fair," Oppenheimer, April 20, 2010. The analyst also characterized "the facts of the SEC complaint as fairly weak and limited" and listed seven reasons why "the complaint seems marginal."

[142] "Solid Quarter Overshadowed by Recent SEC Allegations," Deutsche Bank, April 20, 2010.

[143] "Goldman's Non-Scandal," *Washington Post*, April 20, 2010.

being a slam dunk," the "publicity is clearly embarrassing for Goldman Sachs."[144]

89. As discussed by Dr. Choi in his declaration, the SEC enforcement action against Goldman had several extraordinary characteristics showing an unusually aggressive stance by the SEC which could be expected to affect Goldman's stock price irrespective of the underlying allegations, specifically (a) the SEC did not announce a settlement on the same day the charges were filed; (b) the charges included violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and Section 17(a)(1) of the Securities Act of 1933 ("scienter charges"); and (c) an individual, Fabrice Tourre, was charged along with Goldman.[145] Moreover, the SEC action was unusual because it took place in a tumultuous economic and political environment where there was considerable uncertainty about future regulation and legislation.[146] Dr. Finnerty testified at his deposition that characteristics of the announcement of a regulatory action, such as whether the action is settled at the same time it is announced, can cause different stock price impacts even when the underlying factual allegations are the same.[147]

90. Following the SEC charges against Goldman, market participants commented that there would be increased governmental scrutiny aimed at Goldman specifically. For example:

---

[144] "Analyst's Notes," Argus, April 20, 2010.

[145] Choi Declaration, ¶¶35, 39–40.

[146] Choi Declaration, ¶49.

[147] Finnerty Deposition, 146:24–148:13.

- On April 16, 2010, a Barclays analyst stated, "[t]argeting [Goldman Sachs], given the flurry of anti-Wall Street press that has centered around that firm offers the publicity that the administration needs at this critical juncture."[148]
- On April 19, 2010, a Wells Fargo analyst reported that the SEC action "could embolden other regulators (and investors) to seek legal action against" Goldman. The analyst "expect[ed] [that] lawmakers will use the allegations against [Goldman] as a means to push regulatory reform."[149]
- On April 20, 2010, an Oppenheimer analyst noted that "[i]t is not so much the facts in the complaint that trouble us, it is the fact that the SEC seems to be pursuing a limited and marginal case in a sensational and public manner. No matter how strong the company's financial performance, it is hard to see how the stock outperforms when one of its primary regulators seems intent on this course of action."[150]
- On April 20, 2010, a Credit Suisse analyst wrote, "[w]e acknowledge [that] near-term headline risk remains high and regulatory overhang could keep a cloud over Goldman Sachs and brokerage sector valuations. There's no doubt regulatory/litigation risk now

---

[148] "Administration Steps Up Support for Bill," Barclays Capital, April 16, 2010.

[149] "GS: Reputational Risks Increased, But Valuation Still Attractive," Wells Fargo, April 19, 2010.

[150] "1Q Review: Life Is Not Fair," Oppenheimer, April 20, 2010.

represents a greater risk to our constructive thesis [on Goldman shares]."[151]

- On April 21, 2010, a Societe Generale analyst discussed the political nature of the charges against Goldman and noted that the "current attacks are politically driven in our view ([Goldman] was not the most active player in MBS and synthetic CDO issuance), headlines and legal risk could result in volatility affecting its stock price in the near term."[152]

91. Following the SEC charges, market participants also noted that Goldman could suffer a negative reputational effect due to the stigma associated with being the subject of an SEC enforcement action but did not ascribe the reputational effects to the Conflict Management Statements and/or Business Principles Statements. Equity analysts also downgraded Goldman's stock or changed their risk ratings following the SEC charges. For example:

- On April 16, 2010, an Oppenheimer analyst downgraded Goldman to "perform" from "outperform," noting that "[a]t the moment, it looks as if the SEC is pursuing an agenda aimed specifically at Goldman."[153]

- Also, on April 16, 2010, a Citigroup analyst revised his rating for Goldman to "buy/high

---

[151] "Strong Fundamentals–No New News on SEC Charge," Credit Suisse, April 20, 2010.

[152] "Blow-Out Quarter Overshadowed by SEC Complaint," Societe Generale, April 21, 2010.

[153] "SEC Singles Out GS for Fraud Charge–Stepping to Sidelines," Oppenheimer, April 16, 2010.

> risk" from "buy/medium risk," noting that "these issues will take a while to resolve and will add more headline risk to the story" and that he views "[r]eputation risk [as the] biggest issue."[154]

92. Lastly, I reviewed market commentary surrounding this date and found that none of the commentary attributed Goldman's stock price movement to a revelation that Goldman's Conflict Management Statements or Business Principles Statements were false. Indeed, I did not find any mention of Goldman's Conflict Management Statements or Business Principles Statements at all, in any of the analyst reports around April 16, 2010.

93. As I previously discussed, in conducting my event study I applied an objective and replicable methodology. In the case of public press surrounding the alleged corrective disclosure dates, I searched analyst reports and *Factiva*'s major business publications on the trading day prior to and three trading days after the alleged corrective disclosure day. In the Finnerty Rebuttal Declaration, Dr. Finnerty points to three news articles and incorrectly contends that these articles "showed that the revelation that Goldman had engaged in conflicts of interest and violated is business practices in connection with Abacus . . . had an impact on Goldman's stock price."[155] However, Dr. Finnerty's ad hoc identification of three news articles does not refute my finding (based on a far broader review of more than

---

[154] "Initial Thoughts on SEC Civil Lawsuit," Citigroup, April 16, 2010.

[155] Finnerty Rebuttal Declaration, ¶181. Dr. Finnerty does not refer to these articles in the Finnerty Report.

2,000 press articles and 40 analyst reports) that market commentary did not attribute any of the stock price declines at issue to a revelation that Goldman's Conflicts Management or Business Principles Statements were false. In any event, Dr. Finnerty mischaracterizes these articles as supporting his assertion that Goldman's residual stock price decline on April 16, 2010 was caused by a correction of the alleged misstatements:

- *The Wall Street Journal* article dated April 17, 2010 merely mentions the word "conflicts," but does not reference the Conflict Management or Business Principles Statements, let alone attribute any stock price decline to their alleged falsity.[156] Consistent with Dr. Choi's explanation for Goldman's stock price movement, the article states that the lawsuit "represent[s] the government's strongest attack yet on . . . [pre-crisis] Wall Street deal making," that Goldman had "emerged as a lightning-rod," and that "[t]he SEC lawsuit likely strengthens the position of President Obama as he tries to push financial-overhaul legislation through Congress."
- The April 18, 2010 *Associated Press* news article describes Goldman's Business Principles in the context of discussing the potential impact of the SEC enforcement

[156] Finnerty Rebuttal Declaration, ¶181; "U.S. Charges Goldman Sachs with Fraud—SEC Alleges Firm Misled Investors on Securities Linked to Subprime Mortgages; Firm Vows to Fight the Charges," *The Wall Street Journal,* April 17, 2010. I note that Dr. Finnerty appears to cite a different version of this article.

action on Goldman's image.[157] Dr. Finnerty provides no explanation for why this is the only article he has located that mentions the Business Principles Statements or why he has not located any articles that mention the Conflict Management Statements. The article does not attribute any stock price decline to those statements. In fact, the article described other recent "mishaps" that had affected Goldman's "image" and characterized the statement "[o]ur clients' interests always come first" as "a sales pitch that few Wall Street firms always live up to."

- *The Wall Street Journal* column on April 21, 2010, while mentioning reputational harm, does not attribute any stock price decline to any of the statements at issue having been rendered false.[158] The article states that the "SEC faces a tough task in proving" its allegations and, consistent with Dr. Choi's findings, that "[g]iven the public anger at Wall Street, and the criticism of the SEC's failure to regulate more effectively before the financial crisis struck, it's worth considering that Goldman makes an enticing political target, regardless of the merits of the suit."

94. In sum, Goldman's stock price was adversely affected by news other than alleged corrections of the Conflict Management Statements or Business Principles Statements. My conclusion is based on the

[157] "Fraud Charge Deals Big Blow to Goldman Sachs' Image," *Associated Press,* April 18, 2010.

[158] "Where's the Goldman That I Used to Know?" *The Wall Street Journal*, April 21, 2010.

totality of my analysis, including my event study analysis explained above and my finding that the release of information mirroring the alleged corrective disclosures earlier in the Class Period did not cause a negative residual stock price movement. Because Dr. Finnerty does not attempt to disentangle the impact of this confounding negative news on April 16, 2010, Dr. Finnerty fails to establish that the alleged corrective disclosure caused a negative reaction in Goldman's stock price and thus fails to establish (a) that Goldman's stock price was inflated during the Class Period, and (b) loss causation.

b) April 26, 2010

95. Dr. Finnerty states that "[o]n Saturday, April 24, 2010, the Senate Subcommittee on Investigations announced the release of four emails, which indicated that Goldman made money betting against the CDOs it had sold to its clients."[159]

96. Goldman's stock price decreased from a closing price of $157.40 on April 23, 2010 to a closing price of $152.03 on April 26, 2010, a decrease of 3.41 percent. After controlling for market and industry movements, Goldman's residual stock price movement was not statistically significant.[160] Dr. Finnerty finds a similar

---

[159] Finnerty Report, ¶95.

[160] Dr. Finnerty also notes that this residual stock price movement is statistically significant only at the 38 percent level and not the 5 percent level (Finnerty Declaration, ¶¶66–67). According to Dr. Finnerty's model, Goldman's residual stock price movement was -1.68 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -1.96 percent and was not statistically significant (Finnerty Report, Exhibit 9).

result and therefore excludes the residual stock price movement on this day from his damages analysis.[161]

97. Dr. Finnerty does not mention that on Sunday, April 25, 2010, elected representatives and government officials publicly voiced their concerns over Goldman's internal e-mails released the previous day, arguing that the e-mails revealed that Goldman's conflicts of interest allowed it to make significant profits to the detriment of its clients. Plaintiffs also state that the April 26, 2010 disclosures provide "new material information"[162] relating to Goldman's "fraudulent conduct"[163] that "further detail[ed] that Goldman made billions by betting against the CDOs it sold to its clients."[164] Plaintiffs similarly stated in their Opposition to Defendants' Motion to Dismiss that on this day "new fraud-related material information that further revealed previously concealed risks. . .caused Company-specific stock declines."[165]

98. Further, *The Wall Street Journal* reported that e-mails were discussed by a panel of commentators on ABC's April 25, 2010 "This Week" program.[166]

- "'The CEO of Goldman is not going to win any popularity contests when, over a period that

---

[161] Finnerty Report, ¶107.

[162] Complaint, ¶333.

[163] Complaint, ¶317.

[164] Complaint, ¶316.

[165] Lead Plaintiffs' Opposition to Defendants' Motion to Dismiss the Consolidated Complaint, *In re Goldman Sachs Group, Inc. Securities Litigation*, filed November 14, 2011, p. 29.

[166] "White House Official: Goldman CEO 'Not Going to Win Any Popularity Contests,'" *The Wall Street Journal,* April 25, 2010.

ordinary Americans' pensions, houses et cetera were collapsing in value, they were actually making significant money off of it,' Austin Goolsbee, a member of the White House's Council of Economic Advisors, said on the ABC News Program 'This Week' on Sunday."

- "'These emails signify that there are all kinds of conflicts of interest on Wall Street,' said Sherrod Brown, an Ohio Democrat, on 'This Week.'"

99. Thus, according to Plaintiffs, there was important new information concerning Goldman's alleged CDO conflicts of interest released on this day. In fact, this information contrasts with the corrective information allegedly released on April 30, 2010, which had reported a purported DOJ investigation and no new information regarding alleged CDO conflicts. Yet after controlling for market and industry movements, both Dr. Finnerty and I determined that Goldman's residual stock price movement on the associated trading day of April 26, 2010 was not statistically significant.[167] Absent a statistically significant residual stock price movement, one cannot conclude that the new information had any impact on Goldman's stock price. Dr. Finnerty offers no coherent explanation for the lack of a statistically significant residual stock price movement on this date. Dr. Finnerty has previously argued, without providing any support, that the expectation of additional litigation stemming from the SEC's April 16, 2010 enforcement action and some public discussion of the "profitability of the CDO transactions to Goldman,"

---

[167] Finnerty Deposition, 194:14–24; Finnerty Report, ¶11, Exhibit 3.

could have "muted" the market's reaction.[168] Now Dr. Finnerty claims that the market response could have been "muted"[169] by Goldman's public statements about its conduct and the fact that Goldman executives would be testifying in Congress the next day.[170] In any event, Dr. Finnerty provides no support for any of these assertions and in fact, as discussed in Section V.B.1, Dr. Finnerty's "denials" theory is inconsistently applied and lacks any methodological basis. The obvious conclusion is that there was no stock price movement because the market did not pay attention to the alleged misstatements. This is entirely consistent with my finding that there likewise was no price impact on the 34 earlier dates during the Class Period in response to other reports of Goldman conflicts.

100. It is also telling that, on the two subsequent corrective disclosure dates identified by Plaintiffs (April 30, 2010 and June 10, 2010), there were statistically significant residual stock price declines even though, as I discuss in detail below, no new information about Goldman's alleged conflicts of interest was released on either of these dates. Instead, what these two dates have in common is that they both included prominent media reports about potential governmental investigations of Goldman. For instance, Dr. Finnerty notes that on April 30, 2010, "the *Wall Street Journal* reported that US federal prosecutors had opened a criminal investigation into whether Goldman or its employees had committed securities fraud in connection with its mortgage

---

[168] Finnerty Declaration, ¶66.

[169] Finnerty Report, ¶107.

[170] Finnerty Report, ¶103.

trading."[171] Neither Dr. Finnerty nor the article provides any information regarding the substance of the investigation or any allegations being pursued indeed, the article does not mention any specific CDO, no less the four at issue here.[172] Similarly, for June 10, 2010, Dr. Finnerty points to reports of an SEC investigation into the Hudson CDO, but he does not contend that the reports contained any new allegations of Goldman conflicts.[173] Thus, in contrast to April 26—on which there were *new allegations of* Goldman CDO conflicts, *no news of* government enforcement actions, and *no statistically significant residual stock price movement* —April 30 and June 10 had *news of* governmental actions and investigations, *no new reports of* Goldman CDO conflicts, and *statistically significant residual stock price declines*. This finding further corroborates that Goldman's stock declines on those days were a result of news of government enforcement activities, not new allegations of Goldman CDO conflicts.

101. In sum, not only has Dr. Finnerty failed to show that any correction of the alleged misstatements caused economic losses to investors on this date, the lack of a statistically significant residual price movement on the only alleged corrective disclosure date without confounding news of a governmental enforcement action or investigation provides further evidence that the residual stock price declines on the

---

[171] Finnerty Declaration, ¶69.

[172] *See* Gompers Declaration, ¶80.

[173] *See* Finnerty Declaration, ¶77. Although Dr. Finnerty points to e-mails released days earlier, if Dr. Finnerty is correct that the market for Goldman Sachs stock was efficient, any information in those emails would have affected prices days before June 10.

other alleged corrective disclosure dates were not a result of corrections of the alleged misstatements, and, therefore, Dr. Finnerty has no basis to conclude that the alleged misstatements introduced inflation into Goldman's stock price.

c) April 30, 2010

102. According to Dr. Finnerty, "[o]n Thursday, April 29, 2010 after the market closed, *The Wall Street Journal* reported that the Department of Justice (DOJ) had opened a criminal investigation into whether Goldman or its employees had committed securities fraud in connection with Goldman's mortgage trading."[174]

103. Goldman's stock price decreased from a closing price of $160.24 on April 29, 2010 to a closing price of $145.20 on April 30, 2010, a decrease of 9.39 percent. After controlling for market and industry movements, Goldman's residual stock price movement was -8.00 percent and was statistically significant.[175]

104. The information provided in *The Wall Street Journal* article did not include any details about the purported DOJ investigation. The article states that "[t]he investigation is centered on different evidence than the SEC's civil case"[176] but contains no

---

[174] Finnerty Report, ¶108.

[175] According to Dr. Finnerty's model, Goldman's residual stock price movement was -7.75 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -7.65 percent and was statistically significant (Finnerty Report, Exhibit 9).

[176] "Criminal Probe Looks into Goldman Trading," *The Wall Street Journal*, April 30, 2010.

information regarding specific allegations that the DOJ was purportedly pursuing. The article notes that "[i]t couldn't be determined which Goldman deals are being scrutinized in the criminal investigation,"[177] and does not specifically discuss the Conflict Management Statements or Business Principles Statements. Moreover, even Dr. Finnerty points only to general statements associated with the purported DOJ investigation. Dr. Finnerty states in his report that Goldman "failed to disclose that the Company, in fact, had conflicts of interest with its clients in connection with the synthetic CDOs Goldman structured and sold, e.g., Abacus 2007-AC1, Hudson 2006-1, Anderson 2007-1, and Timberwolf 1 CDOs."[178] Dr. Finnerty fails to provide any evidence of specific news items correcting these alleged misstatements. As discussed above, the allegation that Goldman failed to disclose conflicts of interests to its CDO investors—the very information that Dr. Finnerty claims Goldman should have disclosed—was widely discussed as early as December 2009, without impacting Goldman's stock price.

---

[177] "Criminal Probe Looks Into Goldman Trading," *The Wall Street Journal*, April 30, 2010.

[178] Finnerty Report, ¶44. In addition, without specifying whether Goldman should have disclosed such information, Dr. Finnerty adds that "Goldman allegedly structured and sold to clients these synthetic CDOs, which were structured to fail, while the Company took short positions on these CDOs, without disclosing its short positions to Goldman's clients. Moreover, by engaging in the Abacus 2007-AC1 transaction in particular, Goldman allegedly created conflicts of interest by allowing one client, Paulson, to benefit at the expense of other clients and issued misleading marketing and offering materials to other clients" (Finnerty Report, ¶45).

105. Interestingly, Dr. Finnerty analyzes news items that were discussed a few trading days prior to the alleged corrective disclosure of April 30, 2010, but does not provide an economically plausible explanation why stale news (i.e., old news) would affect Goldman's stock price on April 30, 2010. Dr. Finnerty states that "as part of [his] review of the Disclosure Date of April 30, 2010, the first trading date after the disclosure of the DOJ investigation, [he] also reviewed the information that was released into the market on April 27, 2010."[179] According to Dr. Finnerty, on April 27, 2010, a Senate hearing was held in which "Goldman employees were questioned regarding its fraudulent conduct in connection with certain CDOs that Goldman structured and sold."[180] Dr. Finnerty specifically notes that "[i]n highlighting Goldman's fraudulent conduct, Senators referenced the Abacus 2007-AC1, Hudson 2006-1, Timberwolf 1, and Anderson 2007-1 CDO transactions."[181]

106. It is unclear why Dr. Finnerty believes that stale news released on April 27, 2010 would affect Goldman's stock price on April 30, 2010, three trading days later. Dr. Finnerty has previously claimed that Goldman's stock traded in an efficient market during the Class Period.[182] In an efficient market, new information is quickly incorporated into prices.[183] Therefore, any news about Goldman's conduct

---

[179] Finnerty Report, ¶108.

[180] Finnerty Report, ¶108.

[181] Finnerty Report, ¶110.

[182] Finnerty Declaration, ¶11.

[183] Fama, E. F. (1970), "Efficient Capital Markets: A Review of Theory and Empirical Work," *The Journal of Finance,* 25(2), 383–417 at p. 383.

released on April 27, 2010 should have been reflected in Goldman's stock price by the close of that trading day. I note that Dr. Finnerty does not find a statistically significant negative residual stock price movement on April 27, 2010 (in fact, he finds a positive residual stock price movement).[184] Therefore, Dr. Finnerty's own analysis supports my finding that when information about Goldman's alleged misconduct was revealed to the marketplace, absent confounding information of governmental enforcement actions or investigations, it did not affect Goldman's stock price and thus it did not cause any economic losses to Goldman's investors.

107. Market participants attributed Goldman's stock price decline on this day to (and analysts downgraded Goldman's stock based on) the purported DOJ investigation, increased governmental scrutiny against Goldman, and reputational harm—not to any disclosure of the purported falsity of Goldman's Conflict Management Statements and/or Business Principles Statements. Indeed, I did not find any mention of Goldman's Conflict Management Statements and/or Business Principles Statements in my review of the analyst reports on April 30, 2010.

108. I reviewed public press and analyst reports surrounding *The Wall Street Journal* article on April 29, 2010 and found that market participants attributed Goldman's stock price decline to the risks of the purported DOJ investigation. For example:

- *Dow Jones News Service* reported that "[Goldman's] shares continue to decline premarket. . .after yesterday's news broke that

---

[184] Finnerty Report, Exhibit 3.

federal prosecutors are investigating, and looking at criminal charges stemming from the SEC's civil fraud case."[185]

- *Reuters News* also reported that "Goldman shares fell 9.4 percent on Friday after news of a criminal examination surfaced, and after two analysts downgraded the stock."[186]

109. Market commentary indicates that the purported DOJ investigation indicated increased governmental scrutiny toward Goldman. For example:

- A Buckingham Research analyst reported, "[a]s a lightning rod for the industry, [Goldman] is facing significant political pressure. . . . [O]n top of the SEC's civil fraud case, there are now reports of the US Attorney's office beginning a criminal inquiry into [Goldman's] activities and, separately, 61 Congressmen wrote a letter requesting the DOJ investigate [Goldman] as well."[187]

- The *Financial Times* quoted a former prosecutor and SEC enforcement attorney who discussed the political nature of these allegations: "'The release of the existence of a preliminary inquiry amid the firestorm is reckless and grossly irresponsible. The only purpose in doing so was to stoke a political flame. . . . There is not one scintilla of evidence

---

[185] "Market Talk: With Another Probe, Goldman Shares Sliding Premkt," *Dow Jones News Service*, April 30, 2010.

[186] "Buffett May Push, or Be Pushed, on Goldman," *Reuters News,* April 30, 2010.

[187] "Downgrade to Neutral; Litigation/Political Risk Too Difficult to Handicap," Buckingham Research, April 30, 2010.

in the public domain that suggests there was any criminality here.'"[188]

110. In addition, market participants commented that the purported DOJ investigation would cause reputational harm to Goldman. For example:

- Two days after the report, on May 1, 2010, *The Wall Street Journal* reported that Warren Buffett stated, "'[t]here's no question that the allegation alone causes the company to lose reputation.'"[189]
- On May 2, 2010, a Citigroup analyst stated that "[r]eputational risk could damage Goldman's franchise – While we do not believe at this point Goldman's institutional client base has altered their business practices at this point, Goldman's reputation is one of the firm's greatest assets."[190]
- On May 3, 2010, a Wells Fargo analyst stated that "even the threat of criminal charges against [Goldman] could further tarnish the company's reputation and ability to win client business."[191]

111. Following the news of the purported investigation, several analysts downgraded Goldman's stock and/or reduced their price targets based on

[188] "Goldman Faces Rising Pressure to Strike Deal," *Financial Times*, April 30, 2010.

[189] "WSJ Update: Buffett Offers Spirited Defense of Goldman," *Dow Jones News Service*, May 1, 2010.

[190] "Reiterate Buy – Risks Are There, But Still See Significant Upside," Citigroup, May 2, 2010.

[191] "GS: Headline Risk Returns But We See A Way Forward-Affirming OP," Wells Fargo, May 3, 2010.

information regarding the purported DOJ investigation and additional governmental scrutiny and regulation—and did not attribute these downgrades to the alleged falsity of Goldman's Conflict Management Statements and/or Business Principles Statements. For example:

- On April 30, 2010, a Buckingham Research analyst downgraded Goldman, stating, "[r]eluctantly, and despite strong fundamentals and an attractive valuation, we are downgrading [Goldman] shares to Neutral from Buy given the significant uncertainty surrounding multiple and continued government probes of [Goldman]'s mortgage trading & underwriting operations."[192]
- On April 30, 2010, a Bank of America Merrill Lynch analyst commented, "[w]e are lowering our rating on [Goldman] to Neutral from Buy and our price objective to $160 from $220. Our downgrade is prompted by news reports filed Thursday evening by the media including the Wall St. Journal indicating that federal prosecutors have opened an investigation of [Goldman] in connection with its trading activities, raising the possibility of criminal charges. . . . Most such probes end inconclusively, with no charges filed."[193]
- On May 1, 2010, *The Wall Street Journal* reported that a Standard & Poor's Equity Research analyst cut his investment

[192] "Downgrade to Neutral; Litigation/Political Risk Too Difficult to Handicap," Buckingham Research, April 30, 2010.

[193] "Cutting to Neutral: Concerns Over Reports of Federal Probe," Bank of America Merrill Lynch, April 30, 2010.

> recommendation on Goldman shares to "Sell" and lowered his price target price by $40 to $140, stating, "'[t]hough traditionally difficult to prove, we think the risk of a formal securities fraud charge, on top of the SEC fraud charge and pending legislation to reshape the financial industry, further muddies Goldman's outlook.'"[194]

112. I reviewed market commentary surrounding *The Wall Street Journal* news article and found that none of the commentary attributed Goldman's stock price movement on this day to Goldman's Conflict Management Statements and/or Business Principles Statements. Indeed, I did not find any mention of Goldman's Conflict Management Statements and/or Business Principles Statements in my review of the analyst reports on April 30, 2010.

113. In addition, my review did not reveal any public discussion of, or new information regarding, Goldman's conduct on this date beyond the purported investigation itself. I have thus seen no information released on this day demonstrating that the alleged misstatements were false or that previously undisclosed information about Goldman's alleged misconduct was revealed.

114. In sum, I find that Goldman's stock price was adversely affected by news other than the alleged corrections of the Conflict Management Statements or Business Principles Statements on April 30, 2010. This conclusion is supported by my event study analysis explained above and my finding that the release of information mirroring the alleged corrective

---

[194] "U.S. Faces High Stakes in Its Probe of Goldman," *The Wall Street Journal*, May 1, 2010.

disclosures earlier in the Class Period did not affect Goldman's stock value. Because Dr. Finnerty fails to provide any evidence of specific news items correcting the alleged misstatements on this date and he does not attempt to disentangle the impact of non-allegation-related news on April 30, 2010, he fails to establish that any corrective disclosure of the alleged misstatements caused a negative reaction for Goldman's stock price and thus fails to establish (a) that Goldman's stock price was inflated during the Class Period, and (b) loss causation.

d) June 10, 2010

115. Dr. Finnerty states that "[o]n Wednesday, June 9, 2010, after the market closed, it was reported that the Hudson 2006-1 CDO, which was sold in 2006, was also the target of a probe by the SEC in addition to the Abacus 2007-AC1 CDO."[195]

116. Goldman's stock price decreased from a closing price of $136.80 on June 9, 2010 to a closing price of $133.77 on June 10, 2010, a decrease of 2.21 percent. After controlling for market and industry movements, Goldman's residual stock price movement was -4.44 percent and was statistically significant.[196]

117. An article in the *Financial Times* states:

> The US Securities and Exchange Commission has stepped up its inquiries into a complex

---

[195] Finnerty Report, ¶138.

[196] According to Dr. Finnerty's model, Goldman's residual stock price movement was -4.52 percent and was statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement was -4.64 percent and was statistically significant (Finnerty Report, Exhibit 9).

> mortgage-backed deal by Goldman Sachs that was not part of the civil fraud charges filed against the bank in April, according to people close to the matter. . . . The inquiry into Hudson Mezzanine is part of a wider investigation into the CDO activities of Wall Street banks. People close to the situation said the probe was preliminary and there was no certainty that it would lead to additional actions against Goldman.[197]

118. The article also references discussions of the Hudson CDO from the April 2010 Senate Subcommittee hearing as well as e-mails released in conjunction with the hearing and e-mails previously released by the Senate Subcommittee, but the article does not contain comments from either Goldman or the SEC. Market participants attributed Goldman's stock price decline on this day to the additional SEC investigation and not to Goldman's Conflict Management Statements and/or Business Principles Statements. Indeed, I did not find any mention of Goldman's Conflict Management Statements and/or

---

[197] "SEC Probes Second Goldman Security," *Financial Times*, June 9, 2010.

Business Principles Statements in my review of the analyst reports on June 10, 2010.[198, 199]

---

[198] In addition, Dr. Finnerty notes that *Bloomberg News* reported that Basis Yield Alpha Fund would sue Goldman in relation to the Timberwolf deal after the market closed on June 9, 2010 (Finnerty Declaration, ¶76); however, this information was not new as it had already been reported by *Bloomberg News* prior to market closing on this date ("Goldman Sued by Hedge Fund Basis Over Timberwolf CDO (Update 1)," *Bloomberg News*, June 9, 2010), and there was not a statistically significant residual price decline on this date. According to Dr. Finnerty's model, Goldman's residual stock price movement on June 9, 2010 was 0.71 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, Goldman's residual stock price movement on June 9, 2010 was 0.49 percent and was not statistically significant (Finnerty Report, Exhibit 9). In fact, *Dow Jones Business News* reported that Goldman's stock price "showed little reaction after the lawsuit was announced" ("2nd Update: Goldman Being Sued by Hedge Fund over Toxic CDOs," *Dow Jones News Service*, June 9, 2010). Also, on June 10, 2010, during the trading day, *Reuters News* reported that Goldman president Mr. Cohn stated that there were "'no indications'" that Goldman was close to settling fraud charges with the SEC ("Update 2-IOSCO-Goldman Has No Indication of SEC Settlement," *Reuters News*, June 10, 2010).

[199] My event study indicates that there was other news released on that day separate from any potential correction of the alleged misstatements, including news about Goldman's investments and an analyst earnings forecast change and downgrade unrelated to the allegations. *Bloomberg News* reported that Goldman and Bank of America were reportedly trying to sell "as much as $5 billion in debt related to the buyout of Hilton Worldwide" ("Bank of America, Goldman Said to Offer $5 Billion Hilton Debt," *Bloomberg News*, June 10, 2010). This news was previously reported on June 4, 2010 ("BofA, Goldman Seek $5B Hilton Debt Sale (Bloomberg)," *Real Estate Finance and Investment*, June 4, 2010). Atlantic Equities reduced EPS estimates and price targets for Goldman based on lower investment banking revenues due to mergers and acquisitions resulting from deteriorating markets and increasing uncertainty

119. Again, Dr. Finnerty points only to general statements associated with the SEC Hudson action. Dr. Finnerty notes that information related to the specific conduct at issue was released prior to June 10, 2010, but then claims that while "private litigation by investors may have been expected, the second SEC probe into a Goldman CDO transaction provided significant new information regarding the severity of Goldman's conduct" and that the SEC probe "implied that the issue might be beyond an 'ethical issue.'"[200] Dr. Finnerty fails to link the alleged misstatements discussed in his report that Goldman "failed to disclose that the Company, in fact, had conflicts of interest with its clients in connection with the synthetic CDOs Goldman structured and sold, e.g., Abacus 2007-AC1, Hudson 2006-1, Anderson 2007-1 and Timberwolf 1 CDOs" [201]and the alleged corrective news on this day. Presumably, Goldman could not predict, let alone know, whether the SEC would choose to "probe" the Hudson CDO. Nor does Dr. Finnerty define exactly what aspect of the "severity" of its conduct Goldman

---

in Europe as well as the inclusion of the previously announced UK bonus tax ("Estimates Cut on Weak Trading Revenue & UK Bonus Tax," Atlantic Equities, June 10, 2010).

[200] Finnerty Report, ¶¶139–140.

[201] Finnerty Report, ¶44. In addition, without specifying whether Goldman should have disclosed such information, Dr. Finnerty adds that "Goldman allegedly structured and sold to clients these synthetic CDOs, which were structured to fail, while the Company took short positions on these CDOs, without disclosing its short positions to Goldman's clients. Moreover, by engaging in the Abacus 2007-AC1 transaction in particular, Goldman allegedly created conflicts of interest by allowing one client, Paulson, to benefit at the expense of other clients and issued misleading marketing and offering materials to other clients" (Finnerty Report, ¶45).

allegedly should have disclosed. Moreover, as I have already discussed, the allegation that Goldman failed to disclose conflicts of interests to its CDO investors—the very information that Dr. Finnerty claims Goldman should have disclosed—was widely discussed as early as December 2009, without impacting Goldman's stock price. Therefore, Dr. Finnerty fails to provide any evidence of specific news items correcting these alleged misstatements.

120. Moreover, I reviewed public press and analyst reports surrounding the *Financial Times* article and found that market participants attributed Goldman's stock price decline to the rumors surrounding the second SEC investigation. For example:

- On June 10, 2010, *Dow Jones News Service* reported that Goldman shares were "down 3.1% at $132.60, while the [Dow Jones Industrial Average was] up 200. Traders said there are fresh concerns Goldman might be the target of a second SEC probe into toxic CDOs, and that the case isn't close to being settled."[202]
- On June 10, 2010, *Bloomberg News* reported that "Goldman Sachs's stock fell as much as 4 percent today to its lowest in more than a year after a person familiar with the matter said the SEC is looking into the firm's 2006 sale of a CDO called Hudson Mezzanine."[203]

---

[202] "Market Talk: Goldman Touches 52-Week Low on Legal Worries," *Dow Jones News Service*, June 10, 2010.

[203] "Goldman Sachs's Cohn Sees 'No Indications' of SEC Resolution," *Bloomberg News*, June 10, 2010.

121. Following the release of the *Financial Times* article,[204] market commentary discussed the negative impact of the purported SEC investigation on Goldman's stock. For example:

- *Reuters News* quoted a Fordham University School of Law professor and former federal prosecutor on the additional pressure from this SEC investigation as saying, "'[y]ou put a number of things together and then it becomes harder to defend against all of them.'" The article also stated that "[t]he myriad investigations, coupled with the Timberwolf [private] litigation, could create a tipping point at which Blankfein and other Goldman executives decide they have no choice but to reach some sort of comprehensive settlement, according to legal experts."[205]

- On June 10, 2010, a Wells Fargo analyt report detailed concerns over Goldman given the SEC's investigations: "Near-term challenges for the stock are likely to persist, but are mitigated by three factors. 1) The possibility of an additional SEC investigation into CDO practices at [Goldman] *was* not an unlikely occurrence, in our view, given the SEC's previous comments related to ongoing investigations of CDO practices across the industry. 2) Increased headline risk resulting from the SEC's additional investigation could cause [Goldman] to think more aggressively of

---

[204] "SEC Probes Second Goldman Security," *Financial Times*, June 9, 2010.

[205] "Analysis-Update 1-SEC Presses Goldman to 'Cry Uncle,'" *Reuters News*, June 10, 2010.

> pursuing a settlement with the SEC. 3) As we have noted previously, we believe the SEC could view a high-profile settlement to be in its the [*sic*] best interest as it would eliminate the possibility of an unsuccessful legal case."[206]

122. I also reviewed market commentary surrounding the *Financial Times* article regarding the additional SEC charges into the Hudson CDO on this date and found that none of the commentary attributed Goldman's stock price movement on this day to Goldman's Conflict Management Statements and/or Business Principles Statements purportedly being rendered false.

123. In addition, my review did not reveal any public discussion of, or new information regarding, Goldman's conduct on this date beyond the investigation itself.

124. In sum, I find that Goldman's stock price was adversely affected by news other than alleged corrections of the Conflict Management Statements or Business Principles Statements. This conclusion is supported through my event study analysis explained above and my finding that the release of information mirroring the alleged corrective disclosures earlier in the Class Period did not change the total mix of relevant information regarding Goldman's stock value. Because Dr. Finnerty fails to provide any evidence of specific news items correcting the alleged misstatements on this date and he does not attempt to disentangle the impact of this confounding negative news on June 10, 2010, Dr. Finnerty fails to establish that the alleged corrective disclosure caused a

---

[206] "GS: Reiterating Outperform Rating Despite Near-Term Volatility," Wells Fargo, June 10, 2010.

negative reaction for Goldman's stock price and thus has failed to establish (a) that Goldman's stock price was inflated during the Class Period, and (b) loss causation.

VI. Dr. Finnerty's Damages Methodology Is Flawed, Unreliable, and It Overstates Damages

125. For all of the reasons set forth above demonstrating that Dr. Finnerty failed to establish loss causation, I conclude that damages are zero in this case. Putting those issues aside, Dr. Finnerty's proposed methodology for measuring damages—which is based entirely on Goldman's stock price declines on the alleged corrective disclosure dates—is flawed, unreliable, and overstates damages. Dr. Finnerty fails to exclude the impact on Goldman's stock price of non-allegation-related information, which cannot form the basis of a damages calculation. In particular, with regard to April 30, 2010 and June 10, 2010, Dr. Finnerty is unable to point to any new information about Goldman's alleged misconduct. Moreover, Dr. Finnerty's "attribution" of damages associated with the alleged correction on April 30, 2010 across three CDOs is completely arbitrary, unscientific, and without basis. Finally, Dr. Finnerty incorrectly assumes that per-share damages "attributed" to each of the four CDOs are a constant dollar amount throughout the Class Period. Dr. Finnerty's assumption of constant damages is flawed in this matter because the Class Period includes the time period of the financial crisis, an event that would have affected the value (if any) attributable to the alleged misstatements. To the extent the alleged misstatements had any value-relevance to investors (which, as I show above, they did not), their impact on

Goldman's stock price would likely have been different prior to the financial crisis as compared to after.

A. Calculating Damages in a Securities Class Action and Dr. Finnerty's Approach

126. It is my understanding that economic damages for an investor in securities class actions are derived from any "inflation" in the company's stock price caused by the alleged fraud. Inflation at any point in time is the difference between the observed stock price and the hypothetical price (referred to as the "but-for" price) that would have prevailed absent the alleged misstatements. An investor's damages due to the alleged fraud are determined by the difference between the inflation in the stock price at the time of purchase and inflation at the time of sale, subject to certain statutory limits. By definition, inflation reflects only the impact of the alleged fraud and, therefore, cannot include the impact of any subsequent materialization of risks.

127. As discussed above, Dr. Finnerty fails to establish loss causation in this matter—that is, Dr. Finnerty has failed to show that during the Class Period Goldman's stock price was inflated as a result of the alleged misstatements. Nevertheless, I have been asked by counsel to assess Dr. Finnerty's methodology for measuring damages assuming that Plaintiffs were able demonstrate loss causation and show Goldman's stock price was inflated due to the alleged misstatements.

128. In order to measure damages and to accurately measure inflation, Dr. Finnerty must (a) specify what information, if any, Goldman could and should have disclosed to the market instead of the alleged misstatements at each point in time during the Class

Period; and (b) determine how the market would have valued that alternative disclosure throughout the Class Period. Critically, the proper "but-for" stock price is not the stock price absent the alleged fraud on Goldman *CDO investors*, as Dr. Finnerty seems to assume, but rather the stock price absent that alleged fraud on Goldman's *equity investors* (i.e., the stock price that would have prevailed throughout the Class Period had Goldman disclosed the information Plaintiffs claim it should have disclosed on each of the alleged misstatement dates).[207]

129. Instead of a detailed analysis of the alleged inflation in Goldman's stock price during the Class Period, Dr. Finnerty proposes a "constant dollar" damages methodology that measures inflation as a constant amount throughout the Class Period, based on Goldman's residual stock price declines on the three of the four alleged corrective disclosure dates. Specifically, Dr. Finnerty estimates Goldman's residual stock price movements on the three alleged corrective disclosure dates and attributes the full declines on those dates to the removal of inflation.[208] Dr. Finnerty also allocates damages across the four CDOs. Specifically, he attributes the entire residual stock price decline on April 16, 2010 to the Abacus

---

[207] Dr. Finnerty's conflation of the two concepts is evident from his statement that "the regulatory enforcement by the SEC would not have been brought if there had been no evidence of fraudulent conduct with respect to the Abacus 2007-AC1 CDO transaction." (Finnerty Report, ¶93).

[208] Note that Goldman's residual stock price movement on April 26, 2010 is not statistically significant under Dr. Finnerty's model nor my own. Goldman's stock price movement on this date is not included in Dr. Finnerty's calculation of inflation.

CDO,[209] the entire residual stock price decline on April 30, 2010 equally across the Timberwolf, Anderson, and Hudson CDOs,[210] and the entire residual stock price decline on June 10, 2010 to the Hudson CDO.[211] Dr. Finnerty's damages methodology suffers from numerous flaws and fails to accurately calculate damages in this matter. These flaws include (a) the failure to disentangle the effect of confounding non-allegation-related news released on the alleged corrective disclosure dates, (b) the arbitrary and unfounded allocation of damages across the CDOs, and (c) the assumption that damages are a constant per-share dollar amount throughout the entire Class Period.

B. Dr. Finnerty's Damages Methodology Is Flawed and Unreliable

1. Goldman's Residual Stock Price Movement on April 16, 2010, April 30, 2010, and June 10, 2010 Cannot Be Used to Measure Damages Because Dr. Finnerty Fails to Remove the Impact of Non-Allegation- Related Confounding Information

130. While Dr. Finnerty claims that the corrective disclosures revealed to the market the falsity of the alleged misrepresentations, as explained above in Section V.B.4, there was additional confounding information revealed to investors on the alleged

[209] Finnerty Report, ¶157.

[210] Finnerty Report, ¶161.

[211] Finnerty Report, ¶163. I note that Plaintiffs state that the CDOs ranged in size from $300 million (Anderson) to $2 billion (Abacus and Hudson), and that the Timberwolf CDO was a $1 billion CDO (Complaint, ¶¶50, 164, 202, 213).

corrective disclosure dates. This information—which is separate from the underlying allegations regarding Goldman's Business Principles Statements and Conflict Management Statements—included the announcement of the SEC enforcement action and the purported DOJ investigation as well as the prospect of increased regulatory scrutiny. Dr. Finnerty's failure to disentangle the impact of these factors on Goldman's stock price in measuring damages renders his analysis unreliable and overstates Plaintiffs' damages in this matter.

131. First, as detailed above, on April 16, 2010, the announcement of the SEC enforcement action against Goldman was released to the market. That enforcement action was unusual because (a) the SEC did not announce a settlement on the same day the charges were filed; (b) the charges included violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and Section 17(a)(1) of the Securities Act of 1933 ("scienter charges"); and (c) an individual, Fabrice Tourre, was charged along with Goldman.[212] As previously noted, at least some securities analysts were more concerned by the SEC's enforcement action than by Goldman's alleged conduct.[213] Even Dr. Finnerty himself acknowledges that the filing of a governmental enforcement action can have an impact on the target company's stock price independent of the specific allegations contained in the filing. For example, he admitted at his deposition that an action can have a greater impact on a stock price if it is not

---

[212] Choi Declaration, ¶¶39–40.

[213] "SEC Singles Out GS for Fraud Charge--Stepping to Sidelines," Oppenheimer, April 16, 2010.

settled when it is announced.[214] Thus, the effect on Goldman's stock price of the SEC enforcement action, separate and apart from any information that it conveyed about Goldman's Business Principles Statements and/or Conflict Management Statements, must be excluded from any damages calculation. Similarly, any effects on Goldman's stock price of market participants' expectations of increased governmental enforcement action must also be excluded. However, Dr. Finnerty fails to disentangle the impact of the SEC enforcement action on Goldman's stock price on April 16, 2010 and thus his measurement of damages is unreliable and it overstates damages in this matter.

132. Second, on April 30, 2010, rumors that Goldman was the subject of a criminal investigation by the DOJ had a negative price impact on Goldman's stock after *The Wall Street Journal* published an article about the investigation.[215] Though the article notes that "[t]he investigation is centered on different evidence than the SEC's civil case," *The Wall Street Journal* did not include any details about the specific allegations being pursued, or which Goldman deals were being scrutinized in the purported criminal investigation. As discussed above, the news media credited the stock price decline on April 30, 2010 to increased governmental scrutiny, regulatory risks, and potential reputational harm resulting from a potential purported DOJ investigation. My event

---

[214] Finnerty Deposition, 147:16–148:13.

[215] "Criminal Probe Looks into Goldman Trading," *The Wall Street* Journal, April 30, 2010. Note that this article was released after market close on April 29, 2010; hence, stock price movements are analyzed on the subsequent trading day, April 30, 2010.

study found no evidence of new, allegationrelated information or a correction to the alleged misstatements. Thus, the impact on Goldman's stock price of the purported DOJ investigation and its consequences must be excluded from any damages calculation. However, Dr. Finnerty fails to disentangle the impact of the purported DOJ investigation on Goldman's stock price on April 30, 2010 and thus his measurement of damages is unreliable and it overstates damages in this matter.

133. Finally, on June 10, 2010, it was reported that the SEC was expanding its investigation to include the Hudson CDO.[216] As discussed above, market participants attributed Goldman's stock price decline on that day to the rumors surrounding the SEC investigation, including the implications of a possible settlement. My event study found no evidence of new information regarding Goldman's conduct on this date. Thus, the effect on Goldman's stock price of a potential SEC investigation into the Hudson CDO and its consequences must be excluded from any damages calculation. However, Dr. Finnerty fails to disentangle the impact of the investigation on Goldman's stock price on June 10, 2010 and thus his measurement of damages is unreliable and it overstates damages in this matter.

134. With regards to April 30, 2010 and June 10, 2010 in particular, not only does Dr. Finnerty fail to exclude the impact of non-allegation information, he fails to demonstrate that any new information about Goldman's alleged misconduct was released into the marketplace. Indeed, all of the alleged misconduct by Goldman that Dr. Finnerty details in his report was

---

[216] Complaint, ¶335.

known to market participants by April 27, 2010—that is, subsequent to this date, Dr. Finnerty does not identify any additional specific alleged misconduct by Goldman, and instead can point only to purported regulatory investigations. Dr. Finnerty asserts that the governmental enforcement actions conveyed the "severity" of Goldman's alleged misconduct without specifying what that "severity" refers to or how it could be quantified, or how Goldman could have reasonably have predicted and disclosed it earlier in the Class Period.[217]

135. Again, the "but-for" concept is critical. Dr. Finnerty cannot link any information released on April 30, 2010 and June 10, 2010 to any disclosure he claims Goldman should have made on the alleged misstatement dates. Recall that Dr. Finnerty states that Goldman "failed to disclose that the Company, in fact, had conflicts of interest with its clients in connection with the synthetic CDOs Goldman structured and sold, e.g., Abacus 2007-AC1, Hudson 2006-1, Anderson 2007-1 and Timberwolf 1 CDOs."[218] As I have discussed, allegations that Goldman had conflicts of interest with its CDO investors and allegations that it failed to disclose those conflicts to those investors were publicly discussed as early as 2009. Goldman's residual stock price movements were not statistically significant on any of the days that information was released. Furthermore, Goldman internal e-mails were released on April 26, 2010 and Senate testimony was released on April 27, 2010.[219] According to Dr. Finnerty, the testimony mentioned

---

[217] Finnerty Report, ¶123, 140.

[218] Finnerty Report, ¶44.

[219] Complaint, ¶¶333–334.

alleged misconduct with respect to the Hudson, Anderson, and Timberwolf CDOs specifically, and again Goldman's residual stock price movement was not statistically significant on either of those dates.[220] Dr. Finnerty refers to that information in his discussion of the alleged corrective disclosures on April 30, 2010 and June 10, 2010, but the information about Goldman's conduct by that point was stale and, in an efficient market (as Dr. Finnerty claims the market for Goldman's stock was), should have been fully reflected in the price prior to April 30, 2010. Therefore, Dr. Finnerty has not established that any inflation, and therefore any damages, can be inferred from the residual stock price movements on April 30, 2010 and June 10, 2010.

136. In sum, Dr. Finnerty's damages model does not distinguish between market participants' knowledge of the alleged behavior itself and knowledge of the realization of certain government and regulatory actions—which were discretionary, not inevitable, and which could not possibly have been disclosed by Goldman on the alleged misstatement dates earlier in the Class Period. His damages model is therefore flawed and unreliable.

2. Dr. Finnerty's Allocation of Damages Across the Four CDOs Is Arbitrary, Unscientific, and Without Basis

---

[220] According to Dr. Finnerty's model, on April 27, 2010, Goldman's residual stock price movement was 3.58 percent and was not statistically significant (Finnerty Report, Exhibit 3). According to Dr. Finnerty's alternative model, on April 27, 2010, Goldman's residual stock price movement was 3.59 percent and was statistically significant (Finnerty Report, Exhibit 9).

137. Dr. Finnerty attributes the supposed dissipation of inflation on April 30, 2010 in equal parts to revelation of new information about each of the Hudson, Anderson, and Timberwolf CDOs because "that is what a reasonable investor would do given the limited information about the three CDO transactions available at that time."[221] Dr. Finnerty's equal attribution across the three CDOs is arbitrary, unscientific, and without basis, rendering his damages analysis fatally flawed.

