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NM SECURITIES DIVISION

STATE OF NEW MEXICO
REGULATION AND LICENSING DEPARTMENT
SECURITIES DIVISION
2550 CERRILLOS ROAD
SANTA FE, NEW MEXICO 87505

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

ORDER No. 11-11-998-003

CONSENT ORDER

WHEREAS, Goldman, Sachs & Co. (“Goldman Sachs” or “Respondent”) is a broker-dealer registered in the state of New Mexico; and

WHEREAS, the New Mexico Securities Division cooperated with coordinated investigations into Goldman Sachs’ activities in connection with the marketing and sale of auction rate securities (“ARS”); and

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

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

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

WHEREAS, Goldman Sachs admits to the jurisdiction of the New Mexico Securities Division and consents to the entry of this Administrative Consent Order (the “Order” or “Consent Order”); and

WHEREAS, Goldman Sachs waives compliance with the provisions of the Administrative Procedure Act, NMSA 1978, § 12-8-1, et seq.; and

1 some of whom represented to certain investors that auction rate securities were highly liquid, safe
2 investments for cash management purposes.

3 5. These representations were misleading as to certain investors. Auction rate
4 securities were in fact different from cash and money market funds. As discussed above, the
5 liquidity of an auction rate security relied on the successful operation of the Dutch auction process.
6 In the event of a failed auction, investors cannot sell their auction rate securities in that auction and
7 are potentially stuck holding long-term investments, not money market instruments. As discussed
8 below, starting in the Fall of 2007, the auction rate securities market faced dislocation and an
9 increased risk of auction failure.

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

19 7. Because many investors could not ascertain how much of an auction was filled
20 through Goldman Sachs “cover” bids, those investors could not determine if auctions were clearing
21 because of normal marketplace demand, or because Goldman Sachs was making up for the lack of
22 demand through “cover” bids. Many investors were also not aware that the liquidity of the auction
23 rate securities was dependent upon Goldman Sachs’ continued use of “cover” bids. While
24 Goldman Sachs could track its own inventory as a measure of the supply and demand for its
25 auction rate securities, many investors had no comparable ability to assess the operation of the
26 auctions. There was no way for those investors to monitor supply and demand in the market or to

1 assess when broker-dealers might decide to stop supporting the market, which could cause its
2 collapse.

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

6 9. The resulting market dislocation should have been evident to Goldman Sachs. When
7 client demand for its auction rate securities declined, Goldman Sachs' "cover" bids filled the
8 increasing shortfall, thereby sustaining the impression for certain investors that auctions managed
9 by Goldman Sachs were functioning. As a result, Goldman Sachs' auction rate securities inventory
10 grew significantly, requiring Goldman Sachs to raise its risk management limits for its Municipal
11 Money Markets business (which included auction rate securities) several times.

12 10. From the Fall of 2007 through early February of 2008, demand for auction rate
13 securities continued to erode and Goldman Sachs' auction rate securities inventory increased
14 significantly. Goldman Sachs was aware of the increasing strains in the auction rate securities
15 market, and increasingly questioned the viability of the auction rate securities market. Goldman
16 Sachs did not disclose these increasing risks of owning or purchasing auction rate securities to all
17 of its clients.

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

23 **Failure to Supervise**

24 12. Goldman Sachs did not adequately supervise certain of its salespeople to ensure that
25 all of the firm's clients would be sufficiently apprised of ARS, the mechanics of the auction
26

1 process, and the potential illiquidity of ARS, including the fact that Goldman Sachs may stop
2 submitting “cover” bids, as discussed above.

3 **II.**

4 **CONCLUSIONS OF LAW**

5 13. The New Mexico Securities Division has jurisdiction over this matter pursuant to
6 Section 58-13B-54 of the New Mexico Securities Act of 1986 (1986, as amended through 2004)
7 and Section 58-13C-610 of the Act.

8 14. The New Mexico Securities Division finds that the above conduct subjects Goldman
9 Sachs to sanctions under Section 58-13B-16A(2)(h) of the New Mexico Securities Act of 1986
10 (unethical practice in the offer and sale of securities), and Section 58-13B-16A(2)(k) of the New
11 Mexico Securities Act of 1986 (failure to supervise).

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

13 16. Entry of this Order is in the public interest, appropriate for the protection of
14 investors, and consistent with the purposes fairly intended by the policy and provisions of the New
15 Mexico Securities Act of 1986 and the Act.

16 **III.**

17 **ORDER**

18 On the basis of the Findings of Fact, Conclusions of Law, and Goldman Sachs’ consent to
19 the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without
20 admitting or denying any of the Findings of Fact or Conclusions of Law,

21 **IT IS HEREBY ORDERED:**

22 17. This Order concludes the investigation by the New Mexico Securities Division and
23 any other action that the New Mexico Securities Division could commence under applicable New
24 Mexico law on behalf of New Mexico as it relates to Goldman Sachs’ marketing and sale of
25 auction rate securities to Goldman Sachs’ Eligible Investors, as defined below.

