

1 THE PEOPLE OF THE STATE OF CALIFORNIA  
2 BY AND THROUGH THE COMMISSIONER OF CORPORATIONS

3 In the matter of )  
4 GOLDMAN, SACHS & CO., ) FINDINGS OF FACT  
5 Respondent. ) CONCLUSIONS OF LAW  
6 ) ADMINISTRATIVE CONSENT ORDER  
7 )  
8 )

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

11 WHEREAS, the California Department of Corporations has been a part of coordinated  
12 investigations into Goldman Sachs’ activities in connection with the marketing and sale of auction  
13 rate securities (“ARS”); and

14 WHEREAS, Goldman Sachs has cooperated with regulators conducting the investigations by  
15 responding to inquiries, providing documentary evidence and other materials, and providing  
16 regulators with access to facts relating to the investigations; and

17 WHEREAS, Goldman Sachs has advised regulators of its agreement to resolve the  
18 investigations relating to its marketing and sale of ARS to individual investors; and

19 WHEREAS, Goldman Sachs agrees to take certain actions described herein and to make  
20 certain payments; and

21 WHEREAS, Goldman Sachs admits to the jurisdiction of the California Department of  
22 Corporations and consents to the entry of this Administrative Consent Order (the “Order” or  
23 “Consent Order”); and

24 WHEREAS, Goldman Sachs waives compliance with the provisions of the Administrative  
25 Procedure Act; and

26 WHEREAS, Goldman Sachs elects to permanently waive any right to a hearing and appeal  
27 under the California Corporations Code sections 25532(d) and 25609 and to judicial review of this  
28 Consent Order; and



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

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

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

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

24         9.         The resulting market dislocation should have been evident to Goldman Sachs. When  
25 client demand for its auction rate securities declined, Goldman Sachs’ “cover” bids filled the  
26 increasing shortfall, thereby sustaining the impression for certain investors that auctions managed by  
27 Goldman Sachs were functioning. As a result, Goldman Sachs’ auction rate securities inventory  
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1 grew significantly, requiring Goldman Sachs to raise its risk management limits for its Municipal  
2 Money Markets business (which included auction rate securities) several times.

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

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

#### 14 **Failure to Supervise**

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

### 19 **II.**

#### 20 **CONCLUSIONS OF LAW**

21 13. The California Department of Corporations has jurisdiction over this matter pursuant  
22 to the California Corporate Securities Law.

23 14. The California Department of Corporations finds that the above conduct subjects  
24 Goldman Sachs to sanctions under Title 10, Ch. 3, section 260.218 of the California Code of  
25 Regulations (failure to observe high standards of commercial honor and just and equitable principles  
26 of trade) and Title 10, Ch. 3, section 260.218.4(a) of the California Code of Regulations (failure to  
27 adequately supervise employees with regard to the sale of securities).

28 15. Nothing in this Order shall be construed as a finding or admission of fraud.





1 or in part, the Buyback Offer. The Buyback Offer shall have remained open until at least November  
2 12, 2008 (“Offer Period”). Goldman Sachs may extend the Offer Period beyond this date.

3 27. Goldman Sachs shall have undertaken its best efforts to identify and provide notice to  
4 Eligible Investors who invested in Eligible ARS that since February 11, 2008, have not been  
5 auctioning, of the relevant terms between Goldman Sachs and the California Department of  
6 Corporations.

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

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

22 30. No later than October 20, 2008, Goldman Sachs shall have established a dedicated  
23 toll-free telephone assistance line, with appropriate staffing, to provide information and to respond to  
24 questions from clients concerning the terms of the settlement between Goldman Sachs and the  
25 California Department of Corporations.

#### 26 **Review of Client Accounts**

27 31. For a period of two years from the date of this Order, upon request from any firm that  
28 is repurchasing auction rate securities, upon receipt from the repurchasing firm of (i) the names of

1 any Goldman Sachs clients that may hold ARS subject to the repurchasing firm's repurchase offer,  
2 (ii) the CUSIPs of the Eligible ARS, (iii) the clients' Goldman Sachs' account number(s) (if known  
3 to the repurchasing firm), and (iv) the date those ARS were transferred to Goldman Sachs (if known  
4 to the repurchasing firm), Goldman Sachs shall take reasonable steps to provide notice to those  
5 clients of the repurchasing firm's repurchase offer.

#### **Relief for Investors Who Sold Below Par**

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7 32. By November 12, 2008, Goldman Sachs shall have undertaken its best efforts to  
8 identify any Eligible Investor who sold Eligible ARS below par between February 11, 2008, and  
9 August 21, 2008, and shall have paid any such Eligible Investor the difference between par and the  
10 price at which the Eligible Investor sold the Eligible ARS.