138. First, the only information released into the marketplace on April 30, 2010 was that the DOJ was investigating Goldman "in connection with its mortgage trading."[222] Dr. Finnerty provides no conclusive basis for why a reasonable investor would necessarily assume that the investigation pertained to these three specific CDOs, let alone that they would assume the degree to which each purportedly rendered the Business Principles or Conflict Management Statements false was precisely equal.[223] Indeed, none of the press articles or analyst reports cited by Dr. Finnerty on this day identify any CDOs involved in the investigation, or provide any description of any conduct in a CDO.

139. Second, Dr. Finnerty assumes, without basis, that the marginal value-relevance to Goldman's stock price of allegations of misconduct with respect to an additional CDO is constant. In other words, under Dr.

---

[221] Finnerty Report, ¶161.

[222] "WSJ: Federal Criminal Probe Looks into Goldman Trading," *Dow Jones News Service,* April 29, 2010.

[223] Dr. Finnerty's only justification appears to be that the three CDOs were mentioned during Senate testimony on April 27, 2010 (*see* Finnerty Report, ¶¶109–114).

Finnerty's theory, learning that Goldman allegedly engaged in unspecified misconduct with respect to two CDOs has exactly double the value relevance of learning that Goldman engaged in alleged misconduct with respect to one CDO. Dr. Finnerty provides no basis justifying this assumption. In fact, his assumption makes no sense. The statements at issue do not identify any particular CDO and thus, assuming Plaintiffs' theory of the case, would be rendered false upon disclosure of the conflicts in any transaction. Dr. Finnerty's assumption that additional allegations regarding other CDO transactions rendered the alleged misstatements more false at an equal incremental value (and irrespective of differences in the allegations) is illogical and has no methodological grounding.

140. In sum, Dr. Finnerty's methodology for calculating damages is arbitrary, and as a result, to the extent there are any damages at all, may overstate damages during some parts of the Class Period and understate damages during other parts of the Class Period.

3. Dr. Finnerty's Damages Model Is Also Unreliable Because It Incorrectly Assumes Constant Inflation Throughout the Class Period

141. Even if Dr. Finnerty could rely on the stock price declines on the alleged corrective disclosure dates to measure inflation—which he cannot—it is inappropriate to assume that inflation was constant during the Class Period prior to the alleged corrective disclosure dates.

142. As previously discussed, a proper calculation of inflation requires determining (a) what information

Goldman could and should have disclosed instead of making the alleged misstatements at each point in time during the Class Period, and (b) how the market would have valued that alternative disclosure. Such an analysis would find that the value-relevance of any information "correcting" Goldman's alleged statements would have changed over the Class Period, and therefore a constant inflation as a measure of damages is inappropriate in this case.

143. The Class Period—February 5, 2007 through June 10, 2010—included an unprecedented financial crisis and economic recession. This crisis likely changed the value of the alleged misstatements over time. For example, if Goldman had fully disclosed its conduct in connection with the Abacus CDO shortly after the deal closed in early 2007 and before the deal had declined in value, this announcement would likely have been valued very differently than a disclosure at the end of the Class Period "given the flurry of anti-Wall Street press that [had] centered around [Goldman]" at that time.[224] Similarly, Dr. Choi explains that the SEC's enforcement action was unusually severe due to the financial crisis.[225] As a result, the market's response to a hypothetical disclosure of Goldman's conduct in the CDOs before the financial crisis would have likely been much different than the reaction in April and June 2010, even if the SEC had announced an enforcement action and if losses stemming from the SEC action were found to be attributable to the alleged misstatements (which, as I have explained above, they were not). Thus, Dr. Finnerty's assumption "that the amount of

---

[224] "Administration Steps up Support for Bill," Barclays Capital, April 16, 2010.

[225] Choi Declaration, ¶¶19, 31.

the inflation per share is a constant dollar amount" during the Class Period is unsupported and unreliable.[226]

144. Finally, any alleged inflation from the alleged misstatements would have dissipated or been removed over the course of the Class Period by disclosures in the public press of Goldman's alleged conflicts of interest (such as the articles discussed above in Section V.B.1). In other words, even if Dr. Finnerty's theory were correct and investors assigned substantial importance to Goldman's Conflict Management Statements and/or Business Principles Statements, as allegations of Goldman's purported conflicts of interest were revealed to the market throughout the Class Period, the market necessarily would have placed increasingly less weight (or even entirely discounted) those statements over time. By assuming constant dollar inflation, Dr. Finnerty effectively assumes that investors gave equal weight to Goldman's statements before and after similar allegations of Goldman's conduct. To the extent investors placed less weight on Goldman's Conflict Management Statements and/or Business Principles Statements over time, Dr. Finnerty's methodology would overstate inflation in the later portions of the Class Period.

Executed on this 2nd day of July, 2015

____

Paul Gompers

[226] Finnerty Deposition, 263:2–5. In his deposition, Dr. Finnerty testified that inflation could change on the dates of alleged misstatements or corrective disclosures (Finnerty Deposition, 264:6–14). His methodology does not allow inflation to change based on the facts of the case.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 1:10-cv-03461-PAC

ECF Case

In re GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

This Document Relates To: ALL ACTIONS

REPORT OF STEPHEN CHOI, Ph.D.

July 2, 2015

Table of Contents

I. Qualifications 1

II. Allegations and Assignment 3

III. Summary of Opinions.................................. 7

IV. SEC Enforcement Actions, in and of Themselves and Independent from the Content of the Underlying Allegations, Can Cause a Decline in a Defendant Company's Stock Price 9

V. The SEC Enforcement Action Against Goldman on April 16, 2010, in and of Itself and Distinct from the Content of the Underlying Allegations, Caused a Decline in Goldman's Stock Price 13

A. The Goldman Enforcement Action Had Characteristics that Are Statistically Associated with Significant Stock Price Declines of a Magnitude Consistent with the Decline Observed on April 16, 2010 16

i. Methodology 18

ii. Results.. 20

B. The Stock Price Decline Attributable to the Goldman Enforcement Action Was Exacerbated Because It Was Brought in a Tumultuous Economic, Political, and Regulatory Environment 24

i. The Goldman Enforcement Action Signaled an Increased Risk of Future Regulatory Actions and Legislative and Regulatory Changes that Would Have a Disproportionate Impact on Goldman's Business, Magnifying the Decline in Goldman's Stock Price 25

ii. The Sensational and Aggressive Nature of the Goldman Enforcement Action, as Noted by Equity Analysts and Market Commentators, Caused Uncertainty About the Effect of Future Regulatory Action, Which Magnified the Decline in Goldman's Stock Price 29

VI. The Goldman Enforcement Action and Its Unusual Characteristics Were Not Reasonably Foreseeable 34

A. Enforcement Actions Are Unforeseeable Due to the SEC's Wide Discretion in Deciding Whether to Bring an Enforcement Action and Determining Its Characteristics.................................. 34

B. The Defendants and the Market Could Not Have Reasonably Foreseen the Filing of the Goldman Enforcement Action.. 36

C. The Defendants and the Market Could Not Have Reasonably Predicted the Highly Unusual Characteristics of the Goldman Enforcement Action 38

VII. The Report Alleging a DOJ Investigation into Goldman, Which Provided No Information About the Purported Goldman Conduct, Caused a Decline in Goldman's Stock Price on April 30, 2010... 39

VIII. Reports Alleging an SEC Investigation into Goldman, as Distinct from Any Allegations Regarding Goldman's Conduct, Caused a Decline in Goldman's Stock Price on June 10, 2010 44

IX. Conclusions.. 47

* * *

IV. SEC Enforcement Actions, in and of Themselves and Independent from the Content of the Underlying Allegations, Can Cause a Decline in a Defendant Company's Stock Price

19. An SEC enforcement action is generally a negative event for a firm. For instance, Karpoff et al. (2008) report an average abnormal return for the defendant company's stock price of -13.1 percent for all announcements of regulatory involvement, including SEC enforcement actions, in financial misrepresentation cases.[15] The precise impact of an SEC enforcement action on the defendant company's stock price is determined by a number of factors, including the specific characteristics of the enforcement action, the anticipated potential costs including resolution costs, management distraction, the uncertainty for employees, clients, and business counterparties, and the regulatory or legislative changes signaled by the enforcement action.

20. An enforcement action's specific characteristics are important determinants of the stock price response to an enforcement action.[16] For instance, the charges brought, the list of defendants, and whether a settlement is announced concurrently can all have implications for the company's ongoing costs which affect its stock price. The academic literature relating to SEC enforcement actions indicates that enforcement actions that are not

---

[15] Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 591.

[16] See the empirical results in Section V.A.

settled, or otherwise resolved, on the filing date of the enforcement action ("enforcement action date") are accompanied by larger negative abnormal stock price reactions. For example, Karpoff et al. (2008) document average abnormal returns of -6.7 percent when the enforcement action is concurrently resolved and -15.0 percent when it is not.[17] Dr. Finnerty recognized during his deposition that enforcement action characteristics such as whether the filing of the enforcement action is accompanied by a concurrent settlement can, in and of themselves, lead to different defendant company stock price reactions.[18]

21. Importantly, such factors are not inevitable consequences stemming from the content of the underlying allegations. Rather, the SEC uses its prosecutorial discretion to determine the specific characteristics of an enforcement action in accordance with the signal it intends to send to the market.[19] The

[17] Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 591.

[18] Deposition of Dr. John D. Finnerty on March 19, 2015 ("Finnerty Deposition"), 147:16-148:13.

[19] "SEC Issues Report of Investigation and Statement Setting Forth Framework for Evaluating Cooperation in Exercising Prosecutorial Discretion," *United States Securities and Exchange Commission*, Press Release 2001-117, October 23, 2001 (http://www.sec.gov/news/headlines/prosdiscretion.htm). In bringing an enforcement action, the SEC often focuses on higher profile targets that it believes have greater potential benefits for its objectives. Former SEC Chairman Harvey Pitt wrote in a co-authored article that the SEC "generally is apt to choose the highly visible target if it wants to achieve the greatest deterrent effect for its enforcement efforts . . . . [T]he SEC and its enforcement staff will often consider the public relations value of a case in deciding whether, when and how to pursue it." See Pitt, H. and K. Shapiro (1990), "Securities Regulation By

characteristics of an enforcement action are not known before the filing of the enforcement action and may be influenced by factors which are independent of the content of the underlying allegations. Consequently, the enforcement action, in and of itself, may cause a decline in the defendant company's stock price.

22. An SEC enforcement action may also provide new information to the market about shifts in the SEC's enforcement priorities and strategies, or signal regulatory or legislative changes. This is particularly true in times of regulatory turmoil when SEC actions are likely to have a feedback effect on the regulatory climate. For example, in the insider trading area, SEC enforcement actions have led to a number of seminal U.S. Supreme Court decisions that have altered the nature of the insider trading prohibition.[20] Cox and Thomas have written that "[t]he SEC, through its path-breaking prosecutions on insider trading, not only established the boundaries of insider trading regulation, but also legitimized regulation of this

---

Enforcement: A Look Ahead at the Next Decade," *Yale Journal on Regulation*, 7, 149-529, p. 184. See also Dooley, M. (1999), "Insider Trading: Comment from an Enforcement Perspective," *Case Western Reserve Law Review*, 50, 319-323, p. 323. ("[P]ublicity and other considerations that appear likely to advance the agency's interests often determine its choice of an enforcement target.") Similarly, Kedia and Rajgopal (2011) find that the SEC is more likely to investigate firms with higher visibility. See Kedia, S. and S. Rajgopal (2011), "Do the SEC's Enforcement Preferences Affect Corporate Misconduct?" *Journal of Accounting and Economics*, 51, 259-278, p. 263.

[20] These cases include, for example, *Dirks v. Securities and Exchange Commission*, 463 U.S. 646, 667 (U.S. Supreme Court, 1983), and *United States v. O'Hagan*, 521 U.S. 642, 678 (U.S. Supreme Court, 1997).

phenomenon in the first place."[21] More recently, after media attention on the issue of high frequency trading, the SEC initiated and settled two high frequency trading related enforcement actions in Fall 2014.[22,23] Concurrent with these enforcement actions was speculation in the market about whether the SEC and/or the U.S. Commodity Futures Trading Commission would move forward[24] with new rulemaking focused on high frequency trading. The settled high frequency trading enforcement actions signaled to the market the importance the SEC placed on addressing high frequency trading and the likelihood of new regulation.[25] Importantly, future

---

[21] Cox, J. and R. Thomas (2003), "SEC Enforcement Heuristics: An Empirical Inquiry," *Duke Law Journal*, 53, 737-779, p. 752.

[22] See Lewis, M. (2014), *Flash Boys: A Wall Street Revolt*, New York, NY: WW Norton & Company.

[23] Order Instituting Administrative and Cease-and-Desist Proceedings, *In the Matter of Latour Trading LLC and Nicolas Niquet*, File No. 3-16128, September 17, 2014; Order Instituting Administrative and Cease-and-Desist Proceeding, *In the Matter of Athena Capital Research, LLC*, File No. 3-16199, October 16, 2014.

[24] "Securities Regulation to Watch in 2015," *Law360*, January 2, 2015 (http://www.law360.com/articles/601495/securities-regulation-to-watch-in-2015). ("Sometime in 2015, the SEC likely will publish new proposals to require high-frequency traders to register with regulators if they haven't already and to put in place risk controls around their trading algorithms to stop potentially market-disrupting errant trades.")

[25] "Legal Update: US SEC Brings First Enforcement Action For Market Manipulation Through High-Frequency Trading," *Mayer Brown*, October 23, 2014 (http://www.mayerbrown.com/US-SEC-Brings-First-Enforcement-Action-For-Market-Manipulation-Through-High-Frequency-Trading-10-23-2014). ("The Athena case is in line with

regulatory and legislative developments may not be the direct consequence of the alleged misconduct.

23. Finally, a regulatory action against a company can generate uncertainty about the possibility of additional regulatory action which can impact the company's relationship with its employees, clients, and business counterparties.[26] For instance, clients and counterparties may become more cautious in their dealings with the company in the presence of regulatory scrutiny, impacting the defendant company's business, and potentially its stock price. This effect is likely more prominent if the enforcement action is highly publicized and signals to the market that a regulator has taken an aggressive stance. Dr. Finnerty recognizes that uncertainty generated by an ongoing enforcement action can impact a company's stock price.[27] Again, the SEC may choose to adopt an aggressive stance, or single out the defendant company, due to factors unrelated to the content of the underlying allegations.[28]

---

the SEC's intensified focus on HFT firms and manipulative trading practices involving HFT. While the SEC has signaled that there is nothing inherently wrong with HFT generally, specific HFT strategies that resemble traditional forms of market manipulation or that cause market disruption may be subject to vigorous enforcement action and increased regulation.")

[26] These costs, and their impact on defendant company stock prices, are recognized in the literature on securities class actions. See Alexander, J. (1994), "The Value of Bad News in Securities Class Actions," *UCLA Law Review*, 41, 1421-1469, p. 1435.

[27] Finnerty Deposition, 148:8-13.

[28] During periods of economic and political turmoil, the SEC has been known to focus its resources by bringing highly visible enforcement actions in a specific area of alleged violations, or against a particular defendant, in order to send a strong signal of

V. The SEC Enforcement Action Against Goldman on April 16, 2010, in and of Itself and Distinct from the Content of the Underlying Allegations, Caused a Decline in Goldman's Stock Price

24. I have assessed the relevance of the factors described above in evaluating the stock price impact of the Goldman Enforcement Action. Based on prior academic findings, my empirical analysis, and my expertise, I find that the filing of the SEC enforcement action against Goldman on April 16, 2010, in and of itself and distinct from the content of the underlying allegations, caused a decline in Goldman's stock price. The Goldman Enforcement Action had unusual and severe characteristics that are associated with stock price declines and became known to the market only after the filing of the enforcement action. These unusual characteristics were within the SEC's discretion but were not an inevitable consequence of the underlying allegations and, thus, were not foreseeable.

25. While Dr. Finnerty asserts that "the regulatory enforcement action by the SEC would not have been brought" but for evidence relating to the Abacus CDO,[29] this is not sufficient to establish that the underlying allegations caused the decline in

---

deterrence to the market. For example, my research shows that during the mid-2000s, after much media coverage of option backdating, the SEC dramatically increased enforcement actions involving option backdating at the expense of enforcement against other forms of accounting violations. See Choi, S., A. Wiechman, and A. Pritchard (2013), "Scandal Enforcement at the SEC: The Arc of the Option Backdating Investigations," *American Law and Economics Review*, 15, 542-577, p. 542.

[29] Finnerty Report, ¶ 93.

Goldman's stock price on April 16, 2010. Knowledge of the underlying allegations about the Abacus CDO prior to April 16, 2010, for example, would not have resulted in the same stock price decline. Indeed, Dr. Gompers finds that allegations made prior to April 16, 2010, which were about conflicts in CDOs or mortgage products specifically and which thus mirrored the corrective disclosures alleged by Plaintiffs, had no effect on Goldman's stock price.[30] Only after the SEC filed the Goldman Enforcement Action on April 16, 2010 did the market learn of that enforcement action, its specific characteristics, and its implications for Goldman. If the SEC had chosen, using its discretion, not to bring an enforcement action or to bring an action with less severe characteristics, the price movement on April 16, 2010 for Goldman would very likely have been different, with possibly a smaller or no price decline.

26. Based on an analysis of all enforcement actions against publicly traded companies from fiscal year 2010 to fiscal year 2014, I find that enforcement actions that share the severe characteristics of the Goldman Enforcement Action are associated with an average statistically significant abnormal return of -8.07 percent. In contrast, enforcement actions that did not share the severe characteristics of the Goldman Enforcement Action are associated with an average abnormal return of 0.37 percent. Moreover, the difference of -8.44 percentage points between the average abnormal return associated with enforcement actions with the Goldman Enforcement Action characteristics and those without is statistically

[30] Expert Report of Paul Gompers, Ph.D., filed on July 2, 2015 ("Gompers Report"), ¶¶ 53-57.

significant. The abnormal return on Goldman's stock of -9.27 percent calculated for April 16, 2010 by Dr. Finnerty is not statistically different from the -8.07 percent average abnormal return associated with enforcement actions that share the severe characteristics of the Goldman Enforcement Action.[31]

27. At least two factors further magnified the stock price impact associated with the filing of the Goldman Enforcement Action beyond that associated with the severe characteristics of the Goldman Enforcement Action. First, the filing of the Goldman Enforcement Action occurred in a tumultuous political and economic environment, and therefore signaled an increased risk of regulatory actions and legislative and regulatory changes that would affect Goldman's business disproportionately. Second, the sensational and aggressive nature of the Goldman Enforcement Action, as noted by equity analysts and market commentators, caused uncertainty about the effect of additional regulatory action which could impact Goldman's relationship with its employees, clients, and business counterparties.

28. Dr. Finnerty asserts that the SEC complaint filed against Goldman on April 16, 2010 contained new information that could have caused a decline in

---

[31] Finnerty Report, ¶ 77.

Goldman's stock price.[32,33] However, Dr. Gompers finds that allegations made prior to April 16, 2010, which were about conflicts in CDOs or mortgage products specifically and which thus mirrored the corrective disclosures alleged by Plaintiffs, including some explicitly discussing the deal at issue in the Goldman Enforcement Action, had no effect on Goldman's stock price.[34]

29. Based on my findings, taken together with Dr. Gompers' conclusion that allegations made prior to

---

[32] Finnerty Report, ¶ 71. ("In addition, new information was disclosed on April 16, 2010 that the marketing materials and offering documents misled investors by failing to disclose Paulson's role in selecting the reference portfolio of the Abacus 2007-AC1 CDO, and the fact that Goldman had misled ACA by telling ACA that Paulson was a sponsor of the CDO transaction and would have an equity interest in the transaction.")

[33] The SEC alleged that Goldman and Tourre engaged in several misrepresentations: "GS&Co and Tourre knowingly or recklessly misrepresented in the term sheet, flip book and offering memorandum for ABACUS 2007- ACI that the reference portfolio was selected by ACA without disclosing the significant role in the portfolio selection process played by Paulson, a hedge fund with financial interests in the transaction adverse to IKB, ACA Capital and ABN. GS&Co and Tourre also knowingly or recklessly misled ACA into believing that Paulson invested in the equity of ABACUS 2007-ACI and, accordingly, that Paulson's interests in the collateral section process were closely aligned with ACA's when in reality their interests were sharply conflicting." See Complaint, *Securities and Exchange Commission v. Goldman Sachs & Co. and Fabrice Tourre*, filed on April 16, 2010, ¶ 74. Importantly, none of the misrepresentations alleged by the SEC coincided with those at issue in this case, nor did they refer to Goldman's representations regarding its management of conflicts of interest or its business principles.

[34] Gompers Report, ¶¶ 53-57.

April 16, 2010 mirrored the corrective disclosures alleged by Plaintiffs yet had no effect on Goldman's stock price, I conclude that the filing of the Goldman Enforcement Action — independent of the content of the underlying allegations — was consistent with and likely accounted for the full April 16, 2010 -9.27 percent abnormal return calculated by Dr. Finnerty.[35]

A. The Goldman Enforcement Action Had Characteristics that Are Statistically Associated with Significant Stock Price Declines of a Magnitude Consistent with the Decline Observed on April 16, 2010

30. The specific characteristics of an SEC enforcement action are important determinants of the defendant company's stock price decline. The Goldman Enforcement Action included severe characteristics which were made public only at the time of the filing of the SEC enforcement action on April 16, 2010. These characteristics were:

a. No concurrent resolution: Most SEC enforcement actions against publicly traded companies settle concurrently with the filing of charges.[36] The lack of a concurrent resolution to the charges against Goldman implied future expected costs of dealing with the SEC at the time of the announcement, including potentially enhanced resolution costs, management distraction, and

---

[35] Finnerty Report, ¶ 77.

[36] For instance, in my dataset covering all SEC enforcement actions against publicly traded companies during fiscal years 2010-2014, 93 percent of enforcement actions were settled or otherwise resolved on the same date that the enforcement action was announced. See Exhibit 5.

uncertainty among employees, customers, and business counterparties. Furthermore, there was uncertainty about the size and severity of the penalties levied by the SEC, including risk to Goldman's broker-dealer license.[37] The public press noted that the lack of an immediate settlement was an anomaly and had broader implications. For instance, a *Financial Times* article asserted that "[t]he commission underscored its new aggressive stance by filing charges rather than working out a settlement with Goldman."[38] The Goldman Enforcement Action was resolved on July 15, 2010, almost three months after its announcement.[39]

b. Scienter charges: The SEC brought scienter-based charges against Goldman, specifically alleging violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 17(a)(1) of the Securities Act of 1933.[40] Because the

---

[37] Section 15(b)(4)(C)-(D) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a(b)(4)(C)-(D). This risk was noted by the press. See "Denying it Misled, Goldman Fires Back; SEC Not Saying if More Cases Likely," *The Boston Globe*, April 20, 2010. ("For Goldman, the stakes could not be higher. The worst-case scenario would be if it were to lose its license.")

[38] "Effort to Revitalise SEC Starts to Bear Fruit," *Financial Times*, April 16, 2010.

[39] "Goldman Sachs to Pay Record $550 Million to Settle SEC Charges Related to Subprime Mortgage CDO," *United States Securities and Exchange Commission*, Press Release 2010-123, July 15, 2010.

[40] See Complaint, Securities and Exchange Commission v. Goldman Sachs & Co. and Fabrice Tourre, filed on April 16, 2010, ¶ 6.

prosecution of these violations carries a higher burden of proof, it demands that the SEC devote more resources to the case.[41,42] The choice to pursue these scienter-based charges against a company is a signal of a particularly aggressive stance by the SEC. Among other things, these charges open up the possibility of higher penalties. This characteristic of the Goldman Enforcement Action was not known to the market prior to the filing of the action on April 16, 2010.

c. Individual defendant: An individual, Mr. Tourre, was charged along with Goldman.[43] The inclusion of individuals as defendants along with a defendant company may indicate the SEC's desire to make an example not only

---

[41] Other violations require that the SEC only show negligence, such as Sections 17(a)(2) and (3) of the Securities Act of 1933. Still other violations do not require that the SEC demonstrate a particular defendant state of mind, such as Sections 13(b)(2)(A) and (B) of the Securities Exchange Act of 1934.

[42] News reports took note of this characteristic of the Goldman Enforcement Action. The *Financial Times* reported that "[t]he world's most prestigious investment bank has been charged by the Securities and Exchange Commission with *intentionally* deceiving investors." (emphasis added.) ("Goldman Scrambles to Contain Damage," *Financial Times*, April 19, 2010.) Similarly, news reports emphasized the fact that Goldman was being charged with fraud (as opposed to negligence): "shock news emerged that the US Securities and Exchange Commission had charged Goldman Sachs, the US investment bank, with fraud related to subprime mortgages." ("Overview: Goldman Fraud Charges Trigger Sell-Off," *Financial Times*, April 16, 2010.)

[43] Numerous press articles and analyst reports noted the inclusion of Mr. Tourre as a defendant in the Goldman Enforcement Action. See, for instance, "SEC Shines Spotlight on Little-Known Goldman Exec," *Reuters News*, April 16, 2010.

of the corporate defendant but also of its employees. This may also signal that the SEC will take a more aggressive approach in its enforcement, leading to potentially higher penalties. This characteristic of the Goldman Enforcement Action was not known to the market prior to the filing of the action on April 16, 2010.

i. Methodology

31. I have quantified the impact of the three key characteristics — no concurrent resolution, scienter charges, and individual defendant — on defendant companies' stock prices. I used the *Securities Enforcement Empirical Database*, a comprehensive dataset on SEC enforcement actions against publicly traded companies for the period covering October 1, 2009 to September 30, 2014 (fiscal years 2010 to 2014).[44] The data was collected as part of ongoing academic research by the Pollack Center in collaboration with Cornerstone Research, and the collection process was overseen by me. In addition, I supplemented the *Securities Enforcement Empirical Database* with data on enforcement actions brought against subsidiaries of publicly traded companies

[44] The *Securities Enforcement Empirical Database* does not include enforcement actions brought against subsidiaries of publicly traded companies or enforcement actions limited to charges for delinquent filings.

related to the Financial Crisis.[45,46] My data consists of 117 enforcement actions.

32. I have augmented the *Securities Enforcement Empirical Database* with information about returns on defendant company stocks and the broad market during the period leading up to and immediately after each of the 117 enforcement actions.[47] Using this dataset, I performed an event study for each of these enforcement actions.[48] My event study includes all the

---

[45] The information presented in this report includes enforcement actions against companies for which trading data was available from the *Center for Research in Securities Prices* ("*CRSP*") for the enforcement action date, the day after, and the 250 trading days leading up to the enforcement action date. I found only three instances for which both a civil and an administrative action were filed against a defendant company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[46] Financial Crisis related actions are as identified by the SEC as of the filing date of this report. See "SEC Enforcement Actions that Led to or Arose from the Financial Crisis," *United States Securities and Exchange Commission*, September 11, 2014 (http://www.sec.gov/spotlight/enf-actions-fc.shtml). Some of these actions were already included in the *Securities Enforcement Empirical Database* while others were not as they involved charges against a subsidiary of a public company and not the publicly traded company itself. I added these enforcement actions as they were *a priori* a promising source of enforcement actions with the Goldman Enforcement Action characteristics.

[47] Company stock returns are obtained from *CRSP*. Market returns are obtained from *Bloomberg*. All returns are dividend-adjusted.

[48] An event study is a procedure frequently employed by economists to measure the effects of an economic event on the value of firms. See MacKinlay, A. (1997), "Event Studies in

publicly traded companies that faced an SEC enforcement action during fiscal years 2010 to 2014, and all subsidiaries of publicly traded companies that faced an SEC enforcement action related to the Financial Crisis during the same period. In particular, I used a regression analysis, a standard statistical method to estimate the typical relationship between two or more variables.

33. I use a regression analysis to estimate the relationship between movements in a company's stock price and movements in the market as a whole. This procedure allows me to identify the component of the defendant company's stock price movement for each enforcement action date that is attributable to movements in the market as a whole. Because stock prices reflect information relevant to the market as well as information specific to the company in question, one must remove these movements related to the market in order to isolate the change that is attributable to company-specific information.[49] The

---

Economics and Finance," *Journal of Economic Literature*, 35, 13-39, p. 13.

[49] Industry-specific information may also move stock price and it is advisable to account for this in an event study focusing on a single company or class of companies. However, in cross-sectional studies involving many companies in different industries, it is standard practice to account only for movements in the market as a whole because the gains from taking industry movements into account are generally small. "Generally, the gains from employing multifactor models for event studies are limited. The reason for the limited gains is the empirical fact that the marginal explanatory power of additional factors [to] the market factor is small, and hence, there is little reduction in the variance of the abnormal return. The variance reduction will typically be greatest in cases where the sample firms have a common characteristic, for example they are all members of one industry or they are all firms concentrated in one market capitalization

company's stock price movement net of the effect attributable to movements in the market as a whole is referred to as the abnormal return.

34. In my event study, I ran a regression of a defendant company's stock price returns on the returns of the Standard & Poor's ("S&P") 500 Total Return Index, a broad market index, during the 250 trading days leading up to the company's enforcement action date.[50] I used results from this regression to predict each company's stock price movement on its enforcement action date. The difference between the observed stock price return on the enforcement action date and the return predicted by the regression model is the abnormal return on the date associated with the enforcement action. While it is not possible to predict a stock price movement *ex ante*, the event study method provides a range of stock price movements which would be consistent with movements in the overall market in 95 percent of cases. It is only when an observed stock price movement is outside of this range that we say that it is statistically significant and, thus, that we infer that company-specific news affected the company's stock price on that date.

---

group. In these cases the use of a multifactor model warrants consideration." See MacKinlay, A. (1997), "Event Studies in Economics and Finance," *Journal of Economic Literature*, 35, 13-39, p. 18.

[50] The regression model used is known as a "market model" and its use in event studies is standard practice. The 250-day estimation window is also commonly used. See MacKinlay, A. (1997), "Event Studies in Economics and Finance," *Journal of Economic Literature*, 35, 13-39, pp. 17-18. As a sensitivity test, I confirmed that the results of my event study are qualitatively similar for a 120-day estimation window.

ii. Results

35. Exhibit 1 presents summary statistics for the event study analysis. Of the 117 enforcement actions in my dataset, 57 are accompanied by a positive abnormal return for the company's stock price, and 60 are accompanied by negative abnormal returns. The abnormal returns range between -17.09 percent and 7.78 percent.

36. Exhibit 2 presents summary statistics for enforcement actions which were not settled on the same date as their filing, i.e., did not have a concurrent resolution. As shown in the exhibit, these enforcement actions have a statistically significant average abnormal return for the company's stock price of -3.86 percent on the enforcement action date.[51,52] Similarly, the exhibit shows that the average abnormal return of enforcement actions filed with no concurrent resolution is significantly more negative than the average abnormal return for enforcement actions filed with a concurrent resolution. Indeed, four of the six actions in the entire 117 enforcement action dataset

---

[51] Residual stock price movement is determined to be statistically significant at the 5 percent level if one would expect a result as extreme as that observed less than 1 in 20 times based on random variation in the stock price. In what follows, I will use the term statistically significant to mean statistically significant at the 5 percent level. Statistical significance is measured using a hypothesis test as described in MacKinlay, A. (1997), "Event Studies in Economics and Finance," *Journal of Economic Literature*, 35, 13-39, p. 21.

[52] The finding that enforcement actions which are not resolved concurrently are associated with larger negative average abnormal returns is also reported in Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 591.

with the largest negative abnormal returns were filed without a concurrent resolution.

37. Using my event study, I have calculated the average magnitude of stock price decline for the enforcement actions with the characteristics identified in the Goldman Enforcement Action. Exhibit 3 shows that the magnitude of the average stock price decline for enforcement actions with no concurrent resolution increases where the SEC also brings charges against individual defendants, and where the action includes scienter-based charges. I find that:

a. Enforcement actions which did not have a concurrent resolution have a statistically significant average abnormal return for the company's stock price of -3.86 percent on the enforcement action date.

b. Enforcement actions with no concurrent resolution and charges against an individual defendant are associated with a significant average abnormal stock return for the company's stock price of -6.30 percent.

c. Enforcement actions with no concurrent resolution and scienter-based charges — all of which also had individual defendants — are associated with a statistically significant average abnormal return for the company's stock price of -8.07 percent.

38. Exhibit 4 presents summary statistics for the entire population of enforcement actions which share the three characteristics of the Goldman Enforcement Action: no concurrent resolution, scienter charges, and individual defendants. This subset of four actions that have all three of these key characteristics have a

statistically significant negative average abnormal return for the company's stock price of -8.07 percent. In comparison, the 70 actions in the database that did not have any of the key characteristics had an average abnormal return of 0.37 percent. The difference in average abnormal returns of 8.44 percentage points between those actions with all three characteristics and those with none of the characteristics is statistically significant.

39. While SEC enforcement actions might contain information that could impact stock prices, the mere fact that the SEC files an enforcement action does not establish the validity of the allegations to any market observer. To the extent that the SEC fully litigates cases, it sometimes prevails and sometimes loses.[53] The vast majority of cases are settled, and companies settle with the SEC for multiple and varying reasons that may be unrelated to the merits of the allegations.[54] Indeed, the incentives to settle are heightened when the company is an SEC-regulated broker-dealer and the company requires on-going

---

[53] From October 2013 to February 2014, the SEC won 55 percent of its trials and hearings, which compared unfavorably to its win rate over the previous three years which was above 75 percent. See "SEC Takes Steps to Stem Courtroom Defeats; Trial Unit Is Restructured as Agency's Win Rate Slips," *The Wall Street Journal*, February 13, 2014.

[54] My dataset of SEC enforcement actions against publicly traded companies covering SEC fiscal years 2010 to 2014 shows that, during this period, 93 percent of enforcement actions were settled or otherwise resolved on the same day that the enforcement action was filed. See Exhibit 5. One reason the SEC pursues settlements is that it frees up its scarce resources to investigate and prosecute other violations. See "Judge Approves SEC Settlement With SAC Capital," *Forbes*, June 19, 2014.

cooperation with the SEC in order to conduct its business.

40. Without any basis, Dr. Finnerty suggests that "[w]hat a review of the 117 SEC enforcement actions reveals is that the stock market impact of the announcement of an SEC enforcement action depends on the nature of the underlying behavior that is the subject of the enforcement action."[55,56] A review of the only four enforcement actions with the Goldman Enforcement Action characteristics shows that lawsuits related to the same events were filed before the SEC action in all four cases, so that the SEC action was not the first instance in which the behavior in

---

[55] Finnerty Rebuttal, ¶ 192. Dr. Finnerty's assertion is partly based on an incorrect interpretation of the results presented in Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 591. Dr. Finnerty cites Karpoff et al. (2008) to support his statement that "[t]he market will react differently according to the nature of the underlying misconduct." See Finnerty Rebuttal, FN 312. However, the empirical results from Karpoff et al. (2008) used by Dr. Finnerty as support are for trigger events and <u>not</u> enforcement actions. As Karpoff et al. (2008) note, trigger events are "conspicuous announcement[s] related to the firm that draws the SEC's scrutiny . . . . Following a trigger event, the SEC gathers information through an informal inquiry that, if warranted, grows to a formal investigation." See Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, pp. 587-588.

[56] As noted by Dr. Finnerty, the Goldman Enforcement Action was accompanied by this drop in Goldman's stock price despite Goldman stating that the "SEC's charges are completely unfounded in law and fact and we will vigorously contest them and defend the firm and its reputation." See Finnerty Report, ¶¶ 77, 86.

question was revealed to the market.[57] Thus, the statistically significant average abnormal returns of -8.07 percentage points associated with these four enforcement actions is attributable to the presence of these severe characteristics.

41. My empirical analysis shows that the Goldman Enforcement Action characteristics, which become known only once an enforcement action is filed, are an important determinant of the stock price response on the trading day of the enforcement action disclosure. Moreover, as discussed above, these characteristics heighten the costs a company must bear as a consequence of the filing of an enforcement action.[58] These heightened costs affect a company's valuation and thus provide a causal link between the characteristics and defendant company stock price declines. Indeed, the evidence in the academic literature is consistent with the existence of a causal link between the costs of resolving an enforcement action and defendant companies' stock price declines.[59] Together, this body of evidence indicates that the presence of the Goldman Enforcement Action

---

[57] Class Action Complaint, Steve Silverman v. Houston American Energy Corp, et al., filed on April 27, 2012; Class Action Complaint, Joseph C. Hubbard v. BankAtlantic Bancorp, Inc., et al., filed on October 29, 2007; Complaint, Kenosha Unified School District, et al. v. Stifel, Nicolaus & Co., et al., filed on September 29, 2008; Complaint for Violation of the Federal Securities Laws, Selma Stone, et al. v. Life Partners Holdings Inc., et al., filed on February 3, 2011.

[58] See my discussion in Section IV and ¶ 30 of this report.

[59] See especially Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *The Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 591, regarding the differential effect on stock price of the filing of enforcement actions with and without a concurrent resolution.

characteristics causes declines in defendant companies' stock prices.

42. The -8.07 percent average abnormal stock price decline associated with enforcement actions with the severe characteristics of the Goldman Enforcement Action is consistent with the observed decline in Goldman's stock price following the Goldman Enforcement Action of -9.27 percent, as reported by Dr. Finnerty, as the difference between these two numbers is not statistically significant.[60] Absent these characteristics, the expected losses to Goldman's stock would be far smaller, as evinced by the average abnormal return on SEC actions containing none of the characteristics (0.37 percent). Importantly, the difference between enforcement actions with the Goldman Enforcement Action characteristics and those without is statistically significant at 8.44 percentage points.

B. The Stock Price Decline Attributable to the Goldman Enforcement Action Was Exacerbated Because It Was Brought in a Tumultuous Economic, Political, and Regulatory Environment

43. Based on my experience analyzing enforcement actions and a review of market commentary, I conclude that the legislative and regulatory changes signaled by the Goldman Enforcement Action had the potential to affect Goldman's business disproportionately and that the

---

[60] The abnormal return on Goldman's stock is reported in Finnerty Report, ¶ 77. The abnormal return of -9.27 percent falls within the 95 percent confidence interval surrounding the -8.07 percent average abnormal return for enforcement actions with the characteristics of the Goldman Enforcement Action.

aggressive stance signaled by the SEC during a tumultuous economic and political environment further magnified the Goldman stock price response to the Goldman Enforcement Action, irrespective of any underlying allegations. The stock price decline caused by such factors aggravated the stock price decline associated with the severe characteristics of the Goldman Enforcement Action.

i. The Goldman Enforcement Action Signaled an Increased Risk of Future Regulatory Actions and Legislative and Regulatory Changes that Would Have a Disproportionate Impact on Goldman's Business, Magnifying the Decline in Goldman's Stock Price

44. The Goldman Enforcement Action occurred in a charged political setting in which there was considerable uncertainty about future regulation and legislation.[61] The heightened concerns investors felt upon the announcement of the Goldman Enforcement Action regarding the tightening regulatory environment were well-founded, since it occurred contemporaneously with many regulatory initiatives that were ultimately incorporated into the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Dodd-Frank was signed into law on July 21, 2010, following a prolonged period of intense debate "ending more than a year of wrangling

---

[61] Changes in securities regulation typically follow financial crises. See Banner, S. (1997), "What Causes New Securities Regulation? 300 Years of Evidence," *Washington University Law Quarterly*, 75, 849-855.

over the shape of the new rules."[62] The massive 1,375 page bill was referred to as "[t]he most far reaching Wall Street reform in history."[63] It created new layers of regulatory oversight including the Consumer Financial Protection Bureau. Dodd-Frank touched many corners of the financial services industry, including new regulation for derivatives, hedge funds, insurance, and debit card interchange fees. According to the *Wall Street Journal*, "[f]inancial titans such as J.P. Morgan Chase & Co., Goldman Sachs Group Inc. and Bank of America Corp. may be forced to make changes in most parts of their business, from debit cards to the ability to invest in hedge funds."[64] Dodd-Frank also included the Volcker Rule, proposed by President Obama on January 21, 2010, which prohibits insured depository institutions from engaging in proprietary trading and from directly participating in hedge funds or private equity funds.[65]

45. In the wake of the Financial Crisis, news of SEC enforcement actions, particularly against a high profile financial institution like Goldman, would

---

[62] "Congress Passes Financial Reform Bill," *The Washington Post*, July 16, 2010.

[63] "Wall Street Reform: The Dodd-Frank Act," *The White House* (http://www.whitehouse.gov/economy/middle-class/dodd-frank-wall-street-reform). See also "Congress Passes Financial Reform Bill," *The Washington Post*, July 16, 2010. ("the most ambitious overhaul of financial regulation in generations.")

[64] "Law Remakes U.S. Financial Landscape," *The Wall Street Journal*, July 16, 2010.

[65] "Volcker Rule," *Federal Reserve System*, 12 CFR Part 225 (http://www.federalreserve.gov/bankinforeg/volcker-rule/default.htm); "The Financial Crisis: A Timeline of Events and Policy Actions," *Federal Reserve Bank of St. Louis* (https://www.stlouisfed.org/financial-crisis/full-timeline).

increase the risk perceived by investors that more aggressive and onerous legislative and regulatory proposals would be pursued. For example, the *Financial Times* reported that "the real action in financial reform started last Friday with the fraud lawsuit filed by the Securities and Exchange Commission against Goldman, Sachs & Co."[66] FBR Capital Markets removed Goldman from its *FBR Top Picks* list, noting that "[w]hile Goldman has indicated that it plans to defend itself against the SEC's accusations, shares will likely feel near-term pressure from the risk of more negative headlines and the implications of the SEC's actions on the direction of the financial regulatory reform in coming weeks."[67] A UBS analyst report quoted by Dr. Finnerty notes that the Goldman Enforcement Action could lead to "an increase in momentum for more stringent regulatory reform, and increased public ire against the financial industry."[68] In fact, Davidoff et al. (2012) attribute the decline in the Goldman stock price to the implications of the impending regulatory changes for investment banks by noting:

> [t]he SEC's complaint is likely to be a watershed event for the investment banking industry. . . . [T]he complaint reflects far-reaching structural changes in investment banks. The changes predate the financial crisis, and they are likely to result in further

---

[66] "Wall Street Beware: The Lawyers Are Coming," *Financial Times*, April 18, 2010.

[67] "Near-Term Headwinds From SEC Charges – Removing from FBR Top Picks List," FBR Capital Markets, April 19, 2010, p. 1.

[68] "SEC Charges Goldman with Fraud," UBS Investment Research, April 16, 2010, p. 1.

> significant upheavals in the banking industry. The political and regulatory response to this change will affect the path of future upheavals, and, hence, will have a profound impact upon the future evolution of the investment-banking sector. The $10 billion capital market reaction to the SEC's complaint [against Goldman] reflects this impact.[69]

46. The perception that the Goldman Enforcement Action would influence the outcome of the ongoing regulatory overhaul of the financial sector as a whole was also noted by members of Congress. In a letter addressed to SEC Chairman Mary Schapiro, Representative Darrell Issa and seven of his colleagues noted that "[t]he Goldman litigation – filed by the Commission on Friday, April 16, 2010 – has been widely cited by Democrats in support of the financial regulatory legislation currently before the United States Senate."[70] Representative Barney Frank, one of the main sponsors of Dodd-Frank, reacted to news of the Goldman Enforcement Action saying it "reinforces the need for much of what we were doing."[71]

---

[69] Davidoff, S., A. Morrison, and W. Wilhelm (2012), "The SEC v. Goldman Sachs: Reputation, Trust, and Fiduciary Duties in Investment Banking," *The Journal of Corporation Law*, 37, 529-553, p. 531.

[70] "Letter Addressed To SEC Chairman Mary Schapiro," *United States Congress House of Representatives Committee On Oversight & Government Reform*, April 20, 2010 (http://oversight.house.gov/wp-content/uploads/2012/01/4-23-2010issalettertoseciginvestigation.pdf).

[71] "Rep. Frank: Goldman Charges Improve Chances For Regulatory Reform," *TheHill*, April 19, 2010.

47. Consistent with the market recognizing a signal of increased risk of future regulation, analyst reports following the Goldman Enforcement Action showed that the market was expecting legislators and regulators to respond by advancing significant changes in financial regulation that would affect Goldman disproportionately. Specifically, analysts noted that Goldman was particularly vulnerable to possible future regulation of proprietary and derivatives trading. According to Buckingham Research:

> [t]o us, the only negative coming out of this quarter is the remaining uncertainty around the SEC fraud allegations and, more importantly, the negative implications of potentially harsher regulation around derivatives, proprietary trading, etc. This is clearly a bigger issue for GS than its peers, with the highest percentage of revenue from trading among the large banks (60%-70% of revenue).[72]

Similarly, an analyst report from Citigroup noted that "[w]e estimate impact to Goldman from implementation of the Volcker rule could eliminate between ~$3.5-4.0 bil of annual revenue" and "Goldman's revenue mix is more heavily weighted to derivatives than peers."[73] Argus noted that "any new restrictions on proprietary trading could have a bigger impact on Goldman's revenue and earnings than at

[72] "1Q10: Fixed Income & Lower Comp Drive EPS Upside; Raising 2010 EPS," The Buckingham Research Group, April 20, 2010, p. 3.

[73] "Reiterate Buy – Risks Are There, But Still See Significant Upside," Citigroup, May 2, 2010, pp. 3, 6.

more diversified firms."[74] Indeed, *Fortune* magazine asked, "[w]ill the Volcker Rule crush Goldman Sachs?"[75]

48. In addition to the increased risk of legislative and regulatory change, the Goldman Enforcement Action drew attention from other enforcement agencies and private litigators, signaling an increased likelihood of future litigation against Goldman given the prevailing political environment. For example, a Wells Fargo analyst report highlighted the increased regulatory scrutiny arising from the enforcement action by noting:

> [t]he SEC's lawsuit could embolden other regulators (and investors) to seek legal action against GS. We believe the nature of the SEC's lawsuit against GS in the current political environment across the globe could result in additional legal actions being taken against GS by other regulators. Over the weekend, Bloomberg News reported that both the U.K.'s Financial Service Authority (FSA) and Germany's financial regulator [have] both been asked by their respective heads of state to review the SEC's complaint for possible legal action related to this transaction.[76]

An Oppenheimer analyst report highlighted that the Goldman Enforcement Action signaled the importance

---

[74] "Goldman Sachs Group Inc," Argus, April 20, 2010, p. 3.

[75] "Will the Volcker Rule Crush Goldman Sachs?" *Fortune*, December 9, 2013.

[76] "GS: Reputational Risks Increased, But Valuation Still Attractive," Wells Fargo, April 19, 2010, p. 127.

of public sentiment as a driver of future litigation, concluding that "GS is probably vulnerable to more charges and outsized fines."[77] Dr. Finnerty acknowledges that the possibility of future litigation was a relevant factor in explaining the decline in Goldman's stock price, quoting a UBS analyst report saying that "we see the potential for other litigation (shareholder suits, NY AG . . .)."[78] Similarly, the *Financial Times* noted that the Goldman Enforcement Action "opens the litigation floodgates for more suits based on subprime mortgage fraud, and smart investors know it."[79]

49. The uncommon and aggressive nature of the Goldman Enforcement Action increased the risk of future regulations that would have a disproportionate impact on Goldman compared to its peers. Further, in the context of the prevailing political environment, the enforcement action also increased the likelihood of potential regulatory and private litigation against Goldman. These factors caused a decline in Goldman's stock price, in addition to the stock price decline associated with the severe characteristics of the Goldman Enforcement Action.

---

[77] "SEC Singles out GS for Fraud Charge - Stepping to Sidelines," Oppenheimer & Co., April 16, 2010, p. 1.

[78] Finnerty Report, ¶ 83; "SEC Charges Goldman with Fraud," UBS Investment Research, April 16, 2010, p. 1.