1 18. This Order is entered into solely for the purpose of resolving the investigation into
2 Goldman Sachs' marketing and sale of auction rate securities, and is not intended to be used for
3 any other purpose.

4 19. This Order shall be binding upon Respondent Goldman Sachs and its successors and
5 assigns as well as to successors and assigns of relevant affiliates with respect to all conduct subject
6 to the provisions above and all future obligations, responsibilities, undertakings, commitments,
7 limitations, restrictions, events, and conditions.

8 20. Goldman Sachs shall cease and desist from violating the New Mexico Uniform
9 Securities Act and will comply with Section 58-13C- 412C(13) and Section 58-13C- 412C(9) of
10 the Act in connection with the marketing and sale of ARS.

11 21. Goldman Sachs shall pay the sum of Seventy-three thousand one hundred eighty-
12 seven thousand dollars and forty-two cents (\$73,187.42) to the New Mexico Securities Division as
13 a civil monetary penalty, which amount constitutes New Mexico's proportionate share of the state
14 settlement amount of twenty-two million, five hundred thousand dollars (\$22,500,000.00), which
15 shall be payable to the state of New Mexico within ten (10) days of the date on which this Order is
16 entered, as follows:

17 a. \$60,000.00 to the New Mexico Securities Division as a civil monetary
18 penalty; and

19 b. \$13,187.42 to the Investor Protection Trust (hereafter the "IPT") (to be
20 mailed to Suite 300, 919 Eighteenth Street NW, Washington, DC 20006-5517) to be
21 credited to the New Mexico individual state account, with such funds to be used by
22 the IPT at SunTrust Bank NA, Washington, DC, for credit to the Investor Protection
23 Trust Account, together with a cover letter identifying Goldman Sachs as a
24 respondent in this action and the payment designated for the New Mexico individual
25 state account.
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1 22. In the event another state securities regulator determines not to accept Goldman
2 Sachs' settlement offer, the total amount of the payment to the state of New Mexico shall not be
3 affected.

4 **Requirement to Repurchase ARS from Retail ARS Investors**

5 23. Goldman Sachs shall have provided liquidity to Eligible Investors by offering to buy
6 back Eligible ARS that since February 11, 2008, have not been auctioning, at par, in the manner
7 described below.

8 24. "Eligible ARS," for the purposes of this Order, shall mean auction rate securities
9 purchased from Goldman Sachs on or before February 11, 2008.

10 25. "Eligible Investors," for the purposes of this Order, shall mean:

11 i. Natural persons (including their IRA accounts, testamentary trust and estate
12 accounts, custodian UGMA and UTMA accounts, and guardianship accounts);

13 ii. Legal entities forming investment vehicles for closely related individuals
14 including but not limited to IRA accounts, Trusts, Family Limited Partnerships, and other
15 legal entities performing a similar function;

16 iii. Charities and non-profits with Internal Revenue Code Section 501(c) status
17 that purchased Eligible ARS from Goldman Sachs; and

18 iv. Small Businesses that purchased Eligible ARS from Goldman Sachs. For
19 purposes of this provision, "Small Businesses" shall mean Goldman Sachs clients not
20 otherwise covered in paragraphs 25(i) and (ii) above that had \$10 million or less in assets in
21 their accounts with Goldman Sachs, net of margin loans, as determined by the client's
22 aggregate household position(s) at Goldman Sachs as of August 31, 2008, or, if the client
23 was not a client of Goldman Sachs as of August 31, 2008, as of the date that the client
24 terminated its client relationship with Goldman Sachs. Notwithstanding any other
25 provision, "Small Businesses" does not include broker-dealers or banks acting as conduits
26 for their customers.

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

7 27. Goldman Sachs shall have undertaken its best efforts to identify and provide notice
8 to Eligible Investors who invested in Eligible ARS that since February 11, 2008, have not been
9 auctioning, of the relevant terms between Goldman Sachs and the New Mexico Securities
10 Division.

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

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

1 **Claims for Consequential Damages**

2 34. Goldman Sachs shall consent to participate in a special arbitration (“Arbitration”)
3 for the exclusive purpose of arbitrating any Eligible Investor’s consequential damages claim arising
4 from their inability to sell Eligible ARS. Goldman Sachs shall have provided written notice to
5 Eligible Investors of the terms of the Arbitration process on or before November 12, 2008.

6 35. The Arbitration shall be conducted by a single public arbitrator (as defined by
7 section 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes, eff. April
8 16, 2007), under the auspices of FINRA. Goldman Sachs will pay all applicable forum and filing
9 fees. Any Eligible Investors who choose to pursue such claims in the Arbitration shall bear the
10 burden of proving that they suffered consequential damages and that such damages were caused by
11 their inability to access funds invested in Eligible Auction Rate Securities.

