

FOIA CONFIDENTIAL TREATMENT REQUESTED BY JONATHAN EGOL

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UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of ABACUS CDO 2007-AC1

File No. HO-10911-A
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WELLS SUBMISSION ON BEHALF OF JONATHAN EGOL

Jonathan Egol makes this submission in response to the Staff's proposed recommendation that an enforcement action be brought against him.¹

PRELIMINARY STATEMENT

The January 29, 2010 letter from the SEC Staff provided notice that it intends to recommend a civil injunctive action against Mr. Egol in connection with his involvement in the ABACUS 2007-AC1 transaction ("2007-AC1"). The Staff has indicated its intention to bring charges against Mr. Egol under Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

A single fact undermines the claims the Staff proposes to make against Mr. Egol: his desk took a long position in the 2007-AC1 transaction. In order to bring its proposed claims against Mr. Egol, the Staff and the Commission would have to argue that someone who culpably

¹ This submission is provided solely in connection with the Staff's consideration of possible action against Mr. Egol, and is made without any admission that the conduct under investigation violated any laws, rules or regulations. Should the Staff decide to make any recommendation that varies in any respect from the issues and positions Mr. Egol has addressed, we expressly reserve the right to revise this submission in accordance with Rule 5(c) of the Commission's Rules Regarding Information and Other Proceedings, 17 C.F.R. § 202.5(c), and Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations, Nos. 33-5310, 34-9796, 1972 WL 130244, at *1-2 (Sept. 27, 1972). Mr. Egol also expressly reserves the right to object to the admissibility of this submission and those submitted by any other person in any subsequent proceeding. Finally, Mr. Egol hereby asserts that this submission constitutes attorney work product and requests that (a) it be treated confidentially and not as a waiver of any privilege or immunity from production, and (b) pursuant to Commission Rule 83, 17 C.F.R. § 200.83, that this submission not be disclosed in response to any request made under the Freedom of Information Act, 5 U.S.C. § 552.

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participated in a fraud, the purpose of which was to mislead investors into purchasing toxic assets, advocated allowing his desk to take the risk of a long position with respect to those very same assets (and suffered significant losses as a result). The Staff's argument stretches creativity beyond the breaking point. There is simply no plausible theory on which the Commission could conclude that Mr. Egol was part of any fraud in the 2007-ACI transaction.

Further, both the factual analysis and the legal theory behind the Staff's suggested claims are fundamentally flawed. The Staff's theory, as outlined in a telephone call with counsel on January 29, 2010, is that the offering materials for the 2007-ACI transaction were false and misleading because they stated that ACA Management, LLC ("ACA") selected the reference portfolio but failed to disclose that Paulson & Co., Inc. ("Paulson") also played a role in the portfolio selection process. Mr. Egol joins in the detailed presentation submitted by Goldman, Sachs & Co. ("Goldman Sachs"), which explains why the offering materials were entirely truthful, why Paulson's interaction with ACA was not a matter required to be disclosed in order to make the offering materials not misleading, and why sophisticated investors in synthetic CDOs fully understood that someone had to assume the short side of the synthetic portfolio.

But even if the Staff could establish that the offering materials should have disclosed Paulson's involvement in the portfolio selection process—which it cannot—there is no basis for a claim against Mr. Egol individually:

First, Mr. Egol cannot be primarily liable for any allegedly misleading statement because he did not make any of the statements claimed by the Staff to be false and misleading. Nor did Mr. Egol's actions in reviewing portions of the offering materials drafted by others make him sufficiently responsible for the statements that he could be deemed, under applicable authorities, to have made them. If accepted, the novel theory the Staff advances here would

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effect a significant expansion of the scope of individual vicarious liability for an issuer's disclosures, raising troubling issues of statutory construction and fair notice.

Second, Mr. Egol's conduct does not satisfy either the knowledge or substantial assistance elements of an aiding and abetting claim. The record is devoid of evidence that Mr. Egol *knew* of any violation of the securities laws. The absence of such evidence is not surprising given the Staff's acknowledgement that its position here relies on novel legal theories. Nor does the evidence show that, as the senior person on the Structured Product Correlation Trading Desk, Mr. Egol had reason to believe that the statement in the offering materials that ACA selected the reference portfolio was untruthful, or that the offering materials were required to discuss Paulson's interactions with the portfolio selection agent, ACA. Further, the evidence establishes that Mr. Egol was only one of several individuals, including other business personnel and lawyers, who reviewed drafts of the offering materials. That conduct does not establish the "substantial assistance" element of an aiding and abetting claim.

Significantly, our research (albeit conducted under the pressure of the truncated schedule imposed by the Staff) has disclosed no case in which a senior person on a trading desk has been held liable for the kind of securities law violations alleged here by reason of his monitoring and oversight responsibilities. We have asked the Staff for any authorities supporting its novel position, and it has offered none.

Asserting a claim against Mr. Egol would not only defy common sense and applicable legal standards; it would also constitute an unjustified and unwise departure from the Commission's established enforcement policies.

STATEMENT OF FACTS

A. Mr. Jonathan Egol

1. Personal Background

Jonathan Egol is 40 years old, married, and the father of three. Mr. Egol graduated from Princeton University in 1992 with a degree in aerospace engineering. From 1992 to 1996, he worked as a consultant. He obtained an MBA from the University of Chicago in 1998, and joined Goldman Sachs upon his graduation from business school. He is currently a Managing Director at Goldman Sachs.²

Mr. Egol has never previously been the subject of a securities industry regulatory investigation or any other law enforcement investigation.³

2. Mr. Egol's Position at Goldman Sachs

Mr. Egol joined Goldman Sachs in 1998 as an Associate in the Mortgage Research Department. In 2000, he moved to the Structured Product Collateralized Debt Obligation ("CDO") origination business within Goldman Sachs' Mortgage Department. Mr. Egol became a Vice President in 2001.⁴

In early 2004, Mr. Egol started the Structured Product Correlation Trading Desk within Goldman Sachs' Mortgage Department.⁵ The function of the new desk was to make markets for customers in tranches referencing synthetic portfolios of mortgage-backed and asset-backed securities, and to price and manage the risk of those tranches over time.⁶ Later in 2004, Fabrice Tourre and Geoff Williams joined the desk. Mr. Tourre was promoted to Vice President in

² Transcript of Deposition of Jonathan Egol on January 7, 2010 ("Egol Tr.") at 7, 245.

³ Declaration of Jonathan Egol, dated February 24, 2010 ("Egol Decl."), annexed hereto as Exhibit A, ¶ 6.

⁴ Egol Decl. ¶ 3.

⁵ Egol Tr. 7-10; Egol Decl. ¶ 3.

⁶ Egol Decl. ¶ 3; see Egol Tr. 12-13, 18.

December 2006. By the time of the 2007-AC1 transaction, the desk also included David Gerst, a former attorney who had joined the desk as a structurer with the title of Vice President.⁷

As the senior Vice President on the desk, Mr. Egol not only focused on transactions that he directly executed; he also monitored activity on the desk and had input into decisions that would have a material impact on the desk's risk. He also reviewed matters brought to his attention and raised issues of significance to his supervisors. Mr. Egol did not have formal supervisory authority over the other members of the desk: in particular he did not have the power to terminate their employment or determine their compensation.⁸

B. The ABACUS Synthetic CDO Structure

Mr. Egol was part of the group at Goldman Sachs that in 2004 created the ABACUS synthetic CDO structure. In the ABACUS structure, a special purpose vehicle ("SPV") issued interest-bearing credit-linked notes to investors. The ABACUS structure was a "synthetic" CDO in that it referenced—rather than actually owned—a portfolio of asset-backed or mortgage-backed securities (the "Reference Portfolio"). The SPV entered into credit default swap ("CDS") transactions in which it agreed to provide "insurance" payments to a "protection buyer" in the event of write-downs or other defined credit events on securities in the Reference Portfolio, in exchange for regular premium payments made by the protection buyer. Goldman Sachs' ABACUS transactions were not the only synthetic CDO structures offered in the market during the period 2004-2007; many other financial institutions offered synthetic CDO structures similar to ABACUS as well, and investor demand for this type of investment was strong during that period, resulting in many such transactions.

⁷ Egol Tr. 33, 35.

⁸ Egol Decl. ¶ 5.

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Because the SPV did not actually own the assets in the Reference Portfolio, there were no direct returns from those assets to support interest payments to the note holders. Rather, premium payments from the protection buyer were the main source of the interest payments received by the note holders. Thus, investors necessarily understood that in the ABACUS transactions, as in every synthetic CDO transaction, a protection buyer would necessarily hold a short position in the first instance against the Reference Portfolio. The proceeds of the sale of notes to investors were used to purchase collateral securities, which could be sold to provide cash to make "insurance" payments to the protection buyer in the event of write-downs or other credit events on securities in the Reference Portfolio, or, in the absence of such write-downs, to pay back the note holders' principal.

Goldman Sachs' Structured Product Correlation Trading Desk, acting as principal, was the protection buyer for each of the ABACUS transactions. With respect to its initial short position in the Reference Portfolio resulting from the purchase of protection from the SPV, the Structured Product Correlation Trading Desk could either retain this short position, or, more commonly, could attempt to hedge this short position by selling credit protection on securities in the Reference Portfolio either to a customer or to another Goldman Sachs trading desk that made markets in such credit protection. In the 2007-AC1 transaction, Goldman Sachs hedged its initial short position by selling credit protection to Paulson. Because Goldman Sachs sold *more* credit protection to Paulson than it bought in the 2007-AC1 transaction, it had a long exposure to the 2007-AC1 Reference Portfolio.

The ABACUS transactions were appealing to a number of sophisticated CDO investors because each tranche of the transaction could be structured and sold without regard to other tranches, and not every tranche needed to be placed in order for the transaction to go forward.

This permitted customization of transactions to meet particular investors' requirements with respect to portfolio, structure, or other characteristics. The ABACUS transactions allowed Goldman Sachs to offer its customers a flexible mechanism for taking tailored exposure to mortgage market risks.

As is apparent from the 2007-AC1 transaction, Goldman Sachs did not create the ABACUS issuance platform in order to profit from a decline in the U.S. housing market. In fact, the first ABACUS transaction, 2004-1, closed in July 2004—long before U.S. housing markets peaked and started to decline—and resulted from an inquiry from IKB Deutsche Industriebank AG ("IKB"), which sought to invest in a synthetic CDO referencing asset-backed and mortgage-backed securities meeting its specific requirements.⁹

C. The 2007-AC1 Transaction

1. Transaction Summary

The 2007-AC1 transaction was a synthetic CDO referencing a \$2 billion portfolio of 90 Baa2-rated subprime residential mortgage-backed securities ("RMBS"). The transaction resulted from an inquiry from Paulson about buying protection from Goldman Sachs on certain tranches referencing 2006 vintage Baa2-rated RMBS.¹⁰ In response to this inquiry, Goldman Sachs sought investors interested in selling protection on such tranches either through CDS or an ABACUS deal.¹¹

ACA served as Portfolio Selection Agent for 2007-AC1, and was thus responsible for selecting the Reference Portfolio. On February 15, 2007, ACA entered into an engagement letter

⁹ See Egol Tr. 71, 74.

¹⁰ GS MBS-E 112689 (October 27, 2006 e-mail from Toure to "ficc-mtgcorr-desk" and Michael Swenson, stating: "Paulson has appetite to short, in tranche format, the 9-100 layers of risk (corresponding to the 'A2/A' rated tranches and up) of a Baa2 2006 vintage RMBS portfolio."); see Egol Tr. 104-05.

¹¹ Egol Decl. ¶ 7.

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with Goldman Sachs by which ACA agreed to "select the Reference Portfolio."¹² By a Portfolio Selection Agreement dated April 26, 2007, ACA obligated itself to

exercise that degree of skill and care consistent with industry standards for the selection of a portfolio of investments similar to the investments described in the Credit Default Swap and that which the Portfolio Selection Agent customarily exercises with respect to such investments selected by it for clients in substantially similar transactions and, in any event, to act in a commercially reasonable manner in discharging its duties under this Agreement.¹³

ACA was thus responsible for analyzing and approving each security in the Reference Portfolio.

No transaction could occur without ACA's blessing of the Reference Portfolio.

Paulson originally proposed a list of 123 securities for inclusion in the Reference Portfolio; ACA rejected 68 of these and proposed additional possibilities. After further back-and-forth, including some additional comments from Goldman Sachs and IKB, an investor in the notes, ACA selected each of the 90 reference obligations that ultimately comprised the 2007-AC1 Reference Portfolio, using its expertise and proprietary methodology.

The offering documents for 2007-AC1 listed all 90 RMBS that comprised the Reference Portfolio and noted that the Reference Portfolio would be "static," meaning that it would not be subject to change after the closing date, as opposed to a "managed" portfolio in which the manager can adjust the Reference Portfolio (for instance, by removing poorly performing securities during the life of the transaction).¹⁴ The offering documents stated that ACA had selected the Reference Portfolio. The offering materials did not describe the specific methodology employed by ACA. Nor did they discuss ACA's contacts with Paulson (or Goldman Sachs or IKB) in the portfolio selection process.

¹² GS MBS-E 5997087.

¹³ GS MBS-E 13100786 (Portfolio Selection Agreement).

¹⁴ GS MBS 10014 at 10021-22 (2007-AC1 Term Sheet, dated February 26, 2007); GS MBS 10089 at 10274-76 (2007-AC1 Offering Circular, dated April 26, 2007).

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Mr. Egol understood that the 2007-ACI marketing materials had been drafted and reviewed by Goldman Sachs' external attorneys and the deal team on the desk, in consultation with Goldman Sachs' legal and compliance departments. There is no evidence that anyone raised any issue about disclosing the role of Paulson in the portfolio selection process. Significantly, ACA did not suggest disclosing Paulson's role in the portfolio selection process or question the description of itself in the offering documents as the Portfolio Selection Agent, despite being fully aware of Paulson's involvement.¹⁵

The 2007-ACI transaction closed on April 26, 2007. IKB purchased \$150 million in Class A1 and Class A2 notes, and ACA purchased \$42 million in Class A2 notes. Both classes of notes were rated Aaa by Moody's and AAA by Standard & Poor's. Goldman Sachs entered into a CDS with the SPV in which Goldman Sachs bought protection with a notional amount of \$192 million. Through a separate CDS with Paulson, Goldman Sachs sold protection on the \$192 million notional amount on which it had purchased protection from the SPV.

In May of 2007, Goldman Sachs entered into a CDS with approximately \$909 million notional amount by which Goldman Sachs bought protection from ACA referencing the 50-100% tranche of 2007-ACI, with ABN AMRO ("ABN") serving as intermediary (because ACA would not agree to post collateral and Goldman Sachs would not accept ACA's unsecured credit). Goldman Sachs also entered into a CDS with Paulson to sell tranchet credit protection it had purchased from ACA (intermediated by ABN). Goldman Sachs wrote \$1 billion notional of credit protection to Paulson on the 45-100% senior tranche of the Reference Portfolio, but purchased protection from ACA on only approximately \$909 million notional amount of the 50-100% senior tranche of the Reference Portfolio. As a result, Goldman Sachs bore the long

¹⁵ Egol Decl. ¶ 16.

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market and credit risk on approximately \$91 million notional amount of the 45-50% tranche of the Reference Portfolio.¹⁶

At the time the 2007-AC1 transactions and the related Paulson CDS were priced, the Structured Product Correlation Trading Desk estimated that the net revenues from these transactions were approximately \$15 million.¹⁷

Due to the widespread deterioration of the U.S. housing market that accelerated over the course of 2007 and 2008, the credit quality and market value of subprime loans in general declined severely. The Reference Portfolio for the 2007-AC1 transaction was affected by the general deterioration in the market for subprime loans and the 2007-AC1 notes suffered a precipitous decline in value starting in June 2007. Even notes that had been rated triple-A suffered losses and eventually became worthless as the value of the underlying securities collapsed. Goldman Sachs itself lost approximately \$90 million from its exposure to the 45-50% tranche.

2. Mr. Egol's Involvement in the 2007-AC1 Transaction

The 2007-AC1 transaction was primarily handled on the Structured Product Correlation Desk by Mr. Tourre and Mr. Gerst.¹⁸ Mr. Egol had little involvement in the day-to-day work on the transaction.¹⁹ Mr. Egol does not recall any direct communications with anyone from Paulson, ACA, IKB, or ABN about the 2007-AC1 transaction prior to its closing, with one minor exception (when Mr. Egol took a call from Paolo Pellegrini of Paulson because Mr. Tourre was out of the office).²⁰

¹⁶ Egol Decl. ¶ 22.

¹⁷ Egol Decl. ¶ 23.

¹⁸ Egol Decl. ¶ 8; see Egol Tr. 94-96, 193, 194.