[79] "Wall Street Beware: The Lawyers Are Coming," *Financial Times*, April 18, 2010.

ii. The Sensational and Aggressive Nature of the Goldman Enforcement Action, as Noted by Equity Analysts and Market Commentators, Caused Uncertainty About the Effect of Future Regulatory Action, Which Magnified the Decline in Goldman's Stock Price

50. A number of academics and commentators have noted the pressure faced by the SEC to bring highly visible enforcement actions in times of economic and political turmoil. According to Correia (2014):

> [t]he importance of the Securities and Exchange Commission (SEC) is widely recognized by the media, and its enforcement activities are under increased scrutiny following the recent wave of corporate scandals; such as Enron, Global Crossing, Halliburton, Harken, Arthur Andersen, Fannie Mae, Freddie Mac, Providian, and Bernard Madoff Investment Securities, to name just a few.[80]

Similarly, Heese (2014) notes that "[t]he Securities and Exchange Commission's (SEC) enforcement actions have been subject to increased scrutiny" in the wake of the scandals surrounding the frauds committed by Bernard Madoff and Allen Stanford.[81]

---

[80] Correia, M. (2014), "Political Connections and SEC Enforcement," *Journal of Accounting and Economics*, 57, 241-262, p. 241.

[81] Heese, J. (2014), "Government Preferences and SEC Enforcement," Harvard Business School Accounting & Management Unit Working Paper No. 15-054, p. 2.

51. During periods of economic and political turmoil, the SEC has been known to focus its resources by bringing highly visible enforcement actions in a specific area of alleged violations, or against a particular defendant, in order to send a strong signal of deterrence to the market. For example, my research shows that during the mid-2000s, after much media coverage of option backdating, the SEC dramatically increased enforcement actions involving option backdating at the expense of enforcement against other forms of accounting violations.[82]

52. The SEC brought an enforcement action against Goldman in the wake of the Financial Crisis that the *Wall Street Journal* referred to as "one of the biggest moves by authorities in response to the financial crisis of 2007-08."[83] The Goldman Enforcement Action was announced in a well-publicized phone interview and press conference, both held during trading hours. Robert Khuzami, Enforcement Director at the SEC held the phone call with reporters to discuss the SEC's enforcement action against Goldman and, shortly thereafter, gave a press conference at the 22nd annual Corporate Law Institute in New Orleans.[84] The phone call and press conference received widespread coverage in the

---

[82] Choi, S., A. Wiechman, and A. Pritchard (2013), "Scandal Enforcement at the SEC: The Arc of the Option Backdating Investigations," *American Law and Economics Review*, 15, 542-577, pp. 542, 546.

[83] "Goldman Charges Roil Markets," *The Wall Street Journal*, April 16, 2010.

[84] "SEC Khuzami Explains Why Paulson Wasn't Charged," *The Wall Street Journal*, April 16, 2010.

media.[85] Some SEC officials expressed misgivings about the possibility of holding a high profile press conference for the Goldman Enforcement Action, calling it a "double-edged sword" and noting that "we could be accused of hyping it if we did a press conference."[86]

53. Releasing relevant news about a company during trading hours, as was done in the case of the Goldman Enforcement Action, can result in increased volatility of the defendant company's stock.[87] Indeed,

---

[85] The phone call and press conference were cited in numerous press articles from sources such as *The Chicago Tribune*, *Fortune*, *The New York Times*, and *The Wall Street Journal*. The press conference was also covered by television news outlets such as CNN. See "SEC Accuses Goldman Sachs of Fraud in CDO, or 'Toxic Asset,' Case," *The Chicago Tribune*, April 16, 2010 (http://newsblogs.chicagotribune.com/marksjarvis_on_money/2010/04/sec-accuses-goldman-sachs-in-cdo-or-toxic-asset-case.html); "SEC Charges Goldman Sachs With Fraud," *Fortune*, April 16, 2010; "S.E.C. Accuses Goldman of Fraud in Housing Deal," *The New York Times*, April 17, 2010; "SEC Khuzami Explains Why Paulson Wasn't Charged," *The Wall Street Journal*, April 16, 2010; "SEC Director Talks Tough About Goldman," *CNNMoney*, April 16, 2010 (http://money.cnn.com/video/news/2010/04/16/n_Goldman_SEC_lawsuit_Khuzami.cnnmoney/).

[86] "Report of Investigation: Allegations of Improper Coordination Between the SEC and Other Governmental Entities Concerning the SEC's Enforcement Action Against Goldman Sachs & Co.," *United States Securities and Exchange Commission Office of Inspector General*, September 30, 2010 ("OIG Report"), pp. 51-52 (https://www.sec.gov/foia/docs/oig-534.pdf).

[87] French, K. and R. Roll (1986) "Stock Return Variances: The Arrival of Information and the Reaction of Traders," *Journal of Financial Economics*, 17, 5-26; Francis, J., D. Pagach, and J. Stephan (1992) "The Stock Market Response to Earnings Announcements Released during Trading versus Nontrading Periods," *Journal of Accounting Research*, 30, 165-184.

this decision was examined by SEC's Office of the Inspector General ("OIG"), an independent office within the SEC that conducts, supervises, and coordinates audits and investigations of the programs and operations of the SEC.[88,89] The OIG's report noted the concern raised by an employee of the New York Stock Exchange with the intra-day release of the Goldman Enforcement Action and its "volatility effect on the price of Goldman's stock and . . . the broader market impact from an SEC action against a major company in the financial industry."[90] Kenneth Lench, Chief of the Structured and New Products Unit in the Division of Enforcement at the SEC (the "Division"), "testified that, after the SEC filed against Goldman, a senior officer in the Office of Compliance Inspections and Examinations called Lench and 'sensitized' Lench to the issue of filing during trading hours. . . . Lench testified that this senior officer wanted 'consideration to be given in high-profile market-moving types of cases, potentially to file it outside of trading hours because of the impact [the Goldman action] had on the market that day.'"[91]

---

[88] In conducting its investigation of the Goldman Enforcement Action, "[t]he OIG . . . obtained and searched over 3.4 million e-mails . . . . took the sworn testimony of 32 witnesses and interviewed five other individuals with knowledge of facts or circumstances surrounding the SEC's investigation of Goldman, the SEC's filing of its complaint against Goldman, and/or the SEC's settlement with Goldman." See OIG Report, p. 2.

[89] "The Office of Inspector General (OIG)," U.S. Securities and Exchange Commission, accessed June 29, 2015 (http://www.sec.gov/about/offices/inspector_general.shtml).

[90] OIG Report, p. 66.

[91] OIG Report, pp. 5, 68.

54. Market analysts noted the sensational nature of the Goldman Enforcement Action. A Barclays analyst stated, "[t]argeting GS, given the flurry of anti-Wall Street press that has centered around that firm offers the publicity that the administration needs at this critical juncture."[92] A Societe Generale analyst report made a similar point, noting that "current attacks are politically driven in our view (GS was not the most active player in MBS and synthetic CDO issuance)."[93]

55. A number of analysts noted that the SEC enforcement action was disproportionate in relation to the allegations. For example, an Oppenheimer analyst report noted:

> [i]t is not the facts of the case as presented in the SEC's complaint that disturb us so much as the sensational and aggressive language that the SEC used in its complaint . . . . Goldman is singled out. It is almost as if the SEC wanted to embarrass Goldman and make it [a] lightening [*sic*] rod for lawsuits and negative publicity. . . . [I]t is just not a good thing to have one of your primary regulators with an apparent agenda to pursue.[94]

Similarly, according to Keefe, Bruyette & Woods, "[a]s long as the SEC's civil lawsuit lingers, a DOJ criminal probe is underway, and GS remains the lightening

[92] "Administration Steps Up Support for Bill," Barclays Capital, April 16, 2010, p. 1.

[93] "Blow-Out Quarter Overshadowed by SEC Complaint," Societe Generale, April 21, 2010, p. 1.

[94] "1Q Review: Life is Not Fair," Oppenheimer & Co., April 20, 2010, pp. 2-3.

[*sic*] rod for populist and congressional anger against Wall Street, it will be difficult for GS's stock to come close to recognizing its inherent value, in our view."[95] Commentators in the public press also noted the disproportionate nature of the Goldman Enforcement Action: "[u]nless the SEC is sitting on more evidence than it has laid out so far, the charge sheet looks flimsy."[96] The *Wall Street Journal* noted that "[g]iven the public anger at Wall Street, and the criticism of the SEC's failure to regulate more effectively before the financial crisis struck, it's worth considering that Goldman makes an enticing political target, regardless of the merits of the suit."[97]

56. A highly visible enforcement action in which a company's primary regulator signals an aggressive stance, as was the case in the Goldman Enforcement Action, can cause uncertainty about the effect of additional regulatory action. This uncertainty can impact a defendant's relationship with its employees, clients, and business counterparties. This can occur even if the allegations in question were previously disclosed, meaning that the impact of the filing of an enforcement action itself, as distinct from the underlying allegations, can cause a stock price decline. This signal, apart from heightening the possibility of increased regulation (as described above), can also increase perceived uncertainty regarding what consequences might follow from increased regulatory

---

[95] "Stepping Aside: Lower GS To Market Perform Until The Storm Clouds Clear," Keefe, Bruyette & Woods, May 3, 2010, p. 1.

[96] "In SEC vs. Goldman, Who's Really At Fault?" *The Washington Post*, April 21, 2010.

[97] "Where's the Goldman That I Used to Know?" *The Wall Street Journal*, April 21, 2010.

attention. The negative effect that the uncertainty generated by legal action can have on a defendant company's shares has been studied in the context of securities class actions. For instance, Alexander (1994) writes that "[t]he existence of a securities class action lawsuit can itself affect the value of the firm's shares."[98] Dr. Finnerty recognizes the impact that uncertainty generated by an ongoing enforcement action can have on a company's stock price.[99] This effect is likely more prominent if the enforcement action brought by the SEC is highly publicized and sends a strong signal to the market, as was the case with the Goldman Enforcement Action. These factors caused a decline in Goldman's stock price, which magnified the stock price decline associated with the severe characteristics of the Goldman Enforcement Action.

VI. The Goldman Enforcement Action and Its Unusual Characteristics Were Not Reasonably Foreseeable

57. SEC enforcement actions are, by their nature, unpredictable. The SEC enjoys wide-ranging prosecutorial discretion, and may use this discretion to determine whether to bring suit, which charges to pursue, and whether to provide the defendant with opportunities to settle. The Goldman Enforcement Action was also brought in the wake of the Financial Crisis, with characteristics which were unusual and unforeseeable to the Defendants and the market. Thus, neither investors nor the Defendants could have reasonably predicted the filing of the Goldman

---

[98] Alexander, J. (1994) "The Value of Bad News in Securities Class Actions," *UCLA Law Review*, 41, 1421-1469, p. 1435.

[99] Finnerty Deposition, 148:8-13.

Enforcement Action, its specific characteristics, and the subsequent decline in Goldman's stock price at any time during the Class Period.

* * *

Moreover, only 15 cases (or 12.82 percent) involved scienter charges. Similarly, individuals were charged only in 40 of these cases (or 34.19 percent). Of the 117 cases, only four cases (or 3.42 percent) have all three key characteristics identified in the Goldman Enforcement Action. [116] These figures, in addition to the response by analysts and market commentators to the SEC's enforcement action, as I discuss in Section V.B.ii, underscore the exceptional and unforeseeable nature of the Goldman Enforcement Action and further support the conclusion that the Defendants and the market could not have reasonably expected that the Goldman Enforcement Action would be filed and could not have predicted the specific characteristics of the Goldman Enforcement Action.

VII. The Report Alleging a DOJ Investigation into Goldman, Which Provided No Information About the Purported Goldman Conduct, Caused a Decline in Goldman's Stock Price on April 30, 2010

66. According to Dr. Finnerty, the abnormal price decline for Goldman's stock on Friday, April 30, 2010 was "-7.75%, which is statistically significant at the 1% level."[117] Furthermore, Dr. Finnerty claims that "the abnormal return of -7.75% on Goldman's common stock on April 30, 2010 is attributable to the corrective

[116] See Exhibit 4.

[117] Finnerty Report, ¶ 124.

information" revealed by the publication of news in the *Wall Street Journal* of a possible DOJ criminal investigation into Goldman.[118]

67. Specifically, the *Wall Street Journal* reported that "[f]ederal prosecutors are conducting a criminal investigation into whether Goldman Sachs Group Inc. or its employees committed securities fraud in connection with its mortgage trading."[119] While the purported investigation "stemmed from a referral from the Securities and Exchange Commission . . . . , [i]t couldn't be determined which Goldman deals are being scrutinized in the criminal investigation."[120] Plaintiffs do not allege that the purported DOJ investigation of Goldman resulted in any charges being filed.

68. As acknowledged by Plaintiffs' expert, the report provided no specifics about the purported investigation.[121] Moreover, it contained no new allegations of undisclosed conflicts. As such, the report could not have revealed any information to the market regarding Goldman's conflicts of interest. Therefore, there is no basis for allocating the stock price decline on this date to inferences made by investors about the existence and severity of Goldman's conflicts of

---

[118] Finnerty Report, ¶ 137.

[119] "Criminal Probe Looks Into Goldman Trading," *The Wall Street Journal*, April 30, 2010. The investigation was not acknowledged by the DOJ or Goldman.

[120] "Criminal Probe Looks Into Goldman Trading," *The Wall Street Journal*, April 30, 2010.

[121] Finnerty Deposition, 244:16-245:3.

interest in the Hudson 2006-1, Timberwolf I, and Anderson 2007-1 CDOs, as Dr. Finnerty has done.[122]

69. As part of his review of the alleged April 30, 2010 disclosure date, Dr. Finnerty reviews information released to the market on April 27, 2010.[123] Specifically, Dr. Finnerty notes that:

> [o]n Tuesday, April 27, 2010, the Senate's Permanent Subcommittee on Investigations held a hearing . . . to examine the role that Goldman played in the credit crisis, particularly in connection with sub-prime mortgage securitization. . . . [T]he Subcommittee claimed that Goldman devised a series of transactions (and not just a single CDO transaction) to profit from the collapse of the home mortgage market.[124]

However, Dr. Finnerty does not provide an explanation for why information disseminated three trading days earlier would have affected Goldman's stock price on April 30, 2010.

70. Criminal prosecutions of corporate defendants by the DOJ can have serious consequences. For instance, the DOJ's successful indictment and conviction of Arthur Andersen in 2002 put one of the nation's "Big 5" accounting firms out of business and resulted in the loss of tens of thousands of jobs.[125] Indeed, the *Wall Street Journal* article underscored the unusual severity of criminal charges in noting that

---

[122] Finnerty Report, Exhibit 7.

[123] Finnerty Report, ¶ 108.

[124] Finnerty Report, ¶ 109.

[125] Debold, D. and K. Barry (2008), "Consistency in NPAs and DPAs," *Federal Sentencing Report*er, 20, 331-333, p. 331.

"in the more than two-century history of the U.S. financial markets, no major financial firm has survived criminal charges."[126] At the time, prosecutions of corporations were rare, as the DOJ often opted for deferred prosecution agreements.[127] Nevertheless, even deferred prosecution agreements can entail significant costs for a company. For example, in February 2009, the Swiss bank UBS AG entered into a deferred prosecution agreement with the DOJ, in which it agreed to pay $780 million in fines, penalties, and interest.[128]

71. Equity analysts and press covering Goldman noted the severe consequences that criminal charges could have for Goldman. A Citigroup analyst report, also cited by Dr. Finnerty, described the substantive risks associated with the purported DOJ investigation against Goldman by noting that "[i]f a securities firm were convicted of criminal fraud, then it could lose its license as a primary treasury dealer; broker dealer licenses to sell securities could also be revoked."[129] In a similar vein, a *Washington Post* article stated that "[t]he Justice Department usually investigates high-profile cases of securities fraud, but the threshold for

---

[126] "Criminal Probe Looks Into Goldman Trading," *The Wall Street Journal*, April 30, 2010.

[127] Greenblum, B. (2005), "What Happens to a Prosecution Deferred? Judicial Oversight of Corporate Deferred Prosecution Agreements," *Columbia Law Review*, 105, 1863-1904, pp. 1863-1864.

[128] Nanda, V. (2010), "Corporate Criminal Liability in the United States: Is a New Approach Warranted?" *The American Journal of Comparative Law*, 58, 605-630, p. 606.

[129] "Reiterate Buy – Risks Are There, But Still See Significant Upside," Citigroup, May 2, 2010, p. 9. Cited in Finnerty Report, ¶ 130.

criminal prosecution is significantly higher than that of civil cases . . . It is rare for the government to indict a company, and even the threat of criminal prosecution can doom a business."[130]

72. An important factor influencing Goldman's stock price decline was the repercussions that the report of a purported DOJ investigation could have on the ongoing political debate regarding the regulation of the financial industry. A Standard & Poor's report, also cited by Dr. Finnerty, underlined the importance of the interaction between the report of an investigation and the current political climate, noting that "the risk of a formal securities fraud charge, on top of the SEC fraud charge and pending legislation to reshape the financial industry, further muddies Goldman's outlook."[131] Similarly, a former SEC enforcement attorney interpreted the report of the purported DOJ investigation in the context of the ongoing political situation, saying that "[t]he release of the existence of a preliminary inquiry amid the firestorm is reckless and grossly irresponsible. The only purpose of doing so was to stoke a political flame."[132]

73. Despite the lack of mention of any new allegations in the report of the purported DOJ investigation, the impact of the alleged criminal investigation and its possible severe repercussions

---

[130] "Goldman Case Sent To Justice; SEC Refers Its Findings Indictment of a Firm Would Be Unusual," *The Washington Post*, April 30, 2010. Cited in Finnerty Report, ¶ 118.

[131] "Goldman Shares Slide on Criminal-probe Concerns," *Bloomberg News*, April 30, 2010. Cited in Finnerty Report, ¶ 127.

[132] "Goldman Faces Rising Pressure To Strike Deal," *Financial Times*, April 30, 2010.

were highlighted by the actions taken by some analysts in lowering their outlook for Goldman's stock. Bank of America Merrill Lynch reported on April 30, 2010:

> [w]e are lowering our rating on GS to Neutral from Buy and our price objective to $160 from $220. Our downgrade is prompted by news reports filed Thursday evening by the media including the Wall St. Journal indicating that federal prosecutors have opened an investigation of GS in connection with its trading activities, raising the possibility of criminal charges.[133]

The Buckingham Research Group explained its downgrade of Goldman stock by stating:

> [r]eluctantly, and despite strong fundamentals and an attractive valuation, we are downgrading GS shares to Neutral from Buy given the significant uncertainty surrounding multiple and continued government probes of GS's mortgage trading & underwriting operations.[134]

74. The report of a purported DOJ investigation had an effect on Goldman's stock price for several reasons. The increase in the perceived likelihood of criminal charges, however small, would have had a negative impact on Goldman's stock price given the

---

[133] "Cutting to Neutral: Concerns Over Reports Of Federal Probe," Bank of America Merrill Lynch, April 30, 2010, p. 1. Cited in Finnerty Report, ¶ 126.

[134] "Downgrade To Neutral; Litigation/Political Risk Too Difficult To Handicap," The Buckingham Research Group, April 30, 2010, p. 1. Cited in Finnerty Report, ¶ 128.

severe potential consequences. Moreover, the purported DOJ investigation signaled wider governmental resolve to target Goldman and an increased risk of shifts in regulation with a disproportionate impact on Goldman's business. Finally, market participants, upon learning of the purported DOJ investigation, would have anticipated a drain on Goldman's resources and a major distraction for its executives.

75. Because the *Wall Street Journal* report on the alleged DOJ investigation provided no information about the purported Goldman conduct, any consequent stock price decline could not have been a result of the revelation of new information about Goldman's alleged conflicts of interest to the market through the *Wall Street Journal* report, as alleged by Plaintiffs. In particular, Dr. Finnerty's attribution of the entire abnormal return to new "corrective information" specific to the Hudson 2006-1, Timberwolf I, and Anderson 2007-1 CDOs is baseless.[135] My review of market commentary together with my analysis of the potential consequences of criminal charges lead me to conclude that the report of a DOJ criminal investigation, in and of itself and irrespective of any underlying allegations, caused Goldman's stock price to decline on April 30, 2010. Moreover, the repercussions that the report of a

---

[135] Finnerty Report, ¶¶ 135-137, Exhibit 7. ("The DOJ's criminal investigation was, in fact, a direct consequence of Goldman's alleged fraudulent conduct in connection with certain CDOs. . . . The news about the DOJ's criminal investigation provided significant new information about the severity of Goldman's conflicts of interest and violations of its business principles in contrast to its false and misleading statements during the Class Period.")

purported DOJ investigation could have on the ongoing political debate regarding the regulation of the financial industry heightened Goldman's stock price decline.

VIII. Reports Alleging an SEC Investigation into Goldman, as Distinct from Any Allegations Regarding Goldman's Conduct, Caused a Decline in Goldman's Stock Price on June 10, 2010

76. According to Dr. Finnerty, "[o]n Thursday, June 10, 2010, Goldman's common stock price *decreased* 2.21% from $136.80 to $133.77. . . . [T]he abnormal return on June 10, 2010 is - 4.52%, which is statistically significant at the 5% level."[136] Furthermore, Dr. Finnerty claims that the reports of an SEC investigation "disclosed to market participants the severity of Goldman's conduct and revealed that Goldman had been engaged in undisclosed conflicts of interest and violated its business principles in direct contrast to the false and misleading statements during the Class Period."[137] However, Dr. Gompers has shown that no new information about Goldman's conduct was revealed to the market on this date.[138] Therefore, there is no basis for attributing the abnormal return on June 10, 2010 to the alleged existence and severity of Goldman's conflicts of interest in the Hudson 2006-1 CDO.

77. As Dr. Finnerty reports, "[o]n Wednesday, June 9, 2010, after the market closed, it was reported that the Hudson 2006-1 CDO, which was sold in 2006,

---

[136] Finnerty Report, ¶ 141.

[137] Finnerty Report, ¶ 147.

[138] Gompers Report, ¶ 123.

was also the target of a probe by the SEC."[139] Specifically, a *Financial Times* article reported:

> [t]he US Securities and Exchange Commission has stepped up its inquiries into a complex mortgage-backed deal by Goldman Sachs that was not part of the civil fraud charges filed against the bank in April. . . . SEC interest in Hudson Mezzanine Funding, a $2bn collaterised debt obligation, comes amid settlement talks with Goldman over accusations that the bank defrauded investors in Abacus, a similar CDO.[140]

Plaintiffs do not allege that the SEC's investigation of the Hudson CDO resulted in an enforcement action.

78. A Wells Fargo analyst report pointed to the reports of a second SEC investigation as the cause of this stock price decline, saying that "[m]edia reports of a second SEC investigation into CDO marketing practices at GS (specifically a 2006 CDO called Hudson Mezzanine) pushed GS shares down as much as 4 percent today."[141] Goldman's stock price would have reacted to the announcement of an additional SEC investigation for reasons already discussed above. Complying with the SEC's demands for cooperation in the investigation and preparing a defense against possible charges consume a company's resources and are a distraction to management. As noted by Karpoff et al. (2008), "[s]hare values can

---

[139] Finnerty Report, ¶ 138.

[140] "SEC Probes Second Goldman Security," *Financial Times*, June 9, 2010.

[141] "GS: Reiterating Outperform Rating Despite Near-Term Volatility," Wells Fargo, June 10, 2010, p. 1.

decrease as investors anticipate that the targeted firm will receive non-monetary sanctions or will have to pay fines, penalties, and court settlements related to the charges."[142] The same authors also note that "the firm can suffer real losses as managers are required to divert resources to the investigation and away from company business."[143] A mutual fund executive speaking about SEC investigations reported that "[w]hen a sweep occurs, you're talking about days or weeks, not minutes. It's a major drain on the resources of the firm."[144]

79. Academic studies show that disclosures of SEC investigations result in a decline in defendant company stock prices. For instance, Feroz et al. (1991) find that disclosures of SEC investigations regarding financial reporting violations are associated with average two-day abnormal returns of -7.5 percent.[145] These same authors attempt to "isolate the investigation effect" by "focus[ing] on the cumulative returns for the 20 firms that had previously disclosed the disputed accounting. The cumulative abnormal return for days { -1, 0} for these 20 firms is - 6.0

---

[142] Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 594.

[143] Karpoff, J., S. Lee, and G. Martin (2008), "The Cost to Firms of Cooking the Books," *Journal of Financial and Quantitative Analysis*, 43, 581-611, p. 599.

[144] "Managers Hit by High Cost of SEC Probes," *Pensions & Investments*, October 18, 2004.

[145] Feroz, E., K. Park, and V. Pastena (1991), "The Financial and Market Effects of the SEC's Accounting and Auditing Enforcement Releases," *Journal of Accounting Research*, 29, 107-142, p. 123.

percent."[146] Looking at initial reports of SEC investigations, Choi et al. (2013) report abnormal returns for an event window centered on the event date ranging from -6.5 percent to 0.1 percent, depending on the type of violation involved (accounting or option backdating) and the time period considered.[147]

80. The implications of the reported investigation for future regulatory and legislative activity were likely an important additional contributor to Goldman's stock price decline on this date. The reports of the SEC investigation against Goldman, the first regulatory investigation pertaining to the Hudson CDO, marked the third report of regulatory action against Goldman following the Goldman Enforcement Action and the report of a purported DOJ investigation. Similar to the enforcement action, the SEC investigation signaled additional risk of future regulations which would have a disproportionate impact on Goldman compared to its peers. The investigation of a new CDO transaction implied a wider scope of expected additional civil and regulatory actions against Goldman which would have caused a decline in the Goldman stock price. While this investigation did not lead to an SEC enforcement

---

[146] Feroz, E., K. Park, and V. Pastena (1991), "The Financial and Market Effects of the SEC's Accounting and Auditing Enforcement Releases," *Journal of Accounting Research*, 29, 107-142, p. 124.

[147] The event window spans from the day before the first public disclosure of the SEC investigation to the day after the disclosure. See Choi, S., A. Wiechman, and A. Pritchard (2013), "Scandal Enforcement at the SEC: The Arc of the Option Backdating Investigations," *American Law and Economics Review*, 15, 542-577, pp. 553-554.

action, such enforcement activity can increase the risks and uncertainty that a company faces and which its employees, clients, and business counterparties perceive, and the exposure of the company to potentially severe penalties.

81. Dr. Gompers has shown that reports of an SEC investigation into Goldman on June 10, 2010 contained no new allegations about Goldman's conduct. Therefore, any consequent stock price decline could not have been a result of the revelation of new information about Goldman's alleged conflicts of interest to the market, as alleged by Plaintiffs. Instead, the reports of an SEC investigation, in and of themselves and irrespective of any underlying allegations, caused a decline in Goldman's stock price on June 10, 2010. Furthermore, the implications of the reports of a new SEC investigation for future regulations and litigation heightened the impact on Goldman's stock price. The stock price decline on June 10, 2010 is consistent with the negative impact I would expect from the publication of news of an SEC investigation related to the Hudson CDO and the resulting risks and potential costs that would flow from this regulatory activity.

IX. Conclusions

82. Based on my work on this matter, I have reached the following conclusions:

a. The filing of the Goldman Enforcement Action, in and of itself and distinct from the content of the underlying allegations, caused a decline in the Goldman stock price. The Goldman Enforcement Action had severe characteristics which are associated with price declines. In addition, the Goldman Enforcement Action

signaled an increased risk of future regulatory actions and legislative and regulatory changes which would have a disproportionate impact on Goldman compared to its peers. Further, the sensational and aggressive nature of the Goldman Enforcement Action, as noted by equity analysts and market commentators, caused uncertainty about the effect of additional regulatory action which could impact Goldman's relationship with its employees, clients, and business counter-parties. These additional factors magnified the stock price decline associated with the severe characteristics of the Goldman Enforcement Action. Based on my findings, and Dr. Gompers' finding that allegations made prior to April 16, 2010 which mirrored the corrective disclosures alleged by Plaintiffs had no effect on Goldman's stock price, I conclude that the Goldman Enforcement Action — independent of the content of the underlying allegations — likely accounted for the full April 16, 2010 -9.27 percent abnormal return calculated by Dr. Finnerty.

b. The Goldman Enforcement Action and its unusual characteristics were not reasonably foreseeable for the Defendants and the market because of the wide discretion the SEC enjoys in deciding whether to bring an enforcement action and in determining its characteristics, and because the presence of the Goldman Enforcement Action characteristics is extraordinary. Thus, neither investors nor the Defendants could have reasonably predicted the filing of the Goldman Enforcement Action,

its specific characteristics, and the subsequent decline in Goldman's stock price.

c. The news report alleging a DOJ criminal investigation against Goldman, irrespective of any underlying allegations, caused a decline in Goldman's stock price on April 30, 2010. The report of the alleged DOJ investigation provided no information about the purported Goldman conduct. Therefore, any consequent stock price decline cannot be attributed to the revelation of new information about Goldman's alleged conflicts of interest.

d. The news reports alleging an SEC investigation into Goldman, irrespective of any underlying allegations, caused a decline in Goldman's stock price on June 10, 2010. The reports of the SEC investigation on this date against Goldman — the first regulatory investigation pertaining to the Hudson CDO, but the third report of regulatory action against Goldman within the span of two months — resulted in additional risk of future regulations which would have a disproportionate impact on Goldman compared to its peers. The investigation of a new CDO transaction increased the risks, uncertainty, and exposure of the company to potentially severe penalties resulting in a decline in Goldman's stock price. Furthermore, given that Dr. Gompers has shown that the reports of the SEC investigation into Goldman on June 10, 2010 contained no new allegations about Goldman's conduct, any consequent stock price decline could not have been a result of the revelation of new information about

Goldman's alleged conflicts of interest to the market.

EXHIBIT 1

Summary Statistics for Defendant Company Abnormal Returns [1]
Fiscal Year 2010 – 2014 [2]

Statistic	**Abnormal Returns** [3]
Number of Actions	117
Number of Actions with Negative Abnormal Returns	60
Minimum	-17.09%
Maximum	7.78%
Average [4]	-0.06%

Source: Bloomberg; CRSP; Factiva; http://www.sec.gov; Securities Enforcement Empirical Database

Note:

[1] The dataset includes enforcement actions filed against publicly traded companies for which stock price data covering the enforcement action filing date and the preceding 250 trading days is available from CRSP. Enforcement actions against subsidiaries of publicly traded companies are also included for cases classified by the SEC as arising from the Financial Crisis. The Goldman Sachs Group, Inc. enforcement action filed on April 16, 2010 is excluded. There are three instances in which both a civil and an administrative action were filed against a defendant company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[2] The SEC's fiscal year ends on September 30 (Fiscal Year 2014 ended on September 30, 2014).

[3] Abnormal returns are calculated using an event study methodology based on a one factor market model. The model uses the S&P 500 Total Return Index as the market portfolio and a 250 trading day estimation window, which excludes any trading days on which other enforcement actions against the defendant company were filed. Abnormal returns are calculated for the enforcement action filing date in actions in which the enforcement action was announced before the end of trading hours and for the following trading day in actions in which the announcement came after market close.

[4] The average is not significant at the 5% level.

EXHIBIT 2

Summary Statistics for
Defendant Company Abnormal Returns: [1]
No Concurrent Resolution [2]
Fiscal Year 2010 – 2014 [3]

Statistic	**Abnormal Returns: No Concurrent Resolution** [4]	**Abnormal Returns: Concurrent Resolution** [4]
Number of Actions	8	109
Number of Actions with Negative Abnormal Returns	6	54
Minimum	-17.09%	-8.64%
Maximum	1.36%	7.78%
Average [5]	-3.86%*	0.22%
Difference in Averages [5]	-4.08%*	

Source: Bloomberg; CRSP; Factiva; http://www.sec.gov; Securities Enforcement Empirical Database

Note:

[1] The dataset includes enforcement actions filed against publicly traded companies for which stock price data covering the enforcement action filing date and the preceding 250 trading days is available from CRSP. Enforcement actions against subsidiaries of publicly traded companies are also included for cases classified by the SEC as arising from the Financial

Crisis. The Goldman Sachs Group, Inc. enforcement action filed on April 16, 2010 is excluded. There are three instances in which both a civil and an administrative action were filed against a defendant company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[2] Enforcement actions where the settlement between the SEC and the defendant was not disclosed on the same date that the enforcement action was filed.

[3] The SEC's fiscal year ends on September 30 (Fiscal Year 2014 ended on September 30, 2014).

[4] Abnormal returns are calculated using an event study methodology based on a one factor market model. The model uses the S&P 500 Total Return Index as the market portfolio and a 250 trading day estimation window, which excludes any trading days on which other enforcement actions against the defendant company were filed. Abnormal returns are calculated for the enforcement action filing date in actions in which the enforcement action was announced before the end of trading hours and for the following trading day in actions in which the announcement came after market close.

[5] An asterisk (*) indicates significance at the 5% level.

EXHIBIT 3

Summary Statistics for
Defendant Company Abnormal Returns: [1]
Compounding Impact of Enforcement Action Characteristics
Fiscal Year 2010 – 2014 [2]

Enforcement Action Characteristic		**Additional Enforcement Action Characteristics**		
	No Concurrent Resolution [3]	**Individual Defendants** [4]	**Scienter Charges** [5]	**Individual Defendants and Scienter Charges** [4] [5]
Number of Cases	8	5	4	4
Average Abnormal Return [6]	-3.86%	-6.30%	-8.07%	-8.07%

Source: Bloomberg; CRSP; Factiva; http://www.sec.gov; Securities Enforcement Empirical Database

Note:

[1] The dataset includes enforcement actions filed against publicly traded companies for which stock price data covering the enforcement action filing date and the preceding 250 trading days is available from

CRSP. Enforcement actions against subsidiaries of publicly traded companies are also included for cases classified by the SEC as arising from the Financial Crisis. The Goldman Sachs Group, Inc. enforcement action filed on April 16, 2010 is excluded. There are three instances in which both a civil and an administrative action were filed against a defendant company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[2] The SEC's fiscal year ends on September 30 (Fiscal Year 2014 ended on September 30, 2014).

[3] Enforcement actions where the settlement between the SEC and the defendant was not disclosed on the same date that the enforcement action was filed.

[4] Enforcement actions where allegations were also brought against an individual from the defendant company for related conduct on the same date that the enforcement action against the defendant company was filed.

[5] Enforcement actions where charges include violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and/or Section 17(a)(1) of the Securities Act of 1933.

[6] Abnormal returns are calculated using an event study methodology based on a one factor market model. The model uses the S&P 500 Total Return Index as the market portfolio and a 250 trading day estimation window, which excludes any trading days on which other enforcement actions against the defendant company were filed. Abnormal returns are calculated for the enforcement action filing date in

actions in which the enforcement action was announced before the end of trading hours and for the following trading day in actions in which the announcement came after market close. An asterisk (*) indicates significance at the 5% level.

EXHIBIT 4

Summary Statistics for
Defendant Company Abnormal Returns: [1]
No Concurrent Resolution, Scienter Charges, and Individual Defendants [2]
Fiscal Year 2010 – 2014 [3]

Statistic	**Abnormal Returns: No Concurrent Resolution, Scienter Charges, and Individual Defendants** [4]	**Abnormal Returns: Concurrent Resolution, No Scienter Charges, and No Individual Defendants** [4] [5]
Number of Actions	4	70
Number of Actions with Negative Abnormal Returns	4	32
Minimum	-17.09%	-8.64%
Maximum	-3.34%	6.67%
Average [6]	-8.07%	0.37%
Difference in Averages [6]	-8.44%	

Source: Bloomberg; CRSP; Factiva ; http://www.sec.gov; Securities Enforcement Empirical Database

Note:

[1] The dataset includes enforcement actions filed against publicly traded companies for which stock

price data covering the enforcement action filing date and the preceding 250 trading days is available from CRSP. Enforcement actions against subsidiaries of publicly traded companies are also included for cases classified by the SEC as arising from the Financial Crisis. The Goldman Sachs Group, Inc. enforcement action filed on April 16, 2010 is excluded. There are three instances in which both a civil and an administrative action were filed against a defendant company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[2] Enforcement actions with no concurrent resolution, scienter charges, and individual defendants. That is, enforcement actions where the settlement between the SEC and the defendant was not disclosed on the same date that the enforcement action was filed, charges include violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and/or Section 17(a)(1) of the Securities Act of 1933, and allegations were also brought against an individual from the defendant company for related conduct on the same date that the enforcement action against the defendant company was filed.

[3] The SEC's fiscal year ends on September 30 (Fiscal Year 2014 ended on September 30, 2014).

[4] Abnormal returns are calculated using an event study methodology based on a one factor market model. The model uses the S&P 500 Total Return Index as the market portfolio and a 250 trading day estimation window, which excludes any trading days on which other enforcement actions against the defendant company were filed. Abnormal returns are

calculated for the enforcement action filing date in actions in which the enforcement action was announced before the end of trading hours and for the following trading day in actions in which the announcement came after market close.

[5] Enforcement actions with concurrent resolutions, no scienter charges, and no individual defendants. That is, enforcement actions where the settlement between the SEC and the defendant was disclosed on the same date that the enforcement action was filed, charges do not include violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and/or Section 17(a)(1) of the Securities Act of 1933, and allegations were not brought against an individual from the defendant company for related conduct on the same date that the enforcement action against the defendant company was filed.

[6] An asterisk (*) indicates significance at the 5% level.

EXHIBIT 5

Distribution of SEC Enforcement Actions By Enforcement Action Characteristic [1] **Fiscal Year 2010 – 2014 [2]**

	Enforcement Actions With Characteristic		**Enforcement Actions Without Characteristic**	
Enforcement Action Characteristic	**Number**	**Percentage of Total Actions**	**Number**	**Percentage of Total Actions**
No Concurrent Resolution [3]	8	6.84%	109	93.16%
Scienter Charges [4]	15	12.82%	102	87.18%
Individual Defendants [5]	40	34.19%	77	65.81%
Any Characteristic	**47**	**40.17%**	**70**	**59.83%**

Source: CRSP; http://www.sec.gov; Securities Enforcement Empirical Database

Note:

[1] The dataset includes enforcement actions filed against publicly traded companies for which stock price data covering the enforcement action filing date and the preceding 250 trading days is available from CRSP. Enforcement actions against subsidiaries of publicly traded companies are also included for cases classified by the SEC as arising from the Financial Crisis. The Goldman Sachs Group, Inc. enforcement action filed on April 16, 2010 is excluded. There are three instances in which both a civil and an administrative action were filed against a defendant

company on the same day. In these instances, only one enforcement action with a superset of the characteristics from both actions is recognized in the dataset.

[2] The SEC's fiscal year ends on September 30 (Fiscal Year 2014 ended on September 30, 2014).

[3] Enforcement actions where the settlement between the SEC and the defendant was not disclosed on the same date that the enforcement action was filed.

[4] Enforcement actions where charges include violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 and/or Section 17(a)(1) of the Securities Act of 1933.

[5] Enforcement actions where allegations were also brought against an individual from the defendant company for related conduct on the same date that the enforcement action against the defendant company was filed.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 1:10-cv-03461-PAC

ECF Case

In re GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

This Document Relates To: ALL ACTIONS

REPORT OF LAURA T. STARKS, Ph.D.

July 2, 2015

Table of Contents

I. Qualifications 1

II. Allegations, assignment, and compensation.. 4

III. Summary of opinions.................................... 6

IV. The equity investment decision-making process and the types of information that investors consider in making equity investments 7

V. The statements at issue are general statements regarding Goldman's business principles and management of conflicts of interest... 10

VI. General statements in company communications regarding a company's business principles, the importance of its reputation and client franchise, and those regarding a company's management of conflicts of interest do not affect the value of a company's stock, and therefore do not contain information that can be used in investment decision-making 16

VII. My analysis of analyst reports that included discussions of Goldman Sachs during the Class Period shows that the Business Principles Statements and Conflict Controls Statements were not discussed by analysts, which further reflects that they did not contain information that could be used in an investment decision-making process 22

A. Analysts did not address the Business Principles Statements or Conflict Controls Statements prior to the alleged corrective disclosure dates 26

B. Analysts did not address the Business Principles Statements or Conflict Controls Statements on or after the alleged corrective disclosure dates 30

VIII. Conclusion 41

* * *

V. The statements at issue are general statements regarding Goldman's business principles and management of conflicts of interest

27. Plaintiffs allege that Defendants made two categories of misstatements: their statements about business principles ("Business Principles Statements") and their statements about conflict controls ("Conflict Controls Statements").[20]

28. The Business Principles Statements involve statements regarding Goldman's business principles, and statements about the importance of Goldman's reputation and the importance and quality of its client franchise. The statements in this category are predominantly from Goldman's SEC Form 10-K ("Form 10-K") filings, Goldman's annual reports, or public conference calls. Exhibit 4 provides examples of the Business Principles Statements.

29. The Business Principles Statements include certain of Goldman's 14 business principles contained in the firm's annual report to shareholders during the Class Period and provided to Goldman's employees. Specifically, these statements are:

- "Our clients' interests always come first. Our experience shows that if we serve our clients well, our own success will follow."
- "Our assets are our people, capital and reputation. If any of these is ever diminished,

---

[20] *See, e.g.*, Complaint, ¶¶ 13–15, 18, 21–22, 24–25, 27, 116, 120–121, 127, 134–136, 140–141, 154, 271–275, 277, 279–287, 289, 291–297, 299, 301–303, 305, 327. Emphasis omitted.

the last is the most difficult to restore. We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard."

- "Integrity and honesty are at the heart of our business."[21]

30. Statements of a company's business principles communicate to key stakeholders—including customers, employees, and investors—the principles, standards, values, and goals of the organization as aspired to by the company's founders and top management.[22] Such statements are typically widely circulated and discussed, with the goal of having their meaning understood, shared, and internalized by the company's stakeholders, in particular, its employees.[23] These types of aspirational statements are used for a variety of purposes, including creation and promotion of organizational culture, employee motivation, and corporate brand formation.[24] These types of

---

[21] Complaint, ¶¶ 24, 154, 277, 289, 299, 305. Emphasis omitted.

[22] *See, e.g.*, "Mission and Vision Statements," (http://www.bain.com/publications/articles/management-tools-mission-and-vision-statements.aspx).

[23] *See, e.g.*, Bauer, T., M. Carpenter, and B. Erdogan (2010), "Developing Mission, Vision, and Values," in *Management Principles*, pp. 167–170; Collins, J. C., and J. I. Porras (1996), "Building Your Company's Vision," *Harvard Business Review*, September–October, pp. 65–77, at pp. 66–68; "Mission and Vision Statements," (http://www.bain.com/publications/articles/management-tools-mission-and-vision-statements.aspx).

[24] *See, e.g.*, Bauer, T., M. Carpenter, and B. Erdogan (2010), "Developing Mission, Vision, and Values," in *Management*

statements are also commonly used in company communications across a wide range of industries (as I discuss in more detail in Section VI below).

31. As shown in Exhibit 4, these statements were included in Goldman's annual reports to investors during the Class Period. The history of these 14 business principles shows that they were designed specifically to provide employees of Goldman with an understanding of what are considered to be the firm's core values. According to one author, they were first written in the late 1970s, when Goldman Sachs was operated as a private partnership, and they were attached to the company's annual review and sent to every employee's home.[25] I understand that the 14 business principles are generally provided to all Goldman employees during new employee orientation and are included on Goldman's website.[26]

Principles, pp. 167–170; Collins, J. C., and J. I. Porras (1996), "Building Your Company's Vision," *Harvard Business Review*, September–October, pp. 65–77, at pp. 66–77; "Mission and Vision Statements," (http://www.bain.com/publications/articles/management-tools-mission-and-vision-statements.aspx).

[25] Ellis, C. D. (2009), *The Partnership: The Making of Goldman Sachs*, New York, NY: Penguin Books ("Ellis (2009)"), pp. 184–185. According to Ellis (2009), including the principles in the company's annual review is a practice that has continued.

[26] *See, e.g.*, "Why Goldman Sachs? – Training and Orientation," (http://www.goldmansachs.com/careers/why-goldman-sachs/training-and-orientation/training-and-orientation-main-page.html); "Business Principles and Standards – Goldman Sachs Business Principles," (http://www.goldmansachs.com/who-we-are/business-standards/business-principles/index.html). The 14 business principles are the same as the set originally drafted except for minor changes in wording. *See* Ellis (2009), p. 185. *See also* Deposition of Fabrice Tourre, November 13, 2014, 381:2–382:9; Deposition of George Maltezos, October 29, 2014, 247:19–

32. Based on my experience and understanding, due to the aspirational nature of a company's business principles and their prevalence in company communications, investors cannot view these statements as guarantees that all of the company's employees would uphold these principles at all times.

33. The Business Principles Statements also include certain statements in (i) Goldman's Form 10-Ks, (ii) Goldman earnings conference calls and investor conferences, (iii) a January 21, 2010 Goldman press release, and (iv) a November 8, 2009 *Sunday Times* article.[27] These statements include:

- "Our reputation is one of our most important assets."[28]
- "We believe our willingness and ability to take risk to facilitate client transactions distinguishes us from many of our competitors and substantially enhances our client relationships."[29]
- "I am pleased to report record results for the first quarter. . . . Most importantly, our performance reflects the depth of our client franchise and the diversity of our business mix."[30]

248:6; Deposition of Scott Wisenbaker, October 10, 2013, 49:20–50:6.

[27] *See, e.g.*, Exhibit 4.

[28] *See, e.g.*, Complaint, ¶¶ 154, 272, 284. Emphasis omitted.

[29] *See, e.g.*, Complaint, ¶¶ 154, 271, 283, 293, 302. Emphasis omitted.

[30] *See, e.g.*, Complaint, ¶ 279. *See also* Goldman Sachs Q1 2007 Earnings Conference Call Transcript, March 13, 2007.

- "What drove performance was the quality of our client franchise."[31]

34. These types of statements about the importance of a company's reputation, and importance or quality of its clients or client franchise, are so general in nature that they have no substantive content from the perspective of an investor. In fact, company statements about the importance of the company's reputation and clients are truisms and especially so for companies in the services sector and for companies that have well-recognized brand names. Consequently, such statements do not provide information pertinent to a company's valuation or financial performance. In my experience, the notion that companies value their reputations is a given, irrespective of company statements on that topic. I discuss the pervasiveness of these statements among companies in more detail in Section VI below.

35. The second category of misstatements alleged by Plaintiffs involves statements regarding Goldman's management of conflicts of interest or the Conflict Controls Statements.[32] Exhibit 5 provides examples of the Conflict Controls Statements. Almost all of these statements are from the "Risk Factors" section of Goldman's Form 10-Ks and include the following:

- "Conflicts of interest are increasing and a failure to appropriately deal with conflicts of interest could adversely affect our businesses. Our reputation is one of our most important assets. As we have expanded the scope of our

---

[31] *See, e.g.*, Complaint, ¶¶ 154, 281. Emphasis omitted.

[32] *See, e.g.*, Complaint, ¶¶ 18, 25, 134–136, 272, 284, 294, 303. *See also* Exhibit 5.

businesses and our client base, we increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interests of another client . . . ."

"We have extensive procedures and controls that are designed to address conflicts of interest, including those designed to prevent the improper sharing of information among our businesses. However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and our reputation could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to identify and deal appropriately with conflicts of interest. In addition, potential or perceived conflicts could give rise to litigation or enforcement actions."[33]

36. Financial institutions, which include a variety of business operations from trading to investment banking, can be exposed to a number of business conflicts. For example, investment banks might advise multiple clients in the same sector, or investment banking clients might seek to enter into transactions with other firms with which the investment bank has a relationship. With respect to trading, a bank might act as a middleman between counterparties looking to

[33] Complaint, ¶¶ 134–135, 272, 284, 294, 303 (emphasis omitted); The Goldman Sachs Group, Inc. Form 10-K for the fiscal year ended November 30, 2007 ("Goldman 2007 Form 10-K"), p. 28.

trade or might act in a proprietary role. In my experience, the risks that arise from potential conflicts of interest in this industry are well known to investors, having been pointed out and written about for decades.[34]

37. The general statements at issue in this action are statements that Goldman Sachs made about the entirety of its business, and, in my experience, no reasonable investor could read these types of general statements as suggesting that inconsistent behavior within any particular business line or specific transaction within the larger entity would negate these general statements for the larger entity. Goldman Sachs is a large financial services firm with different divisions, sources of revenues, thousands of clients, and thousands of employees. For example, in the fiscal year ended December 2009, Goldman had net revenues of $45.2 billion, with $871 billion in assets under management and over 32,000 employees worldwide.[35] At the end of its fiscal year 2009, Goldman had three principal business segments: Investment Banking, Trading and Principal Investments, and Asset Management and Securities Services.[36] The size and scope of Goldman's activities

---

[34] Wolfson, N. (1976), *Conflicts of Interest: Investment Banking*, New York, NY: The Twentieth Century Fund, Inc.

