

No. 18-3667

United States Court of Appeals for the Second Circuit

ARKANSAS TEACHER RETIREMENT SYSTEM, WEST VIRGINIA INVESTMENT
MANAGEMENT BOARD, PLUMBERS AND PIPEFITTERS PENSION GROUP,
Plaintiffs-Appellees,
(Caption continued on inside cover)

Appeal from the United States District Court
for the Southern District of New York
(No. 1:10-cv-03461)

PLAINTIFFS-APPELLEES' SUPPLEMENTAL BRIEF

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AFSHANI, LOUIS GOLD, Individually and on behalf of all others similarly situated,

THOMAS DRAFT, Individually and on behalf of all others similarly situated,

Consolidated-Plaintiffs,

v.

GOLDMAN SACHS GROUP, INC., LLOYD C. BLANKFEIN,

DAVID A. VINIAR, GARY D. COHN,

Defendants-Appellants,

SARAH E. SMITH,

Consolidated-Defendant.

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PLAINTIFFS-APPELLEES' SUPPLEMENTAL BRIEF

In *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 141 S. Ct. 1951 (2021), the Supreme Court affirmed this Court's holding that Goldman bears the burden of persuading the district court that its misstatements had no effect on its stock price. The Supreme Court also clarified that in making that determination, courts must consider all the evidence, including the allegedly generic nature of the misstatements, "aided by a good dose of common sense." *Id.* at 1960 (citation omitted). Uncertain whether this Court had taken the nature of the statements into account when reviewing the district court's decision, the Supreme Court remanded for reconsideration. *Id.* at 1961. Because the entirety of the evidence amply supports the district court's finding that Goldman did not meet its burden of persuasion, this Court should affirm.

I. The District Court Permissibly Found Goldman's Principal Evidence Uninformative And Unreliable.

This Court has already upheld the district court's determination that Goldman's principal evidence—Dr. Gompers' analysis of 36 news articles and Dr. Choi's study—was of marginal or no weight. *Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 955 F.3d 254, 271-72 (2d Cir. 2020) ("*Goldman II*"). Goldman's evidence did not support its thesis (JA8035) that the lack of any price drop following the 36 articles showed that the alleged misstatements were so generic in the first place that the

market never incorporated them into Goldman's stock price. Rather, the lack of market reaction to the articles in Dr. Gompers' analysis was easily explained by the reports' lack of details and "hard evidence" to overcome Goldman's denials. 955 F.3d at 271-72. At the same time, Dr. Choi's conclusions were "not supported by his event study" for multiple reasons that rendered his opinions unreliable, including his failure to address the second and third corrective disclosures at all. *Id.* at 263. Goldman offers "no persuasive response to the [district] court's findings" on Dr. Gompers' articles and has never "meaningfully engage[d] with the district court's detailed rejection of Dr. Choi's report." *Id.* at 271-72. The Supreme Court's decision resuscitates neither category of evidence.

II. The Purported Generality Of Goldman's Misstatements Does Not Render The District Court's Finding Clearly Erroneous.

The question, then, is whether the district court's otherwise permissible conclusion is rendered clearly erroneous by a consideration of the nature of Goldman's misstatements. The answer is no. It *may* be that "the generic quality of [an] alleged misstatement[], *coupled with*" other evidence showing a lack of price impact, could carry a defendant's burden. 955 F.3d at 278 (Sullivan, J., dissenting) (emphasis added). But here, the district court properly deemed Goldman's other evidence uninformative and unreliable. Accordingly, Goldman can prevail only by convincing this Court that the supposedly generic nature of the statements *alone* is sufficient to carry its burden. Even Judge Sullivan's dissent did not go that far, however, viewing

the alleged generality of the misstatements as merely confirming what he believed the other evidence independently established. *Id.* at 278-79. But having rejected the dissent’s view of that evidence, the Court could reverse now only by placing decisive weight on the nature of the misstatements. There is no justification for that result.¹

1. Where, as here, a defendant maintains inflation in its stock price by misleading investors about the true state of its affairs, the “proper question for purposes of our inquiry into price impact is . . . what would have happened if [the company] had spoken *truthfully*.” *In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 258 (2d Cir. 2016). Accordingly, “Goldman’s burden is to show that the market would not have reacted had Goldman told the truth about its alleged failure to manage its conflicts.” *Goldman II*, 955 F.3d at 271.

Consistent with the Supreme Court’s admonition to employ a healthy dose of common sense, this Court has explained that “[i]t is difficult to imagine that Goldman’s shareholders would have been indifferent had Goldman disclosed its alleged failure to prevent employees from illegally advising clients to buy into CDOs that were built to fail by a hedge fund secretly shorting the investors’ positions.” 955 F.3d at 271; *see also id.* at 275 n.25; Pl. Br. 39-42. This is particularly so because

¹ Goldman has forfeited any objection that the district court erred in failing to account for the nature of the statements. *See* Pl. Letter on Supp. Briefing 3 n.4; 141 S. Ct. at 1964-65 (Sotomayor, J., concurring in part and dissenting in part).

Goldman's stock traded at a premium precisely because the company courted potential conflicts its peers avoided—a profitable strategy that depended on robust conflict management. *See* Pl. Br. 4, 34, 41-42. Investors understood this. For example, near the start of the class period, Merrill Lynch told investors that Goldman's "Conflict Management skill maximizes franchise value" because "Goldman manages conflicts, rather than simply avoiding them, in order to maximize the value of its franchise." JA3220; *see also, e.g.*, JA7252 (*The Wall Street Journal* article emphasizing "the perception that [Goldman] is an elite adviser and an elite trader that can do both simultaneously *while managing the conflicts to the satisfaction of its clients. That's why its stock carries a premium to its peers in bull markets.*") (emphasis added); JA8007 (Buckingham analysis reaching same conclusion). In this context, Goldman's misstatements about its conflict-management systems and business principles were specific reassurances to a targeted investor concern, not mere boilerplate investors would likely ignore. *Cf.* 141 S. Ct. at 1961 (giving example of "we have faith in our business model" as generic misstatement less likely to have price impact).

The challenged misstatements also include a Goldman press release misrepresenting that the short positions in its CDOs were "fully disclosed and well known to investors." JA83; *see also* Pl. Br. 9; JA82-84, JA89 (Compl. ¶¶ 123-26, 139-42).

Goldman has never claimed that this statement was general or immaterial.²

2. Goldman's contrary arguments are unpersuasive.

Dr. Starks. Although it barely mentioned its expert Dr. Starks in the district court on remand or in the last appeal,³ Goldman apparently intends to rely on her testimony now. Any such reliance is waived. But even if the Court considers Dr. Starks' testimony, Plaintiffs' expert, Dr. Finnerty, convincingly explained why Dr. Starks' "methodology [was] deeply flawed and wholly unreliable." JA5258.

Dr. Starks asserted that "investors do not consider general statements . . . such as the Business Principles Statements and Conflict Controls Statements at issue in this case." JA5046. She based this claim on her general education and experience, *ibid.*, and on her research purportedly showing that such statements were common, JA5050-51.⁴ Dr. Starks also claimed that analysts did not cite Goldman's misstatements, and reasoned that this showed markets were indifferent to whether those

² Instead, Goldman has asserted, without support, that Plaintiffs "did not base their motion for class-certification on [this] statement." Cert. Reply 10 (citing nothing). But Plaintiffs sought class adjudication of *all* their extant claims, as plaintiffs always do. Goldman's own expert, Dr. Gompers, recognized as much, listing this press release as a relevant misstatement in opposing class certification. *See* JA3980-81, JA4096.

³ Goldman cited Dr. Starks only once in the argument section of its opening brief to this Court (in a footnote) and again in a single sentence of its reply. *See* Goldman Opening Br. 50 n.11; Goldman Reply 18.

⁴ In fact, Dr. Starks gave only a handful of examples of other companies even arguably making representations about having systems in place to appropriately

statements were true. JA5060-61. But Dr. Finnerty testified that in *his* experience, Goldman's conflict statements *were* the kind of information investors would care about. JA4478-79; JA8200-01 (citing JA3636). He also showed that Dr. Starks skewed her results by examining only whether analysts *expressly* quoted or referenced Goldman's misstatements, while ignoring analysts' "references to the same *subject matter* of the alleged misstatements and omissions, or references that paraphrase Defendants' misleading statements." JA5207. That myopic review ignored the legally relevant question, which is not whether the analysts quoted Goldman's false statements, but whether investors would have "reacted had Goldman told the truth about its alleged failure to manage its conflicts." *Goldman II*, 955 F.3d at 271; *see* JA5207.