¹⁹ Egol Decl. ¶ 8; see Egol Tr. 97.

²⁰ Egol Tr. 98-99, 216-17, 234-36; Egol Decl. ¶ 9.

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Mr. Egol participated in discussions about the economics of 2007-AC1, transaction format, and risk management considerations. In addition, he played a monitoring and consultative role with respect to the transaction, as he did with many other transactions. He kept apprised of the status of the deal through conversations on the desk and e-mails that were distributed to him or the e-mail list "ficc-mtgcorr-desk."²¹ He offered occasional suggestions and comments about the deal.²² He reviewed portions of drafts of the Term Sheet, Flip Book, and Offering Circular for the 2007-AC1 transaction, but did not formally approve them and does not recall making any substantive comments or edits to those materials.²³ Mr. Egol spent a relatively modest portion of his time working on the 2007-AC1 transaction.²⁴

3. Mr. Egol's Awareness of the Portfolio Selection Process

Mr. Egol played no direct role in the portfolio selection process, although he had a general awareness of it. He monitored updates and suggested possible selection agents.²⁵ Mr. Egol saw copies of the ACA engagement letter and ACA's Portfolio Selection Agreement, in which ACA represented that it would select the Reference Portfolio.²⁶ Mr. Egol also saw e-mail traffic among Goldman Sachs, Paulson, and ACA reflecting back-and-forth exchanges about the Reference Portfolio.²⁷ Mr. Egol was also aware that IKB made suggestions about removing certain names from the Reference Portfolio.²⁸

²¹ Egol Decl. 18.

²² See Egol Tr. 97, 102, 123.

²³ See Egol Tr. 102-03, 187-89, 205-07, 210, 212-13.

²⁴ See Egol Tr. 237-38.

²⁵ See, e.g., GS MBS-E 2618848-50 (December 18-20, 2006 e-mails among Gerst, Williams, Egol, Tourre, and Lehman about possible selection agents); GS MBS-E 8991019-20 (January 31, 2007 e-mail from Gerst to Laura Schwartz, copying "ficc-mtgcorr-desk" and others, with update on reference portfolio).

²⁶ GS MBS-E 5997087-105 (ACA engagement letter); GS MBS-E-013100784-801 (Portfolio Selection Agreement); see Egol Tr. 134.

²⁷ See, e.g., GS MBS-E 8991019-20 (January 31, 2007 e-mail from Gerst to Laura Schwartz of ACA, copying "ficc-mtgcorr-desk" and others, attaching list of RMBS to include in the portfolio); GS MBS-E

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Mr. Egol believed that the Reference Portfolio achieved through this process was of reasonable quality in relation to its market price, and in fact of stronger quality than portfolios for a number of CDO transactions on the market during the first half of 2007 that also primarily referenced recent vintage mezzanine RMBS and related securities.²⁹ On February 21, 2007, Mr. Egol wrote to his colleagues: "I would not want to put on additional shorts on this granular Baa2 portfolio at the below levels," referring to market prices indicated by Mr. Toure.³⁰ On March 1, 2007, Mr. Egol wrote that he wanted to "have the option to hit [Paulson's] protection bid if we feel too short," which would have made Goldman Sachs long the Reference Portfolio.³¹ Because he believed that the Reference Portfolio was of better than average quality relative to comparable CDOs in the market at the time, he consistently disagreed with suggestions that Goldman Sachs keep the protection on the Reference Portfolio for itself (rather than selling the protection to

2622081-82, GS MBS-E-3026086-87 (e-mail chains reflecting discussions among Goldman Sachs, ACA, and Paulson about specific names to be included in the Reference Portfolio); *see also* Egol Tr. 131, 133.

²⁸ *See, e.g.*, GS MBS-E 2972269 (March 6, 2007 e-mail chain including request from Joerg Zimmermann of IKB to Nartey that "new century and fremont serviced bonds will be removed from the portfolio").

²⁹ Egol Decl. ¶ 10, 22.

³⁰ GS MBS-E 3274017. By "additional shorts," Mr. Egol meant that he did not think the Structured Product Correlation Trading Desk, or other Goldman Sachs trading desks, should take a short position on the 2007-AC1 portfolio, in addition to other short exposures that the desk had already taken.

³¹ GS MBS-E 2672229 (e-mail from Egol to "ficc-mtgcrr-desk"). In this e-mail, Mr. Egol raised the possibility of selling protection to Paulson *prior* to Goldman Sachs purchasing protection on the portfolio from any 2007-AC1 investors (as the 2007-AC1 transaction did not close until April 26, 2007 and as of March 1, 2007 had not yet been submitted to the Mortgage Capital Committee for approval). Under this scenario, although Goldman Sachs could seek to hedge the Paulson CDS by finding investors willing to purchase notes and sell protection on the portfolio, Goldman Sachs would remain long the portfolio unless and until it found such investors. Furthermore, Goldman Sachs would assume the risk that it could not find such investors for some or all of the tranches, in which case Goldman Sachs would have retained a long position on any such tranches.

Paulson).³² Finally, Mr. Egol supported the decision for Goldman Sachs to retain approximately \$91 million notional exposure to the 45-50% tranche of the Reference Portfolio.³³

4. Mr. Egol's Understanding of the 2007-AC1 and Paulson CDS Transactions

Mr. Egol understood 2007-AC1 and the Paulson CDS to be separate, but related, transactions. Because the two transactions were not contractually dependent on one another, Mr. Egol understood that Goldman Sachs retained the option to do one deal but not the other. Goldman Sachs could sell protection to Paulson without purchasing protection from investors through 2007-AC1; or it could purchase protection from 2007-AC1 investors without selling protection to Paulson.³⁴ In fact, both of these possibilities were contemplated on at least one occasion.³⁵ In addition, Goldman Sachs could sell protection to Paulson on one portfolio while purchasing protection from 2007-AC1 investors on a different portfolio. This possibility was also contemplated at one point.³⁶

³² Egol Decl. ¶ 10.

³³ Egol Decl. ¶ 11, 22. Goldman Sachs' retention of exposure to the 45-50% tranche did not foreclose it from seeking to hedge that long position by finding investors willing to sell protection on that tranche (and Goldman Sachs did in fact look for such investors). By selling protection on the 45-100% tranche while purchasing protection on the 50-100% tranche, however, Mr. Egol's desk accepted the risk that it might not find a protection seller for the 45-50% tranche and that Goldman Sachs would simply retain that exposure. Mr. Egol's desk could have avoided that risk entirely by insisting that the protection it sold to Paulson match exactly the protection it purchased from ACA/ABN.

³⁴ Egol Tr. 228-29.

³⁵ See, e.g., GS MBS-E 2672229 (March 1, 2007 from Egol to "ficc-mtgcrr-desk" raising possibility of selling protection to Paulson prior to any issuance of 2007-AC1 notes); GS MBE-E 3717296 (March 14, 2007 e-mail from Toure to Egol and "ficc-mtgcrr-desk" raising the possibility that "we don't need to do the ACA Abacus CDO anymore" if Paulson's protection buy could be crossed to Morgan Stanley Prop, and also raising the possibility that Goldman Sachs could pursue the 2007-AC1 transaction "irrespective of Paulson's involvement").

³⁶ See Egol Tr. 154-55 (after IKB proposed that certain obligations be removed from the Reference Portfolio, Mr. Egol was involved in internal discussions at Goldman Sachs that contemplated selling protection to Paulson on one reference portfolio while offering notes to investors of 2007-AC1 with a slightly different reference portfolio).

5. Paulson

Mr. Egol was aware of Paulson because the Structured Product Correlation Trading Desk had done several transactions with Paulson as a counterparty during 2006 and because he had been informed that Paulson was a customer of Goldman Sachs' ABX trading desk. In late 2006, to the extent Paulson was known in the market at all, it was as a hedge fund experienced in merger arbitrage transactions that had recently formed a new fund to take a macro-economic position anticipating that the U.S. residential housing market would decline sharply.³⁷

Mr. Egol believed that, to the extent that investors were aware of Paulson, it was for its macro-economic view that the U.S. housing market would decline and for shorting the ABX indices. Mr. Egol did not think that Paulson was known for any expertise in picking RMBS that would be more likely than average to suffer credit events.³⁸ From Mr. Egol's perspective, Paulson's stated interest in buying credit protection on a portfolio of recent-vintage Baa2-rated subprime RMBS was consistent with his macro-economic bet against the housing market.³⁹ In May 2006, Mr. Egol had seen an email, dated May 3, 2006, circulated by Mr. Tourre, who was the desk's primary contact with Paulson, in which Mr. Tourre noted Paulson's desire to put on a large short on a portfolio of subprime RMBS collateral, and commented, "... the nice thing about Paulson is that besides vintage, they do not have strong view on the names they want to short and are looking for guidance from us."⁴⁰ Although Mr. Egol later saw e-mails in which Paulson suggested certain RMBS to include in the portfolio, the record does not reflect that Mr. Egol ever received any information that Paulson was so insistent on names to be included in or

³⁷ See Egol Decl. ¶ 20.

³⁸ Egol Decl. ¶ 20.

³⁹ See Egol Decl. ¶ 20.

⁴⁰ See GS MBS-E-016078409 (May 3, 2006 e-mail from Tourre to Egol and others).

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excluded from the portfolio that it was causing ACA to abdicate its responsibility to select the portfolio.

6. IKB

At the time of the 2007-AC1 transaction, Mr. Egol considered IKB to be a major customer of his desk. IKB was one of the largest CDO investors in the world. Mr. Egol's desk had done substantial business with IKB, including six prior ABACUS transactions customized to suit IKB's stated preferences.⁴¹

During the fourth quarter of 2006 and the first half of 2007, Mr. Egol was involved in discussions with IKB about a number of potential transactions separate from 2007-AC1.⁴² He also understood at the time that IKB was a customer of Goldman Sachs in other businesses. Mr. Egol does not recall that he had any direct communication with IKB about 2007-AC1.⁴³

DISCUSSION

Mr. Egol at all times believed that the offering materials for the 2007-AC1 transaction were truthful and not misleading. He continues to hold that view. Accordingly, Mr. Egol joins in and adopts the initial and supplemental submissions by Goldman Sachs in which it points out the numerous reasons why no securities law violations occurred in connection with the 2007-AC1 transaction.⁴⁴

⁴¹ Egol Decl. ¶ 24.

⁴² See, e.g., GS MBS-E 7672496-97 (November 7-8, 2006 e-mail chain involving Egol, Narthey, and Zimmerman from IKB about "managed program," a potential transaction entirely separate from 2007-AC1); GS MBS-E 7726361 (March 15, 2007 e-mail from Narthey to Egol mentioning potential IKB deal relating to TABX); Egol Tr. 127.

⁴³ Egol Decl. ¶ 9.

⁴⁴ See Submission on Behalf of Goldman, Sachs & Co., dated September 10, 2009 ("Goldman Sachs Initial Submission") and Supplemental Submission on Behalf of Goldman, Sachs & Co., dated September 25, 2009 ("Goldman Sachs Supplemental Submission").

In this submission, Mr. Egol, as the Staff has requested, focuses on the reasons why no claim lies against him individually, and limits any repetition of the points made in Goldman Sachs' submission to those points necessary to understand the context of Mr. Egol's arguments. In doing so, Mr. Egol does not suggest or imply that any securities law violations occurred in connection with the 2007-ACI transaction.

POINT I

**THE STAFF'S THEORY AND FACTUAL ANALYSIS
ARE FUNDAMENTALLY FLAWED**

Based on the Wells call, we understand the Staff's theory to be that Mr. Egol participated in misleading investors, through the use of false and misleading offering materials, causing them to invest in notes based on a reference portfolio that was in fact "doomed to fail." The putative motivation for engaging in this fraud, according to the Staff, was to allow Goldman Sachs to obtain approximately \$15-20 million in fees for structuring the transaction.

This theory is both implausible and factually flawed. Most obviously, the Staff's theory overlooks the fact that Mr. Egol advocated his desk's taking a long position that put more than \$90 million at risk in the 2007-ACI Reference Portfolio. This position did not result from inadvertence. Mr. Egol could have proposed keeping part or all of the short position, or he could have resisted accepting any net long position. He did not. On February 21, 2007, Mr. Egol informed his colleagues that he would not want to be short the 2007-ACI portfolio; on March 1, 2007, Mr. Egol stated that he wanted to have the option to "hit [Paulson's] protection bid" (which would have made Goldman Sachs long the portfolio).⁴⁵ In conversations about whether

⁴⁵ GS MBS-E-003274017; GS MBS-E-002672229.

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Goldman Sachs should keep for itself the short position resulting from the CDS with the 2007-ACI SPV, Mr. Egol advocated passing the protection on to Paulson.⁴⁶

The result was that Mr. Egol's desk caused Goldman Sachs to enter into transactions that left it bearing approximately \$91 million of credit and market risk on the 2007-ACI Reference Portfolio. That action would have made no sense if, as the Staff's theory posits, Mr. Egol knew that the portfolio had been "adversely selected" by Paulson, was "doomed to fail," and could only be sold through the use of materially misleading offering materials. Nothing obligated Mr. Egol or Goldman Sachs to enter into a CDS with Paulson that included the 45-50% tranche, and whatever Goldman Sachs expected to earn on the spread between the ACA and Paulson CDS would not have justified placing \$91 million at risk on a portfolio of undesirable assets.

This fact compels the inference that Mr. Egol believed, as his actions at the time showed, that the portfolio was not a below average portfolio (relative to its market price) within the universe of Baa2-rated 2006 vintage subprime RMBS. He thought it was a fair deal, and he supported the desk's decision to put its money behind that view. Ultimately, Goldman Sachs (and specifically Mr. Egol's desk) lost approximately \$90 million from its long position on the 45-50% tranche, because, like so many other sophisticated market participants, the desk did not comprehend how close the subprime/CDO markets were to collapse in April and May 2007 and how quickly U.S. home prices would decline and the Great Recession would commence.

The Staff's proposed claim also overlooks the fact that Mr. Egol had no incentive to mislead or defraud IKB. In Mr. Egol's view, the potential revenue highlighted by the Staff paled in importance compared to Goldman Sachs' relationship with IKB, one of the largest CDO investors in the world and a major customer of Mr. Egol's desk, with which Mr. Egol himself had done six prior ABACUS transactions (customized to suit IKB's stated preferences). Indeed,

⁴⁶ Egol Decl. ¶ 10.

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the e-mail traffic reflects that at the time of the 2007-AC1 deal Mr. Egol was discussing other potential transactions with IKB.⁴⁷ Mr. Egol had no reason to jeopardize his and Goldman Sachs' relationships with IKB in order to create an alleged one-time benefit for Paulson, which Mr. Egol did not view as a key customer of his desk at the time. *See Pub. Fin. Consultants, Inc.*, SEC Initial Decision Release No. 274, 2005 WL 464865, *47 (Feb. 25, 2005) ("[I]t is counterintuitive to think that [the respondent] would intentionally defraud his best customers.").

The Staff's effort to buttress its proposed claim against Mr. Egol with references to two e-mails related to IKB betrays a serious misunderstanding of the record. For example, in the Wells call, the Staff cited Mr. Egol's comment "we have to push" in an e-mail dated December 17, 2006.⁴⁸ The Staff suggested that this e-mail indicated that Goldman Sachs was finding it "difficult" to sell the 2007-AC1 notes to IKB and that Mr. Egol was proposing that IKB be "pushed" to take on more risk by entering into the 2007-AC1 transaction. In fact, this e-mail, which was not the subject of inquiry during Mr. Egol's testimony, has nothing to do with "pushing" IKB. As the e-mail chain makes clear, Mr. Egol was responding to Mr. Tourre's comments earlier in the chain regarding levered super senior ("LSS") transactions, a class of transactions that was relatively common in corporate synthetic CDOs at the time, but less common in the world of mortgage-related CDOs. At the time, a number of CDO underwriters, including Goldman Sachs, were asking the rating agencies to rate such mortgage-related LSS transactions and were, consequently, requesting criteria from the rating agencies for how such LSS transactions referencing subprime RMBS might be rated. When Mr. Tourre wrote, "Let's not assume we can get mezz deals done," Mr. Egol understood him to mean that they should not

⁴⁷ See, e.g., GS MBS-E 7672496 (November 7-8, 2006 e-mails among Egol, Narley, and Zimmerman from IKB about a "managed program," a potential transaction entirely separate from 2007-AC1); GS MBS-E 7726361 (March 15, 2007 e-mail from Narley to Egol mentioning potential IKB deal relating to TABX).

⁴⁸ GS MBS-E 3454341-42.