[35] The Goldman Sachs Group, Inc. Form 10-K for the fiscal year ended December 31, 2009 ("Goldman 2009 Form 10-K"), pp. 3, 12, 14.

[36] Goldman 2009 Form 10-K, pp. 1, 5. In its 2010 Form 10-K, issued in 2011, Goldman started reporting four business segments: Investment Banking, Investing and Lending, Institutional Client Services, and Investment Management. *See* The Goldman Sachs Group, Inc. Form 10-K for the fiscal year ended December 31, 2010, p. 1.

within its Trading and Principal Investments segment—Goldman's largest revenue-generating business segment in fiscal year 2009—are sweeping. For example, in its 2009 Form 10-K, Goldman reported $34.4 billion in net revenues from its Trading and Principal Investments segment—which amounted to approximately 76 percent of Goldman's net revenues in fiscal year 2009—and described the company's activities in this segment as follows:[37]

> "We facilitate client transactions with a diverse group of corporations, financial institutions, investment funds, governments and individuals through market making in, trading of and investing in fixed income and equity products, currencies, commodities and derivatives on these products. We also take proprietary positions on certain of these products. In addition, we engage in market-making activities on equities and options exchanges, and we clear client transactions on major stock, options and futures exchanges worldwide. In connection with our merchant banking and other investing activities, we make principal investments directly and through funds that we raise and manage."[38]

38. In addition, these Conflict Controls Statements are provided in a section titled "Risk Factors" in Goldman's Form 10-Ks filed with the SEC. Statements

---

[37] Goldman 2009 Form 10-K, p. 3. Dividing $34.4 billion of net revenues from the Trading and Principal Investments business segment by Goldman's total net revenues of $45.2 billion yields approximately 76 percent.

[38] Goldman 2009 Form 10-K, p. 55.

in the Risk Factors section of Form 10-Ks are designed to provide "information about the most significant risks that apply to the company or to its securities."[39] As such, these and other statements in the Risk Factors sections of Form 10-Ks are there to warn investors about significant risks that could have an adverse impact on the company and cannot reasonably be interpreted by investors as guarantees that the risks will not occur. Indeed, the statements at issue also include the following language providing further warning to investors:

> "However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and our reputation could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to identify and deal appropriately with conflicts of interest. In addition, potential or perceived conflicts could give rise to litigation or enforcement actions."[40]

39. These types of general statements regarding the risks of conflicts and the company's intended approach to the management of conflicts are commonly found in the Form 10-K filings of financial services companies. I discuss the pervasiveness of these statements in more detail in Section VI below.

---

[39] "How to Read a 10-K," (http://www.sec.gov/answers/reada10k.htm). The SEC made Risk Factors section a requirement in 2005. *See*, *e.g.*, "Report on Review of Disclosure Requirements in Regulation S-K," (https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf).

[40] Goldman 2007 Form 10-K, p. 28.

40. As I also discuss in more detail below, I am not aware of any type of investor that could reasonably consider these types of statements as containing information that could be pertinent to their investment decision-making process.

VI. General statements in company communications regarding a company's business principles, the importance of its reputation and client franchise, and those regarding a company's management of conflicts of interest do not affect the value of a company's stock, and therefore do not contain information that can be used in investment decision-making

41. Based on my education, academic research on investments, and years of investment management experience, equity investors do not consider general statements included in company communications on broad topics, such as the Business Principles Statements and Conflict Controls Statements at issue in this case, to provide pertinent information for their investment decision-making process. Such general statements do not provide information that bears on a company's future financial performance or value. Statements such as the Business Principles Statements and Conflict Controls Statements are also too general to convey anything precise or meaningful, cannot be viewed by investors as assurances of a particular outcome and, in some cases, are nothing more than truisms. Even one of the Lead Plaintiffs described the statements at issue as "fairly generic."[41]

---

[41] *See*, *e.g.*, Deposition of H. Craig Slaughter, March 12, 2015, 11:2–11:12, 261:18–262:20; Complaint, Introduction.

42. For example, companies are naturally concerned with establishing a good reputation and protecting it. As such, company statements about the importance of reputation—such as "reputation is one of our most important assets"—are truisms for all companies regardless of whether a company publicly makes such general statements in its communications. I would expect that companies other than Goldman would have also made similar statements regarding the importance of their reputations. Indeed, I identified a number of these statements in public communications by companies in a variety of industries. For example:

- American Express Company 2008 Form 10-K: "Our brand and reputation are key assets of our Company."[42]
- The Boeing Company 2009 Annual Report: "Our . . . reputation and experience are among this company's strongest advantages."[43]
- The Coca-Cola Company 2008 Form 10-K: "If we are unable to maintain our brand image and corporate reputation, our business may suffer. Our success depends on our ability to maintain brand image for our existing products and effectively build up brand image for new products and brand extensions."[44]

---

[42] American Express Company Form 10-K for the fiscal year ended December 31, 2008, p. 73.

[43] The Boeing Company Annual Report for the fiscal year ended December 31, 2009, p. 5.

[44] The Coca-Cola Company Form 10-K for the fiscal year ended December 31, 2008, p. 18.

- FedEx Corporation 2009 Form 10-K: "Our businesses depend on our strong reputation and the value of the FedEx brand."[45]
- Morgan Stanley 2006 Form 10-K: "Our reputation is one of our most important assets."[46]
- Target Corporation 2009 Form 10-K: "Our continued success is substantially dependent on . . . the reputation we have built over many years . . .."[47]
- UBS AG 2009 Annual Report: "Our reputation is our most valuable asset . . .."[48]

43. Further, in my experience, investors are aware of companies' general concern regarding harm to their reputation and the impact it could have on their business, regardless of whether the companies have made statements to that effect. Inclusion of a statement about the importance of a company's reputation in an annual report or in an executive's comments on the firm therefore would not convey new or substantive information to which an investor could react. In addition, in my experience, the term "reputational harm" is commonly used by companies and understood by investors to describe potential or actual damage to a corporate brand due to the

---

[45] FedEx Corporation Form 10-K for the fiscal year ended May 31, 2009, p. 82.

[46] Morgan Stanley Form 10-K for the fiscal year ended November 30, 2006, p. 20.

[47] Target Corporation Form 10-K for the fiscal year ended January 30, 2010, p. 4.

[48] UBS AG Annual Report for the fiscal year ended December 31, 2009, p. 11.

corporation's association with a negative event or news story. This term is used irrespective of whether the company has made prior statements about the importance of its reputation.

44. The general statements at issue in this matter are pervasive in company communications, and given their lack of specific information, in my experience, investors do not identify differentiable content in these statements on which to base investment decisions, or rely on them at all during the investment decision-making process. In Exhibits 6 and 7, I present numerous examples of these statements.

45. Specifically, in Exhibit 6, I provide a list of statements similar to the Business Principles Statements made by various companies during the Class Period. To determine how common it is for companies to include these types of statements in company communications, I looked at statements in publicly available documents of the three largest constituent firms in each of the S&P 500 Sector Indices, as well as statements in publicly available documents of the companies in indices analyzed by Dr. Finnerty (i.e., The Bear Stearns Companies, Inc., The Charles Schwab Corporation, Citigroup Inc., E*Trade Financial Corporation, JPMorgan Chase & Co., Lehman Brothers Holdings Inc., Merrill Lynch & Company, Inc., and Morgan Stanley).[49] I found that

---

[49] The sectors covered by the S&P 500 Sector Indices are: Consumer Discretionary, Consumer Staples, Energy, Financials, Health Care, Industrials, Materials, Technology, and Utilities. Dr. Finnerty examines two indices, including the S&P 500 Investment Banking & Brokerage Sub Industry Index and what Dr. Finnerty deems "Goldman's Core Competitors" as identified in Goldman's 2008 proxy statement dated March 7, 2008. *See*

every company I examined made public statements analogous to the Business Principles Statements. For example:

- 3M Company Code of Conduct: "3M's excellent reputation defines who we are as a company. At the same time it strengthens our competitive position in the global marketplace. It is imperative that each of us remains fully committed to upholding and advancing 3M's reputation, in every decision we make, and in every action we take . . . . Our personal integrity, our shared values and our ethical business practices form the basis of 3M's reputation around the world."[50]

- Apple Inc. 2010 Form 10-K: "Apple's success is based on creating innovative, high-quality products and services and on demonstrating integrity in every business interaction. Apple's principles of business conduct define the way we do business worldwide. These principles are:

  - Honesty. Demonstrate honesty and high ethical standards in all business dealings.

  - Respect. Treat customers, suppliers, employees, and others with respect and courtesy.

Declaration of John D. Finnerty, Ph.D., filed January 30, 2015 ("Finnerty Class Cert Declaration"), Appendix C-1.

[50] "Our Code of Conduct: Being 3M," (http://solutions.3m.com/wps/portal/3M/en_US/businessconduct/bcmain/policy/principles/).

  - Confidentiality. Protect the confidentiality of Apple's information and the information of our customers, suppliers and employees.
  - Compliance. Ensure that business decisions comply with all applicable laws and regulations."[51]

- The Dow Chemical Company 2009 Annual Report: "At Dow, we believe our success depends on maintaining the highest ethical and moral standards everywhere we operate. That focus on integrity starts at the top."[52]
- The Walt Disney Company Standards of Business Conduct: "One of our greatest assets is our reputation. We're known for operating with high ethical standards everywhere we do business."[53]

46. In addition, in Exhibit 7, I provide a list of statements similar to the Conflict Controls Statements made by companies in the same sector as Goldman during the Class Period. Specifically, I looked at statements in publicly available documents of companies in indices analyzed by Dr. Finnerty.[54] I found that every company I examined made public statements analogous to the Conflict Controls Statements. For example:

---

[51] Apple Inc. Form 10-K for the fiscal year ended September 25, 2010, Exhibit 14.1.

[52] The Dow Chemical Company Annual Report for the fiscal year ended December 31, 2009, p. 9.

[53] "The Walt Disney Company and Affiliated Companies Standards of Business Conduct," (http://cdn.media.ir.thewalt disneycompany.com/forms/DIS-SBC-CM.pdf).

[54] *See* Finnerty Class Cert Declaration, Appendix C-1.

- JPMorgan Chase & Co. 2006 Form 10-K: "If JPMorgan Chase does not successfully handle issues that may arise in the conduct of its business and operations, its reputation could be damaged which could in turn negatively affect its business. The Firm's ability to attract and retain customers and transact with its counterparties could be adversely affected to the extent its reputation is damaged. The failure of the Firm to deal, or to appear to fail to deal, with various issues that could give rise to reputational risk could cause harm to the Firm and its business prospects. These include, but are not limited to, appropriately dealing with potential conflicts of interest, legal and regulatory requirements, ethical issues, money-laundering, privacy, record-keeping, sales and trading practices, and the proper identification of the legal, reputational, credit, liquidity and market risks inherent in its products."[55]
- JPMorgan Chase & Co. 2007 Form 10-K: "The Firm could suffer significant reputational harm if the Firm acts when it has, or is thought to have, conflicts of interest. . . . Management of potential conflicts of interest has become increasingly complex as the Firm expands its activities among its numerous transactions, obligations, holdings and clients. Therefore, there can be no assurance that conflicts of

[55] JPMorgan Chase & Co. Form 10-K for the fiscal year ended December 31, 2006, p. 5.

interest will not arise in the future that could cause material harm to the Firm."[56]

- Merrill Lynch & Company, Inc. 2008 Form 10-K: "Our ability to attract and retain clients and employees could be adversely impacted to the extent our reputation is damaged. Our actual or perceived failure to address various issues could give rise to reputational risk that could harm us or our business prospects. These issues include but are not limited to, appropriately addressing potential conflicts of interest; legal and regulatory requirements; ethical issues; money-laundering; privacy; properly maintaining customer and associate personal information; record keeping; sales and trading practices; and the proper identification of the legal, reputational, credit, liquidity and market risks inherent in our products."[57]
- Merrill Lynch & Company, Inc. 2010 Form 10-K: "We could suffer significant reputational harm if we fail to properly identify and manage potential conflicts of interest. Management of potential conflicts of interests has become increasingly complex as we expand our business activities through more numerous transactions, obligations and interests with and among our clients. The failure to adequately address, or the perceived failure to adequately address, conflicts of interest could

[56] JPMorgan Chase & Co. Form 10-K for the fiscal year ended December 31, 2007, pp. 5–6.

[57] Merrill Lynch & Company, Inc. Form 10-K for the fiscal year ended December 26, 2008, p. 12.

affect the willingness of clients to deal with us, or give rise to litigation or enforcement actions, which could adversely affect our businesses."[58]

- Morgan Stanley 2007 Form 10-K: "Our reputation is one of our most important assets. As we have expanded the scope of our businesses and our client base, we increasingly have to address potential conflicts of interest. . . . We have procedures and controls that are designed to address various conflicts of interest. However, identifying and managing potential conflicts of interest can be complex and difficult and our reputation could be damaged if we fail, or appear to fail, to deal appropriately with conflicts of interest. . . . [P]otential or perceived conflicts could give rise to litigation or enforcement actions."[59]

47. The statements I identify in Exhibits 6 and 7, like the statements at issue in this case, are general in nature, and, in my experience, do not provide any specific information that an investor—regardless of investor type—could reasonably use in making an investment decision. In addition, the prevalence of these kinds of general statements in company communications is indicative of their lack of information content for investors in determining the future financial performance or value of a company. Based on my knowledge and experience of the investment decision-making process, the Business Principles Statements or Conflict Controls Statements

---

[58] Merrill Lynch & Company, Inc. Form 10-K for the fiscal year ended December 31, 2010, p. 17.

[59] Morgan Stanley Form 10-K for the fiscal year ended November 30, 2007, p. 18.

and analogous statements made by other companies do not contain information pertinent to the investment decision-making process and I would not expect investors to rely on them.

VII. My analysis of analyst reports that included discussions of Goldman Sachs during the Class Period shows that the Business Principles Statements and Conflict Controls Statements were not discussed by analysts, which further reflects that they did not contain information that could be used in an investment decision-making process

48. Equity analysts are widely known as information intermediaries between companies and investors, delivering significant information from the companies to investors as well as expanding on this information. Further, sell-side analysts are paid by investors (either directly or indirectly) to be their information intermediaries. Thus, the content of analysts' reports provides a useful measure of the information that investors would deem most significant to the investment decision-making process. For a company that is broadly followed by analysts, such as Goldman Sachs, important events and statements made by management that analysts (and, by implication, investors) believe to be significant to the future of a firm are usually included in analyst reports. I understand that Dr. Finnerty has similarly recognized that information that is most significant to investors is typically captured in analyst reports.[60] Thus, reviewing analyst reports published during the

[60] Deposition of John D. Finnerty, March 19, 2015, 101:3–102:20.

Class Period allows me to assess the types of information most significant to investors at the time. In particular, a review of analyst reports during the Class Period provides a method to examine whether the Business Principles Statements and Conflict Controls Statements were among the issues that analysts and investors considered significant in this time frame.

49. Based on professional standards and common industry practices, in the process of evaluating a stock and making investment recommendations, analysts are required to engage in rigorous analysis and identify and utilize various sources of information. For instance, in the United States, the Financial Industry Regulatory Authority ("FINRA")—an independent self-regulatory organization—oversees the securities industry, including the activity of equity analysts in brokerage firms.[61] According to FINRA rules, "[a]n associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report" must pass the Series 86/87 Research Analyst Examination and register as a research analyst with FINRA.[62] This

---

[61] "About FINRA," (http://www.finra.org/about); "Self-Regulatory Organization Rulemaking," (http://www.sec.gov/rules/sro.shtml).

[62] "Research Analyst Qualification Exam (Series 86/87) Content Outline," (http://www finra.org/sites/default/files/Industry/p006473.pdf); "Qualifications Frequently Asked Questions (FAQ) – Research Analysts," (http://www.finra.org/Industry/Compliance/Registration/QualificationsExams/Qualifications/faq/p011105). Analysts who have passed the Chartered Financial Analyst Level I and Level II exams may request an exemption from the FINRA Series 86 Research Analyst Exam (Part 1: Analysis). *See* "Qualifications Frequently Asked Questions (FAQ) – Research Analysts," (http://www.finra.org/Industry/Compli

exam covers a wide variety of topics regarding analysts' critical job functions of information gathering and data collection, analysis, modeling and valuation, preparation of research reports, and dissemination of information. In particular, FINRA identifies an important aspect of the analysts' duties as assessing "the relevance and importance of the information gathered to identify the drivers that influence the performance of the industry and/or the subject company."[63]

50. Analysts often hold the Chartered Financial Analyst ("CFA") credential, which refers to a standardized and widely recognized curriculum and testing regimen "connecting academic theory with current practice and ethical and professional standards to provide a strong foundation of advanced investment analysis and real-world portfolio management skills."[64] In addition to the technical and quantitative demands of the CFA credential, analysts with CFA designations are also required to follow the guidelines and best practices identified in the CFA Institute's *Ethical and Professional Standards and*

---

ance/Registration/QualificationsExams/Qualifications/faq/p0111 05).

[63] "Research Analyst Qualification Exam (Series 86/87) Content Outline," (http://www finra.org/sites/default/files/Industry/p006473.pdf).

[64] "CFA® Program," (http://www.cfainstitute.org/programs/cfaprogram/Pages/index.aspx). To become a CFA charterholder, one must pass a series of formal, standardized tests—referred to as Level I, Level II, and Level III—as well as have a minimum of four years of "qualified work experience in investment decision making," and "[a]gree to follow the CFA Institute Code of Ethics and Standards of Professional Conduct." *See* "Become a CFA Charterholder," (http://www.cfainstitute.org/programs/cfaprogram/charterholder/Pages/index.aspx).

Quantitative Methods on investment analysis and to support their investment analysis and recommendations by appropriate research and investigation.[65]

51. Academic research into analyst reports has also shown what analysts rely upon and what their reports contain. Previts et al. (1994) conducted a content analysis of analyst reports and found that income statement and performance-related discussions dominated analysts' reports.[66] The authors also examined the nonfinancial information in the analyst reports and found that market share, competitive position, industry and economic conditions, competitors' capabilities, products, the nature and recent history of the company, its products, product pricing, customers, suppliers, industry, the national and international economy, and the company's competitive position were included among the subjects covered in the analyst reports.[67] Further, the authors found that analysts considered and discussed the quality of company management and strategy: "Analysts also extensively disclose and evaluate corporate and management strategy (revenue growth, cost management, marketing strategy, competitive

---

[65] CFA Institute (2007), *Ethical and Professional Standards and Quantitative Methods*, Boston, MA: Pearson Custom Publishing, pp. 79–88.

[66] Previts, G. J., R. J. Bricker, T. R. Robinson, and S. J. Young (1994), "A Content Analysis of Sell-Side Financial Analyst Company Reports," *Accounting Horizons,* Vol. 8, No. 2, pp. 55–70, at p. 59.

[67] Previts, G. J., R. J. Bricker, T. R. Robinson, and S. J. Young (1994), "A Content Analysis of Sell-Side Financial Analyst Company Reports," *Accounting Horizons,* Vol. 8, No. 2, pp. 55–70, at p. 65.

positioning, etc.)."[68] Another content analysis study of analyst reports concluded that the central themes of analyst reports can be categorized as growth, management and strategy, profitability, financial position and market conditions.[69]

52. I undertook an examination of analyst reports during the Class Period to understand the issues of importance to analysts during this period. In doing so, I have used 880 reports on Goldman that were previously employed in connection with the expert report that Charles Porten ("Mr. Porten") submitted during the class certification stage of this matter.[70] I

---

[68] Previts, G. J., R. J. Bricker, T. R. Robinson, and S. J. Young (1994), "A Content Analysis of Sell-Side Financial Analyst Company Reports," *Accounting Horizons,* Vol. 8, No. 2, pp. 55–70, at p. 65.

[69] Breton, G., and R. J. Taffler (2001), "Accounting Information and Analyst Stock Recommendation Decisions: A Content Analysis Approach," *Accounting and Business Research,* Vol. 31, No. 2, pp. 91–101, at p. 95.

[70] Declaration of Charles Porten, CFA, filed on April 6, 2015 ("Porten Declaration"), pp. 9–10. The time frame covered by the analyst reports is the beginning of the Class Period (February 5, 2007) through two weeks after the end of the Class Period (i.e., through and including June 24, 2010). Mr. Porten's declaration identified 884 reports, rather than 880; however, I identified three reports relating to other companies and another report that was duplicative of a report already included in the set of analyst reports. I excluded these reports, namely: "Q1/08 in Line. Analyzing Potential December Performance Fees," *RBC Capital Markets*, November 9, 2007, "Union Pacific Corp.: 3Q Earnings – on Track," *Bank of America Merrill Lynch*, October 22, 2009, "Union Pacific Corp.: 4Q Beats, Volumes Weak But FCF Solid," *Bank of America Merrill Lynch*, January 21, 2010, and "Goldman Sachs Group: Ceasing Coverage," *Macquarie*, June 9, 2010. *See* Porten Declaration, Exhibit 3. A complete list of the analyst reports I reviewed is provided in Exhibit 3.

have reviewed and checked the methodology used to identify these reports and find this collection methodology to be reliable.[71]

53. In my examination, I found that, consistent with my experience and with the academic literature, the analyst reports on Goldman during the relevant time period focused on all or parts of the main themes detailed above: growth, management and strategy,

---

[71] The 880 analyst reports were compiled based on reports that were available through two publicly available databases commonly used by academics and the investment community: *S&P Capital IQ* and *Thomson Reuters*. I also understand that Mr. Porten made a request to Goldman Sachs to provide any additional reports it possessed, and those analyst reports were also included. Contributors that published only a single report during the roughly three-and-a-half-year Class Period as well as the contributors that published quantitative or technical reports (i.e., reports devoid of commentary on company performance or investment recommendations) were excluded. The excluded contributors are: *Abaxbank*, *AIG*, *Ativo Research*, *Black Box Investing, Inc.*, *Bloom*, *Corporate Technology Information Services, Inc.*, *Covalence SA*, *Datamonitor*, *Disclosure Insight, Inc.*, *Dolmen Securities*, *Dnb Markets*, *Fact Set*, *Financiele Diensten Amsterdam*, *Fitch Ratings*, *Ford Equity Research, Inc.*, *Global Markets Direct*, *Globaldata*, *Governancemetrics International*, *Hi Investment & Securities*, *Howe Barnes Hoefer and Arnett Inc.*, *IBISWorld*, *Institutional Shareholder Services*, *Market Edge*, *Marketline*, *Medtrack Research*, *Nab Sydney*, *National Australia Bank Limited*, *New Constructs LLC*, *News Bites Pty Limited*, *Nomura Securities*, *Optionsmart.com*, *Plunkett Research*, *Pricetarget Research, Inc.*, *Rapid Ratings*, *Reese Group LLC*, *RiskMetrics Group*, *S&P Equity Research*, *Sadif-Investment Analytics S.A.*, *Stock Traders Daily*, *Susquehanna Financial Group*, *Tabb Group, Inc.*, *Taurus Investment & Securities Co.*, *Thomson Reuters (Stock Activity Reports and Thomson StreetEvents)*, *Trucost Plc*, *Unicredit Research*, *Validea*, *Valuengine, Inc.*, *W Ratings Corporation*, *Wall Street Strategies*, *Wall Street Transcript*, *Weiss Ratings, Inc.*, and *Zacks Investment Research*. *See* Porten Declaration, pp. 9–10.

profitability, financial position, and market conditions. Beyond examining the information indicated to be important to analysts, I also considered whether the alleged misstatements were included as part of this information. If analysts had found the Business Principles Statements or Conflict Controls Statements important to their analysis of Goldman's stock, I would expect to observe at least some analyst discussion related to these statements during the Class Period.

54. I found that during the Class Period prior to the alleged corrective disclosure dates, the analysts reporting on Goldman's stock did not mention or refer to the statements identified as misstatements by Plaintiffs (i.e., Business Principles Statements or Conflict Controls Statements). This further supports my opinion that these types of statements did not contain pertinent information that could be used in an investment decision-making process when determining Goldman's financial performance or the valuation of its stock.

55. I also found that on or around the time of the four alleged corrective disclosure dates and until the end of the Class Period, analysts again focused on all or part of the major themes, consistent with my experience and academic findings. Further, analysts did not refer to or mention the Business Principles Statements or Conflict Controls Statements. If analysts had found the Business Principles Statements or Conflict Controls Statements to be information that was important to their analysis, and if they had incorporated this information into their evaluations of Goldman's stock, I would have expected to find some analyst discussion related to these statements when the misstatements were allegedly

corrected. However, I found that these analyst reports discussed the SEC enforcement action and other enforcement activities, including their potential outcome and their anticipated effects on Goldman's businesses. The analyst reports did not attribute the enforcement activities to the statements at issue in this litigation, and the statements at issue were not addressed in any of the analyst reports in this time frame. This further supports my opinion that the statements at issue in this matter did not contain information that could be pertinent to an investment decision-making process or to Goldman's future financial performance and value.

A. Analysts did not address the Business Principles Statements or Conflict Controls Statements prior to the alleged corrective disclosure dates

56. The Cornerstone Research team, under my direction, and I reviewed in their entirety 813 analyst reports on Goldman issued between February 7, 2007 and April 15, 2010.[72] If the Business Principles Statements or Conflict Controls Statements were important or pertinent to the analysts' evaluation of Goldman's stock during this time frame, I would have expected to find at least some analyst discussion that mentions these statements. I found none.

---

[72] Plaintiffs allege that on April 16, 2010, April 26, 2010, April 30, 2010, and June 10, 2010, the Business Principles Statements and Conflict Controls Statements were revealed to be false. *See* Complaint, ¶¶ 2, 5, 6, 147, 333–335. In this section, I discuss the analyst reports on Goldman published from February 5, 2007 through April 15, 2010. I discuss the analyst reports issued on or after April 16, 2010 in Section VII.B.

57. Instead I found that, consistent with the types of information that analysts and equity investors typically consider, when evaluating Goldman's stock, analysts discussed information and matters pertinent to the company's future financial performance and valuation of its stock. That is, consistent with previous academic research and my experience, analysts focused on the themes of growth, management and strategy, profitability, financial position, and market conditions. I found frequent analyst discussion of Goldman's performance in each of these areas. For example, following Goldman's better-than-expected first quarter 2007 earnings results, analysts commented specifically on the company's growth, positioning in sector, profitability, management and strategy, as follows:

- "Results were again better than forecast. Positioning and profitability—ROE [return on equity] and profit margins—are best in class, that's driving double-digit book value growth and supporting our recommendation of the stock."[73] (*Credit Suisse*, March 13, 2007)
- "[Goldman] set another record with its first-quarter results. What's more, it was no single business within [Goldman] that contributed to its outperformance, rather, it was every business that delivered a staggering 38% ROE and $3.2 billion in net income. As if that wasn't enough, [Goldman] increased its market share of global announced M&A deals to 40% up from 33% for most of last year. So [Goldman] is basically in almost 1 out of every 2 deals that

[73] "Goldman Sachs Group, Inc.: First Impressions," *Credit Suisse*, March 13, 2007.

is announced world-wide and CFO David Viniar said that the company's backlog has not been better since 2000, the last record set."[74] (*CIBC World Markets*, March 13, 2007)

- "Qualitatively, we believe [Goldman] deserves a premium multiple versus its broker peers given its: Premier investment banking franchise; Impressive (but underappreciated) asset management and securities services segment; Extremely profitable (and growing) trading and principal investments business; Solid operating leverage; Best positioned global franchise; and Flexibility in capital management (generating a best-in-class ROE)."[75] (*Bear Stearns & Co.,* March 13, 2007)

58. I also found that analysts had widespread discussions of Goldman's competitive positioning and market conditions and their impacts on Goldman's future business prospects. For example:

- "In our mind, these results are, without question, strong and should be a standout relative to peers and reflective of the scale and scope of this global platform across geographies (50% of revenues this quarter were international), businesses and product, and the company can and will weather 'storms'

---

[74] "Goldman Sachs Group: 'Catch Me If You Can': GS 1Q07 Results Sets New Bar for Peers," *CIBC World Markets*, March 13, 2007.

[75] "The Goldman Sachs Group, Inc.: Another Strong Quarter - - 1Q07 Results," *Bear Stearns & Co.*, March 13, 2007.

in relatively good shape."[76] (*Keefe, Bruyette & Woods*, March 14, 2007)

- "[Goldman] remains best positioned among the brokers given its business mix (more of what's growing and less of what's slowing), geographic footprint, backlog of principal investments, and strong risk culture. . . . While the stock is not cheap, we think investors will want to own the best of the breed in broker land in terms of mix and risk mgmt, and Goldman's ROEs should remain at a healthy premium versus the group, so we reiterate our Buy rating."[77] (*UBS Securities*, November 5, 2007)
- "Best-positioned global player in high-margin investment banking businesses, in our view, with a well-diversified mix of businesses (across products and geographies), including size and breadth of fixed income sales and trading businesses. We believe valuation already discounts the company's premium franchise value and the current capital markets environment."[78] (*Bank of America*, September 10, 2008)
- "We reaffirm our Accumulate rating and $170 price target on [Goldman] given our view that

---

[76] "Goldman Sachs Group, Inc.: GS: Record Revenues and Broad Business Mix Drive GS's Record 1Q EPS," *Keefe, Bruyette & Woods*, March 14, 2007.

[77] "Goldman Sachs: It's Good to Be Goldman," *UBS Securities*, November 5, 2007.

[78] "The Goldman Sachs Group, Inc.: Wash, Rinse, Repeat. Cutting Numbers Again on Cyclical Challenges; Maintain Neutral," *Bank of America*, September 10, 2008.

the company is the most levered to the improving capital markets environment and is well positioned to gain market share globally across most business lines."[79] (*Buckingham Research Group*, June 19, 2009)

59. In addition, in the Goldman analyst reports, I found that analysts discussed prospects for the financial services industry as a whole, including trends in regulatory oversight on financial services companies. In particular, with the onset of the financial crisis, in 2008 and later, the analysts had extended discussions on the expected impact of the evolving U.S. subprime mortgage crisis on the sector. For example:

- "Bear Stearns, Goldman Sachs, Lehman Brothers and Morgan Stanley are expected to report their Q1 '08 earning results in mid-March. As in H2 '07, Fixed Income Sale & Trading [*sic*] results will be the center of investor concern this quarter. Market conditions remained challenging through February as troubles spread through a variety of areas within the fixed income market. We saw deterioration in the leveraged lending and commercial real estate markets as well as problems in auction rate securities and further SIV [structured investment vehicle] defaults. These setbacks should lead to further writedowns from the group this quarter. . . . We are lowering Q1 '08 EPS estimates for . . .

---

[79] "Securities Brokers: 2Q09 Preview: Capital Markets Trends Positive; Non-Operating Items Negative," *The Buckingham Research Group*, June 19, 2009.

[Goldman] to $3.03 from $5.46 . . . ."[80] (*Bernstein Research*, February 22, 2008)

- "Business in a word has been 'lousy' in the third fiscal quarter (ended August 31). There has been no vitality in the investment banking sector. Trading activity has suffered in virtually every area. Private equity activity has been weak. The credit derivatives market has slowed. Prime brokerage is not doing well. Retail commissions are suffering. Plus, and most importantly for Goldman, the equity markets have done poorly. This hurts every aspect of the business. This is because even though Goldman is a diversified firm, its main business continues to be equity related activities. This includes underwriting, trading, and proprietary investments. While I continue to believe that there is simply no better firm on the street than this one, even this one cannot escape the problems in its key markets."[81] (*Ladenburg Thalmann*, September 9, 2008)
- "We are updating estimates based on trends quarter-to-date for 4Q09 and our recently completed fixed income trading outlook for 2010 . . . . Our analysis points to a substantial decline in FICC [fixed income, currencies, and commodities] trading in 4Q09, and then we are looking for industry fixed income trading to fall 15-20% in 2010. We expect 2011 revenues to also be under pressure due to the impact of

---

[80] "U.S. Securities Industry: Lowering Q1 2008 EPS Forecasts," *Bernstein Research*, February 22, 2008.

[81] "Goldman Sachs (GS): Tough Times," *Ladenburg Thalmann*, September 9, 2008.

regulatory reform, which we see negatively impacting FICC revenue growth by 5-10% in 2011. . . . We are reducing our 4Q09 estimate for [Goldman] by $0.25 to $5.25 (vs. consensus of $5.34) as more conservative revenue estimates are offset by lower [compensation] expense."[82] (*Citigroup Global Markets*, January 7, 2010)

- "Facing the threat of the 'Volcker Rule,' higher Basel III capital charges, lower leverage, mandated liquidity pools, a new financial responsibility fee and new resolution authorities for the US systemic regulator, many investors are understandably reluctant to invest in capital markets focused banks and bank holding companies. Indeed, the uncertainty associated with these issues has weighed especially on the valuation of shares of Goldman Sachs, which arguably has the most to lose in any regulatory scenario that would materially alter the business model of Wall Street's large institutional firms."[83] (*Bernstein Research*, March 10, 2010)

60. In sum, my analysis of analyst research reports on Goldman's stock prior to the alleged corrective disclosure dates (i.e., from February 5, 2007 through April 15, 2010) shows no indication that analysts considered or relied on the Business Principles Statements or Conflict Controls Statements in their

---

[82] "U.S. Banks: GS, MS, JPM, BAC Estimate Changes," *Citigroup Global Markets*, January 7, 2010.

[83] "Goldman Sachs: Regulation and Its Discontents – Evaluating Fundamentals Under a New Regime," *Bernstein Research*, March 10, 2010.

evaluations of Goldman's stock over this time period. Instead, I found that the analysts considered and relied on the themes consistent with the prior academic research, and did not include any discussions of the Business Principles Statements or Conflict Controls Statements. That analysts did not address these general statements about business principles or conflicts controls further confirms my opinion that these types of statements do not contain information that could be pertinent to an investment decision-making process.

B. Analysts did not address the Business Principles Statements or Conflict Controls Statements on or after the alleged corrective disclosure dates

61. Plaintiffs identify four dates—April 16, 2010, April 26, 2010, April 30, 2010, and June 10, 2010—on which they allege the Business Principles Statements and Conflict Controls Statements were revealed to be false.[84] If the Business Principles Statements or Conflict Controls Statements had been important to analysts in their considerations of Goldman's stock as an investment, I would expect to observe analyst discussions concerning these statements on or shortly after the days the alleged corrections were made. While I will specifically discuss analyst commentary on and one week after each of Plaintiffs' alleged corrective disclosure dates, I found that the statements at issue were not mentioned or referred to in any of the analyst reports issued between April 16, 2010 (i.e., the first alleged corrective disclosure date) and June 24, 2010 (i.e., two weeks after the end of the

---

[84] Complaint, ¶¶ 2, 5, 6, 147, 333–335.

Class Period).[85] I found that analyst reports discussed the SEC enforcement action and other enforcement activities in this time frame, including their potential outcome and potential effects on Goldman's businesses, but did not attribute the enforcement activities to the statements at issue in this litigation. Analysts' discussion of potential effects of the SEC enforcement action in particular included observations regarding reputational risks to Goldman. However, none of the analysts' comments (including those discussing reputational risks) referenced the statements at issue. Moreover, the analysts' discussions on potential reputational risks stemming from the SEC enforcement action were not based on the alleged misstatements and in fact could have been made regardless of whether the Business Principles Statements and Conflict Controls Statements had even been included in Defendants' public communications. Further, I find no indication that the analysts' discussions on potential reputational risks were linked to the alleged misstatements.

1. April 16, 2010

62. Plaintiffs allege that the filing of securities fraud charges against Goldman by the SEC on April 16, 2010 "revealed that Goldman's [*sic*] had collaborated with a favored client to design a portfolio of securities that would decline in value, and sold this toxic portfolio to other Goldman clients."[86]

---

[85] The Cornerstone Research team, under my direction, and I reviewed in their entirety 67 analyst reports on Goldman issued between April 16, 2010 and June 24, 2010 (two weeks after the end of the Class Period).

[86] Complaint, ¶ 331.

63. In Exhibit 8, I provide selected excerpts that reflect the main issues the analysts discussed in the 39 analyst reports published between April 16, 2010 and April 23, 2010 (i.e., the date of the first alleged corrective disclosure date and one week thereafter). If the analysts related the filing of the SEC fraud charges against Goldman to the alleged falsity of the Business Principles Statements or Conflict Controls Statements, and if the statements at issue were pertinent to an investment decision-making process, I would expect that at a minimum those analysts would have provided even a mention of the Business Principles Statements or Conflict Controls Statements. I found no such mentions or discussions in any of the 39 analyst reports regardless of whether the analysts revised their estimates or recommendations.

64. I found that analysts again focused on the themes research has shown are commonly included in analyst reports: growth, management and strategy, profitability, financial position, and market conditions.[87] The analysts discussed the SEC's securities fraud charges and their implications in the context of these themes. Analysts also approached the SEC's charges from several different perspectives. Some discussed the impact of the SEC enforcement action on Goldman, including its reputation and its business prospects while others discussed the impact

---

[87] *See* ¶ 51 above. *See also* Previts, G. J., R. J. Bricker, T. R. Robinson, and S. J. Young (1994), "A Content Analysis of Sell-Side Financial Analyst Company Reports," *Accounting Horizons*, Vol. 8, No. 2, pp. 55–70; Breton, G., and R. J. Taffler (2001), "Accounting Information and Analyst Stock Recommendation Decisions: A Content Analysis Approach," *Accounting and Business Research*, Vol. 31, No. 2, pp. 91–101.

of the SEC enforcement action on the financial services sector as a whole and commented on what this action could mean regarding the regulation of the sector. Some examples follow:

- "The SEC alleges that Goldman structured a synthetic collateralized debt obligation (CDO) structure that was based on subprime mortgage securities that Goldman marketed as being selected by an independent manager . . . This action is a civil complaint, not a criminal complaint, implying that downside is a large monetary fine . . . Marketing/Disclosure Issue with Limited Read Through . . . This is the first time the SEC has brought a complaint alleging fraud on the part of a broker dealer in marketing investments on subprime mortgages . . . [T]wo key issues for Goldman in our view is [sic] reputational risk, and possible follow on lawsuits related to this action . . . Raising Risk Rating to High, Maintain Buy: On a fundamental basis, we continue to see very strong upside in the stock, but these issues will take a while to resolve and will add more headline risk to the story . . . . We view [Goldman] as a well managed franchise and believe its strong capital base and leading global position in investment banking, capital markets, trading, private equity and asset management offer equity investors a unique opportunity to gain exposure to long-term global economic expansion . . . . Despite the challenges facing the industry, we view Goldman's business model as sound and see the firm winning considerable market share as

we exit the current down cycle."[88] (*Citigroup Global Markets*, April 16, 2010)

- "[T]he SEC charges . . . against [Goldman], possible follow-on, and financial regulatory reform [will] weigh on the stock and sector in the near term; however, we think the loss of ~$13B in market cap . . . is an over-reaction, our long-term view remains unchanged, and we maintain our Buy rating, based on what we see as attractive valuation, relative strong positioning, and improving capital markets trends."[89] (*Deutsche Bank Securities*, April 16, 2010)
- "Typically, reputational damage, particularly in the institutional context, is a paper tiger. However, in this case, the response by the media and Washington has been so severe, that we believe management will want their day in court to prove the firm's innocence. As a result, we may not see the typical settlement but a trial. As for the direct financial impact, the worst-case scenario is probably $1.10/sh or 6% of our 2010 estimate."[90] (*Macquarie*, April 19, 2010)
- "We are maintaining our Outperform recommendation on [Goldman] . . . due to: 1) manageable financial impact if [Goldman] loses the case . . . 2) [Goldman's] share price

[88] "Goldman Sachs Group, Inc.: Initial Thoughts on SEC Civil Lawsuit," *Citigroup Global Markets*, April 16, 2010.

[89] "Goldman Sachs: SEC Charges GS," *Deutsche Bank Securities*, April 16, 2010.

[90] "Goldman Sachs Group: Our Thoughts on the SEC's Fraud Claim," *Macquarie*, April 19, 2010.

decline . . . appears outsized relative to the 'likely worst case' financial cost, suggesting attractive return potential vs. its peers, 3) the possibility the case may be settled at a materially lower cost . . . and 4) our belief that [Goldman's] business opportunities will not suffer meaningful detriment from the lawsuit. We have not adjusted our EPS estimates for 2010 or 2011 . . . . [W]e believe those seeking greater regulation of the financial services sector – and the largest most diversified banks in particular – could use the SEC's allegations as a catalyst for more stringent regulation of the banks and capital markets activities. This could have a negative effect on future revenue generation capabilities for these institutions."[91] (*Wells Fargo Securities*, April 19, 2010)

65. The analyst discussion of the SEC's securities fraud charges against Goldman included some references to terms such as "reputation" or the "client franchise."[92] However, I found no indication that these references related to the earlier general statements at issue in this matter (i.e., Business Principles Statements and Conflict Controls Statements). Neither did I find any indication in analysts' discussions that, in relation to the SEC enforcement

---

[91] "The Goldman Sachs Group, Inc.: GS: Reputational Risks Increased, But Valuation Still Attractive," *Wells Fargo Securities*, April 19, 2010.

[92] *See, e.g.*, "Goldman Sachs Group, Inc.: Initial Thoughts on SEC Civil Lawsuit," *Citigroup Global Markets*, April 16, 2010; "Goldman Sachs Group: Our Thoughts on the SEC's Fraud Claim," *Macquarie*, April 19, 2010; "Goldman Sachs: Solid Quarter Overshadowed by Recent SEC Allegations," *Deutsche Bank Securities*, April 20, 2010.

action, analysts concluded that the earlier general statements in this matter had been shown to be false.

66. Analysts also discussed Goldman's strong fundamentals, especially given the company's announcement on April 20, 2010 of its first quarter 2010 earnings, which exceeded analyst forecasts. Some analysts commented that the strong results were overshadowed by the SEC enforcement action. For example:

- "Goldman posted a tremendous quarter. . . . Were it not for the SEC fraud complaint . . . we think the stock would be materially higher . . . ."[93] (*Oppenheimer & Co.*, April 20, 2010)
- "[Goldman] continues to report strong current-period earnings, giving us confidence in 2010 earnings power. On the basis of 2010 ROE (now 17%), the shares are not expensive at 1.3x P/B. That said, we believe that the overhang of the SEC charges and possible further investigations both in the US and abroad are now overhangs."[94] (*Barclays Capital*, April 21, 2010)
- "[Goldman] had a strong Q1, posting $3.3bn net profit on $12.8bn net revenues mainly driven by trading ($10.2bn). The firm had a record quarter in FICC ($7.4bn net revenues i.e. + 90% qoq / + 14% yoy) on strong client flows in credit, rates and forex. . . . The firm achieved a 20% ROE with a 15.0% T1 ratio.

---

[93] "Goldman Sachs Group: 1Q Review: Life is Not Fair," *Oppenheimer & Co.*, April 20, 2010.

[94] "Goldman Sachs Group Inc.: Strong Revs and Comp Ratio Drive Beat," *Barclays Capital*, April 21, 2010.

> Results were overshadowed by the SEC complaint and FSA [U.K. Financial Services Authority] decision to initiate a formal investigation."[95] (*Societe Generale*, April 21, 2010)

67. In sum, I found no reference to the Business Principles Statements or Conflict Controls Statements in any of these analyst reports. This further confirms that analysts did not view the statements as containing information pertinent to an investment decision-making process or that the statements had any bearing on any movements in Goldman's stock price on or around April 16, 2010. None of the analysts' reports referenced the statements at issue. Moreover, the analysts' discussions on potential reputational risks stemming from the SEC enforcement action could have been stated regardless of whether the Business Principles Statements and Conflict Controls Statements had ever been made. In addition, I found no indication that the analysts' references to terms such as "reputation" or the "client franchise" were in any way references to the earlier general statements, or to any conclusion that the earlier statements had now been rendered false.

2. April 26, 2010

68. Plaintiffs allege that Goldman internal emails released by the Senate Subcommittee on April 26, 2010 revealed "Goldman's practice of betting against the very securities it sold to its clients."[96]

---

[95] "Goldman Sachs: Blow-out Quarter Overshadowed by SEC Complaint," *Societe Generale*, April 21, 2010.

[96] Complaint, ¶ 333.

69. I provide in Exhibit 9 selected excerpts from the analyst reports published between April 26, 2010 and April 29, 2010 that reflect the main issues the analysts discussed.[97] I identified and reviewed two analyst reports (a Bank of America Merrill Lynch report issued on April 26, 2010 and a Deutsche Bank Securities report issued on April 26, 2010), neither of which included revisions to the analysts' recommendations.[98] I found that the Deutsche Bank Securities report, which was an industry report, did not mention the email release at all.[99] I found that the *Bank of America Merrill Lynch* report discussed the Senate Subcommittee release of Goldman internal emails as well as Goldman's own separate release of emails.[100]

70. I found no reference to the Business Principles Statements or Conflict Controls Statements in either of these analyst reports. This further confirms that analysts did not view the statements as containing information pertinent to an investment decision-making process and that the statements had no bearing on any movements in Goldman's stock price on or around April 26, 2010.

---

[97] I limit the period after the April 26, 2010 alleged corrective disclosure date to April 29, 2010 instead of a week after because the next alleged corrective disclosure date is April 30, 2010.

[98] "Goldman Sachs Group: GS Publishes New '07-08 MBS E-mail, Data," *Bank of America Merrill Lynch*, April 26, 2010; "1Q Capital Market Trends: Stacking Up the Brokers and Universal Banks," *Deutsche Bank Securities*, April 26, 2010.

[99] "1Q Capital Market Trends: Stacking Up the Brokers and Universal Banks," *Deutsche Bank Securities*, April 26, 2010.

[100] "Goldman Sachs Group: GS Publishes New '07-08 MBS E-mail, Data," *Bank of America Merrill Lynch*, April 26, 2010.

3. April 30, 2010

71. Plaintiffs identify a *Wall Street Journal* article published on April 30, 2010 that reported Goldman as "the subject of a criminal investigation by the Department of Justice" as "disclosure of . . . new material information."[101]

72. I provide in Exhibit 10 selected excerpts that reflect the main issues the analysts discussed in the 11 analyst reports published between April 30, 2010 and May 7, 2010 (i.e., the date of the April 30, 2010 alleged corrective disclosure and one week thereafter). If the analysts changed their opinions of Goldman's stock based on a potential U.S. Department of Justice ("DOJ") investigation because they realized that the Business Principles Statements and Conflict Controls Statements were false (i.e., if the statements at issue were pertinent to the investment decision-making process), I would expect that at a minimum those analysts would provide discussions about the Business Principles Statements and Conflict Controls Statements or at least make some references to the original statements having been allegedly misleading. I found no such discussion in any of the 11 analyst reports regardless of whether the analysts revised their estimates or recommendations.

73. Again, the analysts focused on the common themes I discussed in paragraph 51 above and considered how a potential DOJ investigation could affect Goldman in the context of these themes. In particular, analysts commented on the reputational and headline risks to Goldman stemming from a potential DOJ investigation and the negative

---

[101] Complaint, ¶ 334.

sentiment against Wall Street, and how these risks could affect Goldman's revenue and profitability prospects, as well as those of the industry. They also discussed the uncertainty about future regulation and civil and criminal litigation against Goldman in light of a potential DOJ investigation and the ongoing SEC enforcement action. Some examples follow:

- "We are lowering our rating on [Goldman] to Neutral from Buy and our price objective to $160 from $220. Our downgrade is prompted by news reports filed Thursday evening by the media including the Wall St. Journal indicating that federal prosecutors have opened an investigation of [Goldman] in connection with its trading activities, raising the possibility of criminal charges. . . . Most such probes end inconclusively, with no charges filed; and we continue to believe that [Goldman] has long-term earnings power beyond what is discounted in the share price. . . . [Goldman] is arguably the most respected inv. bank. . . ."[102] (*Bank of America Merrill Lynch*, April 30, 2010)
- "Reluctantly, and despite strong fundamentals and an attractive valuation, we are downgrading [Goldman] shares to Neutral from Buy given the significant uncertainty surrounding multiple and continued government probes of [Goldman's] mortgage trading & underwriting operations. . . . There is no doubt that [Goldman] has a top tier global

---

[102] "Goldman Sachs: Cutting to Neutral: Concerns Over Reports of Federal Probe," *Bank of America Merrill Lynch*, April 30, 2010.

investment banking franchise with a history and culture of strong risk management and execution. . . . As a lightning rod for the industry, [Goldman] is facing significant political pressure."[103] (*Buckingham Research*, April 30, 2010)

- "Litigation remains a significant overhang on stock [*sic*], but we continue to believe that [Goldman] has among the most robust risk [management] processes on the street and are assigning a low probability of adverse outcome from lawsuits beyond a monetary fine in our target price. . . . Reputational risk could damage Goldman's franchise – While we do not believe at this point Goldman's institutional client base has altered their business practices at this point, Goldman's reputation is one of the firm's greatest assets. To the extent clients lose faith and either reduce or eliminate their interactions with Goldman, it could have significant detrimental effect across all of the firm's businesses."[104] (*Citigroup Global Markets*, May 2, 2010)
- "Admittedly, Goldman Sachs has incurred reputation damage and may suffer client fallout due to [the SEC action and DOJ investigation concerning the Abacus CDO transaction] - it is arguably difficult for a

[103] "Goldman Sachs (GS): Downgrade to Neutral; Litigation/Political Risk Too Difficult to Handicap," *Buckingham Research*, April 30, 2010.