Focused on *that* question, Dr. Finnerty's review of analyst and other reports, before and after the corrective disclosures, confirmed this Court's surmise (955 F.3d at 271-72) that investors certainly would have reacted had Goldman told the truth about its conflict systems. *See* JA8201 (Dr. Finnerty testifying that "if Goldman had disclosed that information which was omitted, it is my opinion that the stock price would have dropped"); JA5254 (same); Pl. Br. 4, 11-12, 41-42, 59-60, 64. Dr. Finnerty explained that during the class period analysts had repeatedly emphasized the

manage conflicts. JA5050-51. She also ignored that investors had company-specific reasons to be interested in Goldman's conflict management. *See supra* 3-4.

importance of Goldman's purportedly rigorous conflict-management systems. *See, e.g., supra* 3-4; JA3666 (2009 Bank of America Merrill Lynch report: "*Goldman has always managed its conflicts effectively. ... Goldman has often been viewed as having more than the average amount of potential conflict because of its principal activities (private equity and prop trading), though the scale and growth of its client trading and investment-banking franchise make it clear that these conflicts have overall been well managed.*"); JA3232 (2008 Merrill Lynch report: "[W]e believe that Goldman has actually tended its customer-oriented businesses carefully, which explains . . . *the absence of major conflict problems.*") (emphasis added).⁵ But after the corrective disclosures, *The Wall Street Journal* reported that Goldman's

premium has dissolved because the market is worried, *not about lawsuits* or politics, but about Goldman's core business. The Abacus affair has highlighted *the conflicts* intrinsic to the investment banking business. *But historically Goldman has managed those conflicts well. . . .* Conversely, evidence of poorly managed conflicts is especially dangerous to Goldman. Some damage has already been done.

JA7251-52 (emphasis added); *see also* JA4652-54 (Dr. Finnerty's report collecting similar market commentary from others).⁶

⁵ Dr. Finnerty testified that, contrary to Dr. Starks' assertions, such comments "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," to Goldman's benefit. JA8189.

⁶ *See also* JA3319-23 (Dr. Starks admitting that "the public outrage" that arose when the truth came out "would have been against the underlying actions" alleged in the SEC Abacus suit, and that this reaction "could have a negative" effect on Goldman's stock price).

In resolving this battle of the experts, the district court permissibly found Dr. Finnerty's testimony more credible and persuasive. *See, e.g., Cifra v. Gen. Elec. Co.*, 252 F.3d 205, 213 (2d Cir. 2001) (only district court can resolve credibility disputes).

Mismatch. The Supreme Court noted that there is a higher risk of a “mismatch” between “the contents of the misrepresentation and the corrective disclosure” when “the earlier misrepresentation is generic.” 141 S. Ct. at 1961. Seizing on this observation, Goldman apparently plans to reprise the mismatch argument this Court rejected in the last appeal. *See* 955 F.3d at 274. But nothing in the Supreme Court's general discussion of mismatch was directed at this Court's opinion, much less implied that there was anything wrong with it. *See* 141 S. Ct. at 1961.

In fact, the decision is obviously correct. As Dr. Finnerty testified, and this Court found in the last appeal, Goldman's Conflicts and Business Principles misstatements together conveyed that Goldman had extensive systems in place to manage conflicts and would actually use them to protect its clients' interests, while the disclosures showed that this was untrue because Goldman was engaged in knowing, flagrant violations of its clients' trust to enrich itself and a favored client. *See* 955 F.3d at 273-74. Dr. Finnerty's review of commentary after the corrective disclosures confirmed this common-sense conclusion. *See, e.g.,* JA8200-02 (testifying that “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"). He cited commentary, like *The Wall Street Journal* article quoted above, demonstrating that the market directly attributed the drop in Goldman's stock price to its conflict-management failures, the subject of its challenged misstatements. *See* JA3636, JA3639-42 (Dr. Finnerty's demonstrative slides collecting examples of market commentary after the corrective disclosures).⁷ There is no mismatch here.

Materiality Decisions. That leaves Goldman's well-worn chart of materiality decisions. This Court has already expressed sensible skepticism of Goldman's materiality claims. *See* 955 F.3d at 275 n.25 ("Goldman's specific assertions that it was conflict free might be seen as connected to a decision to buy, or hold on to, Goldman stock"); *id.* at 271-72 (same); *see also Ind. Pub. Ret. Sys. v. SAIC, Inc.*, 818 F.3d 85, 98 (2d Cir. 2016) ("[S]tatements about a company's reputation for integrity or ethi-

⁷ *See also, e.g.*, JA7248-50 (*Associated Press* article linking corrective disclosure to violation of Goldman's stated business principles); JA3084-85 (Defendant Viniar testifying that after "the SEC suit on the Abacus case" the "world deemed us to have not managed [the] conflict well and the SEC deemed us not to," which is "not good for your reputation"); JA3076-81 (Goldman's internal, contemporaneous admission that what "drove [its stock] price during the day" on April 16, 2010 was news of Goldman's "conflicts of interest in connection with CDO marketing"); JA3069 (Goldman's SEC Consent Decree, acknowledging that its corporate reforms stemming from the Abacus suit included a "firmwide review of its *business standards*" and an "evaluation of [its] *conflict management*") (emphasis added). Further relevant expert testimony is at JA3665, JA3668-71; JA5205-06, JA5221-32, JA5255-59; JA4628-29, JA4647-57, JA4661-73; JA4478-79.

cal conduct” may “give rise to a securities violation” when viewed “in context,” including “for example, a company’s specific statements that emphasize its reputation for integrity or ethical conduct as central to its financial condition or that are clearly designed to distinguish the company from other specified companies in the same industry.”); JA173-74; JA187-89 (trial court materiality decisions).

Moreover, the Supreme Court warned that courts must “resist[] the temptation” to use price-impact analysis as a way of deciding “the closely related issues that must be left for the merits, including materiality.” 141 S. Ct. at 1961 n.2. Given the dearth of other evidence supporting Goldman’s price-impact claims, reversing on the basis of materiality precedent would defy the Supreme Court’s admonition.

Goldman’s reliance on materiality decisions furthermore ignores that materiality and price impact are different. As the United States explained to the Supreme Court in this case:

The question of materiality is an objective one that turns on how a *hypothetical* reasonable investor *would have behaved* under particular circumstances. The question of price impact, by contrast, is purely factual and turns on evidence about how a particular securities market *actually reacted* (or failed to react) to particular disclosures.

U.S. S. Ct. Br. 18. Here, even if Goldman’s materiality cases *suggested* that its misstatements might not have a price impact, Goldman has failed to present any significant evidence substantiating that prediction.

CONCLUSION

For the foregoing reasons, the district court should be affirmed.

Dated: August 10, 2021

Respectfully submitted,

/s/ Thomas C. Goldstein

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CERTIFICATE OF COMPLIANCE

1. The body of this document is within the ten-page limit set by this Court's supplemental briefing order, Doc. 322.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Word 2016 in 14-point Times New Roman font.

/s/ Thomas C. Goldstein
Thomas C. Goldstein

Dated: August 10, 2021

SELECTIONS FROM JOINT APPENDIX

Page 1

** C O N F I D E N T I A L **

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Master File No. 1:10-CV-03461-PAC

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IN RE GOLDMAN SACHS GROUP, INC.

SECURITIES LITIGATION

-----x

October 28, 2014

8:01 a.m.

Videotaped Deposition of DAVID
VINIAR, taken by Plaintiffs, pursuant to
Notice, held at the offices of Sullivan &
Cromwell LLP, 125 Broad Street, New York,
New York, before Todd DeSimone, a
Registered Professional Reporter and
Notary Public of the State of New York.

1 VINIAR - CONFIDENTIAL

2 between Goldman and its customers, would
3 that affect Goldman's reputation?

4 A. Yes, it would.

5 Q. Any examples you can recall of
6 that happening?

7 A. I can recall more recent
8 examples of people thinking that we had
9 not handled a conflict particularly well.

10 There was one with, I'm trying
11 to remember the deal recently where an
12 investment banker was representing a
13 company and also owned stock in that
14 company, and it was deemed to be, you
15 know, a conflict.

16 Q. How about between Goldman Sachs
17 and its clients or customers, any examples
18 you recall of a breach of conflicts of
19 interest policy that harmed Goldman's
20 reputation?

21 A. Well, sure, there was the SEC
22 suit on the Abacus case.

23 Q. And so you will agree that the
24 SEC suit harmed Goldman's reputation?

25 A. Yes.

1 VINIAR - CONFIDENTIAL

2 Q. Why?

3 A. Because there was a, you know,
4 the world deemed us to have not managed
5 conflict well and the SEC deemed us not to
6 and we were sued by our primary regulator,
7 and being sued by your primary regulator
8 is not good for your reputation.

9 Q. All right, we will get back to
10 that.

11 Now, you mentioned other -- you
12 said that the Firm-Wide Risk Committee set
13 firm-wide risk limits. Can you explain
14 what you meant by that?

15 A. Sure. There were market risk
16 limits at the firm-wide level based on a
17 variety of metrics, including VAR. I
18 don't know if you know what VAR is.

19 Q. Value --

20 A. Value at risk, VAR. There were
21 certain stress tests that we did and there
22 were a whole variety of financial metrics
23 on which the Firm-Wide Risk Committee
24 would set limits.