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

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

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

22 **Institutional Investors**

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

1 43. Nothing herein shall preclude New Mexico, its departments, agencies, boards,
2 commissions, authorities, political subdivisions and corporations, other than the New Mexico
3 Securities Division and only to the extent set forth in paragraph 17 above (collectively, “State
4 Entities”), and the officers, agents or employees of State Entities from asserting any claims, causes
5 of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil,
6 criminal, or injunctive relief against Goldman Sachs in connection with certain auction rate
7 securities practices at Goldman Sachs.

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

11 45. To the extent applicable, this Order hereby waives any disqualification from relying
12 upon the registration exemptions or registration safe harbor provisions that may be contained in the
13 federal securities laws, the rules and regulations thereunder, the rules and regulations of self
14 regulatory organizations or any states’ or U.S. Territories’ securities laws. In addition, this Order is
15 not intended to form the basis for any such disqualifications. In addition, this Order is not intended
16 to form the basis of a statutory disqualification under Section 3(a)(39) of the Securities Exchange
17 Act of 1934.

18 46. Except in an action by the New Mexico Securities Division to enforce the
19 obligations of Goldman Sachs in this Order, this Order may neither be deemed nor used as an
20 admission of or evidence of any alleged fault, omission, or liability of Goldman Sachs in any civil,
21 criminal, arbitration, or administrative proceeding in any court, administrative agency, or tribunal.
22 For any person or entity not a party to this Order, this Order does not limit or create any private
23 right against Goldman Sachs including, without limitation with respect to the use of any e-mails or
24 other documents of Goldman Sachs or of others concerning the marketing and/or sales of auction
25 rate securities, limit or create liability of Goldman Sachs, or limit or create defenses of Goldman
26 Sachs to any claims.

1 47. This Order and any dispute related thereto shall be construed and enforced in
2 accordance with, and governed by, the laws of the state of New Mexico without regard to any
3 choice of law principles.

4 48. Evidence of a violation of this Order proven in a court of competent jurisdiction
5 shall constitute prima facie proof of a violation of the Act in any civil action or proceeding
6 hereafter commenced by the New Mexico Securities Division against Goldman Sachs.

7 49. Should the New Mexico Securities Division prove in a court of competent
8 jurisdiction that a material breach of this Order by Goldman Sachs has occurred, Goldman Sachs
9 shall pay to the New Mexico Securities Division the cost, if any, of such determination and of
10 enforcing this Order including without limitation legal fees, expenses, and court costs.

11 50. If Goldman Sachs fails to make the payment specified in paragraph 21, the New
12 Mexico Securities Division, at its sole discretion, may pursue any legal remedies, including but not
13 limited to initiating an action to enforce the Order, revoking Goldman Sachs' registration within
14 the state, or terminating this Order.

15 51. If in any proceeding, after notice and opportunity for a hearing, a court of competent
16 jurisdiction, including an administrative proceeding by a state securities administrator, finds that
17 there was a material breach of this Order, the New Mexico Securities Division, at its sole
18 discretion, may terminate the Order. If Goldman Sachs defaults on any other obligation under this
19 Order, the New Mexico Securities Division may, at its sole discretion, pursue legal remedies to
20 enforce the Order or pursue an administrative action, including but not limited to an action to
21 revoke Goldman Sachs' registration within the state. Goldman Sachs agrees that any statute of
22 limitations or other time related defenses applicable to the subject of the Order and any claims
23 arising from or relating thereto are tolled from and after the date of this Order. In the event of such
24 termination, Goldman Sachs expressly agrees and acknowledges that this Order shall in no way bar
25 or otherwise preclude the New Mexico Securities Division from commencing, conducting, or
26 prosecuting any investigation, action, or proceeding, however denominated, related to the Order,

1 against Goldman Sachs, or from using in any way any statements, documents, or other materials
2 produced or provided by Goldman Sachs prior to or after the date of this Order, including, without
3 limitation, such statements, documents, or other materials, if any, provided for purposes of
4 settlement negotiations, except as may otherwise be provided in a written agreement with the New
5 Mexico Securities Division.

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

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

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

1 answer any and all inquiries that may be put by the New Mexico Securities Division to any
2 of them at any proceedings or otherwise, except to the extent such production would require
3 the disclosure of information protected by the attorney-client and/or work product
4 privileges; "Proceedings" include, but are not limited to, any meetings, interviews,
5 depositions, hearings, trials, grand jury proceedings, or other proceedings;

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

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

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

19 54. The New Mexico Securities Division has agreed to the terms of this Order based on,
20 among other things, the representations made to the New Mexico Securities Division by Goldman
21 Sachs, its counsel and the relevant NASAA task force. To the extent that any material
22 representations by Goldman Sachs or its counsel are later found to be materially inaccurate or
23 misleading, this Order is voidable by the Director of the New Mexico Securities Division in his
24 sole discretion.

25 Dated this 15th day of November 2011.

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Daniel S. Tanaka

Daniel S. Tanaka, Director
New Mexico Securities Division