[104] "Goldman Sachs Group, Inc.: Reiterate Buy – Risks Are There, But Still See Significant Upside," *Citigroup Global Markets*, May 2, 2010.

> portfolio manager to buy or own [Goldman] in an ERISA portfolio, a separately managed account or in a mutual fund due to the current public outrage against the firm. . . . However, Goldman Sachs remains the world's leading M&A house . . ., the second largest equity underwriter . . ., and the leading global fixed income franchise that we believe will continue to book solid trading performance through 2010. . . . There is substantial uncertainty about future regulation, civil litigation and client reputation concerning [Goldman's] stock, but Goldman remains Goldman, the premier investment bank and trading house in the world. We continue to believe the headlines that pressure the stock provides a buying opportunity for investors."[105] (*Bernstein Research*, May 4, 2010)

74. I found no reference to the Business Principles Statements or Conflict Controls Statements being misleading in any of these analyst reports. Where analysts have addressed reputation, it has only been from the perspective of the truism that reputation is important in this industry. The fact that Goldman's Business Principles also include this truism only reflects that Goldman and the analysts recognize that reputation is important in the industry. The lack of discussion about the Business Principles Statements or Conflict Controls Statements further indicates that analysts did not view these statements as containing information pertinent to an investment decision-making process and that the statements had no

[105] "Goldman Sachs: Management Speaks Frankly About the Future of the Firm," *Bernstein Research*, May 4, 2010.

bearing on any movements in Goldman's stock price on or around April 30, 2010.

4. June 10, 2010

75. Plaintiffs identify reports on June 10, 2010 "that the SEC was investigating whether in connection with the Hudson CDO, Goldman profited by ridding itself of mortgage backed securities and related CDO's [*sic*] on Goldman's books that it knew were going to decline by selling these securities to Goldman's clients who suffered billions in losses" as "disclosure of . . .new material information."[106]

76. I provide in Exhibit 11 selected excerpts that reflect the main issues the analysts discussed in the five analyst reports published between June 10, 2010 and June 17, 2010 (i.e., the date of the final alleged corrective disclosure date and one week thereafter).[107] If the analysts were concerned about the additional SEC investigation because they realized that the Business Principles Statements and Conflict Controls Statements were false (i.e., if the statements at issue were pertinent to the investment decision-making process), I would expect that those analysts would provide some type of discussion of the Business Principles Statements and Conflict Controls Statements. I found no such discussion in any of the five analyst reports regardless of whether the analysts revised their estimates or recommendations.

---

[106] Complaint, ¶ 335.

[107] One of these analyst reports was an announcement that the firm was ceasing coverage of Goldman Sachs because the research analyst assigned to cover the company had left the firm. *See* "Goldman Sachs Group: Ceasing Coverage," *Macquarie*, June 10, 2010.

77. Again, the analyst reports during this time period focused on the common themes such as expectations about revenues, profitability, Goldman's competitive position, and overall market conditions, particularly the difficulties for the entire sector.[108] Some analysts mentioned or discussed the headline risks resulting from the additional SEC investigation and its possible impact on those themes. Some discussed the longer-term prospects for Goldman despite near-term volatility, while others commented on the difficult operating environment and the decline in Goldman's revenues. Some examples follow:

- "Estimates cut on weak trading revenue [and] UK bonus tax . . . The Q2 trading environment is looking increasingly difficult. We have cut our estimate of trading revenues . . . Deteriorating markets and increasing uncertainty in Europe have also had a meaningful impact on M&A and underwriting activities."[109] (*Atlantic Equities*, June 10, 2010)
- "Reiterating Outperform Rating Despite Near-Term Volatility . . . Reports of a second SEC investigation caused [Goldman] to set a new 52-week low. . . .[Goldman] appears to have been able to maintain its standing with clients in the major investment banking categories. . . . [Goldman's] reduced competition, minimal consumer exposure, and historically superior risk control are currently overshadowed by legal risks that remain uncertain. Longer-term investors could benefit from the removal of

[108] *See* ¶ 51 above.

[109] "Goldman Sachs: Estimates Cut on Weak Trading Revenue & UK Bonus Tax," *Atlantic Equities*, June 10, 2010.

these risks, thereby resulting in premium share price performance versus peers over time."[110] (*Wells Fargo Securities*, June 10, 2010)

- "Given the continued difficult operating environment, we reduce our second quarter estimate for [Goldman]. The drivers of our estimate reduction are fairly broad-based: weaker trading results, lower investment banking revenues and less in the way of principal investment gains. . . . Best-in-class franchise with solid market positioning across myriad businesses and strong balance sheet . . . All in all, we believe opportunity for market share stability/growth should help sustain earnings and book value growth over the course of the cycle. There's no doubt regulatory/litigation risk now represents a greater risk to our constructive thesis."[111] (*Credit Suisse*, June 17, 2010)

78. Because I found no reference to the Business Principles Statements or Conflict Controls Statements in any of these analyst reports, I further conclude that analysts did not view the statements as containing information pertinent to an investment decision-making process and that the statements had no bearing on any movements in Goldman's stock price on or around June 10, 2010.

---

[110] "The Goldman Sachs Group, Inc.: GS: Reiterating Outperform Rating Despite Near-Term Volatility," *Wells Fargo Securities*, June 10, 2010.

[111] "Goldman Sachs Group, Inc.: Reducing Estimates on Challenging Market Conditions," *Credit Suisse*, June 17, 2010.

79. In sum, I found that the statements at issue were not addressed in any of the analyst reports issued at or around the time of the alleged corrective disclosures. I found that, in this time frame, analyst reports discussed the SEC enforcement action and other enforcement activities, including their potential outcome and potential effects on Goldman's businesses, but did not attribute the enforcement activities as having any connection to the statements at issue in this litigation. None of the analysts referenced or linked their discussions or conclusions to the statements at issue. This further confirms that the Business Principles Statements and Conflict Controls Statements, which were general in nature and typical of statements made by companies in the financial services and other sectors, contained no information that could be utilized in an investment decision-making process.

VIII. Conclusion

80. The statements at issue in this matter are too general to convey anything precise or meaningful, cannot be viewed as assurances of a particular outcome by investors and, in some cases, are nothing more than truisms. Further, general statements of the type at issue in this matter are commonly included in company communications to investors, do not provide information on the company's future financial performance and value, and based on my experience and understanding, are not pertinent to investors in making investment decisions. My analysis of analyst reports on Goldman shows that analysts did not discuss or mention the statements at issue in this matter and there was no analyst discussion that related the accuracy of the statements at issue to the valuation or financial prospects of Goldman during the

Class Period. These findings further support that the statements at issue could not have been utilized for investment decision-making during the Class Period.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 1:10-cv-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

CLASS ACTION
JURY TRIAL DEMANDED
ECF CASE

REBUTTAL EXPERT REPORT OF JOHN D. FINNERTY, Ph.D.

IN SUPPORT OF LOSS CAUSATION AND DAMAGES

Table of Contents

I. Qualifications and Assignment 1

II. Summary of Opinions 2

III. Background 4

IV. Response to Dr. Gompers's Criticisms Regarding the Loss Causation Analysis Conducted in the Finnerty Loss Causation Report 6

A. Dr. Gompers Incorrectly Contends that I Failed to Establish Loss Causation 7

B. Dr. Gompers Incorrectly Concludes that Information Regarding Goldman's Conflicts of Interest and Business Principles Was Already Disclosed Prior to the First Disclosure Date 9

C. Two Additional News Articles Dr. Gompers Reviewed Do Not Convey Relevant Information............................. 15

D. Dr. Gompers Incorrectly Argues that I Did Not Link the Information Released on the Alleged Corrective Disclosure Dates to the Alleged Misstatements 18

E. Dr. Gompers Incorrectly Criticizes My Loss Causation Analysis on the Corrective Disclosure Dates 20

i. April 16, 2010.................................... 22

ii. April 26, 2010.................................... 26

iii. April 30, 2010.................................... 27

iv. June 10, 2010.................................... 28

V. Response to Dr. Gompers's Criticisms Regarding the Damages and Inflation per Share Calculation Presented in the Finnerty Loss Causation Report 29

A. Damages Calculation in a Securities Class Action 30

B. Dr. Gompers Criticises My Damages Calculation Methodology with No Basis 32

VI. Response to Dr. Choi's Opinions 37

A. April 16, 2010 37

i. Dr. Choi's Opinion Based on the Academic Research Is Unfounded Because His Research Sample is Not Comparable to the SEC Enforcement Action Announced on April 16, 2010 39

a. Dr. Choi Mistakenly Compares Irrelevant SEC Enforcement Actions to the SEC Enforcement Action Against Goldman Announced on April 16, 2010....... 39

b. Dr. Choi Unscientifically Uses a Simple Average of the Residual Returns on the Four Companies' Stocks and Attempts to Use This Simple Average to Explain Goldman's Residual Return on April 16, 2010 41

ii. Dr. Choi Speculates Without Any Basis that the Economic, Political, and Regulatory Environment Potentially Contributed to Goldman's Stock Price Decline.......... 43

iii. Dr. Choi's Arguments Regarding Foreseeability and Predictability of the SEC Enforcement Action 46

B. April 30, 2010 47

C. June 10, 2010 47

VII. Response to Dr. Starks's Opinions 49

I, John D. Finnerty, declare pursuant to 28 U.S.C. § 1746, as follows:

I. Qualifications and Assignment

1. I previously submitted an expert report in support of loss causation and damages in connection with this matter on May 22, 2015 (the "Finnerty Loss Causation Report").[1] The scope of my assignment, my qualifications, and other details related to my work in this matter are set forth in the Finnerty Loss Causation Report. Attached as Appendix A is an updated copy of my current resume, which lists all publications I have written or co-authored and includes a brief description of my trial and deposition testimony within at least the past four years. AlixPartners continues to be compensated at a rate of $1,020 per hour for my work on this matter. My compensation is not contingent on my findings or on the outcome of this matter. I have been assisted in the preparation of this expert report by AlixPartners's staff working under my direction and supervision.

2. Labaton Sucharow LLP and Robbins Geller Rudman & Dowd LLP, co-counsel for the Plaintiffs in this matter (collectively "Counsel"), have asked me to review and respond to the opinions proffered in the Report of Paul A. Gompers, Ph.D., dated July 2, 2015 (the "Gompers Report"), the Report of Stephen Choi, Ph.D., dated July 2, 2015 (the "Choi Report"), and the

---

[1] I continue to use the same terms that were defined in the Finnerty Loss Causation Report in this rebuttal report without defining these terms again in the text of this report. I also submitted a rebuttal declaration in support of Lead Plaintiffs' motion for class certification on May 15, 2015 (the "Finnerty Rebuttal Declaration").

Report of Laura T. Starks, Ph.D., dated July 2, 2015 (the "Starks Report").[2]

II. Summary of Opinions

3. I have reached the following opinions, after conducting appropriate studies, the results of which are described in the Finnerty Loss Causation Report and which are augmented in this rebuttal report:

a) The statistically significant abnormal returns on Goldman's common stock on April 16, 2010, April 30, 2010, and June 10, 2010 were not due to any macroeconomic factors, industry-specific factors, or non-fraud-related Goldman news, but were substantially caused by a series of revelations concerning Goldman's alleged fraudulent conduct related to the management of its Conflicts of Interest and its Business Principles;[3]

b) Dr. Gompers incorrectly criticizes that I failed to establish either of the following two

---

[2] I have also reviewed the Defendants' expert declarations previously submitted in connection with Lead Plaintiffs' motion for class certification - Declaration of Paul A. Gompers, Ph.D., dated April 6, 2015 (the "Gompers Declaration"), the Declaration of Stephen Choi, Ph.D., dated April 6, 2015 (the "Choi Declaration"), and the Declaration of Charles Porten, CFA, dated April 6, 2015 (the "Porten Declaration").

[3] The abnormal returns on Goldman's common stock on April 16, 2010, April 30, 2010, and June 10, 2010 are -9.27%, -7.75%, and -4.52%, respectively, which are all statistically significant at the 5% level. Dr. Gompers's regression model he presented in the Gompers Declaration yields similar results, where the abnormal returns on these dates according to his model are -9.94%, -8.00%, and -4.44%, respectively.

conditions in order to establish the presence of inflation in Goldman's stock price during the Class Period: the alleged misstatements must have either (a) caused Goldman's stock price to increase or (b) prevented Goldman's stock price from decreasing until the dates of the alleged corrective disclosure. Dr. Gompers's criticism is baseless because Plaintiffs allege that the misleading statements omitted economically significant information about Goldman's failure to follow its stated Conflicts of Interest management practices and abide by its Business Principles and that when this previously concealed information was properly disclosed to investors, Goldman's common stock price declined causing investors to experience losses. The statistically significant negative market impact of the corrective disclosures of the alleged fraud on the Disclosure Dates and my event study demonstrate that the alleged misstatements and omissions inflated Goldman's stock price by preventing it from declining if the information had been fully disclosed;

c) Dr. Gompers incorrectly asserts that the information disclosed in connection with the SEC regulatory enforcement action announced on April 16, 2010, the DOJ criminal investigation disclosed on April 30, 2010, and the second SEC investigation announced on June 10, 2010 was not related to the allegations in this matter; he attempts to characterize this information simply as "confounding news." However, in this matter, the Plaintiffs allege that Goldman failed to disclose its misconduct,

which violated its Conflicts of Interest and Business Principles statements in relation to the four CDOs at issue in this matter, and that the regulatory enforcement actions announced on the Disclosure Dates revealed the scope of Goldman's misconduct and the alleged misstatements and omissions. Therefore, the news concerning the regulatory enforcement actions on the Disclosure Dates cannot be characterized as "confounding news" but, instead, is directly related to the allegations in this matter, as stated in the Complaint;

d) Dr. Gompers concludes that the exact information that was allegedly concealed concerning Goldman's Conflicts of Interest and Business Principles misstatements and omissions was already disclosed to the market prior to the first corrective Disclosure Date. He is incorrect. The information disclosed on the corrective Disclosure Dates was significant new information. The news articles he reviewed that were published on 34 separate dates did not disclose the same information that was disclosed on any of the Disclosure Dates;

e) Dr. Gompers baselessly concludes that Goldman's stock price movements on the corrective Disclosure Dates was due to news other than the news in relation to Goldman's Conflicts of Interest and Business Principles statements and omissions. He fails to show that the significant negative impact on Goldman's stock price on each of the three corrective Disclosure Dates was due to any information unrelated to Goldman's alleged misstatements and omissions;

f) I stand by my conclusion stated in the Finnerty Loss Causation Report that Goldman's common stock price was artificially inflated during the Class Period prior to the first Disclosure Date and also between the succeeding two Disclosure Dates. Goldman's fraudulent conduct and the severity of such conduct in connection with its alleged misstatements and omissions regarding its Conflicts of Interest management and its Business Principles was not revealed to the market until the SEC enforcement was publicly announced on April 16, 2010, the DOJ criminal investigation was publicly announced on April 30, 2010, and the second SEC investigation was publicly announced on June 10, 2010. Therefore, Goldman's stock price declines on April 16, 2010, April 30, 2010, and June 10, 2010 were all proximately caused by the corrective disclosures related to the allegations in this matter;

g) Dr. Gompers concludes that damages are zero in this case without performing any appropriate economic analysis to measure the damages. Thus, his opinion as to the amount of damages is baseless, unscientific, and not supported;

h) I stand by my conclusion stated in the Finnerty Loss Causation Report that the amount of damages suffered by purchasers of shares of Goldman's common stock during the Class Period as a result of the disclosure of the truth about Goldman's fraudulent conduct on April 16, 2010, April 30, 2010, and June 10, 2010 is, in total, up to $35.70 per share, depending on when the shares were bought and sold during the Class Period or sold thereafter;

i) Dr. Choi opines that the SEC enforcement action, the DOJ criminal investigation, and the second SEC investigation each had a market impact independent of the nature of the misconduct that had given rise to the regulatory enforcement actions. However he does not perform any appropriate loss causation analysis. He performed no analysis whatsoever to determine the impact of Goldman's underlying misconduct alleged in the SEC Complaint in connection with the Abacus 2007-AC1 CDO, the DOJ criminal investigation, or the second SEC investigation. He simply relies on Dr. Gompers's unsupported conclusion that the negative market reactions on the corrective Disclosure Dates were unrelated to the alleged fraud because the information "mirroring" the information disclosed on the corrective Disclosure Dates had previously not had a statistically significant impact on Goldman's stock price. Thus, Dr. Choi's opinion is baseless, unscientific, and unsupported;

j) Dr. Choi also bases his erroneous conclusion concerning the stock market impact on April 16, 2010 on a sample of only four enforcement actions in his limited research study. The four enforcement actions in his sample are not comparable to the SEC enforcement action against Goldman, and his sample size is too small to yield any meaningful conclusions. Therefore, the purported results of his flawed study are irrelevant;

k) Dr. Starks opines that corporate statements, such as statements regarding a company's business principles and the importance of its

reputation and its client relationships, do not provide information concerning the company's future financial performance and its value and therefore are not the types of statements that investors find to be pertinent when making investment decisions. However, she fails to consider the fact that once investors learn of a company's violation of its business principles or its mismanagement of its conflicts of interest, which has involved engaging in allegedly fraudulent activity, those investors would be likely to utilize this information in making their investment decisions, and, in particular, in assessing the riskiness of investing in the company's securities; and

l) Dr. Starks considers only direct quotations or attributions that *explicitly* referred to Goldman's Conflicts of Interest statements or Business Principles statements in her document search process. She fails to look for references to the same *subject matter* of the alleged misstatements and omissions, or references that paraphrase Defendants' misleading statements. Thus, her analysis of securities analysts' reports is flawed, and the conclusions she draws based on this analysis are unreliable and irrelevant.

4. A list of the materials I have considered in this matter not previously cited in the Finnerty Loss Causation Report nor listed in Appendix B of the Finnerty Loss Causation Report is provided in Appendix B to this report.

III. Background

5. The Complaint alleges that, throughout the Class Period, Defendants made a series of misleading statements and omissions regarding Goldman's management of its conflicts of interest with its clients ("Conflicts of Interest") and behaved in a manner inconsistent with its business principles (including their importance to maintaining Goldman's reputation and its client relationships and to the continued success of its business) ("Business Principles"), which are contained in its financial reports, annual reports to shareholders, investor conference calls, and other public announcements.

* * *

98. While Goldman's common stock was trading between $115.01 and $192.28 during the one-year period before April 16, 2010, the common stocks of the four companies in Dr. Choi's analysis were trading between $2.03 and $5.74, $0.24 and $0.71, $3.25 and $16.32, and $28.60 and $49.60, respectively, during the one-year period before the respective dates when the news about the SEC enforcement actions was announced. I provide the allegations and the stock prices of the four companies in detail in Exhibit 1.

b. Dr. Choi Unscientifically Uses a Simple Average of the Residual Returns on the Four Companies' Stocks and Attempts to Use This Simple Average to Explain Goldman's Residual Return on April 16, 2010

99. First of all, Dr. Choi's use of the results from his event study to explain the abnormal return on Goldman's stock on April 16, 2010 is flawed and unscientific. The methodology that Dr. Choi adopts for his event study is, in fact, inconsistent with Dr. Gompers's event study. Dr. Gompers describes in the Gompers Report how a standard event study utilizes a regression model to "measure the changes in a company's stock price that may be related to company-specific information."[87] Dr. Gompers specifically explains that "[m]arket and industry indices, if properly selected, capture the stock price movements of a broad cross-section of companies in the market as a whole and the industry in which the company operates."[88] While Dr. Gompers selects the NYSE/AMEX/NASDAQ/ArcaEx Composite Index as broad market index and a group of comparable companies as the industry index, Dr. Choi simply uses the Standard & Poor's 500 Total Return Index without any industry adjustment to capture the broad cross-section market movements in his regression analysis.[89]

100. Putting aside Dr. Choi's use of the residual returns from his unreliable regression model, Dr. Choi

---

[87] Gompers Report, ¶ 21.

[88] Gompers Report, ¶ 21.

[89] Gompers Report, ¶ 22 and Choi Report, ¶ 34.

calculates a simple average stock price abnormal return of -8.07% based on the four residual returns, which fall within a wide range from -3.34% to -17.09%. He then conveniently claims that this average -8.07% abnormal stock price return is "consistent" with Goldman's -9.27% abnormal return on April 16, 2010.[90]

101. Dr. Choi's comparison is unscientific because it is based on four SEC enforcement actions that are not comparable to the Goldman's enforcement action and because the companies in these four enforcement actions are not comparable to Goldman in terms of industry, business, or market capitalization.

102. Additionally, the four firms in the sample that Dr. Choi selects that purportedly have enforcement actions similar to Goldman's enforcement action are not only dissimilar from Goldman, but dissimilar to each other. The wildly different sizes of the stock price drops associated with these four enforcement actions (ranging from -3% to -17%), which under Dr. Choi's assumption should be the same given that they all have the same "enforcement features," only demonstrate that the amount of a stock price drop is determined by the nature of the allegations and the specific business and industry of the issuer rather than the "fact" of an enforcement action in the abstract. Thus, Dr. Choi's argument has no basis and is undermined by his own evidence. Furthermore, having only four firms in the sample does not provide a sufficient sample size to lead to a reliable average that can be meaningfully applied to this case, especially given the extreme variance in outcomes.

---

[90] Choi Report, ¶ 42.

103. Moreover, Dr. Choi calculates the stock residual returns based on a regression model that is different from my regression model and lacks any industry adjustment, which reinforces my point that he is not justified in arguing that there is any "consistency" between the abnormal returns from his model and from my model.

104. In sum, Dr. Choi's review of the 117 SEC enforcement actions merely reveals that the impact of the announcement of an SEC enforcement action on a company's stock price depends on the nature of the underlying behavior that is the subject of the enforcement action. Ultimately, the severity of the underlying improper behavior would determine the magnitude of the impact of the announcement of an SEC enforcement action on a company's stock price. Dr. Choi ignores this important effect of regulatory enforcement actions.[91]

ii. Dr. Choi Speculates Without Any Basis that the Economic, Political, and Regulatory Environment Potentially Contributed to Goldman's Stock Price Decline

105. Dr. Choi asserts that the SEC enforcement action against Goldman occurred "in a charged political setting in which there was considerable uncertainty about future regulation and legislation."[92] Dr. Choi continues to argue that the SEC enforcement

---

[91] The market will react differently according to the nature of the underlying misconduct. *See, e.g.*, Jonathan M. Karpoff, D. Scott Lee, and Gerald S. Martin, "The Cost to Firms of Cooking the Books," *Journal of Financial and Quantitative Analysis*, 43, September 2008, Table 5.

[92] Choi Report, ¶ 44.

action against Goldman "would increase the risk perceived by investors that more aggressive and onerous legislative and regulatory proposals would be pursued."[93]

* * *

130. Dr. Starks fails to consider securities analysts' discussions of Goldman's management of Conflicts of Interest and Business Principles unless the discussions related to the alleged misstatements *explicitly* refer to Goldman's management of Conflicts of Interest and Business Principles in the context of the Company's 10-K reports or conference calls.

131. To begin, as set forth in ¶ 22 of this report, the corrective disclosures revealed to the market the details of Goldman's misconduct and the severity of its Conflicts of Interest regardless of whether the actual text of the Conflicts of Interest policies or Business Principles was referenced. Moreover, she ignores contemporaneous market commentary in media sources as widely read and prominent as *The Wall Street Journal* and the *Associated Press*, as well as securities analysts' reports, which showed that the revelation that Goldman had failed to manage its Conflicts of Interest and violated its Business Principles in connection with Abacus, as detailed in the SEC lawsuit, and the resulting reputational harm (therefore affecting its client relationships and its business) that followed that revelation, was important and thus relevant to investors' valuation of Goldman's stock – *i.e.*, it had a statistically significant impact on Goldman's stock price. Examples of such

[93] Choi Report, ¶ 45.

contemporaneous market commentary and securities analysts' comments follow:

- *Associated Press*, "Fraud Charge Deals Big Blow To Goldman's Image," April 18, 2010.

> While Goldman Sachs contends with the government's civil fraud charges, an equally serious problem looms: a damaged reputation that may cost it clients . . . .
>
> ***In its corporate profile, the company says its culture distinguishes it from other firms and "helps to make us a magnet for talent." That culture is summed up in the firm's "14 Business Principles," which preach an almost militant philosophy of putting the client before the firm.***
>
> ***Now, it's that very philosophy that has been questioned by the government***. (Emphasis added.)

- *The Wall Street Journal*, "Common Sense: Where's the Goldman Sachs I Used to Know?," April 21, 2010.

> "Surreal" was the word Goldman Sachs Group's Fabrice Tourre used to describe a meeting in which the firm of hedge-fund billionaire John Paulson discussed with an investor a portfolio of mortgage-backed securities it eventually planned to short. That Goldman Sachs, a name once synonymous with professionalism and integrity, now stands accused by the Securities and Exchange Commission of fraud also might be deemed surreal.

***It's hard to imagine the damage that these developments have done already to* Goldman *Sachs's reputation. The company has always maintained a public position that the business of investment banking depends on trust, integrity and putting clients' interests first*. (Emphasis added.)**

Whether those clients remain loyal to Goldman, and whether the firm can attract new ones, remain to be seen. Investors' reaction to the news was swift and negative: Goldman shares closed down 13% Friday after the SEC filed its suit.

- *The Wall Street Journal*, "Goldman Sachs Charged With Fraud – SEC Alleges Firm Misled Investors on Securities Linked to Subprime Mortgages; Major Escalation in Showdown With Wall Street," April 17, 2010.

Goldman Sachs Group Inc. – one of the few Wall Street titans to thrive during the financial crisis – was charged with deceiving clients by selling them mortgage securities secretly designed by a hedge-fund firm run by John Paulson, who made a killing betting on the housing market's collapse.

"***The product was new and complex, but the deception and conflicts are old and simple***," said Robert Khuzami, the SEC's enforcement chief. (Emphasis added.)

- *CitiQroup Global Markets*, "Goldman Sachs Group, Inc. (GS) Initial Thoughts On SEC Civil Lawsuit," April 16, 2010.

The [SEC] complaint alleges that Goldman failed to disclose to investors that a major hedge fund (Paulson & Co. Inc.) played a role in the portfolio selection process and had taken a short position against the bonds referenced in the CDO . . . . Also, the SEC alleges that Goldman misled ACA into believing that Paulson was investing in the CDO equity and therefore shared a long interest with the CDO investors.

The two key issues for Goldman in our view is reputational risk, and possible follow on lawsuits related to this action. 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, and we do not view this as a 'life threatening issue,' but clearly seems like a 'black eye' for Goldman. (Emphasis added.)

- *Bank of America Merrill Lynch*, "Goldman Sachs Group – Sec case seems limited, but reputational fallout worrisome," April 16, 2010.

SEC brings a civil fraud case relating to alleged misrepresentation in a CDO. SEC case alleges a GS Vice Pres. structured a CDO and misrepresented to buyers that the reference collateral had been independently selected, when in fact, it is alleged, it was selected by a hedge fund seeking a way to short subprime.

This is a serious charge, but so far it is a one-off, it is civil rather than criminal, and

the individual charged is at a relatively low level in the firm . . . ***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 . . . .***

[T]he 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. (Emphasis added.)

- *Macquarie (USA) Equities Research*, "Goldman Sachs Group – Our Thoughts on the SEC's Fraud Claim," April 16, 2010.

On Friday, the SEC accused Goldman of fraud associated with a synthetic CDO . . . . After reviewing the allegations and Goldman's response, we are not yet willing to assign probabilities on the chance of a conviction. Proof of intent to deceive is key, and we are not convinced that the emails establish this. Also key is what the original long investors knew or didn't know about the selection process . . . .

Typically, reputational damage, particularly in the institutional context, is a paper tiger. However, in this case, the response by the media and Washington has been so severe, that we believe management will want their day in court to prove the firm's innocence. As a result,

we may not see the typical settlement but a trial . . . ***As for reputation, Goldman clients are "eyes-wide-open.***" (Emphasis added.)

- *Wells Fargo Securities Equity Research*, "The Goldman Sachs Group, Inc. – GS: Reputational Risks Increased, But Valuation Still Attractive," April 19, 2010.

GS has begun to tell its side of the story, possibility reducing the concerns surrounding the SEC's allegations. Following the SEC's filing of its lawsuit, GS has issued public documents detailing its belief that its actions with respect to the ABACUS 2007-AC1 synthetic CDO were 'entirely appropriate', and that it intends to defend itself vigorously. We believe GS' strong stance could be successful in reducing the fear surrounding the SEC's allegations - and also starts to ***rebuild the reputational damage from the recent headlines*** . . . .

GS released a document April 18 stating its position on the SEC's lawsuit, clarifying comments made in the aftermath of the SEC's announcement of the lawsuit. In sum, we believe GS' contentions suggest it is willing to take its chance in court, if necessary, ***to clear its name and attempt to revive its reputation*** . . . .

The SEC's action could lead potential clients seek counterparties and agents other than GS as a means of protesting GS' alleged behavior . . . . We believe that if GS is not implicated in other, similar legal

actions the "reputational damage" is manageable. ***Additional legal actions against the company could further harm its reputation and ability to gain business, in our view***. (Emphasis added.)

- *Credit Suisse*, "Goldman Sachs Group, Inc. – Strong Fundamentals—No New News on SEC Charge," April 20, 2010.

  On Friday, the Securities and Exchange Commission (SEC) filed securities fraud charges against Goldman and one of its employees for making material misstatements and omissions in connection with a $1 billion synthetic collateralized debt obligation (ABACUS) that Goldman underwrote . . . . ***More worrisome to us is the potential longer-term impact on the firm's client franchise, human capital and reputation.***

  We acknowledge near-term headline risk remains high and regulatory overhang could keep a cloud over Goldman Sachs and brokerage sector valuations. ***There's no doubt regulatory/litigation risk now represents a greater risk to our constructive thesis on GS shares.*** (Emphasis added.)

132. I therefore find Dr. Starks's methodology to be deeply flawed and wholly unreliable, because of its unreasonably narrow scope.

133. In sum, Dr. Starks's conclusions are limited to her review of various securities analysts' reports. She disregards the information regarding the reactions of market participants to the corrective

disclosures related to the alleged fraud appearing in other media sources, such as *The Wall Street Journal*. As noted above, these reactions demonstrate that market commentators did understand that the information disclosure in connection with the SEC enforcement action involving Goldman on April 16, 2010, the information disclosure in connection with the pending DOJ criminal investigation of Goldman on April 30, 2010, and the information disclosure in connection with the second SEC investigation concerning Goldman's CDO transaction on June 10, 2010 did constitute corrective disclosures of Goldman's allegedly misleading statements and omissions concerning its Conflicts of Interest misconduct and its Business Principles.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed: August 7, 2015

/s/ John D. Finnerty
John D. Finnerty, Ph.D.

[1] **CONFIDENTIAL **
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File
No 1:10-CV-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

September 9, 2015
10:03 a.m.

Videotaped Deposition of PAUL A. GOMPERS, Ph.D., taken by Plaintiffs, pursuant to Notice, held at the offices of Labaton Sucharow LLP, 140 Broadway, New York, New York, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New York.

---

[2] APPEARANCES

LABATON SUCHAROW LLP
140 Broadway
34th Floor
New York, New York 10005

Attorneys for Plaintiffs

BY: MICHAEL H. ROGERS, ESQ.
mrogers@labaton.com

ROBBINS GELLER RUDMAN & DOWD, LLP
655 West Broadway
Suite 1900
San Diego, California 92101

Attorneys for Plaintiffs

BY: ROBERT R. HENSSLER, JR., ESQ.
bhenssler@rgrdlaw.com

SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498

Attorneys for Defendants

BY: DAVID M.J. REIN, ESQ.
reind@sullcrom.com

ALSO PRESENT:

DEVERELL WRITE: Videographer

[3] THE VIDEOGRAPHER: We are on the record. Please note that the microphones are sensitive and may pick up whispering and private conversations.

My name is Deverell Write representing Veritext Legal Solutions. Today's date is September 9th, 2015. The time on the video monitor is approximately 10:03 a.m.

The caption of this case, In Re Goldman Sachs Group, Inc. Securities Litigation. This case is filed in the U.S. District Court for the Southern District of New York, case number 1:10-CV-03461. The name of the witness is Professor Paul A. Gompers. At this time will counsel please state their appearances.

MR. REIN: David Rein, Sullivan & Cromwell LLP, for defendants and the witness.

MR. ROGERS: Michael Rogers, Labaton Sucharow LLP, for plaintiffs and the class.

MR. HENSSLER: Bobby Henssler [4] from Robbins Geller Rudman & Dowd for the plaintiffs and the class.

* * *

[4] PAUL A. GOMPERS, Ph.D., called as a witness, having been first duly affirmed, was examined and testified as follows:

EXAMINATION BY MR. HENSSLER:

Q. Good morning, Professor Gompers. Please state your full name for the record.

A. Paul Alan Gompers.

Q. And your current home address?

A. 71 Prospect Park, Newton, Massachusetts 02460.

Q. That's your home address?

A. Yes.

Q. Business address?

A. Harvard Business School, Baker Library 263, Boston, Massachusetts 02163.

Q. And you have been deposed before, correct, sir?

A. Yes,

Q. About how many times?

[5] A. Over the last 14 years, 40, 50 I guess, something of that order.

Q. So you understand how a deposition works?

MR. REIN: I object to the form.

A. I've been in depositions and understand the process.

Q. That there is a court reporter typing everything that you and I say and you are agreeing to answer my questions truthfully?

A. Yes.

Q. And you are going to do that, you are going to tell the truth today?

A. I will.

Q. You understand you have just sworn an oath to do that?

MR. REIN: I object to the form.

A. I have affirmed an oath.

Q. You understand you have just affirmed an oath to tell the truth?

A. I do.

* * *

[98] Q. I'm asking a different question, and maybe I wasn't precise. I'm asking not a question about your loss causation, just a question about timing and news disclosure, okay? Do you understand?

A. Okay.

Q. So let me try to ask a more precise question. April 16th, 2010 was the first time that investors learned that Goldman Sachs had intentionally misled ACA into believing that Paulson was long equity?

MR. REIN: I object to the form.

A. It's my understanding that the first time it was revealed to have been alleged that Goldman Sachs

misled ACA was in the complaint. So that is my [99] understanding.

So my understanding is that particular piece of information is alleged and for the first time revealed in the complaint.

MR. HENSSLER: It is about 12. If there is a time that you guys need to break for lunch, we never talked about that.

THE WITNESS: I could use a break to go to the bathroom. I don't know when lunch is coming in.

MR. HENSSLER: Let's take a quick break. Off the record.

THE VIDEOGRAPHER: The time on the video monitor is 11:58 a.m. We are off the record. This ends media one.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the record. The time on the video monitor is 12:05 p.m. This starts media number two.

BY MR. HENSSLER:

Q. Welcome back, Professor [100] Gompers. You understand that you are still under oath?

A. I do.

Q. The SEC complaint that we were just looking at, Choi Exhibit 4, it reveals both Goldman's behavior in misleading ACA that Paulson was long, and the fact that Goldman's primary regulator, the SEC, had found that behavior objectionable. correct?

MR. REIN: I object to the form.

A. I understand that this is an adversarial document. It is a complaint that alleges certain behavior and it is an action brought against Goldman Sachs.

In reviewing, you know, the thousands of news stories and the dozens of analyst reports, what's interesting is that many of the market commentators talk about the flimsy nature of the report, that others had more egregious actions than Goldman Sachs, that the SEC might have difficulty in prosecuting this, that these charges were a context of the charged [101] political environment against the financial sector after the financial crisis.

So I understand there's lots of allegations in this complaint. We have talked about them. The important thing to think about is how this — what elements of this are corrective of the general statements, and in particular as well what could Goldman have said that would have been corrected at various points in time.

I talk in my report, it would be impossible for Goldman Sachs in 2007, 2008, 2009, to say the SEC is going to pursue an action against us.

The important part of loss causation, the important part of estimating damages is to understand what information is corrective of the alleged misstatements.

Q. And we've read your report, so we understand that that's your position in your report. I'm trying to ask a different question here. And let me try to rephrase it.

* * *

[1]** CONFIDENTIAL**
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File
No. 1:10-CV-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

September 22, 2015
9:05 a.m.

Videotaped Deposition of LAURA T. STARKS, Ph.D., taken by Plaintiffs, pursuant to Notice, held at the offices of Labaton Sucharow LLP, 140 Broadway, New York, New York, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New York.

* * *

[390] And I still believe that today. It doesn't refer to the conflict of interest statements.

Q. Okay. You can put that aside.

MR. ROGERS: I would like to mark as Starks 5 a Bernstein Research report, May 4th, 2010, titled Goldman Sachs: Management Speaks Frankly About The Future Of The Firm.

(Starks Exhibit 5 marked for identification.)

(Witness perusing document.)

Q. If you could turn to page 79. Do you see that?

And just for context, the first sentence under Investment Conclusion, and a quotation, says "Goldman Sachs shares plummeted on Friday on press reports that the U.S. Justice Department was reviewing Goldman's MBS business in light of allegations made by the SEC concerning the Abacus CDO deal."

Do you see that?

A. I do.

* * *

[393] Q. You remember that there were Senate investigations of certain companies, correct?

A. Yes.

Q. And there were SEC investigations of certain companies?

A. Yes.

Q. Is it your opinion as you sit here today that the public was outraged that the Senate was investigating some banks?

MR. WALKER: Objection to the form.

A. So the public outrage would have been against the underlying actions that were alleged to have happened. I didn't intend to mean that it was just because of the U.S. Justice Department.

Q. So it is the conduct alleged that caused the outrage, correct?

MR. WALKER: Objection to the form.

A. Correct. Assuming there was public outrage.

* * *

[395] Q. And what do you think he is saying?

MR. WALKER: Objection to the form.

A. Well, I think he is saying that Goldman Sachs has incurred reputation damage, and then he is going on to talk about a portfolio manager buying or owning Goldman because of the public outrage. I don't think he is saying the reputation damage is coming from the public outrage.

Q. But the client fallout was caused by public outrage?

MR. WALKER: Objection to the form.

A. Well, it's not exactly clear what he is -- he is talking about a portfolio manager having difficulty buying or owning Goldman in these kind of portfolios due to the current public outrage. I mean, we are just parsing this sentence differently.

Q. And a manager having difficulty [396] buying or owning Goldman, would that have an impact on Goldman's stock price?

MR. WALKER: Objection to the form, foundation.

A. There could be an effect on Goldman's stock price if there's a large selloff.

Q. And that would have a negative impact on their stock price, correct?

MR. WALKER: Objection.

A. It could have a negative, but that's not something I'm here to testify about.

Q. No, you are here to testify on your expertise reading analyst reports.

So I'm just asking you, is it your understanding of this report that the public outrage against Goldman Sachs as you just said could have a negative effect on its stock price?

MR. WALKER: Objection to form, foundation.

* * *

[1]** CONFIDENTIAL **
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File No. 1:10-cv-03461-PAC

IN RE GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION

This Document Relates To: ALL ACTIONS

Videotaped Deposition of
JOHN D. FINNERTY, Ph.D.
New York, New York
October 1, 2015

Reported by: Bonnie Pruszynski, RMR, RPR, CLR Job No. 97628

* * *

[166] By June 10th, now we are at the third announcement, and there has been some prior announcement on Hudson, there has been all the disclosure on Abacus, so the incremental effect is less than what the de novo effect would have been if the first disclosure occurred on Hudson prior to the Abacus disclosure.

Q. A couple of minutes ago you listed for me a long list of things about the Hudson CDO that you were saying should have been revealed in order to remove the artificial inflation from the stock. Do you remember that?

A. Yes, I do.

Q. Which of the four corrective disclosure dates revealed all of that information?

MR. HENSSLER: Objection, form, outside the scope.

A. The information was partially revealed April 30th and partially revealed June 10th, 2010, on Hudson.

Q. So, you think all of the [167] information that you just described to me was revealed on April 30th and June 10th, 2010?

MR. HENSSLER: Misstates testimony.

A. With regard to Hudson, but as I have also testified, there was prior information on April 16th about Goldman's failure to manage its conflicts of interest and its failure to abide by its business principles in the Abacus transaction, which was a very similar transaction to Hudson. They were both mortgage-backed synthetic CDOs.

So, the first transaction is more of a surprise than the second, because the first one reveals for the first time that the company is -- that Goldman is failing to manage its conflicts of interest and to abide by its business principles, and that's Abacus. Then you have a series of disclosures around April 26th, April 30th, that in fact there is a greater number of CDOs involved that similarly involve allegations of fraud, perhaps criminal, criminal fraud.

[168] Then you have the details of the Hudson transaction coming out in the June -- June 10th, and in particular, another SEC action that suggests the severity of those. So, some of those -- I guess the Hudson details had probably been out by April 30th, but what investors didn't know prior to June 10th was

the fact that the SEC had reviewed the information and was going to investigate Goldman for that transaction as well for possible fraud.

Q. Did any of the information about Hudson come out before April 16th, 2010, that you described to me?

MR. HENSSLER: Objection, form.

A. It didn't come into the public domain. I think investors in that transaction may have known -- somebody had to alert the SEC. And so, it's possible that prior to April 16th, someone might have alerted the SEC.

But there is no -- I haven't seen any public announcement of the conflict of interest, the lack of alignment of interest, [169] the disclosure of the 2 million short, and the misrepresentation to clients about the sourcing of the assets. I don't believe any of that was disclosed about Hudson prior to April 16th. In fact, I don't think it was disclosed prior to the e-mails that were released by Senator Levin on the evening of the -- April 26th. Those e-mails did contain at least some of that information.

Q. And when was the rest revealed?

A. June 10th.

And also, they just -- you can't -- you can't really separate the conduct from the charge. So, what's really important on June 10th is not just the disclosure of the details, but it's the connection between the -- the charge and the conduct, and what's really at issue, and the important point about the announcement on the 10th is that the SEC, Goldman's primary securities regulator, has found sufficiently troubling aspects of that transaction that it's going to investigate

Goldman, Goldman's behavior in that one also for possible securities fraud.

[170] Q. Did the market know before April 16th, 2010, that Paulson & Co. assisted Goldman Sachs in designing a CDO that Paulson intended to short?

MR. HENSSLER: Objection, form.

A. Yes. I think some people in the market did know that.

Q. Is there some differences for purposes of your analysis whether some people in the market knew it or the market more generally knew this?

A. You could -- I think you could even say the market generally knew it. There were news articles that reported that Paulson had gone short and that he had used various dealers to assist him, Goldman Sachs and Deutsche Bank in particular, but perhaps others, and that he had -- in doing that, had convinced some dealers to help him form the portfolios of underlying assets in a way that would facilitate his short. That was known.

Q. And it was known to the market before April 16th, 2010, that Paulson intended to bet against the CDO?

[171] A. Yes.

MR. HENSSLER: Objection to form.

A. Yes, I believe it was known.

Q. To bet that it would fall in value, that the CDO would fall in value?

MR. HENSSLER: Objection, form.

A. Yes.

Q. Was it also known to the market that Goldman Sachs would sell the CDO to clients who believed the value of the mortgages would hold up? Was that known before April 16th, 2010?

MR. HENSSLER: Objection, form.

A. It was known that Goldman Sachs as a securities dealer would sell a full range of securities to investors, who presumably bought them because they thought they would hold their value or increase in value. So that was just a part of Goldman's normal business, would be to do that, and investors would be aware of that, including CDOs and other mortgage-backed product.

Q. Including with respect to this Paulson CDO in particular?

[172] MR. HENSSLER: Objection, form.

Q. Was that known before April 16th, 2010?

MR. HENSSLER: Objection to form.

A. Yes. I think it was known that if Goldman had created the security, it would act as agent, and it would sell it to people who wanted -- investors who wanted to invest in the product, at the same time that Paulson would go short. Goldman is a middleman, so a securities dealer functions as a middleman, and it was known that Goldman was an important middleman in that market, that as part of its normal market-making function, would be selling to both buyers and sellers. The would set up a balanced book. That was known.

Q. Was it known to the market before April 16th, 2010, that this CDO was a billion dollar wager by Paulson against mortgage debt?

MR. HENSSLER: Objection, form.

A. Before April 16?

[173] Q. Yes.

A. It wouldn't be known generally into the -- I'm sorry. April 16, 2010. Yes, it would be known as of the date the security was issued that it was -- that it was a security of a type where longs -- you would have longs investing who believed it would go up, and you could have shorts -- you would have shorts, presumably, who would believe that the price would go down. In that segment of the market, those CDOs were structured so that it provided the opportunity for certain investors who were long and certain investors who were short to engage in those transactions, and it was understood the dealers would often take one side or the other for their own accounts.

Q. But was it understood before April 16, 2010, that the CDO was a billion dollar wager by Paulson against mortgage debt?

MR. HENSSLER: Objection to form.

* * *

[206] Q. Okay. So, if my count is right -- and again, I'm not asking you to recount my count. But if my count is right, that's 21 of the dates out of the 34 where there is no denial; right?

MR. HENSSLER: Objection, form.

A. Yes, there is no direct denial.

Q. Okay.

A. There could be other information in there that in effect has a similar -- a similar result, but there are only 13 apparently, I will accept your count, where

there is an explicit expressed denial in the body of the article.

Q. Did you find any -- and you have used the term "direct denial." Did you find any indirect or other kinds of denials for the remaining 21?

MR. HENSSLER: Objection, form.

A. I would have to review the 23 again. I don't commit all of these things, did not commit all of these to memory. There [207] could be others where they are describing standard procedures or something like -- in some form like that, where in effect it's an indirect denial. I don't remember anywhere that happened, but to give you an absolute answer, I would have to go back and confirm that.

Q. Well, you went through a process of looking for denials, I take it, in preparing this implications list?

A. I did.

MR. HENSSLER: Objection, form.

Q. Did you spot any other denials that you have left out of this?

A. There were no other explicit denials that I have left out.

Q. Did you find any implicit denials that you have not included here?

MR. HENSSLER: Objection, form.

A. I just answered the question. I said if you want me to go back and look, I would be happy to do that.

Q. And I'm asking you —

A. I don't remember any now. I don't [208] remember any now, but as I also testified, I haven't

committed all 34 of these to memory. If you would like me to go back and look through the 23, I would be happy to do it.

Q. I'm asking if there is something you recall leaving out.

MR. HENSSLER: David, he has testified —

MR. REIN: You don't need to -- you may object. I don't need your speech.

MR. HENSSLER: I'm doing that. If want to ask him about this, put the articles in front of him. He said he would be happy to do the analysis for you.

MR. REIN: You can state your objection. We don't need a speech.

Q. I'm simply asking, do you remember leaving out any kind of denial?

MR. HENSSLER: Same objection, form.

A. I think this is the third time I have answered the question. I don't recall whether there are any indirect denials. If [209] you would like me to look at the articles, I would be delighted to do so.

Q. I'm simply asking whether you recall.

A. And I answered -- I'm not being argumentative. I have answered the question three times. If you want to put the articles in front of me, I would be happy to look at each of them and give you a more fulsome answer.

* * *

[226] Q. Well, did Dr. Gompers come up with this denial theory?

A. Dr. Gompers ignored the denials. In effect, he is assuming it's zero. So, he ignored a critically important factor, which has biased his study. He should have -- he ignored it, and he should have taken it into account. Absolutely should have.

Q. But he didn't come up with this theory that the denials thwarted the stock price impact, did he? That was you.

MR. HENSSLER: Objection to form.

A. There is no theory involved in it, this is fact. Goldman Sachs issued 13 denials. This is a source of bias in his study. He ignored this factor, and as a result, it renders his study unreliable.