25 Q. Financial metrics, you mean,

A-3213

Goldman Sachs Group

Management meetings: ever more confident

■ We met with GS Pres. and co-CEO Jon Winkelried, CFO David Viniar, and Peter Kraus, co-head of Asset Mgmt.

Sub-prime small for GS, and maybe an opportunity
Management noted that sub-prime is not a large enough business for GS to pose any significant threat to earnings. However, breaking with previous caution, the firm is building a small origination effort. Recent turmoil will likely present distressed-mortgage opportunities for GS, we think.

GS comfortable with risk; sees less potential for relative revenue decline

The Co. has managed credit exposures carefully, so exposure is largely that of a credit trading revenue fall-off. GS' economically sensitive business mix has historically led to relatively steep declines in earnings from peak-to-trough, but management seems more confident than in the past that GS can out-earn peers throughout the cycle.

Focus is global, especially Emerging Markets

Unique positioning in China just beginning to gain traction and expected to drive meaningful revenue near-term; Russia franchise build on-track; India, Brazil seen as longer-term opportunities. Other Int'l opportunities seen in Middle East (flush with liquidity, and GS has considerable brand power) and Japan (activity picking up).

Franchise solid across-the-board; expansion continues

GS franchise remains the market leader with top market share in key businesses. Mgmt. believes GS can still improve positioning in markets like equity derivatives, structured products via better "connectivity" with the IB. Management anticipates most future growth will come organically.

Estimates (Nov)

(US\$)	2005A	2006A	2007E	2008E	2009E
EPS	11.21	19.69	17.98	18.28	20.39
GAAP EPS	11.21	19.69	17.98	18.28	20.39
EPS Change (YoY)	25.7%	73.6%	-8.7%	1.7%	11.5%
Consensus EPS (First Call: 08-mar-2007)			19.25	20.52	NA
Dividend Rate	1.30	1.30	1.40	1.40	1.40

Valuation (Nov)

	2005A	2006A	2007E	2008E	2009E
P/E	18.1x	10.3x	11.3x	11.1x	9.9x
GAAP P/E	18.1x	10.3x	11.3x	11.1x	9.9x
Dividend Yield	0.5%	0.6%	0.7%	0.7%	0.7%

Company Update **NEUTRAL**

Equity | United States | Securities Broker/Dealer
13 March 2007



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Stock Data

Price	US\$202.60
Investment Opinion	B-2-7
Volatility Risk	MEDIUM
52-Week Range	US\$136.79-222.75
Mkt Val / Shares Out (mn)	US\$89,103 / 439.8
ML Symbol / Exchange	GS / NYS
Bloomberg / Reuters	GS US / GS.N
ROE (2007E)	20.1%
Leverage (2006A)	85.8%
Est. 5-Yr EPS / DPS Growth	10.0% / 0%



Quarterly Earnings Estimates

	2006	2007
Q1	5.08A	5.07E
Q2	4.78A	4.39E
Q3	3.26A	3.51E
Q4	6.59A	5.01E

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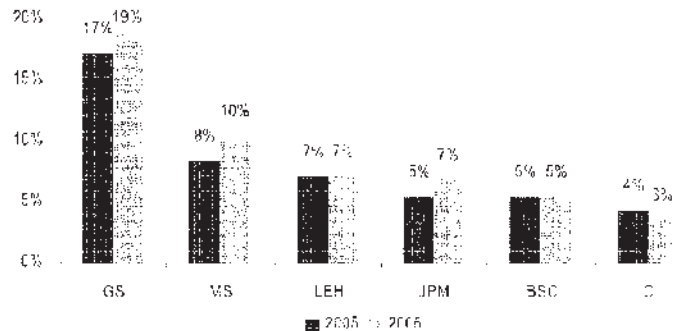
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PORTEN-00012282

Merrill Lynch
13 March 2007

Goldman Sachs Group

Chart 3: Percentage of Private Equity Revenue Contribution to Net Revenues



Source: Company Reports and Market Data

Conflict Management skill maximizes franchise value

As always, discussion of Private Equity gives rise to concerns over conflicts, and there are always plenty of complaints that Goldman walks a very fine line between its clients' interests and its own. But 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 at the firm, since it is viewed as not just a by-product but a key pillar of the firm's franchise business. Though the process is highly structured and rigorous, 20% of the conflicts end up at the top of the firm.

Goldman manages conflicts, rather than simply avoiding them, in order to maximize the value of its franchise, and as an institution, it sees far more principal investing opportunities as a result of that franchise than it would without it. The ICBC investment in China is a great example.

Market's risk appetite remains healthy

We have recently been concerned about a global "attitude adjustment" that may be developing with respect to risk tolerance and risk pricing. Our meeting was held just prior to the recent market turmoil, but at that time, at least, GS was not seeing any meaningful shift, with the financing markets robust and liquid; and indeed, recently, Texas Pacific and TXU were able, for example, to line up considerable financing for their deal, including substantial "equity bridges" from Wall St. Still, Winkelried is clearly aware that one of the most significant potential negative changes would be if this liquidity dried up. And of course, to the extent that Wall Street firms are increasingly providing bridges, the risk of being caught with "hung deals", if liquidity contracts, is rising.

Where does the firm see issues that could result in a cyclical break? Winkelried expressed some concern that the housing finance woes could bleed into other areas of the markets, such as Alt-A (indeed there is evidence that this is happening), prime mortgages, other consumer finance, and/or commerce at real estate. He noted, although the housing-finance issues seem quite contained now, and investor liquidity is massive, that events and perceptions can turn quickly. If a highly visible buyout were to fall apart due to an inability to arrange financing, Winkelried observed this might trigger a re-evaluation of credit spreads and deal activity in the M&A and equity markets. Finally, the markets have put geopolitical risk concerns on the back burner for the past few years, but they are clearly still there.

GS believes market risk appetite remains healthy



Senior mgt cautious, but seeing investment, mkt share opportunities from crisis

Still cautious, but GS seeing solid activity in customer franchise businesses, strong market share gains. Relatively unscathed by credit debacle, GS is more outwardly focused than peers, able to commit balance sheet flexibly as needed. Clearly GS is one of less than a handful of relative winners from the crunch.

Cyclical-bottom ROE prospects better now than in '02

GS believes it can out-earn ROE produced at bottom of last cycle (11% in '02) due to greater global diversity of its revenues, rising returns available as many peers pull back, and growing market share as above. GS feeling less pressure to de-leverage than peers, but does hold more capital than it believes is ideal at this point (10.8% Tier-1 vs. 'normal' seen as 9.5-10%). If proposed consolidation of securitized balances goes forward, though, the current capital could be needed.

Liquidity is job one: Likelihood rising that GS buys a bank

Key lesson of current crisis is one GS has always known: importance of liquidity and availability of 'sticky' funding. We believe GS would not look entirely askance at prospect of buying a depository, a significant change. We still would not ascribe very high probability, but if a bank with excess deposits were available at right price, with no need for GS to exit existing businesses, we'd no longer rule it out.

Big distressed-mortgage opportunity seen, but maybe not just yet

GS' largest single revenue opportunity over the next couple of years: mortgages. To prepare, GS bought Litton (sub-prime servicer) earlier this year, and strengthened its team with a key hire from the late Bear Stearns. Timing unclear because many assets still hard to price given falling house prices, rising delinquencies, but opportunity expected to be large.

Estimates (Nov)

(US\$)	2006A	2007A	2008E	2009E	2010E
EPS	19.72	24.73	17.71	20.92	25.66
GAAP EPS	19.72	24.73	17.71	20.92	25.66
EPS Change (YoY)	75.9%	23.4%	-28.4%	18.1%	22.7%
Consensus EPS (Bloomberg)			16.93	19.83	21.55
Dividend Rate	1.30	1.40	1.40	1.40	1.40

Valuation (Nov)

	2006A	2007A	2008E	2009E	2010E
P/E	9.1x	7.2x	10.1x	8.5x	7.0x
GAAP P/E	9.1x	7.2x	10.1x	8.5x	7.0x
Dividend Yield	0.7%	0.8%	0.8%	0.8%	0.8%

Company Update

BUY

Equity | United States | Securities Broker/Dealer
28 July 2008



Merrill Lynch

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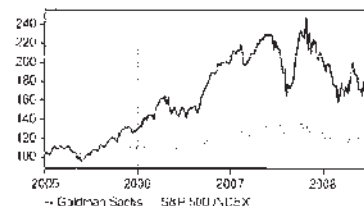
Research Analyst

MLPF&S

mpatrick_davitt@ml.com

Stock Data

Price	US\$178.66
Price Objective	US\$212.00
Date Established	18-Jun-2008
Investment Opinion	C-1-7
Volatility Risk	HIGH
52-Week Range	US\$140.27-250.70
Mkt Val / Shares Out (mn)	US\$76,377 / 427.5
M. Symbol / Exchange	GS / NYS
Bloomberg / Reuters	GS US / GS N
ROE (2008E)	18.8%
Leverage (2007A)	91.4%
Est. 5-Yr EPS / DPS Growth	+0.0% / 0%



Quarterly Earnings Estimates

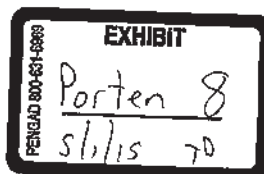
	2007	2008
Q1	6.67A	3.23A
Q2	4.93A	4.58A
Q3	6.13A	4.28E
Q4	7.01A	5.61E

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Refer to Important disclosures on page 11 to 12. Analyst Certification on Page 9. Price Objective Basis/Risk on page 8.