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assume that the rating agencies would agree to rate LSS transactions referencing mezzanine RMBS portfolios. Mr. Toure also noted, "[rating] agencies are too risk averse right now." Mr. Egol's response, "we have to push," referred to pushing the rating agencies to provide the criteria to rate this type of proposed LSS transaction. This e-mail offers no support for the Staff's fraud claim.⁴⁹

Similarly, in the Wells call, the Staff suggested that IKB had told Goldman Sachs that it had become very risk averse and was no longer comfortable investing in CDO transactions without managers. The Staff suggested that IKB's expression of caution and desire for a manager motivated Mr. Egol's desk to engage ACA as Portfolio Selection Agent on the 2007-AC1 transaction so that IKB would invest in a transaction that would not otherwise meet its investment criteria.

Although the Staff cited no support for this assertion, the only conceivable basis we have found for the Staff's argument is a misinterpretation of an e-mail exchange, dated November 23, 2006, among Mr. Egol and others.⁵⁰ Again, the Staff, which did not inquire about this e-mail during Mr. Egol's testimony, misreads the document. In the e-mail chain, the Goldman Sachs salesperson who dealt with IKB, Michael Narthey, reports that, for transactions without a manager, IKB "would probably only approve AA and AAA investment." IKB, however, only invested in AAA-rated notes in the 2007-AC1 transaction. Moreover, when Mr. Narthey referred to IKB's interest in "a managed program," he was referring to an entirely different investment from the static and unmanaged 2007-AC1 transaction.⁵¹

⁴⁹ Egol Decl. ¶ 26.

⁵⁰ GS MBS-E 7741711-12.

⁵¹ Egol Decl. ¶ 25. In fact, Mr. Egol's conduct directly contradicts the notion that the Portfolio Selection Agent was appointed in an effort to induce IKB to invest in 2007-AC1. From discussions with IKB on November 8, 2006 about the "managed program," Mr. Egol was aware that IKB was not very familiar with GSC and did not want to do the managed program with GSC. (GS MBS-E 7672496-97.) Yet Mr.

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Nor does the March 12, 2007 Memorandum to the Mortgage Capital Committee on 2007-AC1 prepared by the Structured Product Correlation Trading Desk (the "MCC Memo") provide support for the Staff's apparent suggestion that the Portfolio Selection Agent was appointed in an effort to fraudulently mislead investors. While the participation of ACA as Portfolio Selection Agent was viewed as a positive marketing point for the 2007-AC1 transaction, the MCC Memo makes clear that the members of the desk believed the partnership with ACA would "enhance Goldman [Sachs'] franchise" in the synthetic CDO sector and "broaden the investor base for this and future ABACUS offerings."⁵² Certainly, selling notes referencing a toxic portfolio would do little to "enhance" the firm's franchise for future ABACUS offerings.

Another "inconvenient truth" detracting from the validity of the proposed claim against Mr. Egol is that ACA, a highly sophisticated investor, with detailed knowledge of the Reference Portfolio it selected and full knowledge of its conversations with Paulson, took a significant long position in the 2007-AC1 offering. While the Staff speculated in the Wells call that marketing the 2007-AC1 offering was so "challenging" that it could only be accomplished by hiding Paulson's interaction with ACA from investors, ACA's investment shows otherwise.

In sum, the proposed claim is based largely on an elaborate theory of deception that repeatedly defies common sense, depends on economic irrationality, and frequently collides with incontrovertible facts.

Egol specifically suggested GSC as a possible Portfolio Selection Agent for the 2007-AC1 transaction on December 18, 2006. (GS MBS-E 3443162.)

⁵² GS MBS-E 5974543; *see also* Egol Decl. ¶ 13.

POINT II

THE EVIDENCE DOES NOT SUPPORT A
PRIMARY VIOLATION CLAIM AGAINST MR. EGOL

Mr. Egol cannot be primarily liable for the alleged misstatements in the offering materials because he did not make the challenged statements. The Staff's description of Mr. Egol's involvement in the issuance of the allegedly false and misleading statements precludes a claim of primary liability. In the Wells call, the Staff described Mr. Egol's connection with the statements as resulting from the fact that he was in charge of the desk that structured and marketed 2007-AC1, and had a general awareness of the transaction throughout its development. The Staff said that Mr. Egol he (i) communicated regularly with, (ii) received updates from, (iii) made suggestions to, and (iv) had oversight over the Goldman Sachs employees involved in the transactions. Significantly, the Staff does not suggest that Mr. Egol drafted or participated in drafting the materials, or that he formally approved them. Although he reviewed portions of the materials, we are aware of no evidence that Mr. Egol made any comments on them or discussed them, and he testified that he did not recall having done so.⁵³ Finally, Mr. Egol did not have responsibility for the day-to-day work on the transaction.⁵⁴

This degree of involvement in an allegedly false or misleading statement does not support a claim of primary liability. Both Exchange Act Section 10(b) and Securities Act Section 17(a) "prohibit[] only the making of a material misstatement (or omission) or the commission of a manipulative act."⁵⁵ *Cent. Bank, N.A. v. First Interstate Bank, N.A.*, 511 U.S. 164, 177 (1994)

⁵³ Egol Tr. 191-92, 207, 213.

⁵⁴ Egol Decl. ¶ 8; Egol Tr. 193.

⁵⁵ After *Central Bank*, a person who does not make a misstatement or omission may still be primarily liable under Section 10(b) (and by extension under Section 17(a)) for engaging in a manipulative act; that is, a person may be held primarily liable if he "used a fraudulent device," *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996). However, we understand the Staff's position to be that the alleged violation in this case is a misstatement or omission, rather than a manipulative act. Furthermore, where

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(discussing Section 10(b)) (emphasis added); see also *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996) (stating that *Central Bank's* holding is applicable to Section 17(a)).

As the Second Circuit explained in *Shapiro v. Cantor*, 123 F.3d 717, 720 (2d Cir. 1997),

a defendant must actually make a false or misleading statement in order to be held liable under Section 10(b). Anything short of such conduct is merely aiding and abetting, and no matter how substantial that aid may be, it is not enough to trigger liability under Section 10(b).

See also *SEC v. KPMG LLP*, 412 F. Supp. 2d 349, 374-75 (S.D.N.Y. 2006).

None of the documents that contained the alleged misstatements at issue here—the Term Sheet, Flip Book, and Offering Circular—were authored by or attributed to Mr. Egol. That undisputed fact precludes a claim that he made the statements. See *Wright v. Ernst & Young LLP*, 152 F.3d 169, 175 (2d Cir. 1998) (for purposes of establishing primary liability for a misstatement, “the misrepresentation must be attributed to that specific actor at the time of public dissemination”).

Nor did Mr. Egol’s review make him “sufficiently responsible” for the statements such that he could properly be said to have made them. *KPMG*, 412 F. Supp. 2d at 374-75; accord *SEC v. Stanard*, No. 06 Civ. 7736, 2009 U.S. Dist. LEXIS 6068, *73-74 (S.D.N.Y. Jan. 27, 2009); *SEC v. Collins & Aikman Corp.*, 524 F. Supp. 2d 477, 490 (S.D.N.Y. 2007); *SEC v. Power*, 525 F. Supp. 2d 415, 420 (S.D.N.Y. 2007). Language from *Warren Lammert*, SEC Initial Decision Release No. 348, 2008 WL 1867960, *17 (Apr. 28, 2008), is instructive:

To the extent that the prospectus language contained a material misstatement or omission, it cannot be attributed to any of the Respondents. No Respondent had any responsibility for drafting the

“the core misconduct alleged is in fact a misstatement, it would be improper to impose primary liability ... by designating the alleged fraud a ‘manipulative device’ rather than a ‘misstatement.’” *SEC v. KPMG*, 412 F. Supp. 2d 349, 378 (S.D.N.Y. 2006). Accordingly, we do not address whether Mr. Egol could be held primarily liable for the use of a “fraudulent device.” If we are incorrect about the Staff’s theory of liability, we request permission to make a supplemental submission concerning whether Mr. Egol used, or aided and abetted the use of, a fraudulent device.

prospectuses. While Lammert and Soderberg received copies of the prospectuses, *there is no evidence that they had input into the drafting of the language or that they were asked to comment on the language.* To the contrary, the evidence establishes that Janus's legal department had responsibility for drafting the prospectus language. . . . As such, the Division is unable to establish that any of the respondents "personally made the untrue statements or omissions."

(emphasis added); *see also KPMG*, 412 F. Supp. 2d at 377 (holding that a concurring review partner in an accounting firm "cannot be considered the source of an auditor's opinion that an issuer's financial statements conformed to GAAP and may not be said to have been the author of any misstatements in that regard"); *SEC v. Hopper*, No. H-04-1054, 2006 U.S. Dist. LEXIS 17772, *33-*34 (S.D. Tex. Mar. 24, 2006) (noting that "merely review[ing] and approv[ing] documents into which [the defendant] had no input" would not be sufficient to show that the defendant was "actually responsible for the material misstatements and omissions"); *Nanopierce Techs., Inc. v. Southridge Capital Mgmt. LLC*, No. 02 Civ. 0767, 2003 U.S. Dist. LEXIS 11108, *20 (S.D.N.Y. June 30, 2003) ("Merely reviewing a report and offering a few comments is generally not enough to establish attribution."⁵⁶)

The difference between primary liability for a false or misleading statement and Mr. Egol's conduct is illustrated by *In re Scholastic Corp. Securities Litigation*, 252 F.3d 63 (2d Cir. 2001). In *Scholastic*, the Second Circuit found that primary liability for misstatements had been sufficiently alleged against Scholastic's vice president for finance and investor relations. In response to the vice president's argument that the statements at issue were not attributable to

⁵⁶ Cases in the District of Columbia Circuit are to the same effect. D.C. courts have held that the SEC must show that a defendant "caused the misstatements and omissions to be made." *SEC v. May*, 648 F. Supp. 2d 70, 77 (D.D.C. 2009); *see also In re Fed. Nat'l Mortgage Ass'n Sec.*, 503 F. Supp. 2d 1, 7 (D.D.C. 2007) ("a defendant who does not make or affirmatively cause to be made a fraudulent misstatement or omission . . . is at most guilty of aiding and abetting" (internal quotation marks omitted)). "Causation" in this context is not satisfied by a showing that the defendant "merely t[ook] part in a decision or [was] intricately involved" in it." *May*, 648 F. Supp. 2d at 77. Rather, to show that a defendant "caused the statements to be made, the SEC must show that he played an integral role in preparing those filings that contained the misstatements and omissions at issue." *Id.*

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him, the court found that he was “*primarily responsible for Scholastic’s communications with investors and industry analysts*” to whom the false statements were made. *Id.* at 75-76 (emphasis added). Further, the vice president was “involved in the drafting, producing, reviewing and/or disseminating of the false and misleading statements.” *Id.* at 76. Accordingly, the vice president in *Scholastic* was “sufficiently responsible” for the misleading statements that he could be deemed to have made them. In contrast, here Mr. Egol was not “primarily responsible for [Goldman Sachs’] communications [in the offering documents],” and was not involved in “the drafting, producing, . . . or disseminating of the [allegedly] false and misleading statements.” *Id.* Indeed, the only factual similarity between Mr. Egol’s role here and the vice president’s role in *Scholastic* was that Mr. Egol “reviewed” portions of the offering documents. Standing alone, however, reviewing a document is insufficient to establish that Mr. Egol was responsible for the alleged misstatements. *See, e.g., KPMG*, 412 F. Supp. 2d at 377; *Hopper*, 2006 U.S. Dist. LEXIS 17772, at *33-*34.

Accordingly, Mr. Egol cannot be primarily liable under either Section 10(b) or Section 17(a) for any misstatements contained in the offering materials.

POINT III

**THE EVIDENCE DOES NOT SUPPORT AN
AIDING AND ABETTING CLAIM AGAINST MR. EGOL**

The Commission has the authority to bring claims that a person aided and abetted a violation of Section 10(b) or Section 17(a) pursuant to Exchange Act Section 20(e), which provides that “any person that knowingly provides substantial assistance to another person in violation of a provision of this title, or of any rule or regulation issued under this title, shall be deemed to be in violation of such provision to the same extent as the person to whom such

assistance is provided.” 15 U.S.C. § 78t(e). Here no such claim lies against Mr. Egol because the evidence does not support any of the three elements of an aiding and abetting claim: “(1) the existence of a securities law violation by the primary (as opposed to the aiding and abetting) party; (2) ‘knowledge’ of this violation on the part of the aider and abettor; and (3) ‘substantial assistance’ by the aider and abettor in the achievement of the primary violation.” *SEC v. DiBella*, 587 F.3d 553, 566 (2d Cir. 2009); accord *Investors Research Corp. v. SEC*, 628 F.2d 168, 178 (D.C. Cir. 1980).⁵⁷

A. The Existence of a Securities Law Violation

As explained in Goldman Sachs’ two submissions, the evidence does not support a claim of the existence of an underlying securities law violation, because the statements at issue were, objectively, not false or misleading. We respectfully invite the Staff and the Commission to consider Goldman Sachs’ detailed and, we submit, conclusive analysis, which we will not repeat here. Certain points from Goldman Sachs’ submissions, however, deserve particular emphasis:

- The statements in the offering materials that ACA selected the Reference Portfolio were true because ACA evaluated, approved, and chose each of the RMBS included in the portfolio. None of that is changed simply because others had input into the process and made proposals for ACA’s consideration.
- Paulson’s involvement in discussions with ACA concerning the portfolio were not material matters required to be included in the offering materials in order to make them not misleading because (a) every synthetic CDO, by its very structure, necessarily requires the presence of a protection buyer taking a short position on the reference portfolio; (b) the sophisticated investors who purchased synthetic CDOs understood that it was common market practice for interested parties (including the protection buyer) to have input on the reference portfolio; (c) in this case, investors were well-aware that Goldman Sachs, as the Protection Buyer, could have input into the portfolio selection process, and that as Protection Buyer Goldman Sachs could enter into transactions with other parties to reduce or

⁵⁷ The test for aiding and abetting in an administrative action is not significantly different. See generally *Howard v. SEC*, 376 F.3d 1136, 1142 (D.C. Cir. 2004).

eliminate its exposure to the SPV; (d) at the time of the 2007-AC1 transaction, Paulson was not a major player in the CDO market; and (e) investors in the 2007-AC1 notes had access to large quantities of data concerning the underlying RMBS in the reference portfolio, and (f) what ultimately drove investors' investment decisions were the objective fundamentals of the portfolio and each investors' views of expected future housing market and economic conditions.

- The losses incurred by investors in the 2007-AC1 notes were the result of the overall decline in the U.S. housing market and the fact that all the RMBS in the reference portfolio were originally Baa2-rated from the 2006 vintage, and had nothing to do with the specific RMBS included in the reference portfolio.
- The Staff's theory, which is based on Paulson's short position and supposed notoriety (in hindsight), is contrary to market practices for synthetic CDOs, and to the actions of the participants in the 2007-AC1 transaction. Certainly ACA knew of the extent of Paulson's involvement in the selection process, yet never suggested that Paulson's involvement needed to be disclosed. Nor did ACA raise the issue whether Goldman Sachs' input to ACA on the Reference Portfolio had to be disclosed in light of its role as the protection buyer. And Paulson's counsel, at Linklaters LLP, apparently thought that it was perfectly legal and appropriate to require that Paulson's involvement in the transaction be kept confidential. Although not dispositive, the fact that the Staff is the first to raise disclosure of Paulson's involvement in the selection process as even an issue shows that the Staff is swimming upstream against a strong current in asserting its disclosure theory.

For these reasons, there was no primary violation of the securities laws for Mr. Ego1 to have aided and abetted.

B. Knowledge of the Violation

The evidence does not support the knowledge element of aiding and abetting because—beyond the fact that there was no underlying violation—the evidence establishes that Mr. Ego1 reasonably believed that the disclosures in the offering materials were accurate and not misleading. Indeed, the cutting-edge nature of the Staff's theory belies a claim that *anyone* had knowledge of a violation, if one in fact existed.