Q. And where are you getting your denial theory from?

A. It's not a denial theory. It's the fact that Goldman Sachs issued these denials. [227] Goldman Sachs pointedly denied the accusations in 13 of these articles. I read the language. I can interpret the language. I can see what the accuser said. I can see what Goldman Sachs said. And I will tell you anybody who thinks that the effect of these is zero is sadly mistaken.

And you don't need a Ph.D. in finance to see that. Any securities analyst will tell you that. And you could read it in the securities analyst reports, where they say -- they will have a quotation or some reference to something, then they say, "Goldman denied it," or "Goldman's spokesman denied it." Clearly, the analysts think that is important. Clearly, they are giving it some weight. I don't know whether it's zero weight, I don't know whether it's 50 percent, I don't

know whether it's 100 percent, but they are giving it some weight, and your expert gave it none.

Q. And if the analysts pick up on the denial and give that weight, is that what to you shows that it was important to investors?

[228] MR. HENSSLER: Objection, asked and answered, misstates testimony.

A. It shows that there is an offset which your expert failed to take into account, and it could imply the information was significant. It could very well. If there is a material reaction and then the denial counteracts that, there could in fact be material information that is issued. Nevertheless, the market reaction to the entire body of information shows up as being statistically insignificant because of the offset.

Q. And if the analyst mentioned the denial, is that to you a reflection of its importance to investors?

MR. HENSSLER: Objection, form.

A. It's an indication that investors would regard the denial as significant. Yes, it's meaningful. If they chose to mention it, yes, they recognized its importance.

Q. Okay. Now, you understand that when the SEC filed its complaint on April 16th, 2010, Goldman Sachs issued a [229] denial; right?

A. Yes, they did.

Q. And is it your opinion this denial was ineffective?

A. It was what?

Q. Ineffective.

A. Yes. The market had a net drop, so there may have been some effect, but overall, it was ineffective.

Q. Did it have any effect?

A. It could have had some effect.

Q. Did you do anything to measure that?

A. I'm being conservative in favor of the defendants by assuming it had a zero effect. I'm measuring the effect of the stock price drop net of market industry factors, but I didn't adjust for the possible effect of Goldman's denial.

Q. As an empirical matter, how would one go about doing that if you chose to?

A. I don't know. Since the effect -- since the announcements are occurring simultaneously, I don't think you could do [230] it. You would have to have enough space between the original article and the denial, have the market settle out, so that you could then measure the two -- two separate announcements.

Q. Is the only way to determine whether the denial was effective to look after the fact to see whether or not the stock price moved in a statistically significant manner?

A. That is part of it.

Q. What is the other part of it?

A. Well, you look at whether the -- the circumstance surrounding the announcement, and the nature of the denial. So, if -- if the announcement is being made by a firm's primary securities regulator, and that regulator is saying that the securities firm has engaged in certain forms of improper behavior, and as a result, we, the regulator, are instituting an enforcement action, in that case, I think it's

extraordinarily unlikely that anybody -- any security firm's denial is going to be effective enough to [231] thwart that fully. There may be some little, some partial offset, but that will give the -- that will give the disclosure a lot of credibility, which will outweigh whatever impact the denial might have.

Q. So, if it's a regulator making the allegation as opposed to a media article, let's say, does that mean to you that the denial will be ineffective?

A If the regulator -- and I think the market attaches credibility to regulators' enforcement actions, because they believe that regulators don't institute enforcement actions unless they genuinely believe that there is misbehavior or improper actions. That will have a lot more credibility than a newspaper article. So, if the securities firm is denying what's in an enforcements action, I think the effect is going to be less than if they are denying something that happens to be an accusation in a newspaper article, because the regulatory action, that announcement will have a lot more credibility typically than a [232] newspaper article.

Q And what do you base this opinion on?

A I base it on the observed effect of these announcements. When enforcement actions are announced, they are almost always met with a strong negative reaction. On the other hand, if one looks at newspaper articles with some sort of an accusation and it's followed by the company's denial, very often they are not statistically significant. It's the credibility of the source.

Q If a regulator makes an accusation, can a denial ever be effective?

A It depends upon the nature of the accusation, it depends upon the nature of the denial. It's possible.

Q Can a denial ever exacerbate a stock price decrease rather than mitigate it?

A I don't see how.

Q You don't think it ever could?

A I'm not saying I don't think it ever could. I'm having difficulty thinking how that could happen, how your denial [233] could -- I think the denial in all likelihood would just be ignored. It would only be if the denial somehow included information that suggested that the behavior was actually worse than it was. I suppose it's possible it could if it -- it could have a counterproductive effect if the market concluded that in fact there was a lot more credibility associated with the -- with the denial.

Q And how would you go about determining whether that occurred?

A Looking at the nature of the denial.

Q Would you also look at the stock price effect?

A No. I'd base it on the nature of the denial and what the securities analysts said. Are the securities analysts saying that the denial made it worse, or are the securities analysts reflecting -- perhaps reflecting the denial as a factor that would reduce the impact?

* * *

[242] MR. HENSSLER: Please don't interrupt.

A Then there is an incremental effect. So the market is going to react to the content. But if you take the -- and allow for whatever the content of that information is, and then factor in the incremental

value of the SEC enforcement action, then that -- that will suggest a more serious behavior. I did a study some years ago looking at settlements and did the same kind of analysis, and when I included enforcement actions as a separate explanatory variable, it was statistically significant. There is an incremental effect from having the government, whether it's DOJ or SEC, institute some sort of government regulatory action. There is an incremental impact because of the seriousness that is signaled by the fact you have that government action.

Q What was the name of that study? Title, I should say.

A I don't remember the title of the [243] article.

Q Where did you publish it?

A I published an article around that time in Hastings Business Law Review, and I am not remembering whether I actually included the regression model in that or not. I know I used the regression model in various presentations. I would have to -- I would have to go back and look and see. But it was in connection with that, with the preparation of that article, and as I say, I don't -- I just don't remember whether I included that regression analysis in the article or not. I think I did, but I have to go back. It was a few years ago, so I would have to go back and refresh my recollection.

Q You mentioned a DOJ investigation, so if -- would a DOJ criminal investigation have more severity than an SEC civil enforcement action?

MR. HENSSLER: Objection, form.

A I would expect that it would. I don't recall whether I tested specifically [244] for that, but I would

expect that it would, because generally, criminal, criminal behavior is regarded as more serious, particularly where you have a corporation that is charged -- a criminal charge against a corporation is, is -- would indicate a more serious level of misbehavior.

Q So, had the Abacus lawsuit on April 16th been in the form of a Department of Justice criminal complaint, would you expect a larger stock decline than occurred with an SEC enforcement action?

MR. HENSSLER: Objection, form. Outside the scope of his opinions. You can answer.

A Yes, because I think that would have had a bigger adverse effect on Goldman's business. There are institutions that don't want to do business with you if you are the subject of an enforcement action. There are others that will not do business with you if they think that you are possibly guilty of a crime. It will impair your business. I [245] mean, generally, a criminal investigation will have a bigger impact than a civil suit. I think there is plenty of academic research on that point.

Q Now, we spoke earlier about Goldman Sachs' business principles. Do you recall that?

A Yes.

Q Do any of those business principles refer to CDOs?

A You are referring to the business principles as stated on their website or in their annual report?

Q Yes, I am.

A I don't believe they refer to CDOs specifically.

* * *

[306] Another approach, which probably is an easier approach, is the impact on the -- it's on settlements as opposed to the filings. But there is the study I testified about earlier where one could get a set of data, and look at those cases in which there is an SEC enforcement action or DOJ investigation, and perform an event study with a sample of announcements, some of which involve enforcement actions, some of which involve DOJ investigations, some on of which involve the announcement of an SEC probe, and then use -- you probably would use dummy variables to figure out -- to measure the incremental impact of that announcement, that regulatory announcement.

That would be -- that would be a way of trying to allocate the damages on April 16th, April 30th, or June 10th between the content and the enforcement action, just basically breaking the two components. I think that would be the best that one could do, because in my view, the two are inextricably tied, for the reasons I have [307] testified about.

Q Thus in your report, you have not presented any attempt to measure this incremental impact?

A I have not, because, as I have testified, I believe that they are inextricably tied, because the charge is tied to the content. The charge is based on the content. If Goldman hadn't done what it's alleged to have done, there wouldn't have been an SEC enforcement action, there wouldn't have been a DOJ probe, and there wouldn't have been an SEC probe into Hudson

Q Now, we have talked earlier today about there being two types of challenged statements here, the business principles and the conflicts controls statements.

A Yes.

Q Does your methodology have any way of distinguishing between damages caused by one or the other class of alleged misstatements?

A As I have testified this morning, there is no objective way that I am aware of [308] or that I found from looking at analyst reports, or in the literature, of objectively distinguishing the effect of the two.

The complaint concerns behavior, improper behavior regarding clients, and the improper behavior was both a violation of Goldman's conflicts of interest management statements and a violation of its business principle statements, as a result of -- and every element of that, every one of those misstatements and omissions involves that. As a result, there is no objective way of separating the effect, as you have asked, and when I reviewed the analyst reports, I didn't see a single analyst report where the analyst even tried to do that. They didn't make even an effort. It just doesn't make any sense.

Q They didn't make an effort to do what?

A They didn't make an effort to try to separate the impact of the violations of the management of conflicts of interest statements from the business principle statements.

[309] Q There were analyst reports that said that both sets of statements were violated?

MR. HENSSLER: Objection, form, misstates testimony.

A The analyst reports talked about the behavior, the improper behavior, and the SEC enforcement action, and the consequences of it. They talked about both of the elements.

I don't know that the analysts mentioned business principle statements or conflicts of interest management statements. Certainly, there were articles in the press that did. But they talked about the behavior itself. They talked about the effect of the misbehavior on Goldman's reputational capital. The fact that Goldman had always prided itself on being able to manage conflicts, and here Goldman's got a black eye.

* * *

This page intentionally left blank.

Public Allegations of Goldman Sachs Client Conflicts
On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

	Date*	Source	Article Excerpt *(Emphasis Added)*
1	MARCH 9 2007	*Forbes*: "Candle Burning at Both Ends"	"When Daniel Loeb's $4 billion New York hedge fund [bought] a 7.2% stake in Pogo Producing Co., it relied on its prime brokerage margin account at Goldman. Loeb then demanded board seats . . . [and] Pogo's board of directors . . . hire[d] Goldman to defend itself from Loeb. Odd coincidence, no doubt—except that it happened before. . . . *Is it kosher for one part of Goldman to help a board fend off advances made by a hedge fund that another part of Goldman is aiding?*"
2	MAY 7 2007	*The New York Times*: "What to Do When Rupert Calls?"	"Has anyone on Wall Street found it odd that Goldman Sachs, which has been a longtime banker to Mr. Murdoch's company, the News Corporation . . . is now representing Dow Jones . . . ? *How hard do you really think Goldman is going to push the News Corporation, considering that if a deal is ever struck, Goldman will want to make Mr. Murdoch's company a client again*?"
3	MAY 17 2007	*The Economist*: "Merchants of Boom"	"[A]cting as a principal has again become a big source of . . . controversy, as banks try to negotiate the blurry line between advising clients, lending to them and pouring their own money into deals. . . . This year Goldman Sachs set itself the task of raising a mammoth $20 billion for its latest private equity venture. . . . *Being one of the world's biggest private-equity funds, as well as one of the biggest advisers to them, could cause serious conflicts of interests*."
4	JUNE 11 2007	*Financial Times*: "Arcelor Minorities Prepare for a Fight"	"[Arcelor] minority investors . . . are threatening legal action . . . . *They argue that the banks that provided the fairness opinion [including Goldman Sachs] have all had advisory and/or financing mandates from either Mittal or Arcelor during the past two years.*"
5	DEC 3 2007	*The New York Times*: "The Long and Short of It at Goldman Sachs"	"*[A]s Goldman was peddling C.M.O.'s, it was also shorting the junk on a titanic scale through index sales—showing . . . how horrible a product it believed it was selling*. . . . [T]he recent unhappiness about mortgages and Goldman's connection with them are not examples of sterling conduct. It is bad enough to have been selling this stuff. It is far worse when the sellers were, in effect, *simultaneously shorting the stuff they were selling, or making similar bets*. . . . Maybe it's time for an investigation of just what Wall Street and Goldman did to make money as they . . . sometimes were seemingly on both sides of the deal."
6	DEC 5 2007	*Financial Times*: "Goldman's Risk Control Offers Right Example of Governance"	"At one end of the spectrum Goldman Sachs sails sublimely on, churning out ever-improving earnings figures while *offsetting losses on its exposure to the subprime market with vast profits on short positions in mortgages*. . . . Yet they offer genuine synergies, albeit with *potential conflicts of interest*."
7	DEC 6 2007	*Financial Times*: "Goldman's Glory May Be Short-Lived"	"David Viniar, Goldman's chief financial officer, gathered a group of trading heads . . . at the end of last year to discuss whether the bank was over-exposed to the weak US housing market. . . . *[Goldman Sach's] leaders astutely decided to hedge its mortgage book*. . . . *Two commentators have now . . . accuse[d] Goldman of behaving unethically and perhaps of breaking the law*. . . . [Goldman Sachs] *often faces accusations of conflicts of interest* over its overlapping roles but it brushes them off by saying that its job is to 'manage conflicts.' . . . *One day, however, this balancing act will blow up in its face*."

* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

Public Allegations of Goldman Sachs Client Conflicts On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

	Date*	Source	Article Excerpt *(Emphasis Added)*
8	DEC 11 2007	*Dow Jones Business News*: "13 Reasons Why Bush's Mortgage Bailout Won't Stop a Recession"	"New York Attorney General Andrew Cuomo has already subpoenaed Wall Street. Next: Congress, the SEC and other state regulators will demand answers, such as *why was Goldman shorting the SIVs they were selling, many of which quickly went into default?* What did they fail to disclose? Sounds like a *massive conflict of interest* with major liabilities."
9	DEC 14 2007	*The Wall Street Journal*: "How Goldman Won Big on Mortgage Meltdown"	"Goldman's success at wringing profits out of the subprime fiasco, however, raises questions about *how the firm balances its responsibilities to its shareholders and to its clients*. . . . Why did Goldman continue *to peddle CDOs to customers early this year while its own traders were betting that CDO values would fall?*"
10	DEC 17 2007	*Reuters*: "Goldman Success Brings Unwanted Attention"	"Goldman is expected to report . . . billions of gains from *bets against the subprime mortgage market*. . . . *Goldman will face questions on how it once again profited when everyone else, including clients, suffered*. . . . Goldman . . . *pursu[ed] strategies that can sometimes run contrary to what clients are doing*. . . . Another trouble spot could be how Goldman's underwriters issued collateralized debt obligations . . . . *'One part of the firm's underwriting CDOs and the other is shorting the hell out of them*.'"
11	DEC 24 2007	*The New York Times*: "Tattered Standard of Duty on Wall Street"	"*The biggest of the big names were among the most aggressive in betraying their clients' trust*, as I see it. . . . *Goldman Sachs[] w[as] aggressively shorting the very same sort of [mortgage-related] products they were underwriting*. . . . *[S]elling short the same securities* or very similar ones *that they were peddling to the clients* is extremely hard to reconcile with basic fairness."
12	DEC 27 2007	*Dow Jones Capital Markets Report*: "When It Comes to Goldman, Investors Argue With Success"	"*Goldman Sachs made money underwriting mortgage-based collateralized bond obligations (CDOs), then made more money selling them short*. Bloggers are hotly debating the propriety of *betting against a financial product while simultaneously persuading institutional investors to buy it*."
13	JAN 14 2008	*The Wall Street Journal*: "Trading in Deal Stocks Triggers Look at Banks"	"Take the September 2006 transaction in which Motorola Inc. acquired Symbol Technologies Inc. . . . *Goldman Sachs counseled the big cellular-phone company on the $3.9 billion deal, filings indicate. Goldman also was a big accumulator of Symbol's stock in the final quarter before the transaction's announcement*. . . . Did Goldman, a longtime adviser to Motorola, know about the talks when it bought the stock? . . . Goldman says it reviewed the trading at the time and found nothing improper."
14	NOV 11 2008	*Los Angeles Times*: "Firm Urged Hedge Against State Bonds It Helped Sell"	"Some experts said [Goldman Sachs'] action, while not illegal, might be inappropriate. 'That's not a good way to do business.' . . . '*They've got a conflict of interest and they're acting against the interests of their customers*. . . . You act in the interests of your clients. You don't screw them, to put it bluntly.'"

* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

Public Allegations of Goldman Sachs Client Conflicts
On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

#	Date*	Source	Article Excerpt *(Emphasis Added)*
15	MAY 13 2009	*The Wall Street Journal*: "Goldman Takes Heat for Conflicts at Whitehall"	"One of *Goldman Sachs Group Inc.'s premier real-estate funds [Whitehall] is in discussions with its lenders to restructure debt* on some of its biggest investments . . . . The wrinkle: *One of the main lenders on those deals is Goldman Sachs. . . . Concessions granted by Whitehall may benefit Goldman, the lender, at the expense of Whitehall investors . . . .*"
16	JUNE 24 2009	*Rolling Stone*: "The Great American Bubble Machine"	"*[E]ven as it was [selling CDOs and mortgage-backed securities], it was taking short positions in the same market, in essence betting against the same crap it was selling.* Even worse, Goldman bragged about it in public. . . . In other words, *the mortgages it was selling were for chumps. The real money was in betting against those same mortgages. . . . 'It's exactly securities fraud,' he says. 'It's the heart of securities fraud.'*"
17	JULY 17 2009	*The New York Times*: "The Joy of Sachs"	"Goldman's role in the financialization of America was similar to that of other players, except for one thing: *Goldman didn't believe its own hype*. Other banks invested heavily in the same toxic waste they were selling to the public at large. *Goldman, famously, made a lot of money selling securities backed by subprime mortgages—then made a lot more money by selling mortgage-backed securities short, just before their value crashed*."
18	AUG 4 2009	*Investor's Business Daily*: "Banking Giant Stands Tall Amid Wreckage of Financial Industry"	"*[Goldman] made money for years issuing and underwriting mortgage-backed securities . . . . Then, it famously made money by selling them short, essentially correctly betting that the market would collapse.*"
19	AUG 24 2009	*The Wall Street Journal*: "Goldman's Trading Tips Reward Its Biggest Clients"	"*Every week, Goldman analysts offer stock tips at a gathering the firm calls a 'trading huddle.' But few of the thousands of clients who receive Goldman's written research reports ever hear about the recommendations. . . .* Some of their recommendations differ from ratings printed in Goldman's widely circulated research reports."
20a	NOV 2 2009	*The Wall Street Journal*: "Profiting from the Crash"	"*[Mr. Paulson] met with . . . Goldman Sachs, and other firms to ask if they would create securities—packages of mortgages called collateralized debt obligations, or CDOs—that Paulson & Co. could wager against. . . .* Deutsche Bank and *Goldman Sachs[] didn't see anything wrong with Mr. Paulson's request and agreed to work with his team. . . .* [Senior Bear Stearns trader] Mr. Eichel said he felt it would look improper for his firm. 'On the one hand, *we'd be selling the deals' to investors, without telling them that a bearish hedge fund was the impetus for the transaction*.'"
20b	NOV 2 2009	*McClatchy Washington Bureau*: "How Goldman Secretly Bet on the U.S. Housing Crash"	"In 2006 and 2007, Goldman Sachs Group *peddled more than $40 billion* in securities backed by at least 200,000 risky home mortgages, *but never told the buyers it was secretly betting that a sharp drop in U.S. housing prices would send the value of those securities plummeting. . . .* [A] five-month McClatchy investigation has found that *Goldman's failure to disclose that it made secret, exotic bets on an imminent housing crash may have violated securities laws*."

* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

Public Allegations of Goldman Sachs Client Conflicts
On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

Date*	Source	Article Excerpt *(Emphasis Added)*
21 NOV 3 2009	*Gregory Zuckerman*: "The Greatest Trade Ever"	"Paulson's team would pick a hundred or so mortgage bonds for the CDOs . . . . [A] senior Bear Stearns trader . . . worried that Paulson would want especially ugly mortgages for the CDOs . . . . *[O]ther bankers, including . . . Goldman Sachs, didn't see anything wrong with Paulson's request and agreed to work with his team. . . . [S]ome investors later would complain that they wouldn't have purchased the CDO investments had they known that some of the collateral behind them was chosen by Paulson and that he would be shorting it*."
22 NOV 19 2009	*MarketWatch*: "GS a Short? And Five Reasons We Hate Goldman Sachs"	"*Goldman was packaging and selling toxic derivatives for hundreds of billions of dollars to investors around the world*, telling those investors that such derivatives were safe and smart bets. At the same time . . . *Goldman was actually betting against those very products*. They were literally selling products that they were so confident would fail that they bet tens of billions of dollars of their own money . . . against those products they were telling investors were safe. *We want some perpwalks for this obvious fraud*."
23 DEC 7 2009	*The New York Times*: "Economy's Loss Was One Man's Gain"	"*Mr. Paulson persuaded Goldman Sachs and Deutsche Bank to put together . . . C.D.O.'s [], which were filled with nasty mortgages that he could then short. Of course, nobody told the suckers—er, investors—who bought those C.D.O.'s that they were designed to help a man who wanted the most toxic mortgages imaginable so he could profit when they went sour*."
24a DEC 24 2009	*The New York Times*: "Banks Bundled Debt, Bet Against It and Won"	"*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*." "*Goldman kept a significant amount of the financial bets against securities in Hudson, so it would profit if they failed . . . .* 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' . . . .*" "How these disastrously performing securities were devised is now the *subject of scrutiny by . . . Congress [and] the [SEC]* . . . [which] 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 . . . .*"
24b DEC 24 2009	*Dow Jones News Service*: "Congress, Regulators Probing Creation, Use of CDOs—NYT"	"*Congress, the [SEC] and [FINRA] . . . are now examining how the CDOs were devised*, and appear to *be looking at whether the firms [including Goldman Sachs] violated securities laws or rules governing fair dealing in any short sales*. One aspect of the investigation centers on *whether the firms purposely help select risky CDOs*."
25 DEC 29 2009	*The New York Times*: "Betting Against All of Us"	"During the bubble, *Goldman Sachs and other financial firms created complicated mortgage-related investments, sold them to clients and then placed bets that those investments would decline in value. . . .* According to industry experts interviewed, *these bets put the firms' interests clearly at odds with their clients' interests. . . .* Did Goldman and other firms create securities that were bound to fail in order to up the odds that its contrary bets would pay off? Some of the securities were so prone to failure that they soured within months of being created."

* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

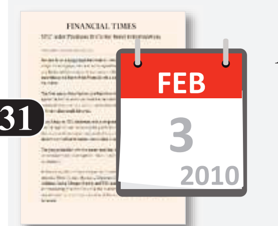
A-2956

Public Allegations of Goldman Sachs Client Conflicts On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

Date*	Source	Article Excerpt *(Emphasis Added)*
26 DEC 30 2009	*McClatchy Washington Bureau*: "Goldman's Offshore Deals Deepened Global Financial Crisis"	"*Goldman's wagers against mortgage securities . . . are now the subject of an inquiry by the [SEC] . . . .* Goldman's Caymans deals were *riddled with potential conflicts of interest*, which Goldman disclosed deep in prospectuses . . . . *Goldman inserted the credit-default swaps into CDO deals 'like a Trojan Horse—secret bets that the same types of bonds that they were selling to their clients would in fact fail.'*"
27 JAN 11 2010	*The New York Times*: "What the Financial Crisis Commission Should Ask"	"Mr. Blankfein, your firm, and others, *created and sold* bundles of mortgages known as *collateralized debt obligations that it simultaneously sold short*, or bet against. *These C.D.O.'s turned out to be bad investments for the people who bought them, but [the] short bets paid off for Goldman Sachs. . . .* Could you explain how *Goldman bet against these C.D.O.'s while simultaneously trying to persuade ratings agencies and investors that they were good investments?*"
28 JAN 12 2010	*The New York Times*: "Goldman Acknowledges Conflicts With Clients"	"A senior Goldman Sachs executive sent an e-mail message to clients on Tuesday disclosing that *the firm's Fundamental Strategies Group may have shared investment ideas with the firm's proprietary trading group or some clients before sharing them with others*. The e-mail . . . demonstrates the various *conflicts that Goldman and other firms face in balancing the interests of its various clients and its own trading operation. . . . Goldman and other firms has come under criticism for trading ahead of, or at odds, with its own clients*."
29a JAN 13 2010	*The New York Times*: "At Goldman, E-Mail Message Lays Bare Conflicts in Trading"	"For years, Wall Street whispered that *Goldman Sachs profited handsomely by trading ahead of—or even against—its own clients. . . .* Last month, the [SEC] and Congress began investigating how Goldman and other firms had *created . . . C.D.O.'s [] that were sold to investors at the same time that the banks had privately bet against the instruments. Some of these C.D.O.'s later fell in value, creating losses for those clients who bought them—and profits for Goldman*."
29b JAN 13 2010	*Dow Jones News Service*: "Live Blogging the Financial Crisis Inquiry"	"[WSJ commenters] wonder if Blankfein dares touch on Goldman Sachs' sacred business principles. . . . *Angelides [Chairman of the Financial Crisis Inquiry Commission] is talking about how Goldman works both sides of any trade*. Now Blankfein will have to explain what a broker actually does. Too bad 'market-making' won't be understood by most folks watching today's show. He's giving it the college try—but it's hard to love any 'middleman'—especially when the middleman is *originating the product, selling the product and then freely shorting the product*."
30a JAN 14 2010	*Dow Jones Capital Markets Report*: "Goldman Chief Testifies That He Supports Fiduciary Standard"	"*[Financial Crisis Inquiry Committee head Phil Angelides] asked Blankfein whether a practice of betting against some of the subprime mortgage securities Goldman was selling to investors was a conflict of interest*. He replied that Goldman didn't have a legal obligation to disclose when *it was betting against the securities it was selling*."

* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

Public Allegations of Goldman Sachs Client Conflicts
On 36 Dates Prior to Plaintiffs' "Corrective Disclosure" Dates

	Date*	Source	Article Excerpt *(Emphasis Added)*
30b	JAN 14 2010	*Financial Times*: "Wall Street Bankers on Defensive in Grilling Over Financial Crisis"	"[The Financial Crisis Inquiry Committee] accused Mr Blankfein . . . *of a conflict of interest in securitising mortgage-backed securities at the same time as taking a trading position against them*."
31	 FEB 3 2010	*Financial Times*: "SEC Asks Paulson Hedge Fund for Information"	"In December, the *SEC sent subpoenas to banks including . . . Goldman Sachs* . . . . The SEC *is examining whether the banks took negative positions on [CDOs] at the same time they marketed them to investors*."
32	FEB 8 2010	*The New York Times*: "Testy Conflict With Goldman Helped Push A.I.G. to Precipice"	"Mr. Egol [of Goldman Sachs] *structured a group of deals—known as Abacus—so that Goldman could benefit from a housing collapse*."
33	FEB 12 2010	*The New York Times*: "Air Products Revises Its Airgas Lawsuit"	"Air Products contends that Airgas's attempt . . . to bar Cravath from advising on the takeover bid is a 'disingenuous' cheap shot. (Airgas has said for months that Cravath . . . has confidential information that it then used to help a rival.) *. . . Air Products contends that a primary Airgas adviser, Goldman Sachs, faces just as much of a problem. Goldman advised Air Products on potential deal-making opportunities and defenses as recently as October 2009 . . . .*"
34	MAR 5 2010	*Financial Times*: "Goldman Looking at an Own Goal"	"The Glazer family [owners of Manchester United Football Club] *are considering severing ties with Goldman Sachs after Jim O'Neill, the bank's chief economist, was revealed as a member of a consortium looking to buy the football club*."
35	MAR 10 2010	*The New York Times*: "Calls Increase for Crackdown on Derivatives"	"The criticism of credit-default swaps stems, in part, from the multiple and at times seemingly *conflicted roles that investment banks like Goldman Sachs often play in the markets. . . . Goldman and others helped the Greek government legally mask its debts . . . . But, just as the true extent of Greece debts began to worry investors, Goldman put on another hat. . . .* [I]t sent clients a 48-page primer on credit-default swaps . . . [which] enable[] investors to . . . bet against certain borrowers. . . . Goldman followed up with its August report, . . . which said . . . *'Buy C.D.S. of developed sovereigns. . . .*'"
36	MAR 17 2010	*The New York Times Magazine*: "Who Needs Wall Street?"	"Asked about *mortgage securities that Goldman both sold to clients and bet against*, Blankfein, while expressing regret for what he admitted was *improper behavior*, added: 'In our market-making function, we are a principal. *We represent the other side of what people want to do*.'"

* For news published between 4pm and midnight on a trading day, or for news not published on a trading day, the date assigned is the next trading day.

Plaintiffs' Analysis of Defendants' News Articles on the 36 Dates Purportedly Reporting on Goldman's Conflicts of Interest

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
1[3]	3/9/07	"Candle Burning At Both Ends," *Forbes* (Defs' Ex. 15)[4]	"When Daniel Loeb's $4 billion New York hedge fund [bought] a 7.2% stake in Pogo Producing Co., it relied on its prime brokerage margin account at Goldman. Loeb then demanded board seats ... [and] Pogo's board of directors ... hire[d] Goldman to defend itself from Loeb. Odd coincidence, no doubt—except that it happened before.... *Is it kosher for one part of Goldman to help a board fend off*	"'***There is no conflict***,' snaps Lucas van Praag, Goldman Sachs' chief spokesman. '***The suggestion that there might be a conflict can only be described as an attempt at mischief-making or a fundamental lack of understanding about how this business is conducted***.'"[5]	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	

[1] The dates listed in this chart for each article are those set forth in the expert reports submitted by the parties. *See* 4/6/15 Gompers Decl., ECF No. 144, at Exs. 5 & 6; 5/15/15 Finnerty Decl., ECF No. 154, at Ex. 6; and 7/2/15 Gompers Report, ECF No. 170-1, at Exs. 2 & 3.

[2] Source: Defendants' Exhibit 2 attached to the Declaration of Jacob E. Cohen, ECF No. 193 ("Defs' Ex. 2").

[3] These numbers refer to the numbering of these 36 dates articles by Defendants in Defs' Ex. 2.

[4] "Defs' Ex. __" refer to the Exhibits attached to the Declaration of Jacob E. Cohen, ECF No. 193.

[5] All emphases are added unless otherwise indicated.

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			advances made by a hedge fund that another part of Goldman is aiding?"				
2	5/7/07	"What to Do When Rupert Calls?" *The New York Times* (Defs' Ex. 16)	"Has anyone on Wall Street found it odd that Goldman Sachs, which has been a longtime banker to Mr. Murdoch's company, the News Corporation . . . is now representing Dow Jones . . . ? *How hard do you really think Goldman is going to push the News Corporation, considering that if a deal is ever struck, Goldman will want to make Mr. Murdoch's company a client again?*"		- Article merely raised possibility of conflicts - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
3	5/17/07	"Merchants of Boom," *The Economist* (Defs' Ex. 17)	"[A]cting as a principal has again become a big source of ... controversy, as banks try to negotiate the blurry line between advising clients, lending to them and pouring their own money into deals.... This year Goldman Sachs set itself the task of raising a mammoth $20 billion for its latest private equity venture.... *Being one of the world's biggest private-equity funds, as well as one of the biggest advisers to them, could cause serious conflicts of interests.*"	"Yet investment banks serve so many masters at the same time that sometimes they cannot avoid ruffling feathers. ***Goldman, along with other banks, has appointed senior people to prevent this happening or at least minimise the effects. 'We can't avoid conflicts,' says the firm's Mr. Viniar. 'We have to manage them.'***"	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	✓
4	6/11/07	"Arcelor Minorities Prepare for a	"[Arcelor] minority investors ... are threatening legal	The Arcelor minority investors "want the fairness opinion on the revised exchange ratio redone on	- Article did not relate to the substance of the misrepresentations		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Fight," *Financial Times* (Defs' Ex. 18)	action .... *They argue that the banks that provided the fairness opinion [including Goldman Sachs] have all had advisory and/or financing mandates from either Mittal or Arcelor during the past two years.*"	the grounds that it was not independent," ***as opposed to a conflict of interest***.	alleged by Plaintiffs - Article did not relate to conflicts of interest at all		
5	12/3/07	"The Long and Short of It at Goldman Sachs," *The New York Times* (Defs' Ex. 19)	"*[A]s Goldman was peddling C.M.O.'s, it was also shorting the junk on a titanic scale through index sales—showing . . . how horrible a product it believed it was selling....* [T]he recent unhappiness about mortgages and Goldman's connection with them are not examples of sterling conduct. It is bad enough to have	"The Goldman Sachs spokesman said that the company ***routinely shorts the securities it underwrites and said that this is disclosed***. . . . [Goldman] says [Dr. Hatzius's] paper, like all of its economists' work, was not written to support any larger short-trading strategy."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article indicated that Goldman appropriately managed potential conflicts of interest	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			been selling this stuff. It is far worse when the sellers were, in effect, *simultaneously shorting the stuff they were selling, or making similar bets*.... Maybe it's time for an investigation of just what Wall Street and Goldman did to make money as they ... sometimes were seemingly on both sides of the deal."				
6	12/5/07	"Market Insight: Goldman's Risk Control Offers Right Example of Governance," *Financial Times* (Defs' Ex. 20)	"At one end of the spectrum Goldman Sachs sails sublimely on, churning out ever-improving earnings figures while *offsetting losses on its exposure to the subprime market with vast*	"Until recently, Goldman was a partnership, which is one of the best risk-control mechanisms invented. The culture of partnership, which entails a high degree of mutual surveillance in the common interest, still survives in spite of Goldman's status as a listed company. That is clear from remarks made at a Wharton	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article stated that Goldman appropriately managed conflicts of interest - Article did not relate to the substance of the	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			profits on short positions in mortgages.... Yet they offer genuine synergies, albeit with *potential conflicts of interest*."	finance conference in New York last month by Lloyd Blankfein, Goldman's chairman and chief executive. ***Apart from the discipline of marking to market, he explained, the firm put great emphasis on ensuring that risk concerns were constantly communicated to higher levels of management, getting more fingerprints' on potential problem risks and challenging the notion that a business group leader ought to make independent decisions on risks that affected the entire firm. There was intense accountability through a host of management committees that evaluated all aspects of risk.*** ***Most importantly, Goldman ascribes as much status, prestige and pay to people engaged in control functions as to those running businesses.*** It constantly rotates human capital back and forth between risk control and business operations. . . .	misrepresentations alleged by Plaintiffs.		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				In contrast, Mr. Blankfein is accompanied on the board by two other executive directors, together with Stephen Friedman, a former senior partner of the firm. So there is a core group on the board steeped in the disciplines of risk. And Goldman's managing directors include Gerald Corrigan, a former head of the Federal Reserve Bank of New York, who is regarded as the pre-eminent expert on financial plumbing.... With its distinctive model, Goldman offers interesting food for thought."			
7	12/6/07	"Goldman's Glory May be Short-lived," *Financial Times* (Defs' Ex. 21)	"David Viniar, Goldman's chief financial officer, gathered a group of trading heads ... at the end of last year to discuss whether the bank was over-exposed to the weak US housing market.... *[Goldman Sach's]*	"***Goldman bankers say it is impressed upon them that they must tell others of any concerns they have about clients*** or investments: the biggest offence is to keep secrets. . . . After everyone had talked over the bank's overall trading positions, its leaders astutely decided to hedge its mortgage book. . . . ***But there is no evidence that Goldman did***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article conveyed that Goldman did not violate any laws - Article indicated that Goldman acted appropriately - Article did not relate	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			leaders astutely decided to hedge its mortgage book.... Two commentators have now ... accuse[d] Goldman of behaving unethically and perhaps of breaking the law.... [Goldman Sachs] *often faces accusations of conflicts of interest* over its overlapping roles but it brushes them off by saying that its job is to 'manage conflicts.'... *One day, however, this balancing act will blow up in its face*."	***wrong*** by issuing Mr. Hatzius's research or conversing with Mr. [Hank] Paulson about financial conditions, if it actually did the latter. ***I do not believe that Goldman broke insider trading laws***. It would be stupid to risk its reputation in this way and it is anything but stupid."	to the substance of the misrepresentations alleged by Plaintiffs.		
8	12/11/07	"13 Reasons Why Bush's Mortgage Bailout Won't Stop A	"New York Attorney General Andrew Cuomo has already subpoenaed Wall Street. Next:	[Relevant excerpt notes that "Wall Street" as a whole, not Goldman specifically, is the subject of a NY	- Article merely raised possibility of conflicts - Article did not relate to Goldman's policies and procedures to		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Recession," *Dow Jones Business News* (Defs' Ex. 22)	Congress, the SEC and other state regulators will demand answers, such as *why was Goldman shorting the SIVs they were selling, many of which quickly went into default?* What did they fail to disclose? Sounds like a *massive conflict of interest* with major liabilities."	AG's investigation, and suggests the possibility of a investigations by other Congress and other entities, with Goldman as one example of the banks at issue. It poses questions that need to be addressed by these regulators, regarding the potential conflicts of interest, rather than conclusions based on evidence already adduced to date. It then further notes:] "These hearings could drag on a long time . . . ."	prevent conflicts and the true risk to its reputation should they fail. - Article mentioned that "Wall Street" banks, not specifically Goldman, was subpoenaed by NY AG, and only suggested possibility that other regulators may begin investigations. -Article focuses on the problems with government efforts to bail out Wall Street banks after the beginning of the financial crisis; Goldman is mentioned only in passing and only as one example of numerous Wall Street banks that are the subject of the article's critique. - Article indicated that		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
					there were questions as to whether Goldman engaged in any wrongdoing and that the resolution of such questions was still distant.		
9	12/14/07	"How Goldman Won Big On Mortgage Meltdown," *The Wall Street Journal* (Defs' Ex. 23)	"Goldman's success at wringing profits out of the subprime fiasco, however, raises questions about *how the firm balances its responsibilities to its shareholders and to its clients*.... Why did Goldman continue *to peddle CDOs to customers early this year while its own traders were betting that CDO values would fall?*"	"The structured-products trading group that executed the winning trades ***isn't involved in selling CDOs minted by Goldman***, a task handled by others. ***Its principal job is to 'make a market' for Goldman clients*** trading various financial instruments tied to mortgage-backed securities. That is, the group handles clients' buy and sell orders, often stepping in on the other side of trades if no other buyer or seller is available. The group also has another mission: If it spots opportunity, it can trade Goldman's own capital to make a profit. ***And when it does, it doesn't necessarily have to share such information with clients, who may be making***	- Article merely raised possibility of conflicts - Article indicated that Goldman appropriately managed potential conflicts of interest - Article indicated that the relevant trading was done by Goldman as a market maker supplying liquidity for Goldman clients (*i.e.* it was not improper) - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				***opposite bets*.**"			
10	12/17/07	"ANALYSIS-Goldman Success Brings Unwanted Attention," *Reuters News* (Defs' Ex. 24)	"Goldman is expected to report ... billions of gains from *bets against the subprime mortgage market.... Goldman will face questions on how it once again profited when everyone else, including clients, suffered....* Goldman *... pursu[ed] strategies that can sometimes run contrary to what clients are doing....* Another trouble spot could be how Goldman's underwriters issued collateralized debt obligations .... *'One part of the firm's underwriting CDOs and the other is*	"'***People believe they [at Goldman] haven't done anything wrong.'***. . . says Jon Fisher, who helps oversee about $22 billion at Fifth Third Asset Management." "Taking shots at Goldman is hardly new. . . . Goldman declined to respond to the criticism, ***which many market sources and analysts call unfounded. The bank maintains its research and economists are completely independent***. . . . Goldman deserves credit for investing in superior trading data and risk management systems. . . . The Wall Street Journal reported on Friday that Goldman generated $4 million in gains from the subprime trades. ***But a Goldman spokesman said the report 'overstates the profitability of the business'***. … 'You've got two departments not communicating, which are sent out	- Goldman explicitly denied any wrongdoing -Article merely raised possibility of conflicts - Article noted that the public believed Goldman acted appropriately - Article reported that analysts believed Goldman appropriately managed conflicts of interest -Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			shorting the hell out of them.'"	to go make money,' said analyst Richard Bove of Punk Ziegel & Co. …"			
11	12/24/07	"Tattered Standard of Duty On Wall Street," *The New York Times* (Defs' Ex. 25)	"*The biggest of the big names were among the most aggressive in betraying their clients' trust*, as I see it .... *Goldman Sachs[] w[as] aggressively shorting the very same sort of [mortgage-related] products they were underwriting.... [S]elling short the same securities* or very similar ones *that they were peddling to the clients* is extremely hard to reconcile with basic fairness."	"***Goldman asserts that it did nothing wrong in its handling of C.M.O.'s***, saying that most of the entities that bought them were ***highly sophisticated*** and capable of making their own investment decisions. . . . ***Goldman emphatically says its short sales and similar trades were normal hedging operations***. . . . After talking to Goldman, ***I was very impressed with how sure it is of its position***."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article suggested that the relevant trading was normal hedging operations and thus not improper - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
12	12/27/07	"When It Comes To Goldman, Investors Argue With Success," *Dow Jones Capital Markets Report* (Defs' Ex. 26)	"*Goldman Sachs made money underwriting mortgage-based collateralized bond obligations (CDOs), then made more money selling them short*. Bloggers are hotly debating the propriety of *betting against a financial product while simultaneously persuading institutional investors to buy it*."	"The investment bank [Goldman] had the choice of declaring the structured finance vehicles fundamentally flawed and therefore sure to decline in value. That would have cost Goldman Sachs millions in underwriting revenue, but it would not have prevented a single CDO from being created and distributed. Other investment banks gladly would have done the deals, for there was no shortage of willing buyers. Alternatively, Goldman could have underwritten CDOs but refrained from selling them short. Billions of dollars worth of CDOs would have been sold short anyway. The only difference is that other investment banks or hedge funds would have earned the profits, rather than Goldman. ***From the viewpoint of investors, in short, the outcome would have been the same whether Goldman Sachs underwrote CDOs, sold CDOs short, did both, or did neither.***	- Article merely raised possibility of conflicts - Article conveyed that Goldman did not violate any laws or do anything improper - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				Under all scenarios investors would have bought just as many deals and their losses would have been equally large. Why then is it a problem that two different departments within a single firm (mortgage finance and proprietary trading) maximized their profits in exactly the way they would have, had they been corresponding departments at two separate firms? Perhaps the real beef is that a rich and powerful investment bank became even richer and more powerful by being good at what it does." "***No one suggests that Goldman Sachs violated any law by underwriting CDOs while also selling them short***. . . . Goldman's happier outcome was not only a matter of being on the right side of the trade. It is generally conceded that the firm had a better handle on its risk than most other investment banks. . . . That was no accident, but rather the result of heavy investment in			

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				state-of-the-art technology for tracking complex structured finance instruments." "***What Is the Problem, Exactly?*** As a generalization, financial market participants want nothing more than an obscene profit. That goes for issuers, underwriters, traders, and yes, investors. The nature of the market is that they cannot all succeed. . . . It seems like a lot of trouble just to calm somebody's sense of outrage."			
13	1/14/08	"Trading in Deal Stocks Triggers Look at Banks," *The Wall Street Journal* (Defs' Ex. 27)	"Take the September 2006 transaction in which Motorola Inc. acquired Symbol Technologies Inc.... *Goldman Sachs counseled the big cellular-phone company on the $3.9 billion deal, filings indicate. Goldman also was a big accumulator of Symbol's stock in the*	"Mr. Luparello [FINRA official] adds that ***the inquiry may not find any problems***. ***The facts in the study 'can have benign or nefarious explanations,'*** he says. . . . The statistical pattern could be no more than a series of coincidences, reflecting unconnected events in disparate parts of giant investment banks. . . . Andrei Simonov, one of the co-authors, says ***that the data don't prove wrongdoing***. . . . Critics say	- Goldman explicitly denied any wrongdoing - Article conveyed that Goldman may not have violated any laws or done anything improper - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article did not relate to conflicts of interest at all	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			final quarter before the transaction's announcement.... Did Goldman, a longtime adviser to Motorola, know about the talks when it bought the stock? ... Goldman says it reviewed the trading at the time and found nothing improper."	the research is flawed. One issue is that quarterly filings provide an incomplete and sometimes outdated picture of a bank's true holdings. Not included, for example, are certain types of options. Behind the scenes, an investment bank holding stock simultaneously could be using options to hedge its position or to bet that the stock will decline. ***'Given that it is impossible to draw any meaningful conclusions about trading activity from 13F filings, it is inconceivable that anyone with knowledge of the subject would take the work seriously,' says Alan M. Cohen, global head of compliance at Goldman Sachs***. Henry Hu, a corporate and securities-law professor at the University of Texas at Austin, says ***the study's data 'do not necessarily prove anything sinister is going on.***'. . . The researchers acknowledge the limitations of the data. . . . ***Goldman says it reviewed the***			

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				trading at the time and found nothing improper. "			
14	11/11/08	"Firm Urged Hedge Against State Bonds It Helped Sell," *The Los Angeles Times* (Defs' Ex. 28) Note: Article not introduced until merits stage	"Some experts said [Goldman Sachs'] action, while not illegal, might be inappropriate. 'That's not a good way to do business.' …'*They've got a conflict of interest and they're acting against the interests of their customers*…. You act in the interests of your clients. You don't screw them, to put it bluntly.'"	"Under the law, the solution is for the parts of the firm dealing with either side to be isolated from each other so that information does not improperly flow between them to benefit one set of clients more than another. ***There is no evidence that the wall was breached in this case.*** " Article cited the California Treasurer office as stating that claims of ***Goldman's improper conduct were "unfounded.*** "	- Article merely raised possibility of conflicts - Article denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs.		✓
15	5/13/09	"Goldman Takes Heat for Conflicts at Whitehall," *The Wall Street Journal* (Defs' Ex. 29)	"One of *Goldman Sachs Group Inc.'s premier real-estate funds [Whitehall] is in discussions with its lenders to restructure debt* on some of its biggest investments	"Goldman said that ***its interests are aligned with those of Whitehall's investors*** because the bank and its employees together own a 33% stake in the fund. . . . 'Goldman Sachs is the largest investor in the fund,' said a spokeswoman, Andrea Raphael.	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing and conveyed that its interests are aligned with its clients - Article did not relate	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			.... The wrinkle: *One of the main lenders on those deals is Goldman Sachs.... Concessions granted by Whitehall may benefit Goldman, the lender, at the expense of Whitehall investors ....*"	She added that employees who work in Whitehall weren't permitted to sell their stakes, and that Goldman employees – unlike other investors – don't have the option of selling their stakes on the secondary market. . . . Ms. Raphael, the Goldman spokeswoman, said Whitehall 'formed an independent investment advisory committee comprised of significant outside investors who are asked to approve certain transactions that involve other parts of the firm.' '***Goldman warned in a 2006 memorandum to potential investors of many possible conflicts*** and said 'there can be no assurance that Goldman Sachs will be able to resolve conflicts in a manner that is favorable to the Partnerships.'"	to the substance of the misrepresentations alleged by Plaintiffs.		
16	6/24/09	"The Great American Bubble Machine,"	"*[E]ven as it was [selling CDOs and mortgage-backed securities], it was*	"It [Goldman] also, oddly enough, had a reputation for relatively solid ethics and a patient approach to investment that shunned the fast	- Article noted that Goldman had denied wrongdoing - Article does not relate	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Rolling Stone (Defs' Ex. 30)	*taking short positions in the same market, in essence betting against the same crap it was selling.* Even worse, Goldman bragged about it in public.... In other words, *the mortgages it was selling were for chumps. The real money was in betting against those same mortgages. . . . 'It's exactly securities fraud,' he says. 'It's the heart of securities fraud.'"*	buck; its executives were trained to adopt the firm's mantra 'long-term greedy.'One former Goldman Banker who left the firm in the early Nineties recalls seeing his superiors give up a very profitable deal on the grounds that it was a long-term loser. 'We gave back money to 'grown-up' corporate clients who had made bad deals with us,' he says. 'Everything we did was legal and fair – but 'long-term greedy' said we didn't want to make sure a profit at the clients' collective expense that we spoiled the marketplace.'" "Goldman has denied that it changed its underwriting standards during the Internet years…" "Goldman[] has denied wrongdoing in all of these cases it has settled …."	to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article is merely an opinion piece that repeated information already available		
17	7/17/09	"The Joy Of Sachs," *The New York*	"Goldman's role in the financialization of America was similar	"***All of [Goldman's subprime-related conduct] was perfectly legal***. . . ."	- Article conveyed that Goldman did not violate any laws		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Times (Defs' Ex. 31)	to that of other players, except for one thing: *Goldman didn't believe its own hype*. Other banks invested heavily in the same toxic waste they were selling to the public at large. *Goldman, famously, made a lot of money selling securities backed by subprime mortgages—then made a lot more money by selling mortgage-backed securities short, just before their value crashed*."		- Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article is merely an opinion piece that repeated information already available		
18	8/4/09	"Banking Giant Stands Tall Amid Wreckage Of Financial Industry," *Investor's*	"*[Goldman] made money for years issuing and underwriting mortgage-backed securities .... Then, it famously made*	"'***You would be hard-pressed to find a company of any size that has done a better job of managing risk than Goldman Sachs***,' said Mark Lane, a William Blair equities analyst. And, Lane notes, much of	- Article indicated that Goldman acted appropriately - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Business Daily (Defs' Ex. 32)	*money by selling them short, essentially correctly betting that the market would collapse.*"	Goldman's profits came from processing customers' orders, rather than inherently risky activities. . . . Wells Fargo Securities analyst Matthew Burnell thinks that [Goldman's mortgage activities] ***shows one of Goldman's strengths***. It seems to share information and insight across its various trading desks better than competitors."	- Article did not relate to conflicts of interest at all - Article acknowledged that it merely repeated information already available		
19	8/24/09	"Goldman's Trading Tips Reward Its Biggest Clients," *The Wall Street Journal* (Defs' Ex. 33)	"*Every week, Goldman analysts offer stock tips at a gathering the firm calls a 'trading huddle.' But few of the thousands of clients who receive Goldman's written research reports ever hear about the recommendations....* Some of their recommendations differ from ratings	"Steven Strongin, Goldman's stock research chief, says ***no one gains an unfair advantage from its trading huddles***, and that the short-term-trading ideas are not contrary to the long-term stock forecasts in its written research." "Goldman spokesman Edward Canaday says the tips are 'market color' and 'always consistent with the fundamental analysis' in published research reports. . . . ***Goldman's published research reports include a disclosure that "salespeople, traders and other***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			printed in Goldman's widely circulated research reports."	***professionals" may take positions that are contrary to the opinions expressed in reports***. . . . Goldman doesn't want to overload other clients with information that isn't relevant to them, he says. 'We are not in the business of serving thousands of retail customers,' he says." "The 2003 case involved allegations that Wall Street firms were issuing overly optimistic stock research in order to win more lucrative investment-banking business. The settlement, in which Goldman and the other firms ***didn't admit or deny wrongdoing***, ***erected walls between research and investment banking***." "Laura Conigliaro, Goldman's co-head of research in the Americas region" stated that "'Issuing a short-term buy recommendation ***wasn't necessarily at odds with*** a lukewarm 'neutral' rating for the long run. . . .'" "***Compliance officers sit in on almost all the meetings***, Goldman			