#### **Reimbursement for Related Loan Expenses**

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12 33. Goldman Sachs shall have made best efforts to identify Eligible Investors who took  
13 out loans from Goldman Sachs, between February 11, 2008, and March 19, 2010, that were secured  
14 by Eligible ARS that were not successfully auctioning at the time the loan was taken out from  
15 Goldman Sachs, and paid interest associated with the auction rate securities based portion of those  
16 loans in excess of the total interest and dividends received on the auction rate securities during the  
17 duration of the loan. Goldman Sachs shall have reimbursed such clients for the excess expense, plus  
18 reasonable interest thereon. Such reimbursement shall have occurred no later than March 31, 2010.

#### **Claims for Consequential Damages**

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20 34. Goldman Sachs shall consent to participate in a special arbitration ("Arbitration") for  
21 the exclusive purpose of arbitrating any Eligible Investor's consequential damages claim arising from  
22 their inability to sell Eligible ARS. Goldman Sachs shall have provided written notice to Eligible  
23 Investors of the terms of the Arbitration process on or before November 12, 2008.

24 35. The Arbitration shall be conducted by a single public arbitrator (as defined by section  
25 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007),  
26 under the auspices of FINRA. Goldman Sachs will pay all applicable forum and filing fees. Any  
27 Eligible Investors who choose to pursue such claims in the Arbitration shall bear the burden of  
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1 proving that they suffered consequential damages and that such damages were caused by their  
2 inability to access funds invested in Eligible Auction Rate Securities.

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

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

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

### 13 **Institutional Investors**

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

18 40. Beginning November 12, 2008, and within 45 days of the end of each Goldman Sachs  
19 fiscal quarter thereafter, Goldman Sachs shall have submitted a written report to the Illinois Securities  
20 Department or other representative specified by the North American Securities Administrators  
21 Association (“NASAA”) outlining Goldman Sachs’ progress with respect to its obligations pursuant  
22 to this Order. Goldman Sachs shall have, at the option of the Illinois Securities Department or other  
23 representative specified by NASAA, conferred with such representative on a quarterly basis to  
24 discuss Goldman Sachs’ progress to date. Such quarterly reports and conferences shall have  
25 continued until December 31, 2009. Following every quarterly report, the representative shall have  
26 advised Goldman Sachs of any concerns regarding Goldman Sachs’ progress, and, in response,  
27 Goldman Sachs shall have discussed how Goldman Sachs plans to address such concerns. The  
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1 reporting or meeting deadlines may be amended with written permission from the Illinois Securities  
2 Department or other representative specified by NASAA.

### 3 **Relief for Municipal Issuers**

4 41. Goldman Sachs shall promptly refund to municipal issuers refinancing fees paid to  
5 Goldman Sachs for the refinancing or conversion of their auction rate securities that occurred  
6 between February 11, 2008, and the date of this Order, where Goldman Sachs acted as underwriter  
7 for the initial primary offering of the auction rate securities between August 1, 2007, and February  
8 11, 2008. Nothing in this Order precludes the California Department of Corporations from pursuing  
9 any other civil action that may arise with regard to auction rate securities other than the marketing  
10 and sale of auction rate securities to retail investors.

11 42. Goldman Sachs agrees to waive any right to indemnification and/or claims of  
12 contribution, and/or other similar remedies with respect to any costs, expenses, or losses in  
13 connection with this Order that Goldman Sachs may have against any municipal issuers that issued  
14 securities through Goldman Sachs in the primary market, including any student loan authority.

### 15 **Additional Considerations**

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

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

26 45. To the extent applicable, this Order hereby waives any disqualification from relying  
27 upon the registration exemptions or registration safe harbor provisions that may be contained in the  
28 federal securities laws, the rules and regulations thereunder, the rules and regulations of self

1 regulatory organizations or any states' or U.S. Territories' securities laws. In addition, this Order is  
2 not intended to form the basis for any such disqualifications. In addition, this Order is not intended to  
3 form the basis of a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of  
4 1934.

5 46. Except in an action by the California Department of Corporations to enforce the  
6 obligations of Goldman Sachs in this Order, this Order may neither be deemed nor used as an  
7 admission of or evidence of any alleged fault, omission, or liability of Goldman Sachs in any civil,  
8 criminal, arbitration, or administrative proceeding in any court, administrative agency, or tribunal.  
9 For any person or entity not a party to this Order, this Order does not limit or create any private right  
10 against Goldman Sachs including, without limitation with respect to the use of any e-mails or other  
11 documents of Goldman Sachs or of others concerning the marketing and/or sales of auction rate  
12 securities, limit or create liability of Goldman Sachs, or limit or create defenses of Goldman Sachs to  
13 any claims.