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To establish the “knowledge” element under Section 20(e), the Commission would have to prove that Mr. Egol had actual knowledge that the offering materials were false and misleading, approximating conscious intent to aid the violation.⁵⁸ See *Ross v. Bolton*, 904 F.2d 819, 824 (2d Cir. 1990) (“[I]f there is no fiduciary duty . . . the scienter requirement increases, so that appellants need to show that [the alleged aider and abettor] acted with actual intent.”); *ITT v. Cornfeld*, 619 F.2d 909, 923-25 (2d Cir. 1980) (“When it is impossible to find any duty of disclosure, an alleged aider-abettor should be found liable only if scienter of the high ‘conscious intent’ variety can be proved.”); see also *SEC v. Johnson*, 530 F. Supp. 2d 325, 333 (D.D.C. 2008) (holding that actual knowledge is required).⁵⁹ This is true even where the underlying primary violation does not contain a scienter requirement. See *Ponce v. SEC*, 345 F.3d 722, 737 & n.10 (9th Cir. 2003) (the second element of aiding and abetting a violation of Exchange Act

⁵⁸ Courts in the Second Circuit have indicated that the subject of the alleged aider and abettor’s knowledge needs to be the fraud or misstatement itself, not merely the underlying facts. See, e.g., *Edwards & Hanly v. Wells Fargo Sec. Clearance Corp.*, 602 F.2d 478, 483 (2d Cir. 1979) (the second element of aiding and abetting liability is “knowledge of the primary fraud by the alleged aider-abettor” (citing Restatement (Second) of Torts § 876 (a person will be liable for the tortious conduct of another when the person “knows that the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself” (emphasis added)))); *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978) (“The second requirement for establishing the aiding and abetting violation is [the alleged aider and abettor’s] knowledge of [the primary violator’s] fraud.”); *KPMG*, 412 F. Supp. 2d at 384 (the issue is whether the defendant “had actual knowledge of fraud”); *SEC v. Lybrand*, 200 F. Supp. 2d 384, 400 (S.D.N.Y. 2002) (discussing whether evidence “could give rise to an inference of actual knowledge of [the primary violator’s] manipulative intent”); accord *Investors Research Corp.*, 628 F.2d at 178 (holding that one element of aiding and abetting liability is that “the accused aider and abetter had a general awareness that his role was part of an overall activity that was improper” (emphasis added)).

⁵⁹ Courts in the Second Circuit have held that “where . . . the alleged aider and abettor owes a fiduciary duty to the defrauded party, recklessness satisfies the scienter requirement.” *ITT*, 619 F.2d at 923. Recklessness, or some lesser degree of knowledge, may also suffice where the alleged aider and abettor owes a non-fiduciary “duty of disclosure to the defrauded party.” *Lybrand*, 200 F. Supp. 2d at 400; see also *ITT*, 619 F.2d at 925 (“Where some special duty of disclosure exists, then liability should be possible with a lesser degree of scienter.”). Finally, certain cases have suggested that recklessness may be sufficient for scienter where the alleged aider and abettor is an auditor and could foresee that third parties would rely on his or her misstatement in an audit or opinion letter. See *In re The Leslie Fay Cos., Inc. Sec. Litig.*, 835 F. Supp. 167, 175 (S.D.N.Y. 1993). Since Mr. Egol owed no fiduciary or other duty to IKB or ABN, and was not an auditor, none of these exceptions to the knowledge requirement apply here.

Sections 13(a) or (b)(2), which requires only negligence, is that the alleged aider and abettor “had knowledge of the primary violation and of his or her own role in furthering it”); *SEC v. Fehn*, 97 F.3d 1276, 1288 (9th Cir. 1996); *Stanard*, 2009 WL 196023 at *32 (“The ‘actual knowledge’ standard applies equally to the SEC’s claims for aiding and abetting [non-scienter primary violations].”).

1. **Mr. Egol Had No Knowledge that Any Statement Was False or Misleading**

Far from having any knowledge that the offering materials were false or misleading, Mr. Egol knew that the 2007-AC1 offering materials had been vetted by a wide range of qualified individuals, supporting his good faith belief that the disclosures were accurate and proper in all respects. He understood that McKee Nelson, the law firm representing Goldman Sachs on each of the ABACUS transactions, had drafted the Offering Circular⁶⁰ and believed that it had reviewed each of the offering documents.⁶¹ He understood that the offering materials had also been drafted or carefully reviewed by Fabrice Tourre, an experienced and highly capable colleague who had worked with Mr. Egol on each of the prior ABACUS transactions, and David Gerst, a non-practicing attorney whose former law practice at McKee Nelson had focused on structuring synthetic CDO transactions, including prior ABACUS deals, as well as drafting and reviewing offering documents associated with those transactions. Mr. Egol also believed that the deal team had, in accordance with standard procedure, consulted with internal counsel for Goldman Sachs as well as McKee Nelson.⁶² Mr. Egol had no reason to believe that anyone, including ACA and Paulson, had suggested that the offering materials were not accurate or required revision.⁶³ Thus, instead of “red flags” that might have alerted Mr. Egol to the alleged

⁶⁰ Egol Tr. 209-10.

⁶¹ See Egol Decl. ¶ 16.

⁶² Egol Decl. ¶ 16; Egol Tr. 190, 208-09.

⁶³ See Egol Tr. 196-97; Egol Decl. ¶ 16.

misstatements, Mr. Egol “encountered green ones, as outside and inside counsel approved [disclosures]” now alleged to have been insufficient. *See Howard v. SEC*, 376 F.3d 1136, 1143, 1147 (D.C. Cir. 2004).

Further, the information available to Mr. Egol provided him with ample basis for his belief that the statements that ACA selected the reference portfolio were truthful. Mr. Egol had seen ACA’s engagement letter, in which ACA represented that “[i]n its capacity as Portfolio Selection Agent, ACA will select the Reference Portfolio.”⁶⁴ He had also seen the Portfolio Selection Agent Agreement, in which ACA acknowledged that it had been “appointed to determine and select specific Reference Obligations to be included in the Initial Reference Portfolio,” undertook to “exercise that degree of skill and care consistent with industry standards for the selection of a portfolio of [similar] investments” and that which it “customarily exercises with respect to such investments selected by it for clients in substantially similar transactions,” and represented that it would “act in a commercially reasonable manner in discharging its duties.”⁶⁵ Mr. Egol also saw the materials that ACA supplied for the Flip Book, which described the manner in which ACA reviewed, evaluated, and chose obligations for portfolios.⁶⁶

The Staff’s assertion, in the Wells call, that the Reference Portfolio had been “adversely selected” amounts to a claim that ACA had abdicated the duties that it had agreed to perform. The information available to Mr. Egol indicated the contrary. The documents and e-mail exchanges routed to Mr. Egol entitled him to believe that ACA was consulting its own substantial sources of information, accepting information from other transaction participants, and conducting its own analysis. It received names of suggested RMBS from Paulson, rejected more than half of them, and circulated its own proposed securities. At the end of this process, it

⁶⁴ GS MBS-E 5997087.

⁶⁵ GS MBS-E 13100784-801 (Portfolio Selection Agreement).

⁶⁶ GS MBS 10023 at 10057-66.

appeared to Mr. Egol that ACA had done what it agreed to do: it selected Reference Portfolio securities in accordance with its professional standards. Mr. Egol saw nothing indicating to him that ACA had adopted the supine posture that the Staff's theory assumes. Furthermore, to Mr. Egol, ACA's decision to purchase \$42 million in 2007-AC1 notes and to enter into a \$909 million notional value CDS referencing the 2007-AC1 portfolio confirmed that ACA had selected the portfolio in accordance with its professional standard of due care.⁶⁷

Mr. Egol's view, moreover, that ACA had "selected" the portfolio was consistent with the commonly understood meaning of the word "select"—to choose from available alternatives.⁶⁸ Mr. Egol had no reason to believe that knowledgeable market observers could reasonably think that the disclosure that ACA had "selected" the portfolio meant that it had acted in a vacuum, with no suggestions or input from others interested in the transaction.

In the end, Mr. Egol saw nothing indicating that Paulson had acquired the ability to control the portfolio itself or to direct ACA concerning its selection of the portfolio.⁶⁹ Paulson was simply able to decide whether it would buy protection on a portfolio. Mr. Egol was well aware that if Paulson, with whom Goldman Sachs had no contract, ultimately decided not to buy protection on the 2007-AC1 portfolio, Goldman Sachs could have sold Paulson protection on a different reference portfolio, or it could have decided not to transact with Paulson at all.⁷⁰

⁶⁷ Egol Decl. ¶ 15.

⁶⁸ The Shorter Oxford English Dictionary defines "select" as to "[c]hoose or pick out in preference to another or others"; to "[c]hoose or pick out something from a number; make a selection." Shorter Oxford English Dictionary 2742 (5th ed. 2002). The American Heritage Dictionary of the English Language defines "select" as "[t]o take as a choice from among several; pick out"; "[t]o make a choice or selection." American Heritage Dictionary of the English Language 1635 (3d ed. 1996). Merriam-Webster defines the verb "select" as "to choose (as by fitness or excellence) from a number or group; pick out." See <http://www.merriam-webster.com/dictionary/select> (definition two).

⁶⁹ Egol Decl. ¶ 15; see Egol Tr. 226.

⁷⁰ See Egol Tr. 154-55, 228-29.

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2. Mr. Egol Had No Knowledge that Paulson's Role Was Required to Be Disclosed.

Additionally, Mr. Egol had no reason to believe that Paulson's involvement in discussions with ACA was required to be disclosed in the offering materials. First, as Mr. Egol testified, it was his understanding that Goldman Sachs should not disclose the actions of another customer unless instructed by the customer or counsel to do so.⁷¹ This understanding was consistent with Goldman Sachs' duty as a broker-dealer to keep information concerning its clients' trades and positions confidential. *See, e.g., In re Thomas W. Heath, III*, Exchange Act Release No. 59,223, 2009 WL 56755, *4 (Jan. 9, 2009) (Commission described the obligation not to divulge client information as "one of the most fundamental ethical standards in the securities industry" and noted that "[t]he duty to maintain the confidentiality of client information is grounded in fundamental fiduciary principles"). It would be entirely inappropriate for the Commission to use an enforcement action to notify financial market participants that it is abrogating such a fundamental market precept.

Second, Mr. Egol had no reason to believe in late 2006 and the first half of 2007 that Paulson's name would be of material interest to investors. Although Paulson is now well known, touted by the Staff as one of the largest investors in the world, it was in 2006 and 2007 a relative newcomer to the synthetic CDO and CDS markets. At that time, Paulson was known (if at all) as a merger arbitrage hedge fund that had established a new fund in mid-2006 for the purpose of taking a negative macro-economic position on the U.S. housing market.⁷²

Nor did Mr. Egol have reason to think that Paulson's investment strategy relied on picking specific subprime RMBS that would be more likely than average to suffer credit events, or that investors believed that Paulson had such expertise. Rather, to Mr. Egol's knowledge,

⁷¹ Egol Tr. 141, 143.

⁷² See Egol Decl. ¶ 20.

Paulson was a hedge fund taking a macro-economic position that anticipated that the U.S. residential housing market would decline sharply.⁷³ From Mr. Egol's perspective, a portfolio broadly representative of lower-rated 2006 vintage subprime RMBS would meet Paulson's stated objective of positioning itself for a widespread and sharp decline in the U.S. housing market.⁷⁴

Mr. Egol believed that the Qualified Institutional Buyers who purchased 2007-AC1 notes would be well aware that Goldman Sachs as Protection Buyer was very likely was involved in the selection process because parties who anticipate purchasing protection customarily participate in the selection of the reference portfolio.⁷⁵ Mr. Egol had no reason to believe that investors, who would be aware that Goldman Sachs, an established participant in the CDO and CDS markets, could be involved in the portfolio selection process; would consider it important to know that Paulson, a relative newcomer, had also expressed its views to the Portfolio Selection Agent. Indeed, it would have been reasonable for Mr. Egol to believe that investors were likely to be more concerned about "betting against" Goldman Sachs than "betting against" Paulson.

3. Mr. Egol Had No Knowledge that the Involvement of Anyone Taking a Short Position Was Required to Be Disclosed

Further, neither Mr. Egol—nor apparently anyone else involved in this transaction—believed that applicable law or regulations required disclosure that parties taking a short position

⁷³ Egol Decl. ¶ 20. Indeed, the "wipe out" scenario referred to in the Paolo Pellegrini e-mail cited by the Staff during the Wells call is consistent with Mr. Egol's understanding of Paulson's approach. In that scenario, the particular names in the portfolio do not matter.

⁷⁴ Egol Decl. ¶ 20. Even though logically Paulson would generally have had an economic interest in including bonds that would be more likely than average to suffer credit events, it was equally in Paulson's interest to consider the likelihood of lowering costs of buying protection by agreeing to a portfolio more likely to be attractive to potential CDO investors. Further, if Paulson had the objective of buying credit protection on specific RMBS that it believed were most likely to experience credit events, that interest could have been more easily and rapidly expressed by simply buying protection in single-name credit default swap form on specific subprime RMBS rather than through a synthetic CDO transaction such as 2007-AC1.

⁷⁵ Egol Decl. ¶ 17.

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in the transaction had contact with the portfolio selection agent. Certainly, Mr. Ego! understood that market practice was to the contrary. The 2007-AC1 transaction, like every synthetic CDO, required the presence of at least one party taking a short position on the Reference Portfolio; and Mr. Ego! knew it was common market practice for interested parties to have input on reference portfolios. The existence of a portfolio selection agent did not imply otherwise. In his exposure to many offering documents used in offerings of synthetic CDOs, Mr. Ego! had not observed a market practice of disclosing parties whom portfolio managers, portfolio advisors, portfolio selection agents, or similarly-situated parties had consulted in selecting reference portfolios.⁷⁶ We are not aware that the Staff has been able to identify a single example of a synthetic CDO transaction in which the offering documents contained a disclosure similar to what it now suggests the law requires.

Moreover, it was Mr. Ego!'s view that investors would be most interested in the major parameters of the portfolio (subprime; 2006-vintage; Baa2 ratings).⁷⁷ Mr. Ego! knew that the 2007-AC1 offering documents not only described these parameters, but also set forth *precisely* which RMBS comprised the static Reference Portfolio.⁷⁸ Further, Mr. Ego! knew that there were a number of other sources of information (including EDGAR filings of RMBS issuers and other offering disclosures) from which investors could obtain more details concerning each reference obligation.⁷⁹ Mr. Ego!'s understanding was that sophisticated investors like IKB and ACA were capable of gathering and analyzing such data, and in fact did do such analysis, in order to make

⁷⁶ Ego! Decl. ¶ 18.

⁷⁷ Ego! Tr. 137.

⁷⁸ GS MBS 10014 at 10021-22 (2007-AC1 Term Sheet, dated February 26, 2007); GS MBS 10089 at 10274-76 (2007-AC1 Offering Circular, dated April 26, 2007).

⁷⁹ Ego! Tr. 120-21.

their own judgments concerning the reference portfolio and the overall transaction based on their own fundamental view of market and economic conditions.⁸⁰

In sum, the evidence does not support the conclusion that Mr. Egol had knowledge of any misstatement or misleading omission in the offering documents.

C. Substantial Assistance in a Violation

Mr. Egol's involvement in the 2007-AC1 transaction did not constitute the "substantial assistance" necessary to support an aiding and abetting claim.

The substantial assistance requirement is a causation standard: an alleged aider and abettor provides "substantial assistance" only if "the aider and abettor proximately caused the harm to [the victim] on which the primary liability is predicated." *DiBella*, 587 F.3d at 566; *see also Bloor v. Carro, Spanbock, Londin, Rodman & Fass*, 754 F.2d 57, 62-63 (2d Cir. 1985) ("In alleging the requisite 'substantial assistance' by the aider and abettor, the complaint must allege that the acts of the aider and abettor proximately caused the harm to the corporation on which the primary liability is predicated. Allegations of a 'but for' causal relationship are insufficient."); *cf. SEC v. Johnson*, 530 F. Supp. 2d 296, 303 n.7, 306 (D.D.C. 2008) (noting that the D.C. Circuit "has not expressly adopted" the proximate cause formulation in defining substantial assistance, but stating that "[t]o constitute substantial assistance, the primary violations must be a direct or reasonably foreseeable result of the aider and abettor's conduct" (internal quotation marks omitted)). Being "aware of" and "approv[ing]" the primary violation does not "state a cause of action for aiding and abetting," because "[a]wareness and approval, standing alone, do not constitute substantial assistance." *Armstrong v. McAlpin*, 699 F.2d 79, 92 (2d Cir. 1983) (noting that, "[i]n the absence of a claim that approval by [the alleged aider and abettor] was a prerequisite to the [primary violation], his advice could not even be considered a 'but-for' cause

⁸⁰ Egol Decl. ¶19.

of the violation). Here, no serious claim can be made that Mr. Egol's conduct proximately caused any alleged violation.

I. Mr. Egol Did Not Proximately Cause the Alleged Misstatements

None of Mr. Egol's actions—discussing the 2007-ACI transaction generally with others on the desk; receiving updates from the people working on the day-to-day details of 2007-ACI; reviewing portions of the offering materials; joining in the MCC Memo; and participating in the single conversation with Paolo Pellegrini that he recalls in relation to the 2007-ACI transaction—assisted, let alone substantially assisted, the making of the allegedly misleading statements. His actions simply cannot be said to have been the “proximate cause” of the alleged misstatements. For instance, Mr. Egol did not (1) suggest the allegedly misleading language, (2) formally approve the allegedly misleading language, (3) offer guidance on the specific language at issue or on the required disclosures generally, or (4) take any action to prevent Paulson's interaction with ACA from being disclosed.