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				says. . . . Goldman says its in-house traders are prohibited from trading on the tips until after they've been relayed to clients. "Typically, traders who wager firm capital are ***walled off*** from those handling customer orders so that they don't take advantage of information about client trading, which securities regulations forbid. Goldman ***says its franchise risk managers don't trade on client information*** and must first share trading-huddle tips with clients before acting on the tips themselves." "Goldman says that in both these cases the analysts' views were consistent with the published research. . . ."			
20a	11/2/09	"Profiting From the Crash," *The Wall Street Journal* (Defs' Ex. 34)	*"[Mr. Paulson] met with ... Goldman Sachs, and other firms to ask if they would create securities—packages of mortgages called*	"Soon, Josh Birnbaum, a top Goldman Sachs trader, began calling and asked to come by his office. Sitting across from Mr. Paulson, Mr. Pellegrini, and his top trader, Brad Rosenberg, Mr. Birnbaum got to the point.	- Article conveyed that Goldman denied any wrongdoing -Article focused on Paulson, not Goldman, and contains no discussion of the	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		(article by the same author as the *The Greatest Trade Ever* below and is adapted from the book, which was published later)	*collateralized debt obligations, or CDOs—that Paulson & Co. could wager against....* Deutsche Bank and *Goldman Sachs[] didn't see anything wrong with Mr. Paulson's request and agreed to work with his team....* [Senior Bear Stearns trader] Mr. Eichel said he felt it would look improper for his firm. 'On the one hand, *we'd be selling the deals' to investors, without telling them that a bearish hedge fund was the impetus for the transaction.'"*	***Not only were Mr. Birnbaum's clients eager to buy some of the mortgages that Paulson &Co. was betting against, but Mr. Birnbaum was, too. Mr. Birnbaum and his clients expected the mortgages, packaged as securities, to hold their value. 'We've done the work and we don't see them taking losses,' Mr. Birnbaum said."*** "Other bankers, including those at Deutsche Bank ***and Goldman Sachs, didn't see anything wrong with Mr. Paulson's request*** and agreed to work with his team." "At the time, though, ***Mr. Paulson still wasn't sure his trade would work***. He simply was buying protection, he said. '***We didn't create any securities, we never sold the securities to investors,' Mr. Paulson said.***" "*Adapted from 'The Greatest Trade Ever' by Gregory Zuckerman . . .* "	structuring of Abacus and what was disclosed to Abacus investors - Article indicated that Goldman appropriately managed potential conflicts of interest - Article suggested that the relevant trading was done by Goldman based on client demand - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article acknowledged that it merely repeated information already available - Article conveyed that others (Paulson and other investment bankers in addition to Goldman) believed the conduct was not improper or illegal.		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
20b	11/2/09	"How Goldman Secretly Bet on the U.S. Housing Crash," *McClatchy Washington Bureau* (Defs' Ex. 35)	"In 2006 and 2007, Goldman Sachs Group *peddled more than $40 billion* in securities backed by at least 200,000 risky home mortgages, *but never told the buyers it was secretly betting that a sharp drop in U.S. housing prices would send the value of those securities plummeting*.... [A] five-month McClatchy investigation has found that *Goldman's failure to disclose that it made secret, exotic bets on an imminent housing crash may have violated securities laws*."	"A Goldman spokesman, Michael DuVally, said that the firm decided in December 2006 to reduce its mortgage risks and did so by selling off subprime-related securities and making myriad insurance-like bets, called credit-default swaps, ***to 'hedge' against a housing downturn***. . . . DuVally told McClatchy that ***Goldman 'had no obligation to disclose how it was managing its risk, nor would investors have expected us to do so*** . . . other market participants had access to the same information we did.' . . . DuVally said that at the time [December 2006], ***Goldman executives 'had no way of knowing how difficult housing or financial market conditions would become***.'. . . Asked whether Goldman's bond sellers knew about the contrary bets, spokesman DuVally said the company's mortgage business ***'has extensive barriers designed to keep information within its proper***	- Goldman explicitly denied any wrongdoing - Article merely raised possibility of conflicts - Article conveyed that Goldman may not have violated any laws based on legal experts' statements - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				confines.' . . . The Securities Act of 1933 imposes a special disclosure burden on principal underwriters of securities, which was Goldman's role when it sold about $39 billion of its own risky mortgage-backed securities from March 2006 to February 2007. ***The firm maintains that the requirement doesn't apply in this case.*** DuVally said the firm sold virtually all its subprime-related securities to Qualified Institutional Buyers, a class of sophisticated investors that are afforded fewer protections than small investors are under federal securities laws. ***He said Goldman made all the required disclosures about risks***. ***Whether*** companies are obliged to inform investors about such contrary trades, or 'hedges,' is 'a very hot issue,' in cases winding through the courts, said Frank Partnoy, a University of Sand			

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				Diego law professor who specializes in securities. ***One issue is how specific companies must be in disclosing potential risks to investors***, he said. Coffee, the Columbia University law professor, said that ***any potential violations of securities laws would depend on what Goldman executives knew about the risks ahead***."			
21	11/3/09	Zuckerman, G. (2009), THE GREATEST TRADE EVER. New York: Crown Publishing Group (Defs' Ex. 36)	"Paulson's team would pick a hundred or so mortgage bonds for the CDOs .... [A] senior Bear Stearns trader ... worried that Paulson would want especially ugly mortgages for the CDOs .... *[O]ther bankers, including ... Goldman Sachs, didn't see anything wrong with Paulson's request and agreed to*	"For his part, Paulson says that investment banks like Bear Stearns didn't need to worry about including only risky debt for the CDOs because '***it was a negotiation; we threw out some names, they threw out some names, but the bankers ultimately picked the collateral***. We didn't create any securities, we never sold the securities to investors. . . . We always thought they were bad loans.' Besides, every time he bought subprime-mortgage protection,	- Author conveyed that Goldman denied any wrongdoing - Author conveyed statements by others (Paulson and other bankers) denying conduct involved any wrongdoing -Book excerpt focused on Paulson, not Goldman, and contains no discussion of the structuring of Abacus and what was disclosed	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			work with his team.... [S]ome investors later would complain that they wouldn't have purchased the CDO investments had they known that some of the collateral behind them was chosen by Paulson and that he would be shorting it."	someone had to be found to sell it to him, Paulson notes, so these big CDOs were no different." "***[O]ther bankers, including those at Deutsche Bank and Goldman Sachs, didn't see anything wrong with Paulson's request*** and agreed to work with his team." "Paulson didn't sell any of these products to investors. ***Some investors were even consulted as the mortgage debt was picked for the CDOs to make sure it would appeal to them. And these deals were among the easiest for an investor to analyze***, if they so chose, because they were 'unmanaged' CDOs, or those in which the collateral was chosen at the outset and not adjusted later on like other CDOs. ***It wasn't his fault that others were willing to roll the dice.***" "A few other hedge funds also worked with banks to create CDOs of their own that these funds could short—***so Paulson wasn't doing anything new***. Nor did Paulson's	to Abacus investors - Book excerpt suggested that the relevant trading was done by Goldman as a market maker supplying liquidity for Goldman clients - Book excerpt did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Book excerpt portrayed Paulson as a hero, conveying that none of the conduct at issue was improper - Book excerpt repeated similar information as was in Zuckerman's related article adapted from the book ("Profiting From the Crash," *The Wall Street Journal*, above), which		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				moves create more troubled mortgages or saddle borrowers with additional losses—the deals were CDOs composed of CDS contracts, rather than actual mortgage bonds. 'We provided the collateral' for the CDOs, Paulson acknowledges. '***But the deals weren't created for us, we just facilitated it***, we proposed recent vintages of mortgages' to the banks.'"	was published earlier		
22	11/19/09	"GS a Short? And Five Reasons We Hate Goldman Sachs," *MarketWatch* (Defs' Ex. 37) **Note**: Article not introduced until merits stage	"*Goldman was packaging and selling toxic derivatives for hundreds of billions of dollars to investors around the world*, telling those investors that such derivatives were safe and smart bets. At the same time ... *Goldman was actually betting against those very products*. They were	"Goldman says 'We were just smart and ***have done nothing wrong***.'"	- Goldman explicitly denied any wrongdoing - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article is merely an opinion piece that repeated information already available	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			literally selling products that they were so confident would fail that they bet tens of billions of dollars of their own money ... against those products they were telling investors were safe. *We want some perpwalks for this obvious fraud*."				
23	12/7/09	"Economy's Loss Was One Man's Gain," *The New York Times* (Defs' Ex. 38) (Book review of *The Greatest Trade Ever* cited above)	"*Mr. Paulson persuaded Goldman Sachs and Deutsche Bank to put together ... C.D.O.'s [], which were filled with nasty mortgages that he could then short. Of course, nobody told the suckers—er, investors—who bought those C.D.O.'s that they were designed to help a man who wanted*	"Mr. Zuckerman [the author of the book reviewed] ***depicts Mr. Paulson as a hero***…" "… Mr. Zuckerman bends over backwards to present Mr. Paulson in a favorable light…" "The author clearly considers Mr. Paulson morally superior to the leaders of investment banks like Bear Stearns and Lehman Brothers and subprime mortgage lenders like Countrywide Financial and New Century [*i.e.*, mortgage	- Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail - Article focused on Paulson, not Goldman, and contains no discussion of the structuring of Abacus and what was disclosed to Abacus investors - Article notes that		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			the most toxic mortgages imaginable so he could profit when they went sour."	originators], all of whom are vilified." Article focused on Paulson's activities in the mortgage market, and includes only a passing reference to Goldman, indicating that "Mr. Paulson persuaded Goldman Sachs and Deutsche Bank to put together securitized collateralized debt obligations…"	book author praised Paulson, suggesting that none of Paulson's shorting activities were improper - Article is merely a book review that repeated information already available		
24a	12/24/09	"Banks Bundled Bad Debt, Bet Against It and Won," *The New York Times* (Defs' Ex. 39)	"*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*." "*Goldman kept a significant amount of the financial bets*	"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 purposefully helped to select especially risky mortgage-linked assets that would be most likely to crater . . ." "***Goldman and other Wall Street***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing, including specifically for the Hudson CDO - Article indicated that Goldman appropriately managed potential conflicts of interest - Article suggested that the relevant trading was done by Goldman as a market maker supplying liquidity for	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			against securities in Hudson, so it would profit if they failed . . . . 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' . . . .*" "How these disastrously performing securities were devised is now the *subject of scrutiny by ... Congress [and] the [SEC] . . .* [which] appear to *be looking at whether securities laws or rules of fair*	***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. . . . 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." "[A] spokesman said investors could have rejected the C.D.O. if	Goldman clients and as normal hedging operations - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article's passing mention of "Abacus" refers only to a Goldman banker's creation of a series of CDOs called Abacus from 2004-2007; but there was no mention of Paulson's involvement nor related conflicts at issue in the Abacus CDO. - In addition to Goldman's numerous denials in the article itself, in response to this article Goldman also issued a separate press release on the same day with many similar, false denials		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			dealing were violated by firms that created and sold these mortgage-linked debt instruments and then bet against the clients who purchased them . . . ."	they did not like the assets." "The Goldman salesman said that ***[Hudson] C.D.O. buyers were not misled because they were advised that Goldman was placing large bets against the securities***. '***We were very open with all the risks that we thought we sold.*** When you're facing a tidal wave of people who want to invest, it's hard to stop them,' he said. The salesman added that investors could have placed bets against Abacus and similar C.D.O.'s if they had wanted to.'"	(*e.g.*, that such CDOs "***were the result of demand from investing clients seeking long exposure***" and that it "***fully disclosed*** … to investors" its short positions. ECF No. 196 at 11.		
24b	12/24/09	"Congress, Regulators Probing Creation, Use Of CDOs - NYT," *Dow Jones News Service* (Defs' Ex. 40)	*"Congress, the [SEC] and [FINRA] ... are now examining how the CDOs were devised*, and appear to *be looking at whether the firms [including Goldman Sachs] violated securities laws or rules governing fair dealing in any short*	"Congress, the Securities and Exchange Commission and the Financial Industry Regulatory Authority . . . are now examining how the CDOs were devised, and appear to be looking at whether the firms violated securities laws or rules governing fair dealing in any short sales." "A Goldman spokesman said ***client demand fueled the creation of many of the CDO products,***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article suggested that the relevant trading was done by Goldman as a market maker based on	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			sales. One aspect of the investigation centers on *whether the firms purposely help select risky CDOs*."	***and that those clients knew that Goldman might bet against mortgages linked to the securities***. Additionally, the spokesman said buyers of the CDO products were ***large, sophisticated investors***."	client demand - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs.		
25	12/29/09	"Betting Against All of Us," *The New York Times* (Defs' Ex. 41)	"During the bubble, *Goldman Sachs and other financial firms created complicated mortgage-related investments, sold them to clients and then placed bets that those investments would decline in value*.... According to industry experts interviewed, *these bets put the firms' interests clearly at odds with their clients' interests*... . Did Goldman and other firms create securities that were bound to fail in order	"***It may turn out that some or all of the products and practices were not illegal***. . . . The way the wizards explain it, betting against one's clients is one of many techniques to prudently guard against loss." "Goldman says that ***its clients knew that it might place contrary bets***."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article conveyed that some or all of Goldman's products and practices were not illegal - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			to up the odds that its contrary bets would pay off? Some of the securities were so prone to failure that they soured within months of being created."				
26	12/30/09	"Goldman's Offshore Deals Deepened Global Financial Crisis," *McClatchy Washington Bureau* (Defs' Ex. 42)	"*Goldman's wagers against mortgage securities ... are now the subject of an inquiry by the [SEC]* .... Goldman's Caymans deals were *riddled with potential conflicts of interest*, which Goldman disclosed deep in prospectuses .... *Goldman inserted the credit-default swaps into CDO deals 'like a Trojan Horse—secret bets that the same types of bonds that they were selling*	"Goldman said ***those investors were fully informed of the risks they were taking***. . . . At the time, Goldman's chief spokesman, Lucas van Praag, ***dismissed as 'untrue' any suggestion that the firm had misled the pension funds, insurers, foreign banks and other investors that bought those bonds***." "Goldman's defenders argue that the legendary firm's relatively unscathed escape from the housing collapse is ***further evidence that it's smarter and quicker than its competitors***." "Goldman's Caymans deals were riddled with potential conflicts of interest, which ***Goldman disclosed***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article conveyed that Goldman may not have done anything illegal or improper - Article indicated that Goldman appropriately managed potential conflicts of interest - Article suggested that the relevant trading was normal hedging operations - Article and does not relate to the substance of the	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			to their clients would in fact fail.'"	deep in prospectuses that typically ran 200 pages or more." "Goldman's chief financial officer, David Viniar, has said that the firm purchased the AIG swaps only as an 'intermediary' on behalf of its clients, first writing protection on their securities, and then buying its own protection to eliminate those risks. . . . In a Dec. 24 letter to McClatchy, ***Goldman said it sold those products only to sophisticated investors and fully informed them of which securities would be the basis of any swap bets***. The investors, it said, 'could simply decide not to participate if they did not like some or all the securities.' . . . ***It called those hedges 'the cornerstone of prudent risk management***.'" "***Whether Goldman deceived investors with its secret bets depends partly on whether the courts or investigators conclude that disclosing the swaps would have dissuaded potential buyers from purchasing its registered***	misrepresentations alleged by Plaintiffs		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				mortgage securities, the experts said. Separate questions of disclosure could apply to clients who invested in the Caymans deals."			
27	1/11/10	"What the Financial Crisis Commission Should Ask," *The New York Times* (Defs' Ex. 43)	"Mr. Blankfein, your firm, and others, *created and sold* bundles of mortgages known as *collateralized debt obligations that it simultaneously sold short*, or bet against. *These C.D.O.'s turned out to be bad investments for the people who bought them, but [the] short bets paid off for Goldman Sachs....* Could you explain how *Goldman bet against these C.D.O.'s while simultaneously trying to persuade ratings*	Article lists a series of "questions" that the FCIC should ask of Blankfein and several other CEOs at its upcoming "first hearing of the Financial Crisis Inquiry Commission" in connection with its inquiry against multiple banks related to the financial crisis.	- Article merely raised possibility of conflicts - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail - Article merely asks for information in the form of a question and does not purport to be disclosing news		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			agencies and investors that they were good investments?"				
28	1/12/10	"Goldman Acknowledges Conflicts With Clients," *The New York Times* (Defs' Ex. 44)	"A senior Goldman Sachs executive sent an e-mail message to clients on Tuesday disclosing that *the firm's Fundamental Strategies Group may have shared investment ideas with the firm's proprietary trading group or some clients before sharing them with others*. The e-mail ... demonstrates the various *conflicts that Goldman and other firms face in balancing the interests of its various clients and its own trading operation....*	"A senior Goldman Sachs executive sent an email message to clients. . . . '***As part of our commitment to managing conflicts of interest appropriately***, this message is to explain how the Fundamental Strategies Group interacts with other parts of our organisation and how that impacts on the Trading Ideas.'" Article also includes the remainder of the Goldman email that reinforces Goldman's purported conflicts of intest policies, which suggests that Goldman has appropriate procedures in place to control for and manage such conflicts.	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			Goldman and other firms has come under criticism for trading ahead of, or at odds, with its own clients."				
29a	1/13/10	"At Goldman, E- Mail Message Lays Bare Conflicts in Trading," *The New York Times* (Defs' Ex. 45)	"For years, Wall Street whispered that *Goldman Sachs profited handsomely by trading ahead of—or even against—its own clients*.... Last month, the [SEC] and Congress began investigating how Goldman and other firms had *created ... C.D.O.'s [] that were sold to investors at the same time that the banks had privately bet against the instruments. Some of these C.D.O.'s later fell in value, creating losses for those clients who bought*	"The e-mail message is a blunt acknowledgement of what often appeared in the fine print of Goldman's marketing materials. Lucas van Praag, a Goldman spokesman, said in a statement: 'We have been providing this disclosure, which we think is best practice, for a number of years and there is nothing new in the disclosure you were sent.'" "***Goldman insists that its trading business is done on behalf of its clients***. . . . ***Mr. Mazarakis's [Goldman executive's] e-mail statement was clearly meant to reinforce Goldman's conflict-of-interest policy and head off any legal liability. 'As part of our commitment to managing conflicts of interest appropriately,***	- Article merely raised possibility of conflicts - Article conveyed that Goldman denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail - Article acknowledged that it merely repeated information already available	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			them—and profits for Goldman."	this message is to explain how the Fundamental Strategies Group interacts with other parts of our organization and how that impacts on the Trading Ideas,' Mr. Mazarakis wrote. Mr. van Praag said the language in the message had been vetted by the Financial Services Authority in Britain."			
29b	1/13/10	"Live Blogging The Financial Crisis Inquiry," *Dow Jones News Service* (Defs' Ex. 46)	"[WSJ commenters] wonder if Blankfein dares touch on Goldman Sachs' sacred business principles.... *Angelides [Chairman of the Financial Crisis Inquiry Commission] is talking about how Goldman works both sides of any trade.* Now Blankfein will have to explain what a broker actually does. Too bad 'market-making'	"9:49 a.m. . . . Angelides: Were any of your activities 'negligent' Blankfein: They were 'typical'. . ." "9:50 a.m. . . ***Blankfein: We are 'market makers'*** . . . and we are 'sorry' people lost money" "10:01 a.m. . . He [Angelides] asked Blankfein point blank if he was telling buyers of those CDOs if Goldman disclosed that it was shorting them. Blankfein didn't answer the question. . . ." "11:58 a.m. . . Blankfein: Over-the-counter derivative market functioned pretty well...but people make bad credit decisions embedded in those derivatives. . . ."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article suggested that the relevant trading was done by Goldman as a market maker based on client demand - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article is merely an opinion piece that	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			won't be understood by most folks watching today's show. He's giving it the college try—but it's hard to love any 'middleman'—especially when the middleman is *originating the product, selling the product and then freely shorting the product.*"	"11:59 a.m. . . Blankfein: Everything was just hunky dory in the OTC derivatives market. In fairness to him, the CDS market never blew up the way everyone was expecting." "12:14 p.m. . . ***Blankfein: We sold to sophisticated investors."*** "12:15 p.m. ***Blankfein: We sold what people wanted. Kids want candy, you sell them candy. They should know what it does to their teeth.***" In addition to Blankfein's denials quoted in this article, he made numerous other denials at this public FCIC hearing: "Well, the way it's—let me—the short answer is [selling and shorting the same securities] ***is the practice of a market maker***. And I would like to explain this.... I just want to explain—and this is a very important—and I appreciate the opportunity to do this because there's so much press swirling around this that I really want—I	repeated information already available - In addition to the denials in this article, Blankfein made numerous other denials at this same public FCIC hearing		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				really need to explain. ***In our market-making function, we are a principal. We represent the other side of what people want to do. We are not a fiduciary. We are not an agent.*** 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. When we sell something as a principal—which is what we are as a market maker—the next minute, that item will have gone up—in which case we'll wish we hadn't sold it that minute—or it will go down—in which case, we'll actually be glad we did for our own P&L and sorry for the person who bought it. ***But we are market makers in that.*** In most of these cases, the person who came to us came to us for the exposure that they wanted to have."* *Note: First Public Hearing of the Financial Crisis Inquiry Commission, January 13, 2010			

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
30a	1/14/10	"Goldman Chief Testifies That He Supports Fiduciary Standard," *Dow Jones Capital Markets Report* (Defs' Ex. 47)	"*[Financial Crisis Inquiry Committee head Phil Angelides] asked Blankfein whether a practice of betting against some of the subprime mortgage securities Goldman was selling to investors was a conflict of interest.* He replied that Goldman didn't have a legal obligation to disclose when *it was betting against the securities it was selling.*"	"'The fiduciary standard puts the interest of the client first.' ..." "Angelides, at one point, asked Blankfein whether a practice of betting against some of the subprime mortgage securities Goldman was selling to investors was a conflict of interest. [Blankfein] replied that ***Goldman didn't have a legal obligation to disclose when it was betting against the securities it was selling.*** ***'We are not a fiduciary,'*** he said. Fiduciary advocates said they were surprised by Blankfein's public support for applying the standard to certain brokers. 'It's absolutely refreshing and hopeful that the face of Wall Street has gone out of his way to make this statement,' said Knut Rostad, a regulatory compliance officer for Rembert Pendleton Jackson, a registered investment advisor in Falls Church, Va., and chairman of The Committee for the Fiduciary Standard, an advocacy group."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article acknowledged that it merely repeated information already available In addition to the denials contained in this article, Goldman also issued a press release on the same day making further, similar denials, including: "***Mr. Blankfein does not believe … that Goldman Sachs had behaved improperly in any way***. In fact, his answer … explained	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
					the market making function and how our practices were ***entirely appropriate***." Pls. Ex. __ (Blankfein Ex. 7) hereto.		
30b	1/14/10	"Wall Street Bankers on Defensive in Grilling Over Financial Crisis," *Financial Times* (Defs' Ex. 48)	"[The Financial Crisis Inquiry Committee] accused Mr Blankfein *...of a conflict of interest in securitising mortgage-backed securities at the same time as taking a trading position against them.*"	"'We are after the truth . . . the hard facts . . . we'll use our subpoena power as needed. ***And if we find wrongdoing***, we'll refer it to the proper authorities,' said Phil Angelides [FCIC chairman]. . . ." "Wall Street's top executives were grilled by a new commission yesterday on whether their pay, risk management and trading were responsible for a financial crisis that put millions out of work." "Mr. Blankfein stressed ***that Goldman traded with institutional investors in securitised assets who were responsible for their own actions***. . . ."	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article conveyed that FCIC's inquiry against multiple banks had just begun and that it may find no wrongdoing - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article acknowledged that it merely repeated information already available	✓	

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
31	2/3/10	"SEC Asks Paulson Hedge Fund for Information," *Financial Times* (Defs' Ex. 49)	"In December, the *SEC sent subpoenas to banks including ... Goldman Sachs ....* The SEC *is examining whether the banks took negative positions on [CDOs] at the same time they marketed them to investors*."	"Paulson & Co., a hedge fund that made billions of dollars betting against subprime mortgages has received a request for information from the [SEC] in connection with an investigation into complex securities at the heard of hte financial crisis…" "Mary Schapiro, SEC Chairman, told a congressional commission on January 14 that her agency was 'reviewing the practices ***of investment banks*** and others that purchased and securitized pools of subprime mortgages. ***We are seeking to determine*** whether investors were misled in some manner.'" "The people familiar with the matter said they believed that Paulson & Co was not a target of any investigation." "In December, the SEC sent subpoenas ***to banks including Bank of America/Merrill Lynch, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman***	- Article focused on subpoena to Paulson in connection with its general strategy of shorting the subprime market, not any specific CDO; no mention of Abacus, nor Goldman's role in structuring any CDO with Paulson. - Article notes that SEC is investigating numerous banks, not just Goldman, and indicates that investigation had just begun (in December 2009), suggesting that any potential liability is far from clear. - Article merely raised possibility of conflicts - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they		

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				Sachs, Morgan Stanley and UBS seeking information about the sale and marketing of such CDOs. The SEC is examining ***whether*** the banks took negative positions on these securities at the same time they marketed them to investors."	fail - Article acknowledged that it merely repeated information already available		
32	2/8/10	"Testy Conflict With Goldman Helped Push A.I.G. to Precipice," *The New York Times* (Defs' Ex. 50)	"Mr. Egol [of Goldman Sachs] *structured a group of deals—known as Abacus—so that Goldman could benefit from a housing collapse*."	"Goldman is proud of its reputation for aggressively protecting itself and its shareholders from losses as it did in the dispute with A.I.G. . . . In March 2009, David A. Viniar, Goldman's chief financial officer, discussed his firm's dispute with A.I.G. in a conference call with reporters. 'We believed that the value of these positions was lower than they believed,' he said." "Asked by a reporter whether his bank's persistent payment demands had contributed to A.I.G.'s woes, ***Mr. Viniar said that Goldman had done nothing wrong*** and that the firm was merely seeking to enforce its insurance policy with A.I.G. ***'I***	- Goldman explicitly denied any wrongdoing - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs - Article did not relate to conflicts of interest at all - Article included statements by others (former Goldman partners) indicating conduct was not illegal nor improper - Article's passing reference to "Abacus" was only to Goldman's series of CDOs with that name; it did not	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
				don't think there is any guilt whatsoever,' he concluded. Lucas van Praag, a Goldman spokesman, ***reiterated that position.*** 'We requested the collateral we were entitled to under the terms of our agreements,' he said in a written statement, '***and the idea that A.I.G. collapsed because of our marks is ridiculous.***'. . . ***Several former Goldman partners said it was not surprising that Goldman sought such tough terms, given the firm's longstanding focus on risk management***." "Mr. Lucas van Praag, the Goldman spokesman, said Goldman did not push other firms to demand payments from A.I.G."	mention Paulson, nor any related, relevant information regarding the structuring of the Abacus CDO at issue in this case. - Article acknowledged that it merely repeated information already available		
33	2/12/10	"Air Products Revises Its Airgas Lawsuit," *The New York Times*	"Air Products contends that Airgas's attempt ... to bar Cravath from advising on the takeover bid is a	"***But Air Products contends that it is taking the high road by not arguing that [Goldman's services] constitutes a conflict***, given the increasingly conflicted nature of merger advisory, when banks and	- Article merely raised possibility of conflicts - Article reported that client believed Goldman appropriately managed conflicts of		✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		(Defs' Ex. 51)	'disingenuous' cheap shot. (Airgas has said for months that Cravath ... has confidential information that it then used to help a rival.) ... *Air Products contends that a primary Airgas adviser, Goldman Sachs, faces just as much of a problem. Goldman advised Air Products on potential deal-making opportunities and defenses as recently as October 2009 ....*"	law firms frequently switch sides. 'Air Products recognizes the frequency with which such overlaps occur in the M.&A. context...' Air Products argues in its court filing."	interest - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article acknowledged that it merely repeated information already available		
34	3/5/10	"Goldman Looking at an Own Goal," *Financial Times* (Defs' Ex. 52)	"The Glazer family [owners of Manchester United Football Club] *are considering severing ties with Goldman Sachs after Jim O'Neill, the bank's*	"Goldman insists that Mr. O'Neill ***[Goldman executive] is working in a personal capacity [i.e. such that there was no conflict]*** . . . . Those episodes [four years prior] prompted Hank Paulson, Goldman's then chairman and chief executive, ***to warn its***	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article indicated that Goldman appropriately managed potential conflicts of interest	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			chief economist, was revealed as a member of a consortium looking to buy the football club."	***bankers not to use its principal investment funds in hostile situations***. . . . The potential for conflicts of interest for banks has intensified in recent years in tandem with the rapid development of new financial products. . . . ***Banks have so-called Chinese Walls***, which are supposed to limit the flow of information between different businesses, such as proprietary trading and investment banking."	(*e.g.*, by changing its policies after a prior incident of conflicts) - Article did not relate to the substance of the misrepresentations alleged by Plaintiffs		
35	3/10/10	"Calls Increase for Crackdown on Derivatives," *The New York Times* (Defs' Ex. 53)	"The criticism of credit-default swaps stems, in part, from the multiple and at times seemingly *conflicted roles that investment banks like Goldman Sachs often play in the markets.... Goldman and others helped the Greek government legally mask its debts .... But,*	"Germany's financial services regulator, known as BaFin, said Tuesday that despite all the hand-wringing ***it had found no evidence that speculators were using [credit default] swaps to bet aggressively against Greece.*** Instead, BaFin said, the evidence suggested that most investors were trying to use the instruments to hedge their risks . . . . " "The [Goldman] report [recommending credit default	- Article merely raised possibility of conflicts - Goldman explicitly denied any wrongdoing - Article included statements by others indicating Goldman had done nothing improper - Article indicated that Goldman appropriately managed potential conflicts of interest	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
			just as the true extent of Greece debts began to worry investors, Goldman put on another hat…. [I]t sent clients a 48-page primer on credit-default swaps ... [which] enable[] investors to ... bet against certain borrowers.... Goldman followed up with its August report, ... which said ... *'Buy C.D.S. of developed sovereigns. ...'*"	swaps] made no mention of Greece. Goldman followed up with its August report. . . . Again, no countries were singled out." "***Goldman, in a statement, said its reports merely outlined a variety of trading strategies. The bank said it saw no conflicts in its various roles.*** '***It is not a conflict to sell new products on behalf of clients while suggesting to other clients, who may have different opinions and objectives, that they may want to buy insurance to protect themselves,' Goldman said.*** Andrew Ang, a finance and economics professor at Columbia Business School, said banks typically tried to maximize their profits across a range of businesses, ***and that he saw no conflict in Goldman Sachs's approach.***"	- Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail.		
36	3/17/10	"Who Needs Wall Street?" *The New York*	"Asked about *mortgage securities that Goldman both*	"[T]he ***potential*** for conflict was rife. ***No firm better resisted the temptations than Goldman,***	- Article merely raised possibility of conflicts - Goldman explicitly	✓	✓

	Date[1]	Source	Defendants' Excerpts of Purported Conflicts Reported in Article[2]	Excerpts Omitted in Defendants' Characterizations	Information Not Corrective Because:	Goldman Denial	Others' Statements Conveying Conduct Legal or Proper
		Times (Defs' Ex. 54)	*sold to clients and bet against*, Blankfein, while expressing regret for what he admitted was *improper behavior*, added: 'In our market-making function, we are a principal. *We represent the other side of what people want to do.*'"	which, from its founding in 1869 through recent decades, epitomized, with only rare slip-ups, the best of American finance. ***Serving the client was its lodestar, and its bankers were pillars of society***, more conversant in literature than in the vagaries of, say, mortgage securities. . . ." Defendants admit that the article even acknowledges: "Asked about mortgage securities that Goldman both sold to clients and bet against, Blankfein, while expressing regret for what he admitted was improper behavior, added: '***In our market-making function, we are a principal. We represent the other side of what people want to do.***'"	denied any wrongdoing - Article suggested that the relevant trading was done by Goldman as a market maker based on client demand - Article conveyed that Goldman had historically managed conflicts well and avoided any wrongdoing - Article did not relate to Goldman's policies and procedures to prevent conflicts and the true risk to its reputation should they fail. - Article acknowledged that it merely repeated information already available		

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

10 Civ. 03461 PAC

IN RE: GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION,

Plaintiffs,

v.

GOLDMAN SACHS GROUP, INC.,

Defendants.

July 25, 2018
10:00 a.m.

Before:

HON. PAUL A. CROTTY,
District Judge

APPEARANCES

LABATON SUCHAROW, LLP

Attorneys for plaintiffs

BY: THOMAS A. DUBBS, Esq.
JAMES W. JOHNSON, Esq.
LAWRENCE A. SUCHAROW, Esq.
JEFFREY A. DUBBIN

- and -

ROBBINS GELLER RUDMAN & DOWD, LLP
(San Diego)

BY: ROBERT R. HENSSLER, JR.
JONAH H. GOLDSTEIN
SPENCER A. BURKHOLZ, Esq.
Of counsel

SULLIVAN & CROMWELL, LLP (NYC)

Attorneys for defendants

BY: ROBERT J. GIUFFRA, JR., Esq.
RICHARD H. KLAPPER, Esq.
DAVID MAXWELL REIN, Esq.
JACOB E. COHEN, Esq.
BENJAMIN R. WALKER, Esq.
JULIA A. MALKINA, Esq.

* * *

[154] THE COURT: Dr. Finnerty.

MR. HENSSLER: For the record, Bobby Henssler from Robbins Geller.

JOHN D. FINNERTY, called as a witness by the plaintiffs, having been duly sworn, testified as follows:

THE COURT: Go ahead, Mr. Henssler.

DIRECT EXAMINATION BY MR. HENSSLER:

Q. Dr. Finnerty, there should be a copy of what has been marked as Exhibit 113 in front of you. Do you have that?

A. I do.

MR. HENSSLER: I have also given a copy to the court and defense counsel.

BY MR. HENSSLER:

Q. What is Exhibit 113, Dr. Finnerty?

A. 113 is a set of Power Point demonstratives that I have prepared to assist the court in following my testimony this afternoon.

Q. Could you please tell the court about your educational background.

A. I have undergraduate degrees in mathematics and economics, and I have a master's degree in economics from Cambridge University in the United Kingdom. I also have a Ph.D in operations research from the Naval Postgraduate School.

[155] Q. Would you also tell the court about your professional experience.

A. Yes. There are really two strands, and I will start with the business experience.

When I finished my doctorate, I joined Morgan Stanley as an associate in its corporate finance department. I worked for 20 years either in investment banking or with an affiliate of an investment bank. So after Morgan Stanley I went to Lazard.

I then joined — I formed a thrift called College Savings Bank which invented a product which I co-invented to help people save for their college education, and I designed the inflation hedging strategy for that product.

I then went back to investment banking. I worked for McFarland Dewey and then Houlihan Lokey Howard & Zukin.

In 1997 I joined PricewaterhouseCoopers in their financial advisory services practice, where I worked primarily in litigation support.

I left in 2001 when the accounting firms got out of the consulting businesses and joined Analysis Group.

In 2003, I form my own consulting firm, which I sold to Alix Partners in 2013 and became a managing director. I retired at the very end of 2016 as a managing director, and today I am an academic affiliate with Alix Partners.

In addition, starting in 1987, I began teaching at [156] Fordham University. I joined the full-time faculty in 1989. I received tenure in 1991. And for three years in the — within the last decade or so, I was the founding director of the Masters of Science in Quantitative Finance Program. So today I am an academic affiliate at Alix Partners, doing primarily litigation and valuation work, and also a full professor at Fordham University, teaching finance.

Q. Are you currently teaching?

A. Yes. I am on faculty. The school year is over, and I'm on sabbatical until the fall of 2019, but I'm on the faculty.

Q. Dr. Finnerty, have you previously been retained as a expert witness in financial economics?

A. Yes.

Q. About how many times?

A. More than 300.

Q. And about how many times have you offered expert testimony in the area of financial economics?

A. Oh, between 175 and 200 times.

Q. Let's get right to your analysis.

Dr. Finnerty, did you review Dr. Gompers' reports?

A. Yes.

Q. And starting with this next slide, slide 8, does this summarize your analysis of Dr. Gompers's opinions?

A. Yes.

Q. What did your analysis of Dr. Gompers's articles and [157] opinions show?

A. My opinion is that none of Dr. Gompers's 34 dates — I realize there are two other dates as a result of defendants' counsel giving Professor Gompers some additional news, so his testimony talked about 36 dates, which is the reason why there appears to be a discrepancy between my slide 8 and his testimony. But whether it is 34 dates or 36 dates, my conclusion, after analyzing each of them carefully and looking at all of the information surrounding those, as well as within those news announcements, is that they were not corrected disclosures. Most of the articles only raised the possibility of conflicts of interest. Dr. Gompers failed to consider confounding information.

Q. Can I stop you right there? What is confounding information?

A. Confounding information is additional information that would be material or significant to investors that is different from the critical information that one is analyzing.

Q. What else did your analysis of Dr. Gompers' articles find?

A. Almost all of the articles contained denials by Goldman. I know there was some testimony that one

of my reports identified 13 denials. There were 13 direct denials, but there are — actually 35 of the 40 articles have denials either by Goldman or someone speaking on behalf of Goldman or a writer of the article. So it's really 35 out of 40, which is 88 percent of [158] the articles, and the other five really had nothing to do with the conflicts of interest that are at issue in this case.

I find also that almost all of the articles contained market commentary that Goldman's conduct was legal and/or appropriate.

And finally I, after analyzing the April 16 SEC enforcement action, concluded that the SEC lawsuit and the subsequent investigations that are at issue did reveal new information that Goldman violated its business principles and conflict policies as alleged in the complaint.

Q. And when you were asked at your deposition about the number of denials, you explained to defense counsel that there is a difference between an indirect denial and a direct denial. Can you explain for the court what you mean by that?

A. Yes. The direct denials were articles such as one that contained a comment by Louis van Praag — I think it is Louis van Praag — that was cited in the opening by Mr. Goldstein where he says, There were no conflicts, so it is a direct denial. There are many, many articles in which representatives of Goldman or other parties say things like, We shorted securities as part of our normal underwriting. We bought and sold CDOs because we were providing liquidity to the market. We were buying and selling these securities because we were acting as market-maker. There are comments like David Viniar's comment that they can't

avoid conflicts of interest; they have [159] to manage them.

So Goldman in many cases were making statements to the effect they had done nothing wrong; and, in my mind, if you tell the world you have done nothing wrong, you are in effect denying that you have in fact done something wrong. And so when you include those, as well as the denials by other parties, 35 of the 40 articles have denials in them.

Q. Directing your attention to slide 9, what are you showing the court with slide 9?

A. Slide 9 is the first of a series of six slides in which I provide my opinion with regard to six specific articles that are at issue in this case in which I highlight in the box towards the top of the slide at least part of what Professor Gompers highlights as the corrective disclosure, and below that I have a series of bullet points that explain why I believe that they were not corrective disclosure, and if I found a particularly appropriate quotation, I then would highlight — did highlight it at the bottom of the slide in its own box.

Q. So these next six slides are examples of your analysis of Dr. Gompers' articles?

A. That's correct.

Q. What does your analysis of this December 6, 2007, *Financial Times* article show?

A. This article, my analysis leads me to conclude that, first [160] of all, the article did not disclose the fact that Goldman had failed to manage its conflicts of interest effectively and had violated its business principles, risking damage to its reputation.

Secondly, the article raised the possibility of conflicts of interest but didn't describe an actual conflict like those in the CDOs that are at issue in this case. In the article Goldman explicitly denied wrongdoing, and the author also stated that he did not believe that Goldman had done anything wrong, and I cited this quotation in particular, a quote, "But there is no evidence that Goldman did wrong by issues Mr. Hatzius's research or conversing with Mr. Paulson about financial conditions, if it actually did the latter. I do not believe that Goldman broke insider trading laws. It would be stupid to risk its reputation in this way, and it is anything but stupid."

Q. Let's look at your next example, Dr. Finnerty. Directing your attention to the next slide, which is slide 10. Is this another example of an article that you analyzed from Dr. Gompers?

A. Yes.

Q. What did your analysis of this show?

A. The article did not disclose the fact that Goldman had failed to manage its conflicts of interest and it violated its business principles, risking damage to its reputation. It [161] again raised the possibility of conflicts.

And I note also that Goldman had previously explicitly denied any wrongdoing in its sale of CDOs in articles published December 3, 2007 in the *New York Times*; December 5, 2007, in the *Financial Times*; and December 6, 2007, in the *Financial Times*. And certainly an efficient market would be fully aware of those denials and would take those into account in interpreting this additional article and assessing whether it involved significant new information.

Q. And you highlighted the words "sounds like" here, right?

A. That is correct. "Sounds like a massive conflict of interest." It's a possibility of a conflict.

Q. And let's look at your next slide, Dr. Finnerty, which is slide 11, for the record. This is a December 14, 2007 *Wall Street Journal* article I think Dr. Gompers testified about earlier.

What does your analysis of this article show, Dr. Finnerty?

A. This article shows that Goldman, again, did not disclose the fact that it had failed to manage its conflicts of interest, and it violated its business principles, risking damage to its reputation. The article, for example, talks about raising questions about certain behavior, talks about the structured products group executing winning trades, and it also points out that when Goldman is trading for its own account it [162] doesn't necessarily have to share that information with others. The article merely raises the possibility of conflicts of interest, indicated that Goldman appropriately managed its conflicts of interest, which is a theme that runs through many of the 40 articles that are cited by the defendants and, as with the previous slide, Goldman's prior denials that they disclosed everything and managed any potential conflicts and done nothing wrong were already in the marketplace.

Q. And why is that important in your analysis, Dr. Finnerty, that the prior denials were already in the marketplace?

A. It is important because in an efficient market, any investor, any reader of the article is going to have

that information available, and he or she will use that information or bear that in mind when assessing the significance of what's in the article. And if someone is repeatedly saying they did everything right and why they did it right by hedging their risks, providing liquidity to investors, managing its conflicts of interest and so on, it is going to make it more difficult for someone to question whether that entity has misbehaved, unless there is very specific evidence as to what the misbehavior was.

Q. Directing your attention to the next slide, Dr. Finnerty, which is slide 12, November 2, 2009, I think this is *The Greatest Trade Ever* book that Dr. Finnerty (sic) testified about earlier.

[163] Did you analyze that book?

A. I did. I read the excerpt that pertains to Mr. Paulson, which part of which is cited here.

Q. What did your analysis show, Dr. Finnerty?

A. The book did not disclose the fact that Goldman had failed to manage its conflicts of interest and it violated its business principles, risking damage to its reputation. The book contained a mix of information, including Paulson's denials. Paulson is quoted as saying, "We didn't create any securities. It was negotiation. We threw out some names. They threw out some. But the bankers ultimately picked the collateral." It appears as though Mr. Paulson certainly had a hand in that. The author of the book conveyed that Goldman denied any wrongdoing, and there were two articles that were published the very same day, one entitled "Profiting from the Crash in the *Wall Street Journal*. The other entitled "How Goldman Secretly Bet on the U.S. Housing Crash," that was published by the McClatchy Washington Bureau in

which Goldman Sachs explicitly denied any wrongdoing for the very same sort of behavior which is described in this excerpt from *The Greatest Trade Ever*. The excerpt in fact really suggested that all of the relevant trading that was done by Goldman was really done in their role as a market-maker supplying liquidity to the marketplace. That's a very favorable activity. There was just an article yesterday in the *Wall Street Journal* about declining [164] liquidity in the bond market. If a broker-dealer is providing liquidity, that is something that is viewed very much as a positive in the marketplace.

Q. Let's go to your next example, Dr. Finnerty, slide 13, which is the December 5, 2009, *New York Times* book review of *The Greatest Trade* Ever. Did you analyze the *Times* book review?

A. I did.

Q. What did your analysis show?

A. First of all, I just comment on the quotation. Both Goldman Sachs and Deutsche Bank are quoted or cited as firms that had approved of what Mr. Paulson wanted to do. So it is indicating pretty clearly by name there is at least one other major broker-dealer that had approved a similar strategy or the same strategy. I find that the article did not disclose the fact that Goldman had failed to manage its conflicts of interest and had violated its business principles, risking damage to its reputation. The news in the article was really old news. It is a book review of *The Greatest Trade Ever*.

Q. Why is that relevant now, Dr. Finnerty, whether the news was old news?

A. In an efficient market, the market will not react to a statistically significant degree to old news. It will already be fully incorporated into the share price.

And lastly, the article focused on Paulson, rather [165] than Goldman, and it doesn't contain any discussion of the structure of ABACUS, which is really what is at issue in the conflict of interest, the fact that the ABACUS CDO was structured in a way that benefited Paulson at the expense of ACA and the two main investors, IKB and ABN Amro.

Q. Directing your attention to slide 14, Dr. Finnerty, I think it is the last of your examples. This is the December 24, 2009, *New York Times* article that we have heard a bunch about already today from defendants' experts. Did you analyze this article?

A. I did.

Q. What did your analysis of the Christmas Eve '09 *New York Times* article show?

A. The article talks about authorities appear to be looking at whether securities laws were broken. So this article, again, may really raise the possibility of conflicts of interest or other sorts of misbehavior. The article did not disclose the fact that Goldman had failed to manage its conflicts of interest and it violated its business principles, risking damage to its reputation. The article, like many others, indicated that Goldman had appropriately managed its potential conflicts of interest, and the article included direct denial by Goldman.

