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BEFORE THE ARKANSAS SECURITIES COMMISSIONER ARKANSAS SECURITIES DEPT.  
CASE NO. S-09-024

IN THE MATTER OF )  
GOLDMAN, SACHS & CO., ) Order No. S-09-024-10-OR14

CONSENT ORDER

WHEREAS, Goldman, Sachs & Co. ("Goldman Sachs" or "Respondent") is a broker-dealer registered in the state of Arkansas; and

WHEREAS, the Arkansas Securities Commissioner has been a part of 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 Arkansas Securities Commissioner and consents to the entry of this Consent Order ("Order" or "Consent Order"); and

WHEREAS, Goldman Sachs waives compliance with the provisions of the Arkansas Administrative Procedure Act, codified at Ark. Code Ann. §§ 25-15-201 through 219; and

WHEREAS, Goldman Sachs elects to permanently waive any right to a hearing and appeal under the Arkansas Securities Act ("Act"), codified at Ark. Code Ann §§ 23-42-101 through 23-42-509 and to judicial review of this Consent Order; and

1 WHEREAS, Goldman Sachs acknowledges, without admitting or denying the Findings of  
2 Fact and Conclusions of Law contained in this Order, and consents to the entry of this Order by the  
3 Arkansas Securities Commissioner.

4 NOW, THEREFORE, the Arkansas Securities Commissioner, as administrator of the Act,  
5 hereby enters this Order.

6 **FINDINGS OF FACT**

7 1. Auction rate securities are long-term bonds issued by municipalities, corporations,  
8 and student loan companies, or perpetual equity instruments issued by closed-end mutual funds that  
9 pay an interest rate that resets periodically through a bidding process known as a Dutch auction.

10 2. Goldman Sachs participated in the marketing and sale of ARS.

11 3. Goldman Sachs acted as an underwriter and as the auction broker-dealer for certain  
12 issues of auction rate securities. When acting as sole manager, Goldman Sachs was the only firm  
13 that could submit bids into the auction on behalf of its clients and/or other broker-dealers who  
14 wanted to buy and/or sell any auction rate securities in such auctions. When acting as lead  
15 manager, Goldman Sachs was the primary firm that could submit bids into the auction, but other  
16 auction broker-dealers were able to submit orders on behalf of their clients as well. Goldman  
17 Sachs received revenue in connection with auction rate securities, including an underwriting fee  
18 representing a percentage of total issuance and a fee for managing the auctions.

19 4. Goldman Sachs conveyed to certain clients that ARS were secure, liquid securities  
20 that were a suitable alternative for cash management purposes. It did so through its sales force,  
21 some of whom represented to certain investors that auction rate securities were highly liquid, safe  
22 investments for cash management purposes.

23 5. These representations were misleading as to certain investors. Auction rate  
24 securities were in fact different from cash and money market funds. As discussed above, the  
25 liquidity of an auction rate security relied on the successful operation of the Dutch auction process.  
26 In the event of a failed auction, investors cannot sell their auction rate securities in that auction and

1 are potentially stuck holding long-term investments, not money market instruments. As discussed  
2 below, starting in the Fall of 2007, the auction rate securities market faced dislocation and an  
3 increased risk of auction failure.

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

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

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

26

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

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

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

### 18 Failure to Supervise

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

## 23 II.

### 24 CONCLUSIONS OF LAW

25 13. The Arkansas Securities Commissioner has jurisdiction over this matter pursuant to  
26 Ark. Code Ann. § 23-42-205.



1 nonprofit organization devoted to investor education; and (2) \$70,700.80 payable to the Arkansas  
2 Securities Department. This amount constitutes the state of Arkansas's proportionate share of the  
3 state settlement amount of twenty-two million, five hundred thousand dollars (\$22,500,000.00),  
4 which shall be payable within ten (10) days of the date on which this Order is entered.

5 20. In the event another state securities regulator determines not to accept Goldman  
6 Sachs' settlement offer, the total amount of the payment to the state of Arkansas shall not be  
7 affected.

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

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

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

14 23. "Eligible Investors," for the purposes of this Order, shall mean:

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

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

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

22 iv. Small Businesses that purchased Eligible ARS from Goldman Sachs. For  
23 purposes of this provision, "Small Businesses" shall mean Goldman Sachs clients not  
24 otherwise covered in paragraphs 23(i) and (ii) above that had \$10 million or less in assets in  
25 their accounts with Goldman Sachs, net of margin loans, as determined by the client's  
26 aggregate household position(s) at Goldman Sachs as of August 31, 2008, or, if the client

1 was not a client of Goldman Sachs as of August 31, 2008, as of the date that the client  
2 terminated its client relationship with Goldman Sachs. Notwithstanding any other  
3 provision, "Small Businesses" does not include broker-dealers or banks acting as conduits  
4 for their customers.