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CONFIDENTIAL



PORTEN-00012298



Goldman Sachs Group

Cyclical backdrop remains pressured, but macro products doing well and GS is a "go-to"

We met last week with Co-Pres. Jon Winkelried, CFO David Vinlar, and David Heller and Harvey Schwartz, responsible for Equities and FICC, respectively, in the US.

Clearly GS remains cautious about the broader economic and public policy backdrop, given the magnitude of the mortgage and consumer-credit meltdown and the consequent destabilization of major financial institutions. The big swings in market sentiment can unleash waves of activity but when confidence erodes, clients move to the sidelines, staying liquid and relatively inactive. The most liquid-markets oriented businesses (rates, FX, high-grade corporates) have been busy, but activity has been more sporadic as one moves up the risk curve. GS is benefiting from having maintained its reputation and its balance-sheet capacity at a time when others have had to retrench.

Less balance sheet constrained than the peer group, which supports both Franchise and Principal businesses

To date the firm's read of the likely changes in the regulatory environment is that the fallout will be manageable, and while cyclically earnings power is under pressure, in many ways GS is, we believe, a beneficiary rather than a victim of the current backdrop. The firm is not finding that it is facing any particularly binding constraints on profitability as a result of the de-leveraging trend. In any event, GS is not pressured to de-leverage as have firms that have had losses and run into capital issues. To the extent that its leverage has come down, this is more than anything else a response to the uncertainty in markets broadly and the fact that risk reduction has been the appropriate response. The cost of capital overall has not changed much for GS but it has made risk-based adjustments to capital charges for certain businesses or exposure classes and this has of course in some cases forced down exposure.

As always, GS remains "constructively paranoid" about risk management. The firm believes that at a time like this it is best to be in a position of great flexibility regarding the use of capital, implying a desire to be very tactical as conditions change. The expectation is that major opportunities to make principal investments will arise at a time of stress for many institutions and investors, but at the same time, clients of the "franchise businesses" (i.e., traditional trading and Investment Banking) will be in need of support from the firm's balance sheet and this is as always a critical concern. Despite the fairly constant undertone of criticism over the firm's embrace of principal activities, **we believe that Goldman has actually tended its customer-oriented businesses carefully, which explains why at the end of the day, the world tends to come to Goldman, and the absence of major conflict problems.**

More market share? It seems to be happening

GS continues to view its share-gain opportunity as very strong, something we have flagged since last autumn; GS is one of less than a handful of capital-markets firms that have (at least to date) weathered the downturn with capital intact and, if anything, enhanced reputation. We believe GS has seen market share gains in numerous key business lines, as many competitors have pulled back because of a need to shrink balance sheets, distractions that have made the firms more inward-looking, stress-induced trepidation, or all of the above. Meanwhile, Goldman has been open for business, with less balance sheet constraints, and a less shell-shocked attitude. Goldman believes, based on client comments and the order flow it

Page 1

** C O N F I D E N T I A L **

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Master File No. 1:10-CV-03461-PAC

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IN RE GOLDMAN SACHS GROUP, INC.

SECURITIES LITIGATION

-----x

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.

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1 STARKS - CONFIDENTIAL

2 believe. And I still believe that today.

3 It doesn't refer to the conflict of
4 interest statements.

5 Q. Okay. You can put that aside.

6 MR. ROGERS: I would like to
7 mark as Starks 5 a Bernstein Research
8 report, May 4th, 2010, titled Goldman
9 Sachs: Management Speaks Frankly About The
10 Future Of The Firm.

11 (Starks Exhibit 5 marked for
12 identification.)

13 (Witness perusing document.)

14 Q. If you could turn to page 79.
15 Do you see that?

16 And just for context, the first
17 sentence under Investment Conclusion, and a
18 quotation, says "Goldman Sachs shares
19 plummeted on Friday on press reports that
20 the U.S. Justice Department was reviewing
21 Goldman's MBS business in light of
22 allegations made by the SEC concerning the
23 Abacus CDO deal."

24 Do you see that?

25 A. I do.

1 STARKS - CONFIDENTIAL

2 Q. You remember that there were
3 Senate investigations of certain companies,
4 correct?

5 A. Yes.

6 Q. And there were SEC
7 investigations of certain companies?

8 A. Yes.

9 Q. Is it your opinion as you sit
10 here today that the public was outraged
11 that the Senate was investigating some
12 banks?

13 MR. WALKER: Objection to the
14 form.

15 A. So the public outrage would
16 have been against the underlying actions
17 that were alleged to have happened. I
18 didn't intend to mean that it was just
19 because of the U.S. Justice Department.

20 Q. So it is the conduct alleged
21 that caused the outrage, correct?

22 MR. WALKER: Objection to the
23 form.

24 A. Correct. Assuming there was
25 public outrage.

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1 STARKS - CONFIDENTIAL

2 Q. And what do you think he is
3 saying?

4 MR. WALKER: Objection to the
5 form.

6 A. Well, I think he is saying that
7 Goldman Sachs has incurred reputation
8 damage, and then he is going on to talk
9 about a portfolio manager buying or owning
10 Goldman because of the public outrage.

11 I don't think he is saying the
12 reputation damage is coming from the public
13 outrage.

14 Q. But the client fallout was
15 caused by public outrage?

16 MR. WALKER: Objection to the
17 form.

18 A. Well, it's not exactly clear
19 what he is -- he is talking about a
20 portfolio manager having difficulty buying
21 or owning Goldman in these kind of
22 portfolios due to the current public
23 outrage. I mean, we are just parsing this
24 sentence differently.

25 Q. And a manager having difficulty

1 STARKS - CONFIDENTIAL

2 buying or owning Goldman, would that have
3 an impact on Goldman's stock price?

4 MR. WALKER: Objection to the
5 form, foundation.

6 A. There could be an effect on
7 Goldman's stock price if there's a large
8 selloff.

9 Q. And that would have a negative
10 impact on their stock price, correct?

11 MR. WALKER: Objection.

12 A. It could have a negative, but
13 that's not something I'm here to testify
14 about.

15 Q. No, you are here to testify on
16 your expertise reading analyst reports.

17 So I'm just asking you, is it
18 your understanding of this report that the
19 public outrage against Goldman Sachs as you
20 just said could have a negative effect on
21 its stock price?

22 MR. WALKER: Objection to form,
23 foundation.

24 A. The public outrage, the
25 sentence is not clear exactly what he is

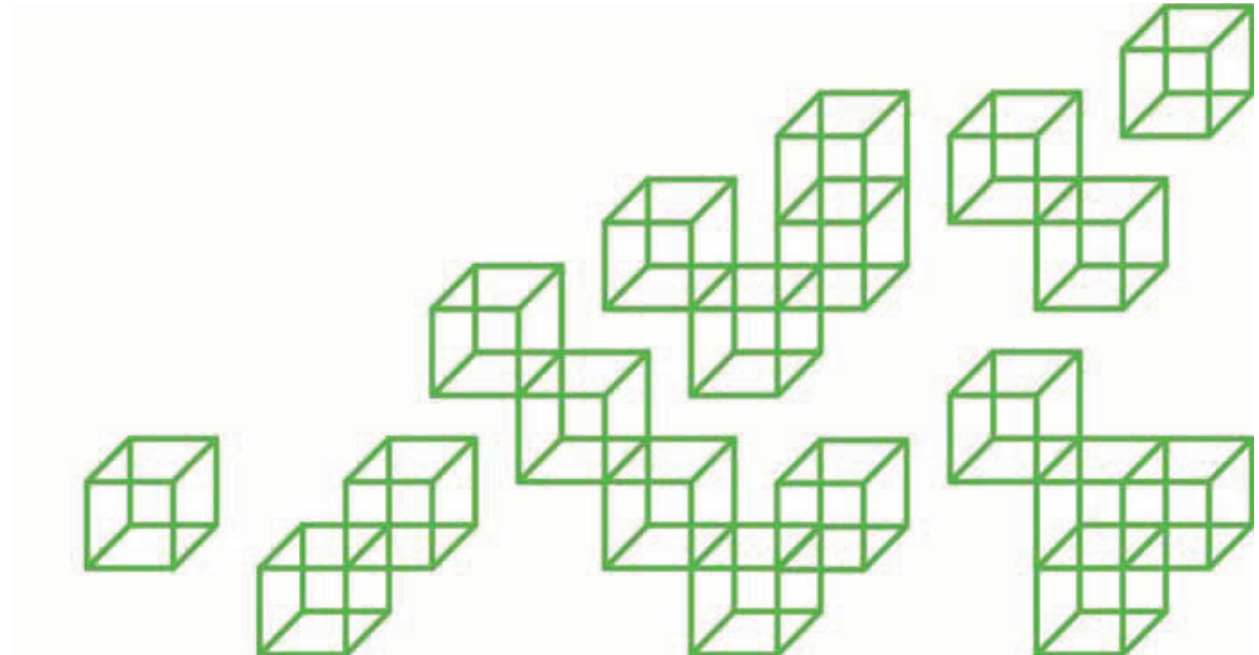


JULY 25 2018

In re Goldman Sachs Group, Inc. Securities Litigation

John D. Finnerty, Ph.D.