Indeed, the only one of Mr. Egol's actions that even potentially affected the alleged misstatements was his review of portions of the offering materials. The Second Circuit has made clear, however, that “[a]wareness and approval, standing alone, do not constitute substantial assistance.” *Armstrong*, 699 F.2d at 92. Reviewing a document is simply not a proximate cause of its contents.

In addition, in the circumstances here, Mr. Egol's mere failure to intervene to correct the alleged misstatements cannot constitute “substantial assistance.” “Inaction on the part of the alleged aider and abettor ordinarily should not be treated as substantial assistance, except when it was designed intentionally to aid the primary fraud or it was in conscious and reckless violation of a duty to act.” *Id.* at 91. First, Mr. Egol owed no fiduciary or similar duty to the alleged victims to intervene, *cf. DiLeo v. Ernst & Young*, 901 F.2d 624, 628 (7th Cir. 1990) (“The

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securities laws do not impose general duties to speak, ... therefore ... these must usually be located in state law, if they exist at all.”), and thus he cannot have substantially assisted the misstatement by doing nothing in the face of some duty owed to IKB or ABN, *see Armstrong*, 699 F.2d at 91. Second, for the same reasons discussed above in relation to Mr. Egol’s knowledge of the alleged misstatements, there is no evidence that Mr. Egol’s inaction was “designed intentionally to aid the [alleged misstatements]” such that his failure to intervene would constitute substantial assistance. *See id.* In the absence of a duty to the victims to intervene, or intent to aid the alleged misstatements, Mr. Egol’s inaction cannot fairly be said to have been a “proximate cause” of the alleged misstatements.

What the Staff’s theory apparently comes down to is the fact that Mr. Egol had an oversight role as the senior person on the desk. Tellingly, however, we have found no case in which any person has been found liable for aiding and abetting a primary violation in circumstances similar to those here, i.e., where the alleged aider and abettor is merely the senior person on a desk. Indeed, a person’s supervisory responsibilities are “completely beside the point when the question is aiding and abetting.” *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992). An oversight role, without more, simply does not satisfy the substantial assistance requirement.

2. Mr. Egol Did Not Proximately Cause the Loss

ACA and IKB ultimately suffered losses not because Paulson’s role in ACA’s portfolio selection process was not disclosed in the offering documents, or even because Paulson played a role at all, but because *every security* of that rating and vintage decreased in value as a result of unprecedented market events. The Reference Portfolio was a fair representation of the credit quality of 2006-vintage Baa2-rated subprime RMBS. That credit quality, however, turned out to be very poor. There is no evidence that a reference portfolio selected by ACA without any input

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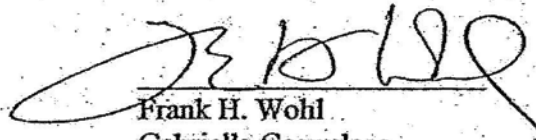
by other parties—or any other portfolio of similar securities—would have performed in a materially different way from the ultimate Reference Portfolio. Of course, ABN's losses, also cited by the Staff in the Wells call, were even more removed from the alleged misstatements in the offering documents, because they were directly caused by ACA's collapse, and only more remotely caused by the overall housing market melt-down.

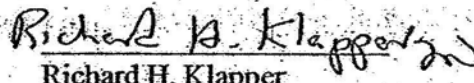
CONCLUSION

The Staff should not recommend an enforcement action against Mr. Ego. If one is recommended, it should not be authorized.

Dated: New York, New York
February 24, 2009

Respectfully submitted,


Frank H. Wohl
Gabriella Geanuleas
Andrew S. Lee
LANKLER SIFFERT & WOHL LLP
500 Fifth Avenue, 33rd Floor
New York, NY 10110
(212) 921-8399


Richard H. Klapper
Christopher J. Dunne
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000

Attorneys for Mr. Jonathan Ego

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

In the Matter of ABACUS CDO 2007-AC1

Declaration of Jonathan Egol

File No. HO-10911

1. Jonathan Egol declares under penalty of perjury that the following is true and accurate.
2. I make this declaration in response to the SEC Staff's Wells notice that it is considering recommending a civil action against me for violating and aiding and abetting violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. To a large extent, this declaration provides information relevant to the Staff's potential charges that was not requested during my January 7, 2010 testimony.

Goldman Sachs

3. I have been employed at Goldman, Sachs & Co. ("Goldman Sachs") for almost twelve years. I started in the summer of 1998 in the Mortgage Research Department and was asked to focus on the commercial mortgage-backed securities market. In or about 2000, I joined the Structured Product Collateralized Debt Obligation ("CDO") origination business within Goldman Sachs' Mortgage Department, working on new issue origination and securitization. I became a Vice President in December 2001. In early 2004, I started the Structured Product Correlation Trading Desk within Goldman Sachs' Mortgage Department. The function of the new desk was to make markets for customers in tranches

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referencing synthetic portfolios of mortgage-backed and asset-backed securities, and to price and manage the risk of those tranches over time.

4. In mid-2004, Fabrice Tourre joined the desk. In January 2006, David Gerst, an attorney who had been at McKee Nelson (the primary outside law firm that had advised our desk on the ABACUS synthetic CDO transactions since 2004), joined the desk as a structurer.
5. I was not the formal supervisor on the Structured Product Correlation Trading Desk. I did not have the authority to terminate the employment of or to determine the compensation of others on the desk. As the senior Vice President on the desk, however, I not only focused on transactions that I directly executed but also was involved in matters that had a material impact on the risk undertaken by the desk, monitored activity on the desk, reviewed matters brought to my attention, and raised issues of significance to my supervisors.
6. I have never been the subject of any securities industry regulatory investigation or any other law enforcement investigation.

ABACUS 2007-AC1

7. In the fall of 2006, I learned that a representative of Paulson & Co. ("Paulson") had told Mr. Tourre that Paulson was interested in buying protection on certain tranches referencing 2006 vintage Baa2-rated subprime RMBS. In response, Mr. Tourre and Mr. Gerst began working on various related transactions, including tranching CDS to sell Paulson the requested protection and a synthetic CDO by which an SPV would offer notes referencing 2006 vintage Baa2 subprime RMBS.

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8. Mr. Tourre and Mr. Gerst were the individuals on the desk primarily responsible for the ABACUS 2007-AC1 transaction ("2007-AC1"). I had little involvement in the day-to-day work on the transaction. I participated in discussions about the economics of the transaction, the transaction format, and risk management considerations. In addition, I monitored the transaction's status primarily by verbal conversations and reviewing e-mails that were either distributed to me or to the internal working group for such transactions, addressed as "ficc-mitgcorr-desk." I was consulted from time to time on matters related to the transaction and reviewed portions of the Offering Circular, Flip Book, Term Sheet, and other documents.
9. I do not recall having any direct conversations with anyone from Paulson, ACA Management, LLC ("ACA"), ABN AMRO ("ABN"), or IKB Deutsche Industriebank AG ("IKB") concerning the 2007-AC1 transaction, except for one conversation with Paolo Pellegrini of Paulson, which occurred on or about March 14, 2007 when Mr. Pellegrini called his Goldman Sachs sales coverage, Cactus Raazi, and Mr. Tourre was not available. Mr. Raazi asked if I could speak with Mr. Pellegrini in Mr. Tourre's absence. In that conversation, Mr. Pellegrini provided some feedback on a proposal that he had received from Mr. Tourre. I subsequently relayed the substance of the conversation to Mr. Tourre, Mr. Gerst, and others.
10. I recall participating in several conversations and e-mail exchanges in or around February to May 2007 with other individuals at Goldman Sachs about whether Goldman Sachs should keep for itself the short position resulting from buying

CDS protection, rather than selling such protection on to Paulson. During these discussions, I advocated passing the protection on to Paulson because I believed that the Reference Portfolio for the 2007-AC1 transaction was of reasonable quality in relation to the market price for the protection, and in fact of stronger quality than portfolios for a number of CDO transactions being marketed during the first half of 2007 that also primarily referenced recent vintage mezzanine RMBS and related securities.

11. For the same reason, I supported the decision for Goldman Sachs to enter into CDS transactions with Paulson and ABN (intermediating for ACA) that resulted in Goldman Sachs taking an approximately \$91 million notional long exposure on the 45-50% tranche of the Reference Portfolio.

Portfolio Selection Agent

12. In or about December 2006 or January 2007, it was decided to have a portfolio selection agent select the reference portfolio for the 2007-AC1 transaction. I do not recall who first proposed having a portfolio selection agent. I participated in various discussions and e-mail exchanges about possible portfolio selection agents.
13. During late 2006 and the first half of 2007, I was interested in building the ABACUS franchise generally to increase Goldman Sachs' market share in the competitive market for synthetic CDOs. Therefore, in the case of the 2007-AC1 transaction, I was interested that a well-qualified portfolio selection agent be appointed and that a successful transaction result that could lead to further business for our desk with ACA and investors in future ABACUS deals.

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14. Ultimately, ACA was engaged as the Portfolio Selection Agent. Although I did not personally know well the professionals in ACA's CDO management team, based upon my knowledge of ACA's prior transaction experience and reputation in the market, and the views of others at Goldman Sachs who did know ACA, I thought ACA was well-qualified to act as the Portfolio Selection Agent for the 2007-AC1 transaction.
15. I believed that ACA selected the 2007-AC1 portfolio. Although I do not recall being part of any discussions with ACA, I saw the ACA engagement letter, dated February 15, 2007, and the Portfolio Selection Agreement, dated April 26, 2007. These documents indicated to me that ACA had undertaken to select the Reference Portfolio. Further, I saw the materials that ACA supplied for the Flip Book, which described the manner in which ACA reviewed, evaluated, and chose obligations for portfolios. I also saw e-mail traffic between the Goldman Sachs deal team and ACA indicating that Paulson and ACA were discussing the RMBS to include in the portfolio. I did not consider another party's suggesting possible RMBS to be included in the portfolio or commenting on the RMBS designated by the Portfolio Selection Agent to be inconsistent with the Portfolio Selection Agent's selection of the portfolio, as long as the Portfolio Selection Agent retained the authority to decide which RMBS would be included in the portfolio. I understood that ACA did retain and exercise that authority. ACA's decision to purchase \$42 million in 2007-AC1 notes and to enter into a \$909 million notional value CDS referencing the 2007-AC1 portfolio further indicated to me that ACA believed that it had

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selected the portfolio in accordance with its professional standards and representations.

The 2007-ACI Offering Materials

16. It did not occur to me that there was anything misleading about the statement in the offering materials that ACA had selected the portfolio, or that Paulson's involvement should have been described in the offering materials. I understood that McKee Nelson, the law firm representing Goldman Sachs on each of the ABACUS transactions, had drafted the Offering Circular. I understood that, as a general matter, McKee Nelson typically reviewed each of the offering documents, and I had no reason to believe that process was not followed here. I also understood that the offering materials had been drafted or carefully reviewed by Mr. Tourre, an experienced and highly capable Goldman Sachs Vice President, who had worked with me on each of the prior ABACUS transactions, or Mr. Gerst, a non-practicing attorney whose former law practice at McKee Nelson had focused on structuring synthetic CDO transactions, including prior ABACUS deals, as well as drafting and reviewing offering documents associated with those transactions. Although I did not participate directly, I assumed that Mr. Tourre or Mr. Gerst had, in accordance with standard procedure, consulted both internal and external counsel for Goldman Sachs and raised any issues worthy of discussion. I also understood that ACA and Paulson were familiar with the facts of the transaction, and nobody told me that either they or anyone else had suggested that the offering materials were not accurate or required revision.

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17. I am familiar with market practices concerning offerings for synthetic CDOs and related offering materials. Such transactions must by definition have at least one party who is interested in purchasing protection because the protection buyer's payments fund the interest payments to the purchasers of the notes. In my experience, parties who anticipate purchasing protection customarily participate in the selection of reference obligations. I believed that this practice was well understood among such Qualified Institutional Buyers as ACA and IKB, who themselves were not only investors in synthetic CDOs but also were active participants in the construction of such products.
18. I am not aware of any market practice in such synthetic CDO transactions of describing in offering materials who a portfolio manager, portfolio selection agent, or similar entity might have consulted or who may have suggested obligations to include in the reference portfolio.
19. In the 2007-AC1 transaction, as in other ABACUS transactions, I understood that the investors considering the purchase of notes were provided with detailed information on each obligation to be included in the Reference Portfolio. I also know that these investors had available to them a number of other sources of information (including EDGAR filings of RMBS issuers, other offering disclosures, and other sources that provided home price data and information on the mortgage loans underlying such RMBS) from which they could obtain a wealth of information concerning each obligation included in a CDO. My understanding was that sophisticated investors like IKB and ACA had the resources to gather and analyze such data, and customarily did such examination and analysis, in order to

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make their own judgments concerning reference portfolios and overall transactions.

Paulson

20. At the time of the 2007-AC1 transaction, I was aware of Paulson because our desk had done several transactions with Paulson as counterparty during 2006 and because I had been informed that Paulson was a customer of Goldman Sachs' ABX trading desk. My understanding in late 2006 and the first half of 2007 was that Paulson was a hedge fund experienced in merger arbitrage transactions that had recently formed a new fund to take a position to benefit from its macro-economic view that the U.S. housing market would deteriorate sharply. I did not think at the time that Paulson had a particularly strong reputation or expertise in the CDO or CDS market. With regard to Paulson's strategy of shorting the ABX indices, my opinion at the time was that Paulson seemed to be following a potentially risky and costly strategy because its short positions appeared to be largely unhedged, and because it apparently was exposed to the risk of increasing carrying costs in order to maintain its protection purchases. In the case of the 2007-AC1 transaction, I did not believe that Paulson's interest in buying protection on a portfolio of recent vintage, Baa2-rated subprime RMBS critically depended on which particular RMBS were included in the reference portfolio. I thought a portfolio broadly representative of lower-rated 2006 vintage subprime RMBS would meet Paulson's stated objective of positioning itself for a widespread and sharp decline in the U.S. housing market. I did not believe in late 2006 and the first half of 2007 that Paulson had expertise in picking specific subprime RMBS.

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that would be more likely than average to suffer credit events, or that other market participants generally believed that Paulson had such expertise.

21. I do not recall having any conversations with Paulson about its objectives in participating in discussions with ACA, the Portfolio Selection Agent.

Goldman Sachs' 2007-ACI Position

22. Our desk ultimately took a long position in the 2007-ACI transaction. Goldman Sachs purchased protection on approximately \$909 million of the 50-100% tranche and sold protection to Paulson on \$1 billion of the 45-100% tranche. The result was that Goldman Sachs bore the long market and credit risk on approximately \$91 million of the 45-50% tranche. Part of the reason I was comfortable recommending to my superiors that Goldman Sachs assume this trading position was that I did not believe the 2007-ACI Reference Portfolio to be of below average credit quality within the universe of Baa2-rated 2006 vintage subprime RMBS.
23. At the time the 2007-ACI transaction and the related Paulson CDS were priced, our desk estimated that the net revenues from these transactions were approximately \$15 million.

IKB

24. I understand that the SEC Staff theorizes that I sought to disadvantage IKB for the benefit of Paulson in the 2007-ACI trade. This is certainly not the case. My view at that time was that IKB was a major customer for Goldman Sachs generally and for me specifically. IKB was one of the largest CDO investors in the world with whom we had done substantial business including six prior ABACUS transactions

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customized to suit IKB's stated preferences. Furthermore, during the fourth quarter of 2006 and the first half of 2007, I was discussing with IKB a number of potential transactions separate from 2007-AC1. I also understood at the time that IKB was a customer of Goldman Sachs in other businesses. At the time, I recognized that Mr. Tourre had focused on developing a business relationship and dialogue with Paulson, but I did not personally view Paulson to be as important a customer of my desk as I viewed IKB. In the 2007-AC1 transaction, I wanted to be fair to Paulson, by selling Paulson credit protection at what I viewed to be a fair mark-up in the context of the market price for such protection at the time. I did not view such activities as injuring IKB for the benefit of Paulson.

25. I understand that the SEC Staff has suggested that IKB communicated to Goldman Sachs that it wanted to avoid risk and that it preferred to do a transaction with a manager, implying that this desire of IKB motivated Goldman Sachs to engage a Portfolio Selection Agent on the 2007-AC1 transaction. I do not believe that was Goldman Sachs' motivation. The e-mail exchange, dated November 23, 2006, among Michael Nartey, Mr. Tourre, me, and others does not support the SEC Staff's claim. Mr. Nartey's e-mail is reporting that, for transactions without a manager, IKB "would probably only approve AA and AAA investment." In 2007-AC1, IKB did in fact purchase a "AAA investment." Other parts of the e-mail string refer to a "Managed Prog[ram]," which Mr. Nartey says IKB "is very keen on." The "managed program" concept was a completely different transaction concept from the 2007-AC1 transaction, which was static and unmanaged. In a managed portfolio transaction, the manager can adjust the

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Reference Portfolio, for instance by removing poorly performing securities during the life of the transaction. In the 2007-ACI transaction the Portfolio Selection Agent had no continuing ability to affect the Reference Portfolio after the notes were sold.