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

11 25. Goldman Sachs shall have undertaken its best efforts to identify and provide notice  
12 to Eligible Investors who invested in Eligible ARS that since February 11, 2008, have not been  
13 auctioning, of the relevant terms between Goldman Sachs and the Arkansas Securities  
14 Commissioner.

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

25 27. No later than December 31, 2009, any Eligible Investor who for good cause  
26 (including but not limited to incapacity or failure to receive the notice provided for in paragraph

1 25) did not accept the Buyback Offer pursuant to paragraph 26 above, shall be entitled to sell their  
2 Eligible ARS, at par, to Goldman Sachs for (30) days after establishing such good cause, and  
3 Goldman Sachs shall purchase such Eligible Investor's Eligible ARS promptly.

4 28. No later than October 20, 2008, Goldman Sachs shall have established a dedicated  
5 toll-free telephone assistance line, with appropriate staffing, to provide information and to respond  
6 to questions from clients concerning the terms of the settlement between Goldman Sachs and the  
7 Arkansas Securities Commissioner.

#### 8 **Review of Client Accounts**

9 29. For a period of two years from the date of this Order, upon request from any firm  
10 that is repurchasing auction rate securities, upon receipt from the repurchasing firm of (i) the names  
11 of any Goldman Sachs clients that may hold ARS subject to the repurchasing firm's repurchase  
12 offer, (ii) the CUSIPs of the Eligible ARS, (iii) the clients' Goldman Sachs' account number(s) (if  
13 known to the repurchasing firm), and (iv) the date those ARS were transferred to Goldman Sachs  
14 (if known to the repurchasing firm), Goldman Sachs shall take reasonable steps to provide notice to  
15 those clients of the repurchasing firm's repurchase offer.

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

17 30. By November 12, 2008, Goldman Sachs shall have undertaken its best efforts to  
18 identify any Eligible Investor who sold Eligible ARS below par between February 11, 2008, and  
19 August 21, 2008, and shall have paid any such Eligible Investor the difference between par and the  
20 price at which the Eligible Investor sold the Eligible ARS.

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

22 31. Goldman Sachs shall have made best efforts to identify Eligible Investors who took  
23 out loans from Goldman Sachs, between February 11, 2008, and March 19, 2010, that were secured  
24 by Eligible ARS that were not successfully auctioning at the time the loan was taken out from  
25 Goldman Sachs, and paid interest associated with the auction rate securities based portion of those  
26 loans in excess of the total interest and dividends received on the auction rate securities during the



1 duration of the loan. Goldman Sachs shall have reimbursed such clients for the excess expense,  
2 plus reasonable interest thereon. Such reimbursement shall have occurred no later than March 31,  
3 2010.

#### 4 Claims for Consequential Damages

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

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

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

19 35. Eligible Investors seeking consequential damages who elect to use the special  
20 arbitration process provided for herein shall not be eligible for punitive or special damages.

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

1 **Institutional Investors**

2 37. Goldman Sachs shall endeavor to work with issuers and other interested parties,  
3 including regulatory and governmental entities, to expeditiously provide liquidity solutions for  
4 institutional investors not covered by paragraph 21 above that purchased auction rate securities  
5 from Goldman Sachs prior to February 11, 2008 (“Institutional Investors”).

6 38. Beginning November 12, 2008, and within 45 days of the end of each Goldman  
7 Sachs fiscal quarter thereafter, Goldman Sachs shall have submitted a written report to the Illinois  
8 Securities Department or other representative specified by the North American Securities  
9 Administrators Association (“NASAA”) outlining Goldman Sachs’ progress with respect to its  
10 obligations pursuant to this Order. Goldman Sachs shall have, at the option of the Illinois  
11 Securities Department or other representative specified by NASAA, conferred with such  
12 representative on a quarterly basis to discuss Goldman Sachs’ progress to date. Such quarterly  
13 reports and conferences shall have continued until December 31, 2009. Following every quarterly  
14 report, the representative shall have advised Goldman Sachs of any concerns regarding Goldman  
15 Sachs’ progress, and, in response, Goldman Sachs shall have discussed how Goldman Sachs plans  
16 to address such concerns. The reporting or meeting deadlines may be amended with written  
17 permission from the Illinois Securities Department or other representative specified by NASAA.

