

# Banking and Finance Law Daily Wrap

## Up, ENFORCEMENT ACTIONS—Goldman Sachs agrees to NY regulator’s \$50 million penalty, reforms for employee misconduct, (Oct. 29, 2015)

By Thomas G. Wolfe, J.D.

Goldman Sachs has agreed to resolve an enforcement action brought by the New York State Department of Financial Services (NYDFS) against the company for violating New York state banking laws—resulting largely from the misconduct of one of its employees, a former bank examiner. In keeping with the Oct. 28, 2015, [consent order](#) executed by Goldman, Sachs & Co. and the Goldman Sachs Group, Inc., with the NYDFS, Goldman Sachs has agreed to: pay a \$50 million civil penalty to the state regulator; abstain from accepting certain new consulting engagements for three years; admit that the particular employee engaged in criminal theft of confidential supervisory information; admit management’s failure to properly supervise the employee; and implement reforms to its policies and procedures.

Essentially, the NYDFS claimed that the Goldman Sachs employee schemed to steal “confidential regulatory information” and then shared that information with other company employees. In an Oct. 28, 2015, NYDFS [release](#), Anthony Albanese, Acting Superintendent of Financial Services, commented, “This case underscores the critical need for financial institutions to put in place strong controls and policies for employee conflicts screening and the use of confidential regulatory information.”

**Backdrop.** The NYDFS related that the Goldman Sachs employee previously was a bank examiner at the Federal Reserve Bank of New York and even functioned as a “Central Point of Contact” for a particular, unidentified financial institution.

In March 2014, the employee was “required to resign” from his position at the New York Fed for, among other things, taking his “work blackberry overseas without obtaining prior authorization to do so and for attempting to falsify records to make it look like he had obtained such authorization, and for engaging in unauthorized communications with the Federal Reserve Board.”

Later in 2014, the employee was hired as an associate in the Financial Institutions Group of the Investment Banking Division of Goldman Sachs. As a result of discussions the employee had with a Goldman Sachs partner, he obtained clarification from the New York Fed about “applicable restrictions” in his new position with Goldman Sachs.

However, despite guidance from the New York Fed and a “Notice of Post-Employment Restriction” from the New York Fed’s Ethics Office prohibiting him from undertaking certain work assignments for a regulated entity for a specified period, the NYDFS claimed that Goldman Sachs placed the employee “from the outset of his employment” on these regulated entity matters.

**Charges.** According to the NYDFS, the Goldman Sachs employee “wrongfully obtained confidential information, including approximately 35 documents, on approximately 20 occasions, from a former co-worker at the New York Fed.” Moreover, these obtained documents constituted “confidential regulatory or supervisory information.”

Furthermore, the employee shared this confidential information with “various senior personnel at Goldman, including the Partner and the Managing Director, as well as a Vice President.” Accordingly, the NYDFS contended that Goldman Sachs failed to take any steps to screen the employee from the prohibited work, despite the clear communications from the New York Fed.

**Consent order.** Under the consent order, Goldman Sachs is found to have “possessed and distributed Department confidential supervisory information” in violation of New York’s banking laws.

Among other things, the settlement provisions provide that:

- Goldman Sachs must pay a \$50 million civil penalty to the NYDFS;
- while Goldman Sachs, as a result of its own internal investigation, terminated the employee and the Managing Director, Goldman Sachs agrees “never to re-hire either individual”;
- in light of the employee’s and Managing Director’s misconduct and Goldman Sachs management’s failure to effectively supervise the individuals or have reasonable procedures and processes in place to detect that misconduct, Goldman Sachs “will not accept any new engagements that would require the [NYDFS] to authorize the disclosure of confidential supervisory information under New York Banking Law ... to Goldman during the three-year period following the date of this Consent Order”; and
- in connection with the Goldman Sachs entities regulated by the NYDFS, the company must implement reforms to its policies and procedures that are reasonably designed to prevent the improper use of confidential supervisory information under the New York Banking Law.

Companies: Goldman, Sachs & Co.; Goldman Sachs Group, Inc.

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