14 47. This Order and any dispute related thereto shall be construed and enforced in  
15 accordance with, and governed by, the laws of the State of California without regard to any choice of  
16 law principles.

17 48. Evidence of a violation of this Order proven in a court of competent jurisdiction shall  
18 constitute prima facie proof of a violation of the Act in any civil action or proceeding hereafter  
19 commenced by the California Department of Corporations against Goldman Sachs.

20 49. Should the California Department of Corporations prove in a court of competent  
21 jurisdiction that a material breach of this Order by Goldman Sachs has occurred, Goldman Sachs  
22 shall pay to the California Department of Corporations the cost, if any, of such determination and of  
23 enforcing this Order, including without limitation legal fees, expenses and court costs.

24 50. If Goldman Sachs fails to make the payment specified in paragraph 21, the California  
25 Department of Corporations may, at its sole discretion, pursue any legal remedies, including but not  
26 limited to initiating an action to enforce the Order, revoking Goldman Sachs' registration within the  
27 state, or terminating this Order.

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1           51.     If in any proceeding, after notice and opportunity for a hearing, a court of competent  
2 jurisdiction, including an administrative proceeding by a state securities administrator, finds that  
3 there was a material breach of this Order, the California Department of Corporations, at its sole  
4 discretion, may terminate the Order. If Goldman Sachs defaults on any other obligation under this  
5 Order, the California Department of Corporations may, at its sole discretion, pursue legal remedies to  
6 enforce the Order or pursue an administrative action, including but not limited to, an action to revoke  
7 Goldman Sachs' registration within the state. Goldman Sachs agrees that any statute of limitations or  
8 other time related defenses applicable to the subject of the Order and any claims arising from or  
9 relating thereto are tolled from and after the date of this Order. In the event of such termination,  
10 Goldman Sachs expressly agrees and acknowledges that this Order shall in no way bar or otherwise  
11 preclude the California Department of Corporations from commencing, conducting, or prosecuting  
12 any investigation, action, or proceeding, however denominated, related to the Order, against Goldman  
13 Sachs, or from using in any way any statements, documents, or other materials produced or provided  
14 by Goldman Sachs prior to or after the date of this Order, including, without limitation, such  
15 statements, documents, or other materials, if any, provided for purposes of settlement negotiations,  
16 except as may otherwise be provided in a written agreement with the California Department of  
17 Corporations.

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

25                   (a)     production, voluntarily and without service of subpoena, upon the request of  
26                   the California Department of Corporations, of all documents or other tangible evidence  
27                   requested by the California Department of Corporations and any compilations or summaries  
28                   of information or data that the California Department of Corporations requests that Goldman

1 Sachs (or the Goldman Sachs' parent companies, subsidiaries, or affiliates) prepare, except to  
2 the extent such production would require the disclosure of information protected by the  
3 attorney-client and/or work product privileges;

4 (b) without the necessity of a subpoena, having the current (and making all  
5 reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners,  
6 and employees of Goldman Sachs (and of any of the Goldman Sachs' parent companies,  
7 subsidiaries, or affiliates) attend any Proceedings (as hereinafter defined) in California or  
8 elsewhere at which the presence of any such persons is requested by the California  
9 Department of Corporations and having such current (and making all reasonable efforts to  
10 cause the former) officers, directors, trustees, agents, members, partners, and employees  
11 answer any and all inquiries that may be put by the California Department of Corporations to  
12 any of them at any proceedings or otherwise, except to the extent such production would  
13 require the disclosure of information protected by the attorney-client and/or work product  
14 privileges; "Proceedings" include, but are not limited to, any meetings, interviews,  
15 depositions, hearings, trials, grand jury proceedings, or other proceedings;

16 (c) fully, fairly, and truthfully disclosing all information and producing all records  
17 and other evidence in its possession, custody, or control (or the possession, custody, or control  
18 of the Goldman Sachs parent companies, subsidiaries, or affiliates) relevant to all inquiries  
19 made by the California Department of Corporations concerning the subject matter of the  
20 Order, except to the extent such inquiries call for the disclosure of information protected by  
21 the attorney-client and/or work product privileges; and

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

26 53. In the event Goldman Sachs fails to comply with paragraph 23 of the Order, the  
27 California Department of Corporations shall be entitled to specific performance, in addition to any  
28 other available remedies.

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

Dated this 27<sup>th</sup> day of April, 2010.

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
ALAN S. WEINGER  
Deputy Commissioner  
Enforcement Division