Professor of Finance, Fordham University
Academic Affiliate, AlixPartners, LLP



Case 1:18-cv-01017 Document 1-1 Filed 07/27/18 Page 1 of 28
A-3615

Event Study and Economic Analysis Demonstrate Price Impact on the Three Corrective Disclosure Dates

- Defendants' misstatements and omissions on the first day of the Class Period inflated Goldman's stock price – i.e., kept the stock trading at a higher price than it would have been had the truth been known – and subsequent statements and omissions further inflated and maintained inflation. 5/25/15 Finnerty Reb. Decl., ¶205; 8/7/15 Finnerty Reb. Decl., ¶3(b), 10-14.
- The statistically significant stock price declines on the three corrective disclosure dates “establish price impact.” 5/22/15 Finnerty Reb. Decl., ¶¶202-205.
- The statistically significant stock price declines are related to the alleged misrepresentations. 8/7/15 Finnerty Reb. Decl., ¶¶3(c), 38-42, 131-133; 5/22/15 Finnerty Rep ¶¶11.a-c, 65-94, 108-147.

Case 1:18-cv-03461-PAC Document 215-1 Filed 07/27/18 Page 22 of 28
A-3636

Market Commentary in Response to the April 16, 2010 Corrective Disclosure Supports Price Impact Analysis

- *Associated Press*, "Fraud Charge Deals Big Blow To Goldman's Image," April 18, 2010 (ECF No. 155-5)

"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."

"Our Clients' interests always come first" the company says on its website under the heading, "Goldman Sachs Business Principle No. 1."

- *Wall Street Journal*, "Common Sense: Where's the Goldman Sachs I Used to Know?," April 21, 2010 (ECF No. 155-7)

"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."

- *Wall Street Journal Blog*, "How Goldman Gets Its Premium Back," May 21, 2010 (ECF No. 201, Ex 25)

"...the premium has dissolved because the market is worried, not about lawsuits or politics, but about Goldman's core business. The Abacus affair has highlighted the conflicts intrinsic to the investment banking business. But historically Goldman has managed those conflicts well."

Conversely, evidence of poorly managed conflicts is especially dangerous to Goldman. Some damage has already been done.

Case 1:10-cv-03461-PAC Document 215-1 Filed 07/27/18 Page 25 of 28
A-3639

Market Commentary in Response to the April 16, 2010 Corrective Disclosure Supports Price Impact Analysis

- John Coffee, a securities law professor at Columbia Law School, April 19, 2010

"These charges are far more severe than anyone had imagined" and Goldman had teamed with "the leading short-seller in the industry to design a portfolio of securities that would crash."

- Citigroup Global Market, April 16, 2010

"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... 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."

- Bank of America Merrill Lynch, April 16, 2010

"This is clearly a serious charge,... 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 and for the industry more broadly."

- Moody's, April 19, 2010

"This development is a credit negative for Goldman Sachs given the potential franchise implications and direct financial costs."

Market Commentary in Response to the April 29, 2010 Corrective Disclosure Supports Price Impact Analysis

- Fitch Ratings, May 5, 2010

"The Rating Outlook revision to Negative incorporates recent legal developments and ongoing regulatory challenges that could adversely impact Goldman's reputation and revenue generating capacity.... And for financial services companies, particularly those dependent on the capital markets, reputation is critically important."

- Bank of America Merrill Lynch, April 30, 2010

"We 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."

- Standard & Poor's Equity Research Group, April 30, 2010

Cut its investment recommendation on Goldman's stock to Sell from Hold and lowered its price target by \$40 to \$140, stating that "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."

- Citigroup Global Market, May 2, 2010

"Goldman's reputation is one of the firm's greatest assets. To the extent clients lose faith and either reduce or eliminate their transactions with Goldman, it could have significant detrimental effect across all of the firm's business."

- The Washington Post, April 30, 2010

"The Justice Department's criminal investigation into Goldman Sachs goes beyond the financial transactions targeted by the Securities and Exchange Commission in the civil fraud suit brought against the firm last month... While prosecutors and investigators are focusing on some of the same mortgage-related transactions as the SEC,... the Justice Department cast a wider net."

Market Commentary in Response to the **June 9, 2010** Corrective Disclosure Supports Price Impact Analysis

- Wells Fargo, June 10, 2010

Near-term challenges for Goldman's stock were likely to persist, although it believed that a settlement with the SEC in the future would be positive for Goldman's stock. It noted that media reports of a second SEC investigation into Goldman's CDO marketing practices, specifically the Hudson 2006-1 CDO, pushed Goldman shares down as much as 4% on June 10, 2010.

Case 1:10-cv-03461-PAC Document 215-1 Filed 07/27/18 Page 28 of 28
A-3642

**Labaton
Sucharow**

**Robbins Geller
Rudman & Dowd LLP**

In re Goldman Sachs Grp., Inc. Secs. Litig., No. 1:10-cv-03461-PAC

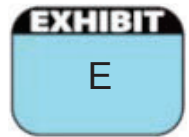
Lead Plaintiffs' Summary of Argument in Further Support of Class Certification

July 26, 2018

Case 1:18-cv-03461-PAC Document 215-2 Filed 07/27/18 Page 1 of 47
A-3643

Analysts Rebut Gompers, Cont'd

- Pls' Ex. 19 (1/29/2007 CIBC): "According to Viniar, **Goldman is very careful about the conflicts or perceived conflicts** that emerge, and actually **has a full time partner monitoring these conflicts.**"
- Pls' Ex. 21 (7/28/2008 Merrill Lynch): "**[W]e believe that Goldman has actually tended its customer-oriented businesses carefully**, which explains why at the end of the day, the world tends to come to Goldman, **and the absence of major conflict problems.**"
- 11/24/09 Bank of America Merrill Lynch: "**Goldman has always managed its conflicts effectively.** ... Goldman has often been viewed as having more than the average amount of **potential conflict** because of its principal activities (private equity and prop trading), though the scale and growth of its client trading and investment-banking franchise make it clear that **these conflicts have overall been well managed.**"
 - *Issued just 5 days after Defs' Ex. 37 ("GS a Short? And Five Reasons We Hate Goldman Sachs") and within a few weeks of *The Greatest Trade Ever* (Defs' Ex. 36, 11/3/09) and other 36 Dates articles (Defs' Exs. 34 & 35, 11/2/09)



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	No. 1:10-cv-03461-PAC
IN RE GOLDMAN SACHS GROUP, INC.	:	
SECURITIES LITIGATION	:	<u>CLASS ACTION</u>
	:	<u>JURY TRIAL DEMANDED</u>
	:	<u>ECF CASE</u>
_____	X	

**REBUTTAL DECLARATION OF JOHN D. FINNERTY, Ph.D. IN SUPPORT
OF LEAD PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

A. I can't answer that with a yes or no. It was not part of my assignment. And to the extent it wasn't part of my assignment, I can't answer that without assessing this.²⁹³

Q. Is it your opinion that no part of the April 16th drop was caused by the revelation of what Goldman or Fabrice Tourre was alleged to have done in connection with the Abacus deal?

A. This was not part of my assignment so I can't comment on that...²⁹⁴

180. Dr. Choi's unsupported opinion cannot serve as a reliable basis for Dr. Gompers's conclusion that it was the SEC enforcement action by itself that caused the entire price impact on April 16, 2010.

181. Second, Dr. Gompers suggests that market commentary shows that the impact on Goldman's stock price on these three days was due entirely to the SEC's announcement of its enforcement action and not in any part due to the revelation of Goldman's underlying conduct in connection with the Abacus CDO transaction.²⁹⁵

However, Dr. Gompers failed to consider contemporaneous market commentary in media sources as widely read and prominent as the *Wall Street Journal* and the *Associated Press*, which showed that the revelation that Goldman had engaged in conflicts of interest and violated its business practices in connection with Abacus, as detailed in the SEC lawsuit, was important and thus value relevant to investors' valuation of Goldman's stock – *i.e.*, it had an impact on Goldman's stock price:

- *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.

...

²⁹³ Choi Tr. at 42:8-16.

²⁹⁴ Choi Tr. at 48:5-17.