I cite down below a relevant quotation to support that. "Goldman and other Wall Street firms maintain there is [166] nothing improper about synthetic CDOs. Mr. DuVally," who was a Goldman spokesman, "said

many of the CDOs created by Wall Street were made to satisfy client demand," again indicating there is nothing wrong with it, with the fact they were created in response to client demand to benefit the clients. And it states that "clients knew Goldman might be betting against mortgages linked to the securities." This is also a theme that comes out in many of the disclosures Goldman saying or Goldman reps saying investors were alerted and warned that Goldman Sachs would trick a trade against them, and said that they were advised that Goldman was placing large bets against these particular securities.

Q. Dr. Finnerty, we just went through six examples of your analysis of Dr. Gompers' articles and the defendants' additional articles. Did you analyze all of their articles?

A. Yes, I did.

Q. Did any of the either Dr. Gompers' articles or the defense counsel's additional articles, did any of those disclose that Goldman had in fact failed to manage its conflicts and it violated its business principles policies?

A. No, they did not.

Q. Okay. Directing your attention to the next slide, Dr. Finnerty, we are up to 15.

Dr. Finnerty, what are you showing the court with slide 15?

[167] A. Slide 15 shows examples of market commentary confirming that Dr. Gompers' 34 dates evidence did not disclose Goldman severe conflicts and did not have an impact on Goldman's reputation. These really indicate that the investors and securities analysts in the marketplace had in fact read what

Goldman had written in its 10-Ks and annual reports about its conflict of interest policies and its adherence to its business principles and the value of its reputation, and that those repeated 18 affirmative statements and the repeated denials are in fact reflective of — the benefit of those to Goldman here are reflected in these comments, these very favorable comments from securities analysts, and I have just given three of what would be many possible examples of that.

Q. Could you tell us about the one in the middle, the Merrill Lynch analyst report from March 13, 2007? The heading of the article is "Conflict Management Skill Maximizes Franchise Value." What is franchise value?

A. Franchise value is the value of the equity, the value of the company. And the argument in — that the analyst from Merrill Lynch is making in this particular analyst report is that Goldman Sachs's skill in managing conflicts is something that has contributed to the value of Goldman Sachs's enterprise. There is value — and that value is being perceived in the marketplace. That ties back directly to the allegations in this case because the conflict of interest [168] management was in fact very important in the minds of investors. It was part of the overall risk management. Goldman at the time was really perceived in the market as a firm that was skilled at managing all of its risks, including the risk of a conflict violation. And the article says, you will note, "consistency with this conflict management with which the" — "the consistency with which the firm has avoided crossing the line and damaging its reputation is such that it must be doing something right. The conflict management process is clearly taken

extremely seriously . . . It is viewed as not just a by-product, but a key pillar of the firm's franchise business." This ties directly to the business principle statements, that clients come first and the conflict of management statements that they can't avoid these conflicts, they manage them.

It goes on to say, "The process is highly structured and rigorous. 20 percent of the conflicts end up at the top of the firm," which is actually pretty incredible, and it would signal to the market this is so important that the CEO, CFO, and COO are going to be involved in 20 percent of these conflict management decisions.

And then it concludes by saying "Goldman manages conflicts, rather than simply avoiding them," which also ties to statements Goldman made in its 10-Ks and annual reports and statements made a number of times by David Viniar, and it does [169] so in order to maximize the value of its franchise." This activity enhanced the value of Goldman Sachs in the marketplace.

Q. In your analysis of these reports, and you said there were others like this, did these analyst reports show that the market believed the Goldman Sachs denials that you were talking about earlier?

A. Yes.

Q. Just one more question on this slide. The Merrill Lynch report from July 28, 2008, so now it is over a year later than the last one you talked about, the last section you bolded states "the absence of major conflicts problems."

Why did you bold that passage, Dr. Finnerty?

A. I bolded that because the four CDO transactions that are at issue in this case had all closed, so all the

selling activity and alleged conflicts had already occurred. Hudson closed in December of '06, ABACUS closed in April of '07, and Timberwolf and Anderson closed in March of '06. So all four of those transactions had all closed more than a year prior to the statement, and yet the Merrill Lynch analyst is saying that there is an absence of any major conflicts.

Q. I want to move on to the next slide, Dr. Finnerty. This is slide 16, for the record.

Can you explain for the court the difference between an effective denial and an ineffective denial?

[170] A. Yes. The basic difference is whether the denial is credible or not, and I have highlighted what I mean by that in the body of the text.

Goldman's denials prior to April 16, 2010, and its denial on April 16, 2010, about which there was testimony a few moments ago, they are fundamentally different. Before the SEC lawsuit, when Goldman issued its denials and testified in the 40 news articles cited by Professor Gompers, 35 of them are accompanied by denials. Those denials, coupled with the 18 affirmative statements about the conflicts of interest management policies, the adherence to business principles, and the importance of Goldman's reputation, all of which are alleged in the complaint, before the SEC lawsuit is filed, when Goldman issued its denials, those denials were credible because there was no evidence that Goldman had really done anything wrong.

Once the SEC complaint was filed, now you had SEC, the major regulator of Goldman Sachs, laying out in a very detailed, 22-page complaint exactly what it had found wrong. And included in there were new information about the nature of the

misrepresentations to ACA about Paulson's supposed long position which in fact was a very large short position. There were more than a dozen e-mails. It made very clear that what Goldman was saying and people were saying internally was very different from what they were telling IKB, ABN Amro, and ACA. [171] And the complaint also makes clear, really for the first time, that at the time the ABACUS transaction closed, Goldman had in fact misrepresented to IKB and ACA Holding, the parent of ACA, that took a 909-million-dollar long position in CDSs on that transaction, that Goldman had misrepresented Paulson's role and, as a result, had defrauded them, allegedly defrauded them.

[172] BY MR. HENSSLER:

Q. One more question before we move on to your analysis of Dr. Choi's opinions.

Are you familiar with what has previously been marked as the Johnson Declaration Exhibit 15 to plaintiff's April 27, 2018 briefs? And, for the record and for the Court, that's Exhibit 73 to today's Plaintiff's Exhibits.

Are you familiar with that exhibit?

A. Yes.

Q. And did you review what's been referred to as Johnson Exhibit 15?

A. Yes.

Q. And what's your opinion of Johnson Exhibit 15?

A. Johnson Exhibit 15 is consistent with the analysis I did, but Mr. Johnson has a much more detailed analysis of the articles and has a different way of identifying the set of reasons why those various

articles were not corrected disclosures and, in particular, Johnson Exhibit 15 distinguishes, very clearly, between Goldman denials, whether they're direct or indirect denials on the one hand, and denials by third-parties on the other. And, it also has a more detailed discussion of possible conflicts as opposed to real conflicts and it is a different way of looking at those articles and classifying the reasons why they're not corrective disclosures. And, quite frankly, he did a more thorough and [173] better job than I did. His results are more consistent with mine but his analysis is better.

Q. A couple more questions about Dr. Gompers, actually.

After having analyzed Dr. Gompers' reports and the additional articles that defense counsel submitted in this case, do you have an opinion regarding whether defendants have demonstrated a lack of price impact?

A. I do.

Q. And what is your opinion?

A. My opinion is that the defendants have not demonstrated the lack of price impact.

Q. Did you review Dr. Choi's reports?

A. I did.

Q. And does this section of Exhibit 113 summarize your analysis of Dr. Choi's opinions?

A. Yes.

Q. Can you explain for the Court what you are summarizing on Slide 18?

A. My opinion is that the statistically significant stock price declines in Goldman stock following the

announcements of the SEC ABACUS fraud lawsuit on April 16, 2010, the DOJ criminal investigation on April 29th, 2010, and the SEC Hudson investigation on June 9th, 2010, do demonstrate stock price impact from the misrepresentations that are pled in the complaint.

[174] Dr. Choi and Dr. Gompers mischaracterize the SEC complaint in the DOJ and SEC investigations as confounding information. They're not confounding information, those are disclosure documents. They disclose, and in the case of the SEC enforcement action on April 16th, 2010, they disclose, in remarkable detail, exactly what Goldman did wrong. It is very much part of the corrective disclosure. So, it is not confounding news, it is corrective disclosure.

My analysis demonstrates that the description of Goldman's conduct embodied in those three regulatory actions is inextricably tied to the actions themselves. To put it at a very simple level, if you were telling my students what the take-away is, is you can't have a fraud charge without the fraud — without the behavior — and particularly, the SEC enforcement action does lay out the behavior that is the basis for the fraud charge.

And, in fact, again with particular reference to the April 16th, SEC enforcement action, that document describes the precise conduct, that is the subject of the alleged misstatements and omissions regarding Goldman's conflicts of interest and business principles that are laid out in the complaint in this matter.

And, lastly, the news concerning the regulatory enforcement actions just can't be characterized as confounding news because it is — the information in

those actions is [175] directly related to the allegations in this matter.

Q. Based on your analysis, should there be any disaggregation analysis in this case?

A. One could do a disaggregation analysis. I don't think there should be because the enforcement actions, themselves, are, as I said, the announcement of those is inextricably tied to the information and vice versa. One could do a disaggregation. For example, as Professor Choi mentioned, there is literature, the Karpov, et al., paper is quite good that describes methodology for characterizing and quantifying the fines and penalties and direct legal costs. Karpov, et al., also have some additional analysis of the effect, for example, of when you have contemporaneous settlement with the enforcement action. So, one could do that analysis.

Secondly, as I testified in my deposition or one of my depositions, one could also look at those SEC enforcement actions, identify those that are really pretty sparse, and I think Professor Choi found he found six out of 70 that really didn't have any detail, or I guess it was no new news I think is what he testified. So, one could disaggregate. As I say, I don't — it is my opinion that I don't think one should, but if the Court wants me to do that, I'm going do it.

Q. And why should you not here?

A. I think it is because the enforcement action is, as I have testified, those announcements are themselves part of the [176] corrective disclosure.

Q. Thank you. We have got about 10 minutes left, let's summarize slide 19 for the Court.

A. Slide 19 has my assessment of the flaws in Dr. Choi's analysis. As I pointed out in two of my reports, the sample size of four is too small to draw any meaningful conclusions, and if one looks at the abnormal returns you can see that they're widely dispersed. Dr. Choi didn't look at the substance of each of those four to try to figure out how much of those returns was attributable to the information that was disclosed but it just defies logic that this kind of variation, from 3 percent to 17 percent, is random noise. It's not random noise. There are fundamental differences. Three of these actions involved accounting issues. The Stifel Nicolaus case involved suitability, those are different from Goldman. I was the SEC's economist in the Stifel case and looked at the other three I can tell you that they're very different.

Next, Professor Choi's two-sample t-test is improper. He doesn't have two samples. He has one sample and he has a discrete item that is specific, minus 9.27 percent, which is specific to this case. You can't run a two-sample t-test when you don't have two samples.

Also, because the data are highly skewed — you can see that in the table — you can't assume the normal distribution so you can't run a standard t-test either. And [177] the federal manual on statistical evidence makes clear you can't run a t-test on a small sample if you don't have normal data. So, you can't run a standard t-test either.

Dr. Choi ignored his own prior research recognizing that the announcement of enforcement action inherently conveys information about the underlying conduct so it is a disclosure document.

And, lastly, he ignored market commentary linking the SEC fraud lawsuit to the alleged false statements about conflicts of interest and business principles.

Q. To sum it up, in analyzing Dr. Choi's reports, do you have an opinion regarding whether defendants, through Dr. Choi, have demonstrated the lack of price impact?

A. I do.

Q. What is your opinion?

A. That they have not.

Q. Let's skip ahead, one more about Dr. Choi, actually. Could you quickly summarize slide 20?

A. Dr. Choi has some qualitative analysis on the April 16th date. Just common sense would tell you if you have got a minus 9.27 percent drop and the average for the others is minus 8, you have to do something to try to explain why the actual minus 9.27 percent drop is typical of the 8, and he has some qualitative analysis to try to explain why, even though it is 9 and bigger than the average, it is really no different [178] economically.

He also has some qualitative analysis for the April 30th and June 10th dates but does not have any statistical analysis, and as a result he doesn't prove economically that it's more likely than not that the entire drop was due to these regulatory actions. And under his assumption that if you assume, as he did, apparently that returns are normally distributed, in fact you will never get there. You can't come to that conclusion. There is no way that a minus 9.27 percent drop would be consistent with those data.

Q. Okay. Let's go to Slide 22 and you have got the heading: Event study and economic analysis demonstrate price impact on three corrective disclosure dates here; is that right?

A. Yes.

Q. And what are you showing the Court with slide 22?

A. The first point is the defendants' misstatements and omissions on the first day of the class period inflated Goldman's stock price, that is, kept the stock trading at a higher price than the price at which it would have traded if Goldman had disclosed the failure to manage its conflict of interest and its failure to adhere to its business principles in connection with the — particularly with the Hudson transaction.

So, the Goldman had made these statements many, many times before so they're not new statements. And in contrast to [179] what Professor Gompers said about my opinion, it is not that not making these statements would have caused the stock price to fall. The issue is the management of Goldman's conflict and failure of Goldman, as pled in the complaint, that disclose that it had not managed its conflict of interest, it has not in fact placed its clients' interests first and adhered to business principles, if Goldman had disclosed that information which was omitted, it is my opinion that the stock price would have dropped on April 16th, 2010.

And my conclusion, in the next, second bullet: The statistically significant stock price declines on the three corrective disclosure dates does establish price impact.

And, finally, when one looks at the market commentary which is summarized in the next several slides, one can see very clearly that the statistically significant stock price declines are in fact related to the alleged misrepresentations concerning the conflicts of interest management, the business principles, and Goldman's reputation.

Q. Let's look at slides 23 and 24. Is this a summary of your event study and economic analysis on the three corrective disclosure dates?

A. Yes.

Q. Can you summarize for the Court what your analysis found?

A. The decision of the April 16th date shows, first of all, if you go to the right-hand side, I calculated an abnormal return [180] of minus 9.27 percent which is statistically significant at the 1 percent level which is what the three asterisks indicate.

The information that was disclosed was contained in a is detailed, 22 page complaint. I have already testified about that. There was new information, again which I have testified about, in that document. The new information, in particular, revealed that Goldman had misled ACA, that ACA and Paulson's interests were aligned.

The fraud charge also provided new information regarding the severity of Goldman's conduct. This wasn't just somebody out in the marketplace alleging that Goldman had done something wrong. This is their primary regulator putting together a 22-page complaint in which it described, in detail, how Goldman had structured transactions or helped someone do that to favor the interests of one client over

another and the SEC was saying, as in the Stifel case I worked on, the SEC was saying this is bad behavior which we don't want to see.

Q. And, could you talk about April 26, 2010, Dr. Finnerty? What does your analysis of that date show?

A. April 26 was originally pled as a corrective disclosure. When I analyzed it, I found that in addition to the four e-mails that were issued by the Senate Subcommittee on Investigations on April 24th, there was a 12-page Goldman memo that went up on its website the same day that explained why it hadn't done anything wrong.

[181] When the market opened April 26 and traded, one finds that an efficient market is going to take all of that information into account and the price of Goldman stock did in fact drop, it dropped by almost three and a half percent.

The abnormal return was minus 1.68 percent so it is consistent with what one would expect but it was not statistically significant even at the 10 percent level. So, if I were doing a damages analysis, I would exclude the April 26th date.

Q. Does your analysis, of April 26, 2010, impact your price impact analysis for the other dates?

A. No.

Q. Why not?

A. I analyzed each date separately.

Q. Okay. And let's quickly go to 24. Could you, very briefly, explain your analysis for April 30th and June 10th, for the Court?

A. April 30th was the day that the market reacted to the announcement of April 29th in the Wall Street Journal that there was a DOJ investigation. That, followed by that two days, the Senate investigation in which four e-mails were highlighted — or e-mails regarding four CDOs were highlighted very prominently.

The Wall Street Journal article didn't identify the CDOs by name, but it did have a very memorable quote by Tom [182] Montag, who was the head of fixed-income trading, I believe, at Goldman on the Timberwolf I transaction: *This Timberwolf was one — blank — deal*.

So, investors, in my opinion, could easily infer, since the Journal article also talked about the SEC having referred the case, the evidence was more expansive than the SEC case, it was similar and it related to mortgage trading. What the April 29th announcement revealed was that the misbehavior by Goldman extended beyond ABACUS, it extended to at least one other deal and at least as many as three other deals, and it also indicated the severity of the Goldman's conflicts of interest and violations of its business principles because a DOJ investigation is a pretty serious event.

Q. And what about June 10th?

A. June 10th, the market reacted to a Bloomberg report on June 9th regarding the Hudson 2006-1 CDO. What was new in that complaint was the revelation that at the time that transaction was done, Goldman had misrepresented to investors that it was long because it bought the equity tranche. What it did not disclose to investors who purchased the Hudson CDO was that they had purchased protection, in other

words gone short on the entire $2 billion CDO and so that was new news. And the other aspect of the new news was the severity.

So, now you had not only a criminal investigation regarding CDOs in general, you now had another SEC [183] investigation and this one was focused on the Hudson CDO which was different from the ABACUS CDO and, again, it indicated, really, a broadening of the range of misbehavior by Goldman in violation of its conflicts of interest policies.

THE COURT: Mr. Henssler, do you want to bring this to conclusion?

MR. HENSSLER: Two more questions if I could, your Honor. We won't do the rest of the slides.

BY MR. HENSSLER:

Q. Dr. Finnerty, are slides 25 through the end your summary of relevant market commentary following the corrective disclosures?

A. Yes.

Q. And the Court has that.

Dr. Finnerty, after doing your study in economic analysis, do you have an opinion about whether the alleged misrepresentations in this case impacted Goldman's stock price?

A. Yes.

Q. What's that?

A. My opinion is that the three corrective disclosures did adversely impact Goldman's stock price and it led directly to the statistically significant drops that I have quantified in my reports and in this presentation.

Q. Even considering defendants' evidence and their experts, is it your opinion that plaintiffs have demonstrated price impact [184] in this case?

A. Yes.

MR. HENSSLER: Okay. No more questions. Thanks, your Honor.

THE COURT: Mr. Giuffra?

MR. GIUFFRA: Your Honor, just give me a second to set up here?

THE COURT: Yes. Certainly.

MR. GIUFFRA: Your Honor, to speed things up, this is the document I will be using.

CROSS EXAMINATION

BY MR. GIUFFRA:

Q. Good afternoon, Dr. Finnerty.

Would you put up Exhibit A?

Dr. Finnerty, this is a list of challenged statements from your expert report. Do you see that? These are 18 days when plaintiffs challenged the truthfulness of the Goldman Sachs' statement.

It is right there on the screen. Do you see it?

A. I find it easier to look at this screen but they're the same.

Q. Okay.

* * *

[187] Q. Pages 25 and 26.

A. 25 and 26? There you go.

MR. HENSSLER: Counsel, there is numbers at the top and bottom. Are you on the top?

MR. GIUFFRA: I am looking at pages 25 and 26 of the K.

THE WITNESS: I am now, too. Thank you.

THE COURT: Conflicts of interest are increasing and the failure to deal with and so forth?

MR. GIUFFRA: Yes, that's it, your Honor.

BY MR. GIUFFRA:

Q. So, you agree that this was not a guarantee that Goldman Sachs would not have any client conflicts, right?

A. I agree.

Q. And you would agree that the investment banking business inherently involves potential conflicts with clients?

A. Yes, I would agree.

Q. And you would agree that the Goldman Sachs conflict warning was not limited to any business?

A. Yes, I would agree.

Q. And applies to all the firm's businesses, right?

A. Potentially all the firm's business, yes. There is no limitation that I can see.

Q. And it didn't reference CDOs in particular, right?

A. No, it did not.

[188] Q. And, in the course of your work, you didn't do any analysis to see whether Goldman Sachs made

any disclosures about the risk of conflicts with clients before February 6, 2007, right?

A. I saw that they made these same statements before. I didn't specifically do a separate analysis because that predated the class period. But, they certainly made the statements before.

Q. You didn't do any work to assess whether any inflation entered Goldman Sachs' stock price prior to the start of the class period on February 6, 2007, right?

A. I did not. I was asked to assume the allegations in the complaint, which is what I did, so I did not do that analysis.

Q. Okay, then let's turn back to your chart, your Exhibit A. Am I correct that plaintiff's --

A. Hang on. Let me go back to Exhibit A. Okay, now I am back to Exhibit A.

Q. Am I correct that plaintiff's first claim that Goldman Sachs did not truthfully disclose its business principles in the firm's annual report issued on February 21st, 2007, right?

A. No, that's not what's in the complaint. It is not about disclosing your principles.

Q. Well, if you look at the document Chart A from your report, the first time you reference the business principles is on February 21st, 2007, right?

[189] A. Yes. And my Exhibit 8 says this is the first date there were false and misleading statements and omissions. That's what it says, but the case isn't about whether it talked about the principles or whether it talks about conflicts of interest.

Q. Just bear with my questions. Yes or no; the first time it gets raised as a claim in this case is as of February 21, 2007, right?

A. The first false and misleading misstatement and omission date is February 6, 2007.

Q. And then the first time that there is an alleged false and misleading statement with respect to the business principles, according to your document, is February 21st, 2007, right?

A. With regard to the business principles --

Q. Yes.

A. -- or conflicts of interest management, or the value of its reputation. The first time that is alleged in the complaint to have occurred is February 6, 2007.

Q. Okay.

And then would you agree that Goldman Sachs had previously published these business principles, right?

A. There had been prior 10Ks that had contained substantially similar or the same statements regarding the conflicts of interest, management, and the business principles.

Q. And your testimony is that the first time that the business principles caused inflation in Goldman Sachs' stock price was [190] on February 21st, 2007?

A. No. That's not what is pled in the complaint.

Q. But if you look at Exhibit A, am I not correct the first time that the business principles get referenced as a source for inflation of the stock price of Goldman Sachs is February 21, 2007?

A. No. The first date is February 6th and you have got the date -- well, you didn't get the date right in the

last question, you got it right in the prior question. February 6th is the first date but you got it wrong in the complaint. This is an omissions case.

Q. Even though we are trying to get basic --

A. It is an omissions case. And you are asking me about -- it is an omissions case.

Q. Were the business principles limited to any line of business?

A. The business principles apply across the firm.

Q. Now, would you agree that the business principles were not a guarantee that Goldman Sachs would never experience conflicts with its clients?

A. Yes, there is no guarantee.

Q. And there is not a guarantee of ethical behavior by all 30,000 Goldman Sachs employees at all times, right?

A. I don't see it as a guarantee of ethical behavior by everybody.

[191] Q. And, would you agree that other companies in the securities business issued, publicized similar business principles, correct?

A. I have seen something similar from Morgan Stanley. I don't know about anybody else.

Q. Are you aware of any academic research indicating that investors relied on a company's publication of its business principles?

A. No, but I am aware of academic research indicating that investors place a higher value in companies that they believe behave ethically.

Q. Now, let's take a look at Exhibit F, which is from your merits expert report.

A. I am sorry. Which one?

Q. The piece of paper --

A. Oh, the piece of paper.

Q. You would agree that there was no statistically significant increase in Goldman Sachs' stock price when the conflict risk factor statement was first made during the putative class period on February 6, 2007, correct?

A. That's -- yes, I agree.

Q. And you agree that there was no statistically significant increase in Goldman Sachs' stock price when the first business principle statement was made during the putative class period on February 21st, 2007, right?

[192] A. I agree.

Q. And you would agree there was no statistically significant increase in Goldman Sachs' stock price on any of the 18 dates when the challenged statements were made?

A. Yes, I agree. I say that in the report and I stand by that.

Q. Okay. Now, Exhibit F, which I have on the board in front of you, that reflects your calculation of inflation in Goldman Sachs' stock during the putative class period, correct?

A. Yes.

Q. And you would agree that the Hudson CDO closed on December 5, 2006?

A. Somewhere around there. I'm not sure of the exact date. It was certainly December 2006.

Q. And, you would agree with me that February 6, 2007, is the date of the Goldman Sachs 10K containing the first conflict risk disclosure during the class period, right?

A. It is the first one following -- yes. The first date in the class period that had the challenge dates.

Q. And Goldman Sachs put out its risk statement following the closing of the Hudson CDO, right?

A. Yes. It was the first time that statement appeared following the closing of the Hudson CDO.

* * *

[196] A. I can't see it. We are having continuing technological difficulties. It is like my classroom, it doesn't work.

Q. I will represent to you that the statement that plaintiffs challenge on June 14, 2007 is the statement that, during the earnings call, that Mr. Viniar made when he said: *Most importantly, the basic reason for our success is our extraordinary focus on our clients*.

Do you see that?

A. Yes.

Q. That's a statement, at least according to Exhibit 8 which is up in front of you, caused, according to you, a $25.38 increase in inflation in the stock price of Goldman Sachs?

A. No. It was a failure to disclose the conflicts of interest and the failure to manage those conflicts of interest, the failure to adhere to the business

principles and the failure to disclose the risk to Goldman's reputation associated with not managing its conflicts of interest. The first time it had a public disclosure and it was this earnings call it was the failure to disclose that information in the marketplace and if that had been disclosed, it is my opinion that the stock price would, in fact, have dropped by that amount.

Q. So, your position is that by saying to the marketplace that Goldman Sachs' basic reason for our success is our extraordinary focus on our clients and not disclosing the supposed conflict in connection with Timberwolf, Anderson, and [197] ABACUS, Goldman Sachs added $25.38 of inflation to its stock price.

Is that your position?

A. No. No, that's not my position. My position — would you like me to answer your question or do you just want to yell at me?

My position is I have just testified —

THE COURT: Doctor, let him ask the questions, you answer the questions. Mr. Henssler will have an opportunity to bring out other information.

THE WITNESS: Okay.

THE COURT: Just answer the question.

BY MR. GIUFFRA:

Q. Dr. Finnerty, if you look at your Exhibit 8, which I think you have in front of you, it says: Inflation due to ABACUS, Anderson and Timberwolf: $25.38.

Do you see that?

A. Yes.

Q. And the date that inflation supposedly enters the stock price, according to your analysis, is on 6/14/2007; right?

A. Yes.

Q. And on 6/14/2007 the supposed misstatement made by Goldman Sachs is Mr. Viniar's statement that the basic reason for our success is our extraordinary focus on our clients; correct?

[198] A. Mr. Viniar made that statement. The reason the stock price would have lost the inflation was because of the omissions. It is not the misstatement, it is omissions.

Q. Okay, but your position is that Mr. Viniar, once he made the point that a basic reason for our success is our extraordinary focus on our clients must have had to have disclosed to the market that the company had conflicts in connection with ABACUS, Anderson, and Timberwolf.

Is that your position?

A. No, that's not my position.

Q. Is it your position, though, is that this statement itself caused the infliction?

A. No, it is not.

Q. Okay, so it is your position that it is the failure of Goldman Sachs, as of this date, to make a disclosure about conflicts in connection with these three CDOs, caused a $25.38 inflation in the stock price?

A. Yes. That's correct.

Q. Okay.

Now, am I correct, if I just look at Exhibit 8, that the $10.32 of inflation that you identify between February

6, 2007 and 6/14/2007, plus the additional inflation of $25.38 which totals $35.70, that inflation lasts almost three years until April 16, 2010 when the SEC files the ABACUS complaint; is that correct?

[199] A. Yes. Under the constant dollar method, that's correct. It lasts that Long.

Q. You would agree that plaintiff alleges that Goldman Sachs made 14 of the challenged statements between June 14, 2007 and April 16, 2010, correct?

A. Correct.

Q. And it is your position that these 14 statements maintained the $35.70 per share inflation in Goldman's stock price?

A. Yes. They maintain the price inflation.

Q. And, if Goldman had not made these 14 statements, your position is that the firm's stock price would have fallen by $35.70?

A. No.

Q. Well, your document here says that — this is your own supposed inflation ribbon during the damage period, has a constant amount of $35.70, and as I understand your testimony, it's that by making these statements about business principles or the conflicts risk factor, Goldman Sachs maintained this inflation in the stock price.

Is that correct?

A. No. The misstatements are the omissions. It was the omission of information which, if it had been disclosed, would have caused the inflation to come out of stock sooner than it did.

* * *

[202] So, let's suppose if Goldman Sachs had not made the statements that you claim maintained the stock price between June 2007 and April 2007, would the stock price have fallen?

A. I am assuming liability. Goldman made those statements.

Q. If Goldman had not made the statements, would the stock price have fallen?

A. I think that's irrelevant. I don't know. Goldman made the statements. And in my opinion it had nothing to do with affirmative misstatements. They are misstatements because they contain omissions and the opinion is the inflation came into the stock because Goldman lied about its conflicts of interests management and its business principles and the stock would fall when that truth was revealed.

Q. Let's now, I will represent to you that Goldman Sachs' stock price, on November 20, 2008, was $52 a share. Is it your position that Goldman Sachs had disclosed the fact that it had conflicts in connection with these four CDOs, the stock price would have fallen by 70 percent?

A. Yes.

Q. Now, am I correct that April 16, 2010, we have established that's the date of the ABACUS complaint and your claim that the filing of that ABACUS complaint removed $17.09 of the $35.70 of inflation that you find in the stock price, correct?

A. Correct.

Q. And you would agree with me that the ABACUS complaint [203] didn't mention Goldman Sachs' conflicts risk factor statements from its 10K, right?

A. It didn't mention it by name but it described the behavior that clearly -- that clearly violated it.

Q. There was no mention, yes or no, of the actual 10K disclosure, correct?

A. It did not mention the 10-k disclosure.

Q. And there was no mention of the business principles, correct?

A. Again, it didn't mention the principles by name but described the payor.

Q. As far as you know the SEC never charged Goldman with making false statements about its conflict risk disclosure, correct?

A. Not that I'm aware of.

Q. Or its business principles, correct?

A. Not that I'm aware.

Q. And you would agree that, before April 16, 2010, the market knew that Paulson had assisted Goldman in designing a CDO that Paulson intended to short?

A. Yes, I think that's true.

Q. And you would agree that before April 16, 2010, the market knew that Paulson intended to bet against that CDO?

A. It knew that Paulson was betting against CDOs in general and, yes, that probably that one too, but certainly that [204] Paulson had taken a negative on this.

Q. And the next corrective disclosure date identified on your chart is April 26th -- let me restate that. You would agree that, on April 26, the permanent

Senate subcommittee released a series of e-mails about Goldman Sachs betting against CDOs, right?

A. No. It was on the 24th.

Q. 24th; but there was no statistically significant drop in the stock price of Goldman Sachs on that Monday after the weekend e-mails had been released, correct?

A. That's correct. There was a drop but it was not statistically significant.

Q. And you would agree that on April 29, after the market closed, the Wall Street Journal and some other publications recorded a criminal investigation of Goldman Sachs, right?

A. Yes.

Q. And that's one of your -- and on the 30th, that's one of your corrective disclosure dates, right?

A. Yes.

Q. And you would agree that no specific transactions, as being under investigation, were identified in that Wall Street Journal article, right?

A. Yes.

Q. And there is no mention of CDOs in that article, right?

A. They mention mortgages but not CDOs.

[205] Q. And you would agree that your testimony is that that article, that single article removed $12.43 of inflation from the stock price of Goldman Sachs, right?

A. Yes.

Q. And you basically went and, in your analysis, you attributed that dissipation of $12.43 to investors supposedly learning about conflicts in connection with Hudson, Anderson, and Timberwolf, correct?

A. Correct.

Q. And in a report you allocated one third of the $12.43 drop to each of those CDO transactions, right?

A. Yes.

Q. And you would agree that the press reports about the supposed criminal investigation didn't reference any of those CDOs, right?

A. The press reports did not. The information had been disclosed previously but it wasn't in those reports.

MR. HENSSLER: Your Honor, subject to the agreement in your stipulation, it has been 30 minutes for counsel's cross.

MR. GIUFFRA: I don't think we have. We have two more minutes left.

THE COURT: I think with have to add some time for the technical difficulties we had. Mr. Giuffra has another five minutes.

MR. GIUFFRA: Thank you, your Honor.

* * *

[207] Q. Are you aware of any SEC enforcement action with regards to the Hudson CDO?

A. No.

Q. Are you aware of one with respect to the Anderson CDO?

A. No.

Q. Timberwolf CDO?

A. No.

Q. Now, would you agree with me that there is no accepted test in financial economics for measuring severity?

A. I would agree with that.

Q. And would you agree that government investigations may conclude without a finding of wrongdoing?

A. Yes.

Q. And you would agree with me that a company stock price declines typically greater if an enforcement complaint is filed with no concurrent resolution, as opposed to filed with a settlement?

A. Yes.

Q. And you would agree that specific characteristics of the government enforcement action, whether it is a criminal or civil, can affect the impact on the stock price, right?

A. I'm sorry. Can you give me that one again?

Q. You would agree that the specific characteristics of a government enforcement action, civil versus criminal, can [208] impact the stock price reaction?

A. Yes. I testified to that effect in my direct.

Q. Did you do an economic analysis of the impact of the denials on the market reaction to the press articles on conflicts that were set out in Dr. Gompers' report?

A. I evaluated each of the denials. My conclusion is the denials were strong enough --

Q. Did you do an economic analysis?

A. Yes, I did. I looked at every single one of them.

Q. Did you do an event study?

A. I did an event study of each date. Yes, I did.

Q. Did you do an event study in analyzing the denials?

A. The denials occurred simultaneously with the supposed disclosure that Professor Gompers had cited, so I analyzed the combined effect and my opinion is that they were offsetting. So, I did use an event study in my analysis to show that there was an offset.

Q. Are you aware of any economic analysis study and the difference between effective and ineffective denials?

A. That is just common English. I don't know that that is an economic term.

Q. You would agree that -- you didn't identify any analyst reports that specifically referenced the Goldman Sachs risk factor from the 10K?

A. There were analyst reports that explained conflicts of [209] interest management and business principles and I believe I cited those in -- cited some of those in my report.

Q. Okay. Are you aware of any analyst report speaking specifically about the business principles?

A. Yes. I am.

Q. Okay, we will talk about that.

Your Honor, because I know I am out of time, I have one more bit and I am done, I will take one minute. Now, are you aware that Professor Gompers identified -- let's put up modified Exhibit F. Are you aware that Professor Gompers identified 36 dates during the class period with press reports of Goldman Sachs' client conflicts, right?

A. Yes.

Q. And it is your testimony that the inflation in Goldman Sachs' stock price remained constant during the two periods that are identified in your Exhibit 8, that would be the period from February 2007 to June 2007, and then the second period is June 2007 up to the filing of the ABACUS complaint?

A. Under the constant dollar method, yes, I do have that opinion.

Q. And, it is your position that Goldman Sachs' stock price did not respond to a single one of those press reports that are identified by Dr. Gompers showing Goldman Sachs' conflicts?

A. There was no significant change with regard to any of them. [210] He showed that and I showed that. As a result of no significant change the inflation didn't change.

Q. You agree with Dr. Gompers that there was no statistical impact from any of those press stories prior to the ABACUS complaint on April 16, 2007, right?

A. There was no impact from any of those 36.

MR. GIUFFRA: Thank you.

THE COURT: Mr. Henssler?

MR. HENSSLER: No further questions, your Honor. Thanks, Dr. Finnerty.

THE COURT: Thank you, Doctor.

THE WITNESS: Thank you, your Honor.

THE COURT: You are excused. Thank you for your help.

(witness excused)

* * *

[1] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

10 Civ. 03461 PAC

IN RE: GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION,

Plaintiffs,

v.

GOLDMAN SACHS GROUP, INC.,

Defendants.

July 25, 2018
10:00 a.m.

Before:

HON. PAUL A. CROTTY,
District Judge

APPEARANCES

LABATON SUCHAROW, LLP

Attorneys for plaintiffs

BY: THOMAS A. DUBBS, Esq.
JAMES W. JOHNSON, Esq.
LAWRENCE A. SUCHAROW, ESQ.
JEFFREY A. DUBBIN

- and –

ROBBINS GELLER RUDMAN & DOWD, LLP
(San Diego)

BY: ROBERT R. HENSSLER, JR.
JONAH H. GOLDSTEIN
SPENCER A. BURKHOLZ, Esq.
Of counsel

SULLIVAN & CROMWELL, LLP (NYC)

Attorneys for defendants

BY: ROBERT J. GIUFFRA, JR., Esq.
RICHARD H. KLAPPER, Esq.
DAVID MAXWELL REIN, Esq.
JACOB E. COHEN, Esq.
BENJAMIN R. WALKER, Esq.
JULIA A. MALKINA, Esq.

[79] But what I am saying, as well, is that it was known, and a number of the articles that formed the 36 that I use in my event study analysis, include discussions of [80] Goldman Sachs not telling its investors of Paulson's role in selecting the collateral assets or the fact that Paulson was going to be shorting them.

So, generally, it was known that investors had been misled.

MR. BURKHOLZ: Can you bring up, Larry, clip 1?

Sir, I am going to show you your deposition.

(deposition played)

BY MR. BURKHOLZ:

Q. And you were being truthful in that deposition, correct?

A. Yes, I was.

Q. Okay.

Can we bring up paragraph 4 of the SEC complaint?

Sir, that's tab 5 of your binder, if you want to look at it, Plaintiff's Exhibit 2.

THE COURT: What paragraph?

MR. BURKHOLZ: Paragraph 4 of the SEC complaint.

Q. Do you see where it says, Mr. Tourre was principally responsible for ABACUS 2007 AC 1?

A. Yes.

Q. And can we look at paragraph 18 on page 7, flip to that? This is an e-mail from Mr. Tourre on January 23rd, 2007, where he says: More and more leverage in the system, the whole building is about to collapse now.

Sir, this e-mail, Goldman e-mail from the person [81] principally responsible for ABACUS, this was never public until the SEC complaint; isn't that true, sir? This e-mail was never public? Simple yes or no.

A. I am unaware of this e-mail having been made public prior to the April 16th complaint.

Q. Okay. Let's look at the second e-mail in the same paragraph. Similarly, it shows an e-mail on February 11th to Mr. Tourre from the head of Goldman structured product correlation trading desk that stated in part, "the CDO business is dead, we don't have a lot of time left."

Same question: This e-mail never out in the public until the complaint. Isn't that true, sir?

A. Again, I'm unaware of this e-mail being made public prior to the SEC complaint.

Q. Let's look at one more, because we don't have a lot of time here; paragraph 32. This is an e-mail that Mr. Tourre sent to another Goldman employee regarding a meeting that he was at with Mr. Paulson and ACA in which he said: I am at this ACA/Paulson meeting. This is surreal.

Again, same question, that e-mail, internal e-mail, never out in the public until this SEC complaint; isn't that true, sir?

A. Again, I am unaware of this e-mail being public before. I am not sure what the meeting being surreal actually would mean, but I am unaware of this e-mail being made public prior to the [82] ABACUS complaint.

Q. Okay. In fact, none of the e-mails — you read the SEC complaint, there was over a dozen e-mails in that complaint — none of them were ever public until the SEC Complaint was filed; isn't that true, sir?

A. I am unaware of any of those e-mails being public prior to the publication or the filing of the SEC complaint.

Q. Right; and you actually read a lot of what was out in the media and in your 38 articles, none of these e-mails are in those articles, are they?

A. I think I have stated that I am unaware of these e-mails being public prior to the SEC complaint.

Q. And in the book, "Greatest Trade Ever," none of these e-mails are in that book, are they, discussing the ABACUS transaction?

A. No.

Q. It is a simple question. Are the e-mails in the book?

A. Again, it is my understanding that the e-mails were not in the book having looked at the book, but the general principle that Paulson was involved in selecting the collateral assets and that investors had been misled about Paulson shorting them was known. So, these e-mails were not known but the conflicts that were embedded in the ABACUS complaint were known through a variety of news publications and the book which you just mentioned.

[83] THE COURT: Doctor, you would do a lot better if you would just answer his question.

MR. BURKHOLZ: Yes.

THE WITNESS: Okay.

MR. BURKHOLZ: Thank you, your Honor.

BY MR. BURKHOLZ:

Q. You talk about the Goldman denial on April 16th in your direct testimony. Do you remember that?

A. Yes.

Q. Okay. That occurred after the internal e-mails in this complaint were released, right?

A. Yes.

Q. Okay. And the denials before April 16th, including the e-mail we just looked at, standing in the middle of these monstrosities, and the CDO business is dead; those e-mails weren't out in the public when Goldman was making its denials, were they?

A. That's my understanding.

Q. Thank you. Let's talk a little bit about Goldman's denials. Sir, you agree with me, don't you,

that positive news can blunt negative news when information comes out about Goldman?

[84] A. Yes. As a theoretical matter, positive news can offset negative news. Any day that you have confounding news, you have to try an ascertain what each component is doing to the stock price.

Q. In fact, positive news can cancel out negative news, right?

A. It would be a knife edge situation in which the positive news would exactly offset the negative news but, hypothetically, if two identical pieces of news with the identical but opposite cash flow implications came to the market, they would exactly offset and you would have no stock price movement.

Q. In the denials by Goldman throughout the class period in the articles, they issued their own denials and press releases after Mr. Blankfein's testimony. That was positive news, right? You are not saying it was negative news, are you?

A. They denied wrongdoing. They denied what they did was illegal. They didn't deny the facts of the conflict but that what they said was that what we did was not illegal.

Q. It was positive news for Goldman shareholders. They're seeing this criticism and they have denials about the company; that's positive news for Goldman's stock price, right?

A. What they're saying is that they believe what they did was not illegal.

Q. Positive news, right? Is it positive or negative?

A. It is certainly not negative news. I am not sure [85] necessarily whether it would be of a positive magnitude but it is certainly not negative news.

Q. I want to take a look at your, it is Defendant's Exhibit B, I marked it as, I think it is tab — it is your 4/16 report, I think it is the second —

A. Tab 2.

Q. Yes, tab 2; that's your April 16, 2015 report?

A. It is, sir.

Q. Okay.

Can you turn to Exhibit 5? So, on Exhibit 5 I have highlighted what you title: Public discussion of the Goldman Sachs business conflict of interest during the class period and prior to April 16, 2010. I have highlighted one of the articles on March 9, 2007 and this is from your Exhibit 5, correct?

A. Yes.

Q. And in the description of the public discussion of Goldman Sachs' business conflict of interest let me show you what you left out of that description. It is tab 6 of your binder, it is the article, Plaintiff's Exhibit 3, this is what you left out: "'There is no conflict,' snaps Lucas van Praag, Goldman Sachs' chief spokesman. 'The suggestion that there might be a conflict can only be described as an attempt at mischief-making or a fundamental lack of understanding about how this business is conducted.'"

[86] That denial is not in your Exhibit 5, is it? It is not there? It is a simple question, is it there?

A. I don't tabulate where Goldman Sachs alleged no wrongdoing. So —

Q. When you gave the Judge the description of the important information in the public discussion regarding the conflict from the article you left out the denial, didn't you? It is not in there.

A. The denial — this portion of the article is not there. Certainly the article, in its entirety, speaks for itself.

Q. Right, but you didn't include the denial in the provision in your report that you gave to the Judge, did you?

A. I did not include this section in the excerpt in my Exhibit 5.

Q. Okay. Let's move on to Exhibit 6.

So, Exhibit 6, if you can turn to page 4. So, on this day you have the article regarding the book and the next day the book comes out, and you also included an article that came out at the same time McClatchy, and in that description of the public discussion of Goldman Sachs' mortgage and CDO conflicts of interest during the class period prior to April 16, 2010, you provided this excerpt for the Judge about Goldman had only $40 billion in securities. Let me show you what you left out for the Judge. From the article it is Plaintiff's Exhibit 23, tab 26 to your binder, it is on the sixth page, this is what [87] you left out. *DuVally said that investors were fully informed of all known risks.*

A. What tab was that again, sir?

Q. I believe it is tab 26.

A. Okay.

THE COURT: What page?

MR. BURKHOLZ: Page 6 of the article.

THE COURT: DuVally said that investors were fully informed of all known risks?

MR. BURKHOLZ: Yes.

Q. You left that out of your description in exhibit 6, didn't you?

A. This is not included in what I excerpted in Exhibit 6.

Q. Let's move on to — I only have two more to do, so let's look at same exhibit, no. 15. This is the December 24, 2009 article, New York Times article, that you say had a public discussion of Goldman's mortgage and CDO conflicts of interest.

A. Excuse me, sir. Which one? No. 15 on page 5?

Q. No. 15, page 5.

A. Thank you.

Q. So, you have a description of what you say is the public discussion of their conflicts. Let me show you what you left out, and the article is at tab 30, Plaintiff's Exhibit 27, and let me show you all four, go through them.

So, let me show you a few of the denials in the [88] article. On your direct you didn't point out — it is actually on Defendant's slide 10 in your direct had some of the information but it didn't have the denials and neither did your Exhibit 6 so let me show them to you. Here is one of them: Goldman and other Wall Street firms maintain there is nothing improper about synthetic CDOs.

Let's go to page 5. This is when they're having a discussion of Hudson: The Goldman salesman said that CDO buyers were not misled.

Let's go to the next two, and on page 2 carrying on to 3: Mr. DuVally, the Goldman spokesman, says products were created satisfy client demand and, in addition, he said that everyone knew they were betting against the mortgages.

None of those denials that I show you are in your Exhibit 6, are they? They're not in there?

A. The portions which you just highlighted are not in what I excerpted in Exhibit 6.

Q. Right.

Let me show you, take a look at tab 48, it is Plaintiff's Exhibit 45. So, on the same date you are aware on the same day the New York Times article came out that Goldman issued a denial, right?

A. Yes.

Q. Right. And back in Exhibit 6 you have the New York Times article but you didn't include Goldman's denial in Exhibit 6, [89] did you, of the public discussion of their conflicts?

A. I'm not sure that Business Insider is included in the Factiva major publications database so it wouldn't have come up.

Q. Right, but the fact that Goldman issued a denial that same day, I am sure you were looking for those kinds of information when you were doing your search, weren't you?

A. No. What I was looking for and the way I employed the search, sir, was to do exactly what people do when they do event studies. I wanted to find days upon which there was discussion of conflicts of interest at Goldman Sachs, both conflicts in other areas of Goldman Sachs, as well as conflicts in the mortgage

and the CDO business. That's the search, and I did it in the Factiva major publications database, and what I got out is exactly what I put in my report.

Q. So, the fact that Goldman had a denial on that day, you weren't aware of that when you issued your report?

A. I certainly looked, and in the articles there is often a discussion of Goldman's denials. When there is a discussion of the Goldman's denials in the articles which are the product of that objective replicable search, I saw that Goldman had denied in those articles.

Q. Let's look at no. 20 of your Exhibit 6. Do you see here you have two articles regarding Mr. Blankfein's testimony in front of the FCIC? It is on page 6.

[90] A. No, it is on page 8.

Q. Okay. Do you see it in your Exhibit 6?

A. Yes.

Q. The two articles?

Let me show you what you left out on that day for the Judge regarding the public discussion. It's Goldman's response that day, to Mr. Blankfein's testimony; it is tab 50 to your binder, Plaintiff's Exhibit 47. It says — this is a Goldman Sachs press release saying that Mr. Blankfein's statements had been erroneously reported by the media and about him saying that, he made an admission that there were practices with respect to mortgage-related securities that were improper. Here is Goldman saying they did no such thing and Mr. Blankfein believes that they behaved or didn't say that they behaved improperly in any way.

This denial is not in your Exhibit 6, is it?

A. This press release wouldn't have been picked up by that Factiva search.

Q. When you issued your report in this case were you aware that Goldman had issued denials on the day of the New York Times article and on the day after Mr. Blankfein testified?

A. So, if it's discussed in the articles which get picked up by the search that I do in the Factiva database, then I will see in those that there is a mention of a denial by Goldman Sachs. If it is not picked up, then I wouldn't have [91] looked at it.

THE COURT: Do you recall on this particular document whether it is so?

THE WITNESS: I would have to go back and read the entire article or any of the articles that came out of that search, sir, to know whether or not there was a mention of this particular denial, but the press release wouldn't be picked up by that search.

THE COURT: Okay.

BY MR. BURKHOLZ:

Q. You agree with me, don't you, that the two denials I just showed you, that was relevant information to investors regarding Goldman's denial of accusations being made against them?

A. So, it is relevant about whether or not the investors thought that the actions were legal but the nature of the conflict itself was not denied. The fact that Goldman Sachs had put together these CDOs and shorted them, that was known and it wasn't denied that they had actually shorted those securities.

Q. What about Mr. van Praag's statement there is no conflict, that I showed you earlier? Not relevant? Not a denial?

A. Again, I mean to the extent that is in the article it's in one of the 13 as opposed to the other 23.

* * *

This page intentionally left blank.