26. I understand that the SEC Staff has also cited my comment "we have to push" in an e-mail, dated December 17, 2006, seemingly suggesting that I was proposing that we "push" IKB to take more risk in what the SEC Staff apparently believes refers to the 2007-ACI transaction. The e-mail does not refer to "pushing" IKB at all. My e-mail is responding to Mr. Tourre's comments regarding levered super senior ("LSS") transactions. Mr. Tourre had noted earlier in the e-mail chain that IKB was approved to invest in LSS transactions, which referred to a type of transaction that was relatively common in corporate synthetic CDOs at the time, but was much less common for mortgage-related synthetic CDOs. At the time, a number of CDO underwriters including Goldman Sachs were requesting criteria from the rating agencies for how such LSS transactions referencing subprime RMBS might be rated. My comment responds to Mr. Tourre's statement that "Let's not assume we can get mezz deals done," by which I understood he meant one should not assume that the rating agencies would rate LSS transactions referencing mezzanine portfolios (e.g., triple-B rated subprime RMBS). Mr. Tourre also noted, "[rating] agencies are too risk averse right now...." By this I understood he was referring to the fact that rating agencies were reluctant to establish criteria for rating such transactions, in light of the price volatility that had recently been observed in the ABX indices. The idea I set forth in this e-mail

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chain was to propose to the rating agencies a 3x levered structure (in contrast to the 10x or higher leverage common in corporate LSS transactions at the time). My statement "we have to push" meant push to get feedback from the rating agencies on the criteria to rate this type of proposed LSS transaction referencing mezzanine subprime RMBS portfolios.

27. I declare the foregoing is true under penalty of perjury. } } }

Dated: New York, New York
February 24, 2009


JONATHAN M. EGOL

APPENDIX F

Misrepresentation Chart

[illegible]

Summary of Misrepresentations and Omission in the ABACUS 2007-AC1 Offering Materials

	11	ACA Management, LLC ("ACA") will be acting as Portfolio Selection Agent in this transaction. The 360 WARF target Reference Portfolio selected by ACA consists of 90 Baa2-rated mid-prime and subprime RMBS bonds issued over the last 18 months. Additional misleading aspect of statement: Paulson unilaterally removed two Well's Fargo bonds reducing the reference portfolio from 92 to 90 bonds.
	12	"The Portfolio Selection Agent has selected a target granular Reference Portfolio containing 90 equally sized (by notional amount) Reference Obligations fully disclosed to investors."
	20-48	"This section generally describes ACA Management and its related companies. This section is designed to present investors in the deal with an overview of the Portfolio Selection Agent, its people and their qualifications, and its investment process." Additional misleading aspect of section: a critical aspect of the portfolio selection process - Paulson's involvement and influence - is omitted from this description.
	34-35	"The ACA "ABS Credit Selection Process" is described as including a three-part analysis that was performed." Additional misleading aspect of section: a critical aspect of the portfolio selection process - Paulson's involvement and influence - is omitted from this description.
Portfolio Selection Agent Agreement	1	"The Portfolio Selection Agent is hereby appointed to determine and select specific Reference Obligations to be included in the Initial Reference Portfolio . . ."
	1	"The Portfolio Selection Agency shall exercise the degree of skill and care consistent with industry standards for the selection of a portfolio of investments similar to the investments describes in the Credit Default Swap and that which the Portfolio Selection Agent customarily exercises with respect to such investments selected for its clients in substantially similar transactions and, in any event, to act in a commercially reasonable manner in discharging its

Summary of Misrepresentations and Omission in the ABACUS 2007-AC1 Offering Materials

duties under this Agreement."	
Evidence that "ACA selected the portfolio" is misleading	
These representations outlined above are materially false and misleading for the following reasons: • The Paulson and Co. hedge fund (Paulson), which took a short position in the CDO portfolio, played a significant and material role in the asset and selection process. • Paulson's participation in the collateral selection process changed the portfolio - had Paulson not participated in the portfolio selection process, the portfolio would have been materially different. • The omission of Paulson's role in selection of the reference portfolio is especially important given that Paulson intended to take a naked short position on the CDO - i.e. that Paulson's interests were diametrically opposed the CDO investors' interests. ◦ Paulson's role in the selection process included: (1) proposing a list of 123 assets from which ACA selected 55 for inclusion in the portfolio; (2) de facto veto authority over all other assets included in the portfolio; (3) the identification of undisclosed characteristics for each additional reference asset included in the portfolio, and (4) the ability to unilaterally remove reference assets from the portfolio. The repeated references to ACA's role in the portfolio selection emphasizes the importance of this aspect of the transaction.	
Document	Evidence
1.9.2007 email from Goldman to ACA (ACA-ABACUS 2007-AC1-0000000010-13)	Paulson prepares first draft of portfolio by selecting 123 RMBS names that fit its criterion. Paulson provides this portfolio to Goldman; Goldman then forwards it to ACA.
1.9.2007 internal ACA email (ACA-ABACUS 2007-AC1-0000390849)	ACA performs an "overlap" analysis on the list of 123 bonds proposed by Paulson, in order to determine which of those names had previously been pre-approved by ACA for inclusion into a CDO.

Summary of Misrepresentations and Omission in the ABACUS 2007-AC1 Offering Materials

1.22.2007 email from ACA to Goldman (ACA-ABACUS 2007-AC1-00002341)	ACA responds to Paulson's proposal by circulating a spreadsheet showing which of the 123 names proposed by Paulson met ACA's approval. Of the 123 names, ACA approves 55. ACA proposes an additional set of 31 new names, which Paulson is to review.
1.27.07 email from ACA to Goldman (ACA-ABACUS 2007-AC1-0000119253)	ACA's Laura Schwartz meets with Paulson's Paolo Pellegrini at Jackson Hole, Wyoming. At these meeting, Schwartz and Pellegrini discuss the proposed portfolio and exchange views on different names that could be included.
2.2.2007 emails (ACA-ABACUS-0000304133-39; ACA-ABACUS 2007-AC1-0000304133-39)	ACA and Paulson personnel meet in New York to further exchange views on the portfolio. Following this meeting, Paulson and ACA have reached agreement on 82 names for inclusion in the portfolio.
2.5.07 email (ACA-ABACUS-0000304133-39)	Paulson resends a portfolio based on the prior meeting, asking if ACA agrees with the names.
2.26.07 email (ACA-ABACUS 2007-AC1-0000304671)	Paulson and ACA reach agreement on draft portfolio of 90 names.

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RE: ABACUS 2007-AC1 (HO-10911) -- Draft action memo is attached 11/24/2009 10:43:27 AM

From: Muoio, Reid

To: (b)(7)(C)

Cc:

Top ENF priority.

From: (b)(7)(C)

Sent: Tuesday, November 24, 2009 9:42 AM

To: Muoio, Reid; (b)(7)(C)

Cc: (b)(7)(C)

Subject: RE: ABACUS 2007-AC1 (HO-10911) -- Draft action memo is attached . . .

What's a "National Priority" case? (b)(7)(C)

From: Muoio, Reid

Sent: Tuesday, November 24, 2009 9:35 AM

To: Enforcement Action Memos; GC-Advance Review ENF Memos; (b)(7)(C) #TM-LIAISON-ALL; #IM-ENFORCEMENT LIAISON; (b)(7)(C)

Cc: Scarboro, Cheryl; Muoio, Reid; (b)(7)(C)

Subject: ABACUS 2007-AC1 (HO-10911) -- Draft action memo is attached . . .

. . . for your comment and review. This is a National Priority case against Goldman Sachs for conduct related to the credit crisis. We have reserved a spot on the Commission calendar for December 17. To make that happen we need to ask everyone for comments on or before December 2. Good news is that the memo clocks in at 20 pages. The balance of the attached file is Wells submissions. We are prepared to meet and discuss at your convenience. Reid (b)(7)(C)

<< File: abacus.cdo.ho.10911.goldman.action.memo.11.24.09.pdf >>

Unknown

From: Cohen, Stephen L.
Sent: Thursday, September 17, 2009 9:58 AM
To: Muoio, Reid
Subject: RE: ??? -- I'm concerned we know nothing about this

(b)(5), (b)(7)(C)

From: Muoio, Reid
Sent: Thursday, September 17, 2009 9:57 AM
To: Cohen, Stephen L.
Subject: RE: ??? -- I'm concerned we know nothing about this

(b)(5), (b)(7)(C)

From: Cohen, Stephen L.
Sent: Thursday, September 17, 2009 9:52 AM
To: Muoio, Reid
Subject: RE: ??? -- I'm concerned we know nothing about this

(b)(5)

From: Muoio, Reid
Sent: Thursday, September 17, 2009 9:51 AM
To: Cohen, Stephen L.
Subject: RE: ??? -- I'm concerned we know nothing about this

My AD group -- and (b)(7)(C) branch in particular -- has been investigating the structuring and marketing of RMBS CDOs for the past two years. (b)(5)

(b)(5)

(b)(5)

(b)(7)(C)

Thanks. Reid

From: Cohen, Stephen L.
Sent: Thursday, September 17, 2009 9:47 AM
To: Muoio, Reid
Subject: RE: ??? -- I'm concerned we know nothing about this

Of course. Joan and (b)(7)(C) Joan was at the most recent meetings.

What is the concern?

From: Muoio, Reid
Sent: Thursday, September 17, 2009 8:32 AM
To: Cohen, Stephen L.

Subject: Fw: ??? -- I'm concerned we know nothing about this

Any idea who in ENF is involved in this? Reid (b)(7)(C)

Sent from my BlackBerry Wireless Handheld

From: (b)(7)(C)
To: Muoio, Reid; (b)(7)(C) (b)(7)(C)
Sent: Thu Sep 17 08:27:40 2009
Subject: ??? -- I'm concerned we know nothing about this
SEC Will Examine Insurer Settlements

By KARA SCANNELL and SARAH N. LYNCH

WASHINGTON -- The Securities and Exchange Commission has set up an agencywide task force to examine a financial product in which people collect cash for selling their existing life-insurance contracts.

The product, known as a life-insurance settlement, has come under greater scrutiny following the financial crisis. In recent months, Wall Street firms have begun securitizing the products by slicing them up and selling bundled pieces to investors.

Regulators are concerned about the securitization of these products and whether those who are selling their life-insurance policies and those buying them know exactly what they are getting, according to people familiar with the matter.

Some see echoes of the residential-mortgage market, in which pieces of mortgage-backed assets became widely distributed among financial firms and few people had a good grasp of the value of the underlying mortgages.

SEC Chairman Mary Schapiro asked her staff last month to open a task force that pulls staff from several divisions including enforcement, trading and markets, and corporation finance, a person familiar with the task force said.

"There are many questions raised by life settlements -- from sales practices to privacy rights to the role of securitizations," Ms. Schapiro said. "And the answers could help determine where more oversight is needed. This is a growing market and we want to be ahead of it."

The life-settlement industry says it is unfair to compare securitized life settlements to other products like mortgages or derivatives because they have a permanent value and aren't subject to the same kind of volatility.

Financial companies see the market as beneficial to seniors who may need the extra cash and investors who purchase the contracts.

"They unlock money that is otherwise tied up in a future promise to pay that may never be realized," said Doug Head, executive director of the Life Insurance Settlement Association.

The SEC is trying to get a better handle on the breadth of the market and how the products are marketed and sold to investors, said the person familiar with the task force. Regulators also are examining what should be disclosed to investors given that the underlying insurance policies that include private information about the insured, such as health information.

Write to Kara Scannell at kara.scannell@wsj.com



(b)(7)(C)

Branch
Chief
U.S.
Securities
&
Exchange
Commission
100
F.
Street,
N.E.
Washington,
D.C.
20059

(b)(7)(C)

47

Meeting

10/1/2009 1:33:41 PM

From: (b)(7)(C)

To: Mejia, Lou (b)(7)(C)

(b)(5),(b)(7)(C)

Securities and Exchange Commission

100 F St., NE

Washington, D.C. 20549-4010

(b)(7)(C)

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RE: Priority Case Updates - ABACUS CDO (HO-10911)

9/2/2009 3:13:11 PM

From: (b)(7)(C)**To:** Muoio, Reid (b)(7)(C)**Cc:** Scarboro, Cheryl (b)(7)(C)

Thanks Reid, we'll go with December unless we hear from Cheryl in the next 5 hours. (b)(7)(C)

From: Muoio, Reid**Sent:** Wednesday, September 02, 2009 3:12 PM**To:** (b)(7)(C)**Cc:** (b)(7)(C) Scarboro, Cheryl; (b)(7)(C)**Subject:** RE: Priority Case Updates - ABACUS CDO (HO-10911)

We expect to receive Goldman's Wells submission on September 11 and have scheduled our first Wells meeting on September 15. My guess is that there will be at least one more Wells meeting in October. Assuming we decide at that point to move ahead with the current proposed charges, we will not get onto the Commission calendar until November. That is the very quickest I see this thing moving forward. There are a number of wild cards that could cause further delay. Most immediate is the interest of the newly assigned Trial Unit attorney to expand the scope of the proposed charges significantly to include additional individual and entity defendants. These will have to be resolved somehow. Then there are the possibilities that Goldman raises issues during the Wells process that require follow-up investigative efforts or expresses an interest in settling – all of which would require additional time. Unless Cheryl objects my preference is to reset the target date to "December 2009."

Reid (b)(7)(C)

From: (b)(7)(C)**Sent:** Wednesday, September 02, 2009 2:55 PM**To:** Muoio, Reid**Cc:** (b)(7)(C)**Subject:** RE: Priority Case Updates - ABACUS CDO (HO-10911)

Reid:

The Initial Target Date for ABACUS CDO (HO-10911) is "August 2009" (in blue box). We revised it to "September 2009". Please confirm if you would like to change it to another date.

Thanks and regards,

(b)(7)(C)

Division of Enforcement
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5546

(b)(7)(C)

From: (b)(7)(C)**Sent:** Thursday, August 27, 2009 9:58 PM**To:** (b)(7)(C)**Subject:** Fw: Priority Case Updates

(b)(7)(C)

From: Muoio, Reid

To: Scarboro, Cheryl; (b)(7)(C)

Cc: (b)(7)(C) Muoio, Reid

Sent: Thu Aug 27 17:43:33 2009

Subject: Priority Case Updates

Here are 3 of my AD group's weekly priority case updates. (b)(7)(C) could you please provide updates for J&J and GE? Thanks. Reid (b)(7)(C)

(b)(7)(A)

RE: Priority Case Report Updates Due Monday, November 2 by 3:00 EST thanks 11/4/2009 4:47 PM

From: Muoio, Reid

To: Muoio, Reid (b)(7)(C)

Cc: Scarboro, Cheryl (b)(7)(C)

ABACUS CDO (HO-10911) – update. We expect to receive a response to our hypothetical from counsel for ACA Capital at 3:30 pm this Friday November 6 at 3:30 pm.

From: Muoio, Reid

Sent: Monday, November 02, 2009 1:55 PM

To: (b)(7)(C)

Cc: Scarboro, Cheryl; Muoio, Reid; (b)(7)(C)

Subject: RE: Priority Case Report Updates Due Monday, November 2 by 3:00 EST thanks

(b)(7)(A)

From: (b)(7)(C)

Sent: Wednesday, October 28, 2009 12:06 PM

To: Romero, Rose L.; Korotash, Stephen J.; Hoerl, Donald M.; (b)(7)(C) Addleman, Katherine S.; Fagel, Marc J.; Dicke, Michael S.; Gordon, Glenn S.; Tyson, Rosalind R.; Petillon, Andrew G.; Layne, Michele W.; Calamari, Andrew M.; Rosenfeld, David; Gillette, Merri Jo; Burson, Robert J.; Warren, Timothy L.; Hawke, Daniel; Greenberg, Elaine C.; Bergers, David; Dugan, John T. (BRO); Chion, Antonia; Firestone, Rick; Scarboro, Cheryl; Conte, Christopher; Friestad, Scott; Blackburn, Robert B.; (b)(7)(C)

(b)(7)(C) Canellos, George; (b)(7)(C)

Addleman, Katherine S.; (b)(7)(C)

(b)(7)(C) Muoio, Reid; (b)(7)(C)

(b)(7)(C)

Cc: (b)(7)(C)

Subject: Priority Case Report Updates Due Monday, November 2 by 3:00 EST thanks

Importance: High

All,

Please update all of your priority cases by **3:00, Monday, November 2**. (Last report is attached for your convenience). In updating:

(i) please check all items in the blue box, especially "Initial Target Date (or Revised)" and

“Coordinating” with other regulators.