18 **Relief for Municipal Issuers**

19 39. Goldman Sachs shall promptly refund to municipal issuers refinancing fees paid to  
20 Goldman Sachs for the refinancing or conversion of their auction rate securities that occurred  
21 between February 11, 2008, and the date of this Order, where Goldman Sachs acted as underwriter  
22 for the initial primary offering of the auction rate securities between August 1, 2007, and February  
23 11, 2008. Nothing in this Order precludes the Arkansas Securities Commissioner from pursuing  
24 any other civil action that may arise with regard to auction rate securities other than the marketing  
25 and sale of auction rate securities to retail investors.



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

10           45.     This Order and any dispute related thereto shall be construed and enforced in  
11 accordance with, and governed by, the laws of the state of Arkansas without regard to any choice  
12 of law principles.

13           46.     Evidence of a violation of this Order proven in a court of competent jurisdiction  
14 shall constitute prima facie proof of a violation of the Act in any civil action or proceeding  
15 hereafter commenced by the Arkansas Securities Commissioner against Goldman Sachs.

16           47.     Should the Arkansas Securities Commissioner prove in a court of competent  
17 jurisdiction that a material breach of this Order by Goldman Sachs has occurred, Goldman Sachs  
18 shall pay to the Arkansas Securities Department the cost, if any, of such determination and of  
19 enforcing this Order including without limitation legal fees, expenses, and court costs.

20           48.     If Goldman Sachs fails to make the payment specified in paragraph 19, the Arkansas  
21 Securities Commissioner, at his sole discretion, may pursue any legal remedies, including but not  
22 limited to initiating an action to enforce the Order, revoking Goldman Sachs' registration within  
23 the state, or terminating this Order.

24           49.     If in any proceeding, after notice and opportunity for a hearing, a court of competent  
25 jurisdiction, including an administrative proceeding by a state securities administrator, finds that  
26 there was a material breach of this Order, the Arkansas Securities Commissioner, at his sole

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

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

22 (a) production, voluntarily and without service of subpoena, upon the request of  
23 the Arkansas Securities Department, of all documents or other tangible evidence requested  
24 by the Arkansas Securities Department and any compilations or summaries of information  
25 or data that the Arkansas Securities Department requests that Goldman Sachs (or the  
26 Goldman Sachs' parent companies, subsidiaries, or affiliates) prepare, except to the extent

1 such production would require the disclosure of information protected by the attorney-client  
2 and/or work product privileges;

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

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

21 (d) making outside counsel reasonably available to provide comprehensive  
22 presentations concerning any internal investigation relating to all matters in the Order and  
23 to answer questions, except to the extent such presentations or questions call for the  
24 disclosure of information protected by the attorney-client and/or work product privileges.  
25  
26



1 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY**  
2 **GOLDMAN, SACHS & CO.**

3 Goldman, Sachs & Co. ("Goldman Sachs") hereby acknowledges that it has been served  
4 with a copy of this Consent Order, has read the foregoing Order, is aware of its right to a hearing  
5 and appeal in this matter, and has waived the same.

6 Goldman Sachs admits the jurisdiction of the Arkansas Securities Commissioner, neither  
7 admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and  
8 consents to entry of this Order by Arkansas Securities Commissioner as settlement of the issues  
9 contained in this Order.

10 Goldman Sachs states that no promise of any kind or nature whatsoever was made to it to  
11 induce it to enter into this Order and that it has entered into this Order voluntarily.

12 MICHAEL C. KEATS represents that he/she is MANAGING DIRECTOR of Goldman  
13 Sachs and that, as such, has been authorized by Goldman Sachs to enter into this Order for and on  
14 behalf of Goldman Sachs.

15 DATED this 21<sup>ST</sup> day of DECEMBER, 2010.

16 GOLDMAN, SACHS & CO.

17  
18 By: MICHAEL C. KEATS  
19 Title: MANAGING DIRECTOR

20 STATE OF New York  
21 County of Kings )

22 SUBSCRIBED AND SWORN TO before me this 21<sup>ST</sup> day of December, 2010.

23 Norma A. Gerald  
24 Notary Public

25 My commission expires:

26 **NORMA A. GERALD**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
**No. 01GE6192086**

**Qualified In Kings County**  
NY12526-99903  
My Commission Expires August 15, 2012