²⁹⁵ Gompers Declaration, ¶¶ 61, 66, 81, and 91.

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.)

- 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.

- 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.)*

Dr. Gompers disregards this evidence of price impact.²⁹⁶

²⁹⁶ That the conduct described by the SEC allegations in fact impacted securities analyst’s models and ratings and thus necessarily had an impact (whether positive or negative) on Goldman’s stock price is further evident from the Wells Fargo securities analyst report, dated April 19, 2010, in which Goldman’s outperform rating was maintained in part based on an assessment of the seriousness and validity of the underlying allegations – not just the charge itself: *“We are maintaining our Outperform recommendation on GS. . . . GS has begun to tell its side of the story, possibility reducing the concerns surrounding the SEC’s allegations.* Following the



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	No. 1:10-cv-03461-PAC
	:	
IN RE GOLDMAN SACHS GROUP, INC.	:	<u>CLASS ACTION</u>
SECURITIES LITIGATION	:	<u>JURY TRIAL DEMANDED</u>
	:	<u>ECF CASE</u>
	:	
_____	X	

EXPERT REPORT OF JOHN D. FINNERTY, Ph.D.
IN SUPPORT OF LOSS CAUSATION AND DAMAGES

the abnormal return on April 16, 2010 is -9.27%, which is statistically significant at the 1% level. Such a significance level means that there is less than a 1 in 100 chance that the abnormal return happened by mere chance.

3) Loss Causation Analysis

78. As discussed above, on Friday, April 16, 2010, the SEC filed a complaint against Goldman and Tourre alleging fraud in structuring and marketing the Abacus 2007-AC1 CDO.⁵⁹

79. In response to the SEC's lawsuit against Goldman, Robert Khuzami, the director of the SEC's Division of Enforcement, said in a statement that:⁶⁰

The product was new and complex but the deception and conflicts are old and simple. Goldman wrongly permitted a client that was betting against the mortgage market to heavily influence which mortgage securities to include in an investment portfolio, while telling other investors that the securities were selected by an independent, objective third party.

80. The *New York Times* published an article shortly after the SEC Complaint was filed and commented on the allegations, highlighting Goldman's previous defenses against the allegations relating to the mortgage-related securities:⁶¹

In recent months, Goldman has repeatedly defended its actions in the mortgage market, including its own bets against it. In a letter published last week in Goldman's annual report, the bank rebutted criticism that it had created, and sold its clients, mortgage-linked securities that it had little confidence in.

The letter continued: "Although Goldman Sachs held various positions in residential mortgage-related products in 2007, our short positions were not a 'bet against our clients.'" Instead, the trades were used to hedge other trading positions, the bank said.

In a statement provided in December to the Times as it prepared the article on the

⁵⁹ SEC Litigation Release No. 21489, "The SEC Charges Goldman Sachs With Fraud In Connection With The Structuring And Marketing of A Synthetic CDO," April 16, 2010.

⁶⁰ Bloomberg News, "SEC accuses Goldman Sachs of Fraud in CDO tied to Subprime," April 16, 2010.

⁶¹ New York Times, "U.S. Accuses Goldman Sachs of Fraud in Mortgage Deal," April 16, 2010.

Abacus deals, Goldman said that it has sold the instruments to sophisticated investors and that these securities “were popular with many investors prior to the financial crisis because they gave investors the ability to work with banks to design tailored securities which met their particular criteria, whether it be ratings, leverage or other aspects of the transaction.”

81. John Coffee, a securities law professor at Columbia Law School, commented that “[t]hese charges are far more severe than anyone had imagined,” and suggested Goldman had teamed with “the leading short-seller in the industry to design a portfolio of securities that would crash.”⁶² He further noted that “[t]he greatest penalty for Goldman is not the financial damages – Goldman is enormously wealthy – but the reputational damage. It’s not impossible to contemplate that the case could lead to criminal charges.”
82. Several securities analyst reports were issued the same day primarily commenting on the SEC allegations. Citigroup Global Market stated in a securities analyst report that:⁶³

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.

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.

Reflecting these concerns, Citigroup raised its risk rating of Goldman to High.

83. UBS noted in a securities analyst report that:⁶⁴

GS stated it will vigorously defend against these charges. Still, secondary and tertiary impacts are tough to quantify, but we will see the potential for other litigation (shareholder suits, NY AG...), possible loss of business at least in the short term (central banks, public pension funds...), an increase in momentum for more

⁶² Reuters News, “Goldman Sachs Charged With Fraud By SEC,” April 19, 2010.

⁶³ Citigroup Global Markets Research, “Goldman Sachs Group, Inc.: Initial Thoughts On SEC Civil Lawsuit,” April 16, 2010.

⁶⁴ UBS Investment Research, “Goldman Sachs Group Inc.: SEC Charges Goldman With Fraud,” April 16, 2010, and UBS Investment Research, “Goldman Sachs Group Inc.: How Do You Define a Market?” April 16, 2010.

stringent regulatory reform, and increased public ire against the financial industry.

While the complaint refers to a single transaction, we think there could be others.

GS could face continued pressure in the near term as the “uninvestable” level is back.

84. Bank of America Merrill Lynch also commented that:⁶⁵

This is clearly 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.

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 and for the industry more broadly.

85. Following the SEC’s lawsuit against Goldman, Moody’s confirmed Goldman’s reputational damage caused by the SEC lawsuit in its Weekly Credit Outlook Report released on Monday, April 19, 2010, commenting that:⁶⁶

On Friday morning in a civil complaint, the SEC accused Goldman Sachs (A1, negative) of fraud in the marketing and origination of a synthetic collateralized debt obligation (CDO). Later on Friday, Goldman Sachs denied the SEC’s allegation. This development is a credit negative for Goldman Sachs given the potential franchise implications and direct financial costs.

86. Goldman responded to the SEC Complaint and denied all charges, 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.”⁶⁷ Goldman also stated in an email statement that the SEC’s probe was centered on one CDO transaction dating from 2007 and that the SEC investigation would not have “broad ramifications” for the wider CDO market.⁶⁸

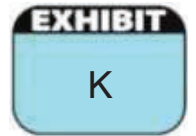
87. I have reviewed the media databases on Bloomberg, Thomson Research, and other news

⁶⁵ Bank of America Merrill Lynch, “Goldman Sachs Group, SEC case seems limited, but reputational fallout worrisome,” April 16, 2010.

⁶⁶ Moody’s Weekly Credit Outlook, April 19, 2010, p. 10.

⁶⁷ Business Wire, “Goldman Sachs Responds to SEC Complaint,” April 16, 2010.

⁶⁸ Bloomberg News, “Goldman Sachs says SEC probe Based on One CDO Transaction,” April 19, 2010.



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	
	:	No. 1:10-cv-03461-PAC
	:	
IN RE GOLDMAN SACHS GROUP, INC.	:	<u>CLASS ACTION</u>
SECURITIES LITIGATION	:	<u>JURY TRIAL DEMANDED</u>
	:	<u>ECF CASE</u>
	:	
_____	X	

REBUTTAL EXPERT REPORT OF JOHN D. FINNERTY, Ph.D.
IN SUPPORT OF LOSS CAUSATION AND DAMAGES

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

integral to our broader corporate strategy, which will continue to be driven by our obligation to meet the needs of our diverse client base.” (Emphasis added.)

127. Dr. Starks fails to consider the fact that once investors learn of a company’s violation of its business principles or its failure to manage its conflicts of interest effectively, those investors would utilize this material information in making their subsequent investment decisions regarding the company’s securities. That is precisely what happened here when investors learned in April and June 2010 the details and severity of Goldman’s misconduct, and Goldman’s stock was devalued accordingly.
128. Therefore, Dr. Starks’s review of other companies’ reports containing statements similar to Goldman’s Conflicts of Interest and Business Principles statements is irrelevant. The issue in this matter, as reflected in the Complaint, concerns whether Goldman’s Conflicts of Interest and Business Principles statements were affected by material misstatements and omissions. Dr. Starks does not address this issue with respect to any of the other companies’ similar statements.
129. Moreover, Dr. Starks not only confines her examination to securities analysts’ reports (excluding any news articles or other market commentary in prominent media sources) but also unduly restricts her search methodology in reviewing securities analysts’ reports. Specifically, she only looks for direct quotations or attributions that explicitly refer to the Conflicts of Interest statements or to the Business Principles statements but does not look for references to the subject matter of the misstatements or references that paraphrase Defendants’ misleading statements.¹⁰⁹
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

¹⁰⁹ Starks Report, ¶ 61.

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 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.)

- *Citigroup 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


John D. Finnerty, Ph.D.

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April 18, 2010 Sunday 09:28 PM GMT

SECTION: BUSINESS NEWS

LENGTH: 1214 words

HEADLINE: Fraud charge deals big blow to Goldman's image

BYLINE: By STEVENSON JACOBS, AP Business Writer

DATELINE: NEW YORK

BODY:

While Goldman Sachs contends with the government's civil fraud charges, an equally serious problem looms: a damaged reputation that may cost it clients.