(ii) please keep the “Activity in Last Two Weeks” field to no more than 1-2 sentences.

(iii) please check all information in the case name, case number and the main summary. You may (but do not need to) make edits to the main summary if it is inaccurate – do not make it longer, if you add, you must also delete.

Please copy me, (b)(7)(C) and (b)(7)(C) (cc'd above) on your responses.

<< File: Enforcement Priority Case Report (10 16 09).doc >>

Thank you for your help!

(b)(7)(C)

Division of Enforcement
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5546

(b)(7)(C)

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RE: ABACUS 2007-AC1 (HO-10911) -- Closed Commission Meeting 12/17/09 11/20/09 2:40:31 PM

From: (b)(7)(C)
To: Muoio, Reid (b)(7)(C)
Cc: Scarboro, Cheryl (b)(7)(C)

Ok, we'll note that we're expecting this for the 12/17 meeting. You are right that this is the last closed meeting that we have on the calendar for 2009. (b)(7)(C)

On 11/12/09 6:15 PM, "Muoio, Reid" (b)(7)(C) wrote:

My understanding is that the last Closed Commission Meeting this calendar year is likely to be held on December 17, 2009. If so can we please reserve a spot on the calendar for a significant enforcement matter against Goldman Sachs & Co? Copy of the draft action memo is attached. We are in the process of circulating the recommendation for comment and review. Reid (b)(7)(C)

<<abacus.ho.10911.goldman.tourre.action.memo.11.12.09.pdf>>

RE: ABACUS 2007-AC1 (HO-10911) -- Draft action memo is attached 1/24/2009 10:52:49 AM**From:** (b)(7)(C)**To:** Muoio, Reid (b)(7)(C)**Cc:** #TM-LIAISON-ALL (b)(7)(C)

Scarboro, Cheryl

(b)(7)(C)

(b)(7)(C)

You are giving us one week to review an authorization memo with complex facts, over the Thanksgiving holiday. Limiting a memo to 20 pages does not limit the complexity of the facts. This is an important case that deserves appropriate review time by TM. We will do our best to get you comments by cob on Dec. 4. If you feel you need to send to the Commission before then, please remove TM as a division consulted.

From: Muoio, Reid**Sent:** Tuesday, November 24, 2009 9:35 AM**To:** Enforcement Action Memos; GC-Advance Review ENF Memos; (b)(7)(C)

#TM-LIAISON-ALL; #IM-ENFORCEMENT LIAISON; (b)(7)(C)

Cc: Scarboro, Cheryl; Muoio, Reid; (b)(7)(C)

(b)(7)(C)

Subject: ABACUS 2007-AC1 (HO-10911) -- Draft action memo is attached . . .

. . . for your comment and review. This is a National Priority case against Goldman Sachs for conduct related to the credit crisis. We have reserved a spot on the Commission calendar for December 17. To make that happen we need to ask everyone for comments on or before December 2. Good news is that the memo clocks in at 20 pages. The balance of the attached file is Wells submissions. We are prepared to meet and discuss at your convenience. Reid (b)(7)(C)

<< File: abacus.cdo.ho.10911.goldman.action.memo.11.24.09.pdf >>

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RE: 12/8/09 2B meeting

12/8/2009 11:39:40 AM

From: Muoio, Reid

To: Muoio, Reid (b)(7)(C)

Cc: Scarboro, Cheryl (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

Wed like to pull this from today's 2B calendar. Thanks. Reid

(b)(7)(C)

From: Muoio, Reid

Sent: Monday, December 07, 2009 11:44 AM

To: (b)(7)(C)

Cc: Scarboro, Cheryl; Muoio, Reid; (b)(7)(C)

Subject: 12/8/09 2B meeting

Sorry for the late notice on this one. We sent to memo to the Secretary's office late last Friday and are on the Commission calendar for 12/17/09.

(b)(5),(b)(7)(C)

<< File: Abacus.ho.10911.Goldman.Tourre.action.memo.final.12.5.09.doc >>

RE: Jonathan Egol - timeline

12/7/2009 12:13:00 PM

From: (b)(7)(C)
To: Muoio, Reid (b)(7)(C) Scarboro, Cheryl (b)(7)(C)

The answer we got from Klapper was that Klapper will "possibly" continue to represent Egol as co-counsel.

From: Muoio, Reid
Sent: Monday, December 07, 2009 11:12 AM
To: (b)(7)(C) Scarboro, Cheryl; (b)(7)(C)
Subject: RE: Jonathan Egol - timeline

Thanks. Is the representation similar to Tourre's in that Sullivan & Cromwell is co-counsel to Egol?

From: (b)(7)(C)
Sent: Monday, December 07, 2009 11:07 AM
To: Muoio, Reid; Scarboro, Cheryl; (b)(7)(C)
Subject: Jonathan Egol - timeline

Reid: You asked for a timeline of events on our subpoena to speak with Jonathan Egol, Fabrice Tourre's boss in the Abacus matter.

On November 2, we sent a subpoena to Goldman Sach's counsel for Mr. Egol's testimony, to take place on November 18.

On November 13, after receiving multiple staff requests for an update, Goldman's counsel Rich Klapper at Sullivan finally advised that Egol would be separately represented by (b)(7)(C) of Lankler Siffert and Wohl. Because of this, Klapper advised that testimony would be impossible on November 18.

On November 19, staff spoke with (b)(7)(C) and requested that we schedule testimony dates in early December. (b)(7)(C) advised that he needed time to get up to speed on the case.

On December 1, staff asked (b)(7)(C) to provide a date the week of December 7 or December 14 that testimony could take place. Staff suggested, if it was easier, that testimony could take place in New York.

From December 1 through December 7, staff and (b)(7)(C) exchanged voicemails. First (b)(7)(C) indicated that December testimony was unlikely, as (b)(7)(C) required "time to get up to speed and a document heavy case." In response, on December 4, staff left another voicemail with (b)(7)(C) stating that the answer was unacceptable, that there had been adequate time for preparation, and stating that unless a firm date was proposed, staff would subpoena again for a firm date the week of December 14. Staff also conveyed this in a live phone call to an associate of (b)(7)(C). On December 4, (b)(7)(C) left a final voicemail stating that because of the difficulties of the case, testimony in December was impossible.

Re: nyt review

12/6/2009 3:26:34 PM

From: (b)(7)(C)
To: Cohen, Stephen L. (b)(7)(C)

Thanks, Steve. Hate to bring you more issues and problems.

-----Original Message-----

From: Cohen, Stephen L.
Sent: Sun 12/6/2009 12:24 PM
To: (b)(7)(C)
Subject: RE: nyt review

(b)(7)(C) I appreciate your giving me full context on your comments. I will review and consider how best to proceed within the bounds of your request.

From: (b)(7)(C)
Sent: Sunday, December 06, 2009 9:44 AM
To: Cohen, Stephen L.
Subject: FW: nyt review

Steve: Hope you had a good Thanksgiving with time off for real.

See the highlighted two paragraphs in this review from this morning's NYT. I think you should be aware of the following:

I have withdrawn as litigation counsel on Goldman for two reasons:

(b)(5)

(b)(5), (b)(7)(C)

From: (b)(7)(C)

Sent: Sunday, December 06, 2009 9:03 AM

To: (b)(7)(C)

Subject: nyt review

55

RE: ABACUS (Goldman)

12/8/2009 10:58:33 AM

From: McKown, Joan
To: Scarboro, Cheryl (b)(7)(C)

Thanks.

From: Scarboro, Cheryl
Sent: Tuesday, December 08, 2009 9:48 AM
To: McKown, Joan
Cc: Khuzami, Robert; Reisner, Lorin L.
Subject: ABACUS (Goldman)

Joan,

I got your message. This matter will not be on the calendar for December 17 and we will not discuss it at today's 2B meeting. I anticipate that we will be ready to put this on the calendar in mid-January.

Cheryl

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RE: 12/17

12/8/2009 8:53:25 AM

From: McKown, Joan

To: (b)(7)(C)

BTW Abacus is coming off but I need to talk to Cheryl first so please don't do anything in that regard.

-----Original Message-----

From: (b)(7)(C)

Sent: Tuesday, December 08, 2009 8:40 AM

To: (b)(7)(C) McKown, Joan

Subject: 12/17

Could you give some thought to what items on the 12/17 agenda would be appropriate for the summary calendar? We'll wait to see how it works tomorrow before making the final call though.

(b)(7)(C)

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RE: ABACUS 2007-AC1 (HO-10911) FOR REGULAR CALENDAR ON (12-17-09) 12/17/2009 12:25:03 PM

From: (b)(7)(C)
To: Muoio, Reid (b)(7)(C)
Cc: Scarboro, Cheryl (b)(7)(C)

Thank you.

From: Muoio, Reid
Sent: Tuesday, December 08, 2009 11:24 AM
To: (b)(7)(C)
Cc: Scarboro, Cheryl; Muoio, Reid
Subject: RE: ABACUS 2007-AC1 (HO-10911) FOR REGULAR CALENDAR ON (12-17-09)

(b)(5),(b)(7)(C)

From: (b)(7)(C)
Sent: Tuesday, December 08, 2009 10:53 AM
To: Muoio, Reid
Subject: RE: ABACUS 2007-AC1 (HO-10911) FOR REGULAR CALENDAR ON (12-17-09)

We need to offer the Commissioners a more detailed reason your matter is being pulled. When do you want it re-calendared.

From: Muoio, Reid
Sent: Tuesday, December 08, 2009 10:52 AM
To: Muoio, Reid; (b)(7)(C) Commission-Action-Memos; (b)(7)(C)
Cc: (b)(7)(C)
Subject: RE: ABACUS 2007-AC1 (HO-10911) FOR REGULAR CALENDAR ON (12-17-09)

Sorry about this but we need to take this recommendation off the Commission Calendar for 12/17/09. Thanks.
Reid (b)(7)(C)

From: Muoio, Reid
Sent: Monday, December 07, 2009 10:36 AM
To: (b)(7)(C); Commission-Action-Memos; (b)(7)(C)
Cc: Muoio, Reid
Subject: RE: ABACUS 2007-AC1 (HO-10911) FOR REGULAR CALENDAR ON (12-17-09)

<< File: Abacus.ho.10911.Goldman.Tourre.action.memo.final.12.5.09.doc >>

From: (b)(7)(C)
Sent: Monday, December 07, 2009 10:29 AM
To: Commission-Action-Memos; Muoio, Reid; (b)(7)(C)
Subject: ABACUS 2007-AC1 (HO-10911) FOR REGULAR CALENDAR ON (12-17-09)

Please email the action memorandum in a WORD format concerning the above-captioned matter to the "Commission-Action-Memos" mailbox as soon as possible. *If your matter requires submission of the money ordered summary form, please email the form with the action memorandum.*

PLEASE MAKE CERTAIN THAT YOUR DOCUMENT DOES NOT CONTAIN AN AUTO DATE NOR RED-LINING.

For tracking purposes, please use the subject line above when sending the memo or simply "Reply to All" in this message and attach the memo in your reply.

Please disregard this message if you have already sent the action memorandum *and the money ordered summary forms* to the "Commission-Action-Memos" mailbox.

Best regards,

(b)(7)(C)

Office of the Secretary

U.S. Securities and Exchange Commission

100 F St NE, Room 10904

Washington, DC 20549

(b)(7)(C)

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FW: 12/8/09 2B meeting

12/8/2009 11:46:07 AM

From: Muoio, Reid**To:** Adler, Mark A. (b)(7)(C)**Cc:** Scarboro, Cheryl [ScarboroC@SEC.GOV]; Muoio, Reid (b)(7)(C)**Attachments:** Abacus.ho.10911.Goldman.Tourre.action.memo.final.12.5.09.doc

Mark (b)(7)(C) At Cheryl's request we pulled this recommendation from today's 2B and scheduled Ego's testimony for January 7. Cheryl has asked that we schedule a time for my staff to meet with the Trial Unit on Thursday 12/10 preferably in the late morning or early afternoon. Please let me know what works for you and we'll get a conference room. Reid (b)(7)(C)

From: Muoio, Reid**Sent:** Monday, December 07, 2009 11:44 AM**To:** (b)(7)(C)**Cc:** Scarboro, Cheryl; Muoio, Reid; (b)(7)(C)**Subject:** 12/8/09 2B meeting

Sorry for the late notice on this one. We sent to memo to the Secretary's office late last Friday and are on the Commission calendar for 12/17/09.

(b)(5), (b)(7)(C)

<<...>>

Re: a correction: I'm back on Goldman

12/9/2009 11:27:10 AM

From: (b)(7)(C)
To: Cohen, Stephen L. (b)(7)(C)

(b)(5), (b)(7)(C)

Securities and Exchange Commission

100 F St., NE

Washington, D.C. 20549-4010

(b)(7)(C)

From: Cohen, Stephen L.

Sent: Wednesday, December 09, 2009 10:53 AM

To: (b)(7)(C)

Subject: RE: a correction: I'm back on Goldman

(b)(5)

From: (b)(7)(C)

Sent: Wednesday, December 09, 2009 10:44 AM

To: Cohen, Stephen L.

Subject: RE: a correction: I'm back on Goldman

(b)(5), (b)(7)(C)

(b)(5),(b)(7)(C)

From: Cohen, Stephen L.

Sent: Wednesday, December 09, 2009 10:36 AM

To: (b)(7)(C)

Subject: RE: a correction: I'm back on Goldman

(b)(5)

From: (b)(7)(C)

Sent: Wednesday, December 09, 2009 10:35 AM

To: Cohen, Stephen L.

Subject: a correction: I'm back on Goldman

Steve:

(b)(5),(b)(7)(C)

60

This document is subject to the provisions of the Privacy Act of 1974, and may require redaction before disclosure to third parties. No redaction has been performed by the Office of Inspector General. Recipients of this report should not disseminate or copy it without the Inspector General's approval.



REPORT OF INVESTIGATION

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
OFFICE OF INSPECTOR GENERAL**

Case No. OIG-534

Appendix, Volume III of III

September 30, 2010

Report of Investigation OIG-534

Exhibit List

Allegations of Improper Coordination Between the SEC and Other Governmental Entities Concerning the SEC's Enforcement Action Against Goldman Sachs & Co.