The Securities and Exchange Commission's bombshell civil fraud charge against Goldman has tarnished the Wall Street bank's already bruised image, analysts say. It could also hurt its ability to do business in an industry based largely on trust.

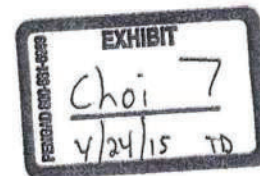
Damage from the case could hit other big banks as well. The SEC charges are expected to help the Obama administration as it seeks to more tightly police lucrative investment banking activities.

Goldman has denied the SEC's allegation that it sold risky mortgage investments without telling buyers that the securities were crafted in part by a billionaire hedge fund manager who was betting on them to fail. A 31-year-old Goldman employee is also accused in the civil suit that was announced Friday.

The charges could result in fines and restitution of more than \$700 million, predicted Brad Hintz, an analyst at Sanford Bernstein. Yet, even if Goldman beats the charge, the hit to its reputation could carry a greater cost.

The company, founded in 1869, grew from a one-man outfit trading promissory notes in New York to the world's most powerful, most profitable and arguably most envied securities and investment firm. From its 43-story glass-and-steel headquarters in Lower Manhattan, Goldman oversees a financial empire that spans more than 30 countries and includes more than 30,000 employees.

It has long attracted some of the world's best and brightest. Some have gone on to lofty careers in public life, enhancing the firm's aura of mystique and influence. Goldman alumni include former Treasury Secretaries Henry



Fraud charge deals big blow to Goldman's image The Associated Press April 18, 2010 Sunday 09:28 PM GMT

Paulson and Robert Rubin and former New Jersey Gov. Jon Corzine.

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.

So far, no Goldman clients have publicly condemned the bank's alleged actions. But the negative publicity and regulatory scrutiny could cause some to distance themselves, said Mark T. Williams, a professor of finance and economics at Boston University.

Goldman earned a record \$4.79 billion during the fourth quarter of last year and is expected to report blowout first-quarter results on Tuesday. A big chunk of its profits are from fee-based client businesses, such as investment advising, underwriting securities and brokering billion-dollar mergers.

"Goldman can really only truly be effective in the marketplace if it maintains a strong reputation," Williams said.

Morgan Stanley, the No. 2 U.S. investment bank after Goldman, could be in a position to poach some Goldman clients, which include hedge funds, pension funds and other big institutional investors. Overseas, European rivals such as Deutsche Bank AG and UBS could benefit.

Investors are already betting the legal troubles will hurt Goldman's finances. The company's shares plunged 13 percent after the charges were announced Friday, erasing a staggering \$12.5 billion in market value.

"Reputation risk is the biggest issue in our view," Citigroup analyst Keith Horowitz wrote in a note to clients. He predicted the fraud case won't be a "life-threatening issue" but that it "clearly seems like a black eye for Goldman."

It's not the first. The company came under criticism for receiving billions in bailout money that the government funneled into crippled insurer American International Group Inc. at the height of the financial crisis in 2008. Goldman was owed the money, but critics argued it should've been treated like other creditors and be forced to accept less.

Goldman CEO Lloyd Blankfein angered the bank's critics last year after The Times of London quoted him as saying he was "doing God's work" running the firm and handing out big employee bonuses. Blankfein himself got a \$9 million stock bonus for 2009.

Mishaps like those have been surprising given how much attention Goldman pays to its image. "Our clients' interests always come first," the company says on its website under the heading, "Goldman Sachs Business Principle No. 1."

It's a sales pitch that few Wall Street firms always live up to. Some analysts blame that on a shift in the industry's business model from traditional investment banking to one that focuses on making big bets for itself or clients.

That shift culminated in the rise of Blankfein, a former commodities trader, to the position of CEO in 2003. Today, trading accounts for nearly 70 percent of Goldman's revenue. Most of that trading is done on behalf of clients, though Goldman generates about 10 percent of its revenue by trading for itself.

The heavy reliance on trading and Goldman's peerless performance have left the firm open to criticism that it uses its market knowledge to game the system to benefit itself and a select group of clients.

The SEC charges seemingly support that assertion. Fabrice Tourre, the 31-year-old Goldman executive accused of shepherding the deal in question, boasted about the "exotic trades" he created "without necessarily understanding all of the implications of those monstrosities!!!" according to the SEC complaint.

Fraud charge deals big blow to Goldman's image The Associated Press April 18, 2010 Sunday 09:28 PM GMT

In another e-mail, he describes as "surreal" a meeting between his hedge fund client and another firm that allegedly wasn't told that the bundle of securities it was buying were chosen with input from a third party who was betting they would fail.

"Once upon a time, Wall Street firm protected clients," said Christopher Whalen, managing director of financial research firm Institutional Risk Analytics. "This litigation exposes the cynical, savage culture of Wall Street that allows a dealer to commit fraud on one customer to benefit another."

In a lengthy rebuttal to the SEC charges Friday, Goldman insisted it was a middleman in the transaction and did nothing wrong by not disclosing bearish bets against the pool by Paulson & Co., a major hedge fund led by billionaire investor John Paulson. Goldman said it lost \$90 million on the deal.

The SEC said Goldman had a duty to inform buyers of the mortgage investments that Paulson had played a major role in choosing the securities that went into the derivatives product and then bet that they would go bust.

Derivatives are complex financial products whose value is based on an underlying asset like mortgages or other types of debt. They're not traded on a public exchange, allowing firms like Goldman to generate fees by brokering deals between buyers and sellers.

The charges strengthen the government's case for increased regulation of derivatives like those Goldman is accused of using, analysts said.

Regardless, Goldman's ability to weather the storm should not be discounted, said Janet Tavakoli, president of Tavakoli Structured Finance, a Chicago consulting firm.

"The benefits of the crisis have so far swamped the reputation risks for Goldman," she said.

"If anything," she added, "they may wind up getting more customers if people can't avoid doing business with them."

AP Business Writer Chip Cutter contributed to this report from New York.

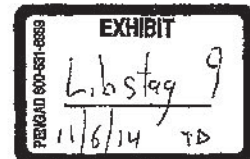
LOAD-DATE: April 19, 2010

A-7251

PLAINTIFFS'
EXHIBIT

53

From: Libstag, Gwen (FIN 200W41)
 Sent: Friday, May 21, 2010 2:47 PM
 To: Cohn, Gary [EO]; Vinjar, David; Stecher, Esta [GSBankUSA]; Rogers, John F.W. [EO]; Solomon, David [IBD]; Dyal, Gordon [IBD]; Scherr, Stephen [IBD]; Schwartz, Harvey [Fin]; Heller, David B [Sec Div]; Eisler, Ed [Sec Div]; Sherwood, Michael S; Cohen, Alan (AM-NY) [Compl]; Weinberg, John S. [IBD]
 Subject: In case you somehow missed this one



- May 21, 2010, 11:53 AM GMT

How Goldman Gets Its Premium Back

Top of Form 1

Search The Source

- By Robert Armstrong and Gregory J. Milman

For the first time since 2003, Goldman Sachs trades at a price/tangible book discount to both JP Morgan Chase and Morgan Stanley. When the SEC is suing you and Congress is grilling you, investors simply steer clear of your stock. That's the common explanation. [\[Read our GS coverage here.\]](#)

But there is another possibility: that the premium has dissolved because the market is worried, not about lawsuits or politics, but about Goldman's core business.

The Abacus affair has highlighted the conflicts intrinsic to the investment banking business. But historically Goldman has managed those conflicts well. Moreover, the conflicts in the Abacus deal at the center of the SEC's case have nothing to do with trading priorities versus I-banking responsibilities — the tension usually cited in discussions of Goldman. The conflicts in the creation of the now-notorious synthetic CDOs were all on the trading side of the business.

The issue is more subtle than that. To see that, let's play a quick game of Can You Spot the Conflict?

Which of the following conflicts is nothing to worry about, in a gray area, or beyond the pale?

1. Bank makes a market in a company's securities while its prop desk is net short those securities.
2. Bank uses information about its clients' overall trading activities to make prop trading decisions.
3. Bank makes a market in mortgage securities issued by financial institution while its prop desk is net short that institution's shares.
4. Bank acts as adviser to mortgage company while its prop desk is net short mortgages.
5. Bank does advisory work for a client while its prop desk is short that client's shares.
6. Bank sells and supports an IPO or other equity or debt issue recognized to be very low quality.
7. Bank designs and sells structured mortgage security product while it is net short against the mortgage market and/or against buyers of the structured product.
8. Bank designs and sells hyper-leveraged synthetic CDO product while:
 - a. believing at the management level that the mortgage market is ready to crack;
 - b. knowing the short party is more sophisticated than the long; and/or

- c. there is more money to be made in the long run from the relationship with short party than from the long.
- 9. Bank's prop desk is net short a security while an analyst has a buy recommendation on it.
- 10. Bank uses inside information gained through client relationships to take short/long positions on that client's shares.

A good argument can be made that 1 and 2 are not problematic while 9 and 10 are out of bounds.

If you believe it is difficult, if not impossible, to separate flow and prop trading and that major banks cannot compete in advisory services without a sales and trading operation, the conflicts in scenarios 3 through 7 are inherent to the business and simply have to be managed.

As a group, 6 through 8 are particularly important. More than the other cases, a bank is benefiting from its own role as a financial counselor to trade for its own account or earn a fee. These three cases carry the greatest risk of serious conflicts, tainted advice and reputational harm. Banks that push the boundaries in these kinds of cases are giving all their advisory customers reason to worry.

Of course, scenario 8 is based on Abacus. Whatever the true facts are in Goldman's case, the business of constructing a synthetic CDO in a volatile market, shuttling between the counterparties to create the customized product, is riddled with potential conflicts.

This territory is especially dangerous for Goldman because of the perception that it is an elite adviser and an elite trader that can do both simultaneously while managing the conflicts to the satisfaction of its clients. That's why its stock carries a premium to its peers in bull markets.

Conversely, evidence of poorly managed conflicts is especially dangerous to Goldman. Some damage has already been done.

"If I'm a corporate treasurer would I do a debt underwriting with Goldman right now? I might say it's not worth the hassle of trying to explain to a board of directors or irate shareholders or my boss," says Sanford C. Bernstein and Co. analyst Brad Hintz.

Goldman will always play in gray areas — that's the nature of the modern I-bank — but everyone can tell dark gray from light gray.

To regain its valuation premium, Goldman must steer back to the light side.

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Tamilla Ghodsi
Managing Director
Business Selection & Conflicts

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THE BUCKINGHAM RESEARCH GROUP

Important disclosure information (relative to NASD Rule 2711) about The Buckingham Research Group's rating system, risks, and potential conflicts of interest appear at the end of this material (or contact your investment representative). This report should be used as only a single factor in making investment decisions.

GOLDMAN SACHS (GS)

2Q08: Another Strong Quarter; Bumping Up '08 Estimate

STRONG BUY

June 17, 2008

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John Grassano 212-922-2019

jgrassano@buckresearch.com

- GS reported 2Q08 EPS of \$4.58, well ahead of consensus of \$3.42 and our estimate of \$3.43. Book value grew more than 5% sequentially and the company's ROE was 20.4%. These results also include \$750m (\$0.54 per share) in write-downs/hedging losses related to leveraged loans, as well as a lower than expected tax rate (adding \$0.35 per share vs. our forecast).
- The majority of the upside was driven by better than expected revenues in investment banking, private equity, and prime brokerage (trading revenues were basically in line). In fact, total revenues were 10% above our forecast. Also contributing to the upside was solid expense discipline, with non-comp expenses falling 6% sequentially vs. our expectation of flat expenses.
- Raising 2008 EPS to \$16.20 from \$16.00 to partially reflect the sizable "beat" this quarter. We believe the estimate is conservative given the continued evidence of stabilizing credit markets over the past three months and the potential for market share gains as many peers "retrench."
- In terms of the stock, while GS trades at a substantial premium to its peers, we believe it is warranted given its diversified franchise, strong brand, higher ROE profile, and peerless risk management. And at 1.9x current book value and 1.7x '08E book value, the stock trades well below fair value when considering a 20% ROE profile. Consequently, we reaffirm our Strong Buy rating, although we continue to see more upside in the likes of MS at 1.3x book.

Target	\$250.00
Price (06/17/2008)	\$179.44
52-Week Price Range	\$251-\$140
Shares Out. (mil.)	427.9
Market Capitalization (mil.)	\$76,782.4
Float	349.5
Avg. Daily Vol. (mil.)	12.0
Dividend/Yield	\$1.40/0.7%
Book Value (05/31/2008)	\$97.49
Debt/Capital (05/31/2008)	78.6%
2 Yr. Growth Rate	NM
ROE (2008E)	17.9%



EARNINGS PER SHARE ESTIMATES						
FYE Nov	Q1	Q2	Q3	Q4	Fiscal Yr	FY P/E
2007E	\$6.67A	\$4.93A	\$6.13A	\$7.01A	\$24.73A	7.3x
2008E	\$3.23A	\$4.58A	\$3.60E	\$4.79E	\$16.20E	11.1x
prior	--	--	\$3.76E	\$5.58E	\$16.00E	
2009E	--	--	--	--	\$21.00E	8.5x

Company Description - Growth Drivers - Risks: Goldman Sachs is a leading global investment bank engaged in three principal segments: Investment Banking (16% of revenue in 2007); Trading & Principal Investments (68% of revenue) and Asset Management & Securities Services (16% of revenue). Growth drivers: increased client activity associated with stronger economic and market performance; broadening client relationships; and international expansion. Risk factors: Market, economic, and competitive risks.

I7P5gol1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IN RE: GOLDMAN SACHS GROUP, INC.
SECURITIES LITIGATION,

Plaintiffs,

v.

10 Civ. 03461 PAC

GOLDMAN SACHS GROUP, INC.,

Defendants.

-----x

July 25, 2018
10:00 a.m.

Before:

HON. PAUL A. CROTTY,

District Judge

APPEARANCES

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Attorneys for plaintiffs

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JAMES W. JOHNSON, Esq.

LAWRENCE A. SUCHAROW, ESQ.

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- and -

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1 economically.

2 He also has some qualitative analysis for the April
3 30th and June 10th dates but does not have any statistical
4 analysis, and as a result he doesn't prove economically that
5 it's more likely than not that the entire drop was due to these
6 regulatory actions. And under his assumption that if you
7 assume, as he did, apparently tat returns are normally
8 distributed, in fact you will never get there. You can't come
9 to that conclusion. There is no way that a minus 9.27 percent
10 drop would be consistent with those data.

11 Q. Okay. Let's go to Slide 22 and you have got the heading:
12 Event study and economic analysis demonstrate price impact on
13 three corrective disclosure dates here; is that right?

14 A. Yes.

15 Q. And what are you showing the Court with slide 22?

16 A. The first point is the defendants' misstatements and
17 omissions on the first day of the class period inflated
18 Goldman's stock price, that is, kept the stock trading at a
19 higher price than the price at which it would have traded if
20 Goldman had disclosed the failure to manage its conflict of
21 interest and its failure to adhere to its business principles
22 in connection with the -- particularly with the Hudson
23 transaction.

24 So, the Goldman had made these statements many, many
25 times before so they're not new statements. And in contrast to

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1 what Professor Gompers said about my opinion, it is not that
2 not making these statements would have caused the stock price
3 to fall. The issue is the management of Goldman's conflict and
4 failure of Goldman, as pled in the complaint, that disclose
5 that it had not managed its conflict of interest, it has not in
6 fact placed its clients' interests first and adhered to
7 business principles, if Goldman had disclosed that information
8 which was omitted, it is my opinion that the stock price would
9 have dropped on April 16th, 2010.

10 And my conclusion, in the next, second bullet: The
11 statistically significant stock price declines on the three
12 corrective disclosure dates does establish price impact.

13 And, finally, when one looks at the market commentary
14 which is summarized in the next several slides, one can see
15 very clearly that the statistically significant stock price
16 declines are in fact related to the alleged misrepresentations
17 concerning the conflicts of interest management, the business
18 principles, and Goldman's reputation.

19 Q. Let's look at slides 23 and 24. Is this a summary of your
20 event study and economic analysis on the three corrective
21 disclosure dates?

22 A. Yes.

23 Q. Can you summarize for the Court what your analysis found?

24 A. The decision of the April 16th date shows, first of all, if
25 you go to the right-hand side, I calculated an abnormal return

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1 of minus 9.27 percent which is statistically significant at the
2 1 percent level which is what the three asterisks indicate.

3 The information that was disclosed was contained in a
4 is detailed, 22 page complaint. I have already testified about
5 that. There was new information, again which I have testified
6 about, in that document. The new information, in particular,
7 revealed that Goldman had misled ACA, that ACA and Paulson's
8 interests were aligned.

9 The fraud charge also provided new information
10 regarding the severity of Goldman's conduct. This wasn't just
11 somebody out in the marketplace alleging that Goldman had done
12 something wrong. This is their primary regulator putting
13 together a 22-page complaint in which it described, in detail,
14 how Goldman had structured transactions or helped someone do
15 that to favor the interests of one client over another and the
16 SEC was saying, as in the Stifel case I worked on, the SEC was
17 saying this is bad behavior which we don't want to see.

18 Q. And, could you talk about April 26, 2010, Dr. Finnerty?
19 What does your analysis of that date show?

20 A. April 26 was originally pled as a corrective disclosure.
21 When I analyzed it, I found that in addition to the four
22 e-mails that were issued by the Senate Subcommittee on
23 Investigations on April 24th, there was a 12-page Goldman memo
24 that went up on its website the same day that explained why it
25 hadn't done anything wrong.