1. Excerpts of Testimony Transcript of (b)(7)(C) July 6, 2010
2. Excerpts of Testimony Transcript of Cheryl Scarboro; July 7, 2010
3. Excerpts of Testimony Transcript of (b)(7)(C) July 13, 2010
4. Excerpts of Testimony Transcript of Unidentified Senior Counsel, Division of Enforcement; July 14, 2010
5. Excerpts of Testimony Transcript of (b)(7)(C) July 15, 2010
6. Excerpts of Testimony Transcript of Reid Muoio; July 20, 2010
7. Excerpts of Testimony Transcript of Pauline Calande; July 23, 2010
8. Excerpts of Testimony Transcript of Joan McKown; July 26, 2010
9. Excerpts of Testimony Transcript of (b)(7)(C) July 26, 2010
10. Excerpts of Testimony Transcript of Timothy Henseler; July 27, 2010
11. Excerpts of Testimony Transcript of Julie Davis; July 27, 2010
12. Excerpts of Testimony Transcript of Anne-Marie Kelley; July 27, 2010
13. Excerpts of Testimony Transcript of (b)(7)(C) July 29, 2010
14. Excerpts of Testimony Transcript of John Nester; July 30, 2010
15. Excerpts of Testimony Transcript of (b)(7)(C) July 30, 2010
16. Excerpts of Testimony Transcript of Eric Spitler; August 3, 2010
17. Excerpts of Testimony Transcript of Ricardo Delfin; August 3, 2010
18. Excerpts of Testimony Transcript of Kayla Gillan; August 4, 2010
19. Excerpts of Testimony Transcript of Didem Nisanci; August 6, 2010
20. Excerpts of Testimony Transcript of Richard Klapper; August 6, 2010
21. Excerpts of Testimony Transcript of Kathleen Casey; August 9, 2010
22. Excerpts of Testimony Transcript of Lorin Reisner; August 10, 2010
23. Excerpts of Testimony Transcript of Mary Schapiro; August 11, 2010
24. Excerpts of Testimony Transcript of Stephen Cohen; August 11, 2010

25. Excerpts of Testimony Transcript of Myron Marlin; August 12, 2010
26. Excerpts of Testimony Transcript of (b)(7)(C) August 12, 2010
27. Excerpts of Testimony Transcript of Robert Khuzami; August 13, 2010
28. Excerpts of Testimony Transcript of Scott Friestad; August 13, 2010
29. Excerpts of Testimony Transcript of Luis Aguilar; August 17, 2010
30. Excerpts of Testimony Transcript of Kenneth Lench; August 19, 2010
31. Excerpts of Testimony Transcript of Troy Paredes; August 19, 2010
32. Excerpts of Testimony Transcript of Elisse Walter; August 27, 2010
33. Memorandum of Interviews of (b)(7)(C) (b)(7)(C) April 27, 2010
34. Memorandum of Interview of (b)(7)(C) June 21, 2010
35. Memorandum of Interview of (b)(7)(C) August 26, 2010
36. January 24, 2010 E-mail from Stephen Cohen to Didem Nisanci
37. August 31, 2010 Letter from David McCraw to (b)(7)(C)
38. April 30, 2010 SEC.gov Press Release webpage printout
39. April 14, 2010 E-mail from Scott Friestad to Robert Khuzami
40. August 26, 2010 Golden Telephone Call Memorandum
41. April 19, 2010 E-mail from Scott Friestad to Joan McKown
42. July 16, 2010 E-mail from Louise Story to John Nester
43. April 29, 2010 HUB Report regarding ABACUS 2007-AC1
44. April 1, 2010 Action Memorandum regarding "Goldman, Sach & Co." and "Fabrice Tourre"
45. November 24, 2009 E-mail from Reid Muoio to (b)(7)(C)
46. September 17, 2009 E-mail from Stephen Cohen to Reid Muoio
47. October 1, 2009 E-mail from (b)(7)(C) to Lou Mejia
48. September 2, 2009 E-mail from Reid Muoio to (b)(7)(C)
49. November 2, 2009 E-mail from Reid Muoio to (b)(7)(C)
50. November 13, 2009 E-mail from Elizabeth Murphy to Reid Muoio
51. November 24, 2009 E-mail from Reid Muoio to Enforcement Action Memos
52. December 7, 2009 E-mail from Reid Muoio to (b)(7)(C)

53. December 7, 2009 E-mail from (b)(7)(C) to Reid Muoio
54. December 6, 2009 E-mail from (b)(7)(C) to Stephen Cohen
55. December 8, 2009 E-mail from Joan McKown to Cheryl Scarboro
56. December 8, 2009 E-mail from Joan McKown to (b)(7)(C) and (b)(7)(C)
(b)(7)(C)
57. December 8, 2009 E-mail from Reid Muoio to (b)(7)(C)
58. December 8, 2009 E-mail from Reid Muoio to Mark Adler and (b)(7)(C)
59. December 9, 2009 E-mail from (b)(7)(C) to Stephen Cohen
60. December 22, 2009 E-mail from (b)(7)(C) to Reid Muoio and (b)(7)(C)
61. December 25, 2009 E-mail from Mary Schapiro to Robert Khuzami
62. January 4, 2010 E-mail from Reid Muoio to (b)(7)(C)
63. December 24, 2009 E-mail from Reid Muoio to Robert Khuzami
64. January 4, 2010 E-mail from Robert Khuzami to Mary Schapiro
65. January 5, 2010 E-mail from Stephen Cohen to Lorin Reisner and Robert Khuzami
66. HUB Report Excerpt for HO-10911
67. January 7, 2010 E-mail from Reid Muoio to (b)(7)(C)
68. January 9, 2010 E-mail from Reid Muoio to Robert Khuzami
69. January 15, 2010 E-mail from Reid Muoio to Robert Khuzami
70. January 15, 2010 E-mail from (b)(7)(C) to Reid Muoio and (b)(7)(C)
71. January 15, 2010 E-mail from Stephen Cohen to Reid Muoio
72. January 15, 2010 E-mail from Didem Nisanci to Stephen Cohen
73. January 15, 2010 E-mail from Stephen Cohen to Reid Muoio
74. January 19, 2010 E-mail from Reid Muoio to (b)(7)(C) and Cheryl Scarboro
75. January 22, 2010 E-mail from Reid Muoio to Cheryl Scarboro
76. January 22, 2010 E-mail from Reid Muoio to Kenneth Lench
77. January 24, 2010 E-mail from Stephen Cohen to Mary Schapiro
78. January 25, 2010 E-mail from Stephen Cohen to Reid Muoio
79. January 25, 2010 E-mail from Stephen Cohen to Reid Muoio
80. January 26, 2010 E-mail from Stephen Cohen to Lorin Reisner
81. January 26, 2010 E-mail from Stephen Cohen to Myron Marlin

82. January 26, 2010 E-mail from (b)(7)(C) to Reid Muoio
83. January 25, 2010 E-mail from Reid Muoio to Cheryl Scarboro
84. January 27, 2010 E-mail from Reid Muoio to Cheryl Scarboro and Kenneth Lench
85. January 27, 2010 E-mail from Stephen Cohen to (b)(7)(C)
86. January 27, 2010 E-mail from Reid Muoio to (b)(7)(C) and (b)(7)(C)
87. January 28, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
88. February 16, 2010 E-mail from Reid Muoio to (b)(7)(C)
89. March 5, 2010 E-mail from Lorin Reisner to Reid Muoio
90. March 8, 2010 E-mail from Reid Muoio to (b)(7)(C) and (b)(7)(C)
(b)(7)(C)
91. February 25, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
92. March 23, 2010 E-mail from Robert Khuzami to Reid Muoio
93. March 24, 2010 E-mail from Reid Muoio to (b)(7)(C)
94. March 26, 2010 E-mail from Reid Muoio to Enforcement Action Memos
95. April 8, 2010 E-mail from Reid Muoio to Lorin Reisner
96. February 25, 2010 E-mail from Pauline Calande to (b)(7)(C)
97. February 25, 2010 E-mail from Timothy Henseler to Pauline Calande and (b)(7)(C)
(b)(7)(C)
98. April 7, 2010 E-mail from Pauline Calande to Timothy Henseler and Reid Muoio
99. April 7, 2010 E-mail from Timothy Henseler to Robert Khuzami
100. April 7, 2010 E-mail from Lorin Reisner to Timothy Henseler
101. February 22, 2010 E-mail from Timothy Henseler to (b)(7)(C)
102. March 18, 2010 E-mail from Reid Muoio to Lorin Reisner and Kenneth Lench
103. April 16, 2010 E-mail from Timothy Henseler to Didem Nisanci
104. April 17, 2010 E-mail from Timothy Henseler to Kenneth Lench
105. April 14, 2010 Closed Commission Meeting Minutes
106. April 12, 2010 E-mail from David Rosenfeld to Robert Khuzami
107. April 12, 2010 E-mail from David Rosenfeld to Robert Khuzami
108. April 12, 2010 E-mail from Robert Khuzami to Mary Schapiro
109. April 13, 2010 E-mail from Stephen Cohen to Mary Schapiro

110. April 13, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
111. April 13, 2010 E-mail from Lorin Reisner to Reid Muoio
112. April 13, 2010 E-mail from David Rosenfeld to Robert Khuzami
113. April 14, 2010 E-mail from Myron Marlin to John Nester
114. April 14, 2010 E-mail from (b)(7)(C) to Reid Muoio
115. April 11, 2010 E-mail from Stephen Cohen to Mary Schapiro
116. April 14, 2010 E-mail from Kenneth Lench to (b)(7)(C)
117. April 15, 2010 E-mail from Myron Marlin to John Nester
118. April 15, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
119. April 16, 2010 E-mail from Julie Davis to (b)(7)(C)
120. April 17, 2010 E-mail from Robert Khuzami to John Nester and Lorin Reisner
121. April 16, 2010 E-Mail from SEC NEWS
122. *The SEC's Impeccable Timing*, The Wall Street Journal, April 20, 2010
123. April 16, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
124. David Scheer and Joshua Gallu, *Madoff Scam Reached Family of SEC Official Whose Unit Got Tip*, Bloomberg, September 7, 2009
125. Sarah N. Lynch, *Madoff: SEC Agent was a "Blowhard,"* The Wall Street Journal, October 31, 2009
126. *SEC Faulted Over Bear Probe*, the Washington Post, October 11, 2008
127. Peter Barnes, *SEC Inspector General Slams Agency, Again*, Foxbusiness.com, May 3, 2010
128. April 16, 2010 E-mail from Kayla Gillan to Myron Marlin
129. April 1, 2010 E-mail from Kayla Gillan to Mary Schapiro
130. March 26, 2010 E-mail from Kayla Gillan to Mary Schapiro
131. April 7, 2010 E-mail from Kayla Gillan to (b)(7)(C)
132. April 9, 2010 E-mail from (b)(7)(C) to COMMISSION COUNSELS
133. April 12, 2010 E-mail from (b)(7)(C) to COMMISSION COUNSELS
134. April 14, 2010 E-mail from (b)(7)(C) to Barry Walters
135. April 15, 2010 E-mail from (b)(7)(C) to Kayla Gillan and Stephen Cohen
136. April 16, 2010 E-mail from Stephen Cohen to Myron Marlin
137. August 9, 2010 Letter from (b)(7)(C) to Craig Welter

138. April 17, 2010 E-mail from Joan McKown to Robert Khuzami
139. April 17, 2010 E-mail from Lorin Reisner to John Nester and Robert Khuzami
140. April 17, 2010 E-mail from Robert Khuzami to John Nester and Lorin Reisner
141. April 18, 2010 E-mail from Robert Khuzami to John Nester
142. Joshua Gallu & Christine Harper, *Goldman Shares Tumble on SEC Fraud Allegations*, Bloomberg News, April 16, 2010
143. Deborah Levine, *Goldman Sachs Bonds Suffer Again on Fraud Fears*, MarketWatch, April 19, 2010
144. Miriam Marcus, *Market Crumbles After Goldman Fraud Charges*, Forbes.com, April 16, 2010
145. April 16, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
146. April 16, 2010 E-mail from (b)(7)(C) to Lorin Reisner
147. New York Stock Exchange Manual Section 2
148. April 19, 2010 E-mail from Robert Khuzami to (b)(7)(C)
149. July 1, 2010 E-mail from (b)(7)(C) to Kenneth Lench
150. Attachment to July 2, 2010 E-mail from Reid Muoio to Kenneth Lench and (b)(7)(C)
- (b)(7)(C)
151. July 8, 2010 E-mail from Kenneth Lench to Lorin Reisner
152. July 12, 2010 E-mail from (b)(7)(C) to Commission Counsels
153. July 12, 2010 Reid Muoio E-mail to Robert Khuzami
154. July 12, 2010 E-mail from (b)(7)(C) to Luis Aguilar and (b)(7)(C)
155. July 14, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
156. July 14, 2010 E-mail from Stephen Cohen to Myron Marlin
157. July 15, 2010 E-mail from Robert Khuzami to (b)(7)(C)
158. July 15, 2010 E-mail from John Nester to Stephen Cohen
159. July 15, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
160. July 15, 2010 E-mail from (b)(7)(C) to ENF-ALL TRIAL ATTORNEYS
161. July 15, 2010 E-mail from SEC NEWS
162. July 15, 2010 E-mail from Reid Muoio to (b)(7)(C)

61

RE: Banks Bundled Debt, Bet Against It and Won - nyt(r) early

12/25/2009 8:30:40 AM

From: Schapiro, Mary L.
To: Khuzami, Robert (b)(7)(C)

We're up to it.

From: Khuzami, Robert
To: Schapiro, Mary L.
Sent: Fri Dec 25 08:13:25 2009
Subject: Re: Banks Bundled Debt, Bet Against It and Won - nyt(r) early

Nope -- gonna be a battle.

Rob

From: Schapiro, Mary L.
To: Khuzami, Robert
Sent: Fri Dec 25 08:12:20 2009
Subject: Re: Banks Bundled Debt, Bet Against It and Won - nyt(r) early

Is this a settled matter?

From: Khuzami, Robert
To: Schapiro, Mary L.
Sent: Thu Dec 24 11:42:07 2009
Subject: Fw: Banks Bundled Debt, Bet Against It and Won - nyt(r) early

Gretchen is spot-on, and ABACUS is the synthetic CDO deal we are targeting to calendar in January; looks like her sources are leaks from ex-Goldman folks rather than from inside SEC.

Rob

From: NEWSSUMMARY
To: #NEWSSUMMARY
Sent: Thu Dec 24 06:57:27 2009
Subject: FW: Banks Bundled Debt, Bet Against It and Won - nyt(r) early

From: (b)(7)(C)
Sent: Thursday, December 24, 2009 6:57:26 AM
To: NEWSSUMMARY
Subject: Banks Bundled Debt, Bet Against It and Won - nyt(r) early
Auto forwarded by a Rule

Banks Bundled Debt, Bet Against It and Won

By Gretchen Morgenson and Louise Story

24 December 2009

The New York Times

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In late October 2007, as the financial markets were starting to come unglued, a Goldman Sachs trader, Jonathan M. Ego, received very good news. At 37, he was named a managing director at the firm.

Mr. Ego, a Princeton graduate, had risen to prominence inside the bank by creating mortgage-related securities, named Abacus, that were at first intended to protect Goldman from investment losses if the housing market collapsed. As the market soured, Goldman created even more of these securities, enabling it to pocket huge profits.

Goldman's own clients who bought them, however, were less fortunate.

Pension funds and insurance companies lost billions of dollars on securities that they believed were solid investments, according to former Goldman employees with direct knowledge of the deals who asked not to be identified because they have confidentiality agreements with the firm.

Goldman was not the only firm that peddled these complex securities -- known as synthetic collateralized debt obligations, or C.D.O.'s -- and then made financial bets against them, called selling short in Wall Street parlance. Others that created similar securities and then bet they would fail, according to Wall Street traders, include Deutsche Bank and Morgan Stanley, as well as smaller firms like Tricadia Inc., an investment company whose parent firm was overseen by Lewis A. Sachs, who this year became a special counselor to Treasury Secretary Timothy F. Geithner.

How these disastrously performing securities were devised is now the subject of scrutiny by investigators in Congress, at the Securities and Exchange Commission and at the Financial Industry Regulatory Authority, Wall Street's self-regulatory organization, according to people briefed on the investigations. Those involved with the inquiries declined to comment.

While the investigations are in the early phases, authorities appear to be looking at whether securities laws or rules of fair dealing were violated by firms that created and sold these mortgage-linked debt instruments and then bet against the clients who purchased them, people briefed on the matter say.

One focus of the inquiry is whether the firms creating the securities purposely helped to select especially risky mortgage-linked assets that would be most likely to crater, setting their clients up to lose billions of dollars if the housing market imploded.

Some securities packaged by Goldman and Tricadia ended up being so vulnerable that they soured within months of being created.

Goldman and other Wall Street firms maintain there is nothing improper about synthetic C.D.O.'s, saying that they typically employ many trading techniques to hedge investments and protect against losses. They add that many prudent investors often do the same. Goldman used these securities initially to offset any potential losses stemming from its positive bets on mortgage securities.

But Goldman and other firms eventually used the C.D.O.'s to place unusually large negative bets that were not mainly for hedging purposes, and investors and industry experts say that put the firms at odds with their own clients' interests.

"The simultaneous selling of securities to customers and shorting them because they believed they were going to default is the most cynical use of credit information that I have ever seen," said Sylvain R. Raynes, an expert in structured finance at R & R Consulting in New York. "When you buy protection against an event that you have a hand in causing, you are buying fire insurance on someone else's house and then committing arson."

Investment banks were not alone in reaping rich rewards by placing trades against synthetic C.D.O.'s. Some hedge funds also benefited, including Paulson & Company, according to former Goldman workers and people at other banks familiar with that firm's trading.

Michael DuVally, a Goldman Sachs spokesman, declined to make Mr. Ego available for comment. But Mr. DuVally said many of the C.D.O.'s created by Wall Street were made to satisfy client demand for such products, which the clients thought would produce profits because they had an optimistic view of the housing market. In addition, he said that clients knew Goldman might be betting against mortgages linked to the securities, and that the buyers of synthetic mortgage C.D.O.'s were large, sophisticated investors, he said.

The creation and sale of synthetic C.D.O.'s helped make the financial crisis worse than it might otherwise have been, effectively multiplying losses by providing more securities to bet against. Some \$8 billion in these securities remain on the books at American International Group, the giant insurer rescued by the government in September 2008.

From 2005 through 2007, at least \$108 billion in these securities was issued, according to Dealogic, a financial data firm. And the actual volume was much higher because synthetic C.D.O.'s and other customized trades are unregulated and often not reported to any financial exchange or market.

Goldman Saw It Coming

Before the financial crisis, many investors -- large American and European banks, pension funds, insurance companies and even some hedge funds -- failed to recognize that overextended borrowers would default on their mortgages, and they kept increasing their investments in mortgage-related securities. As the mortgage market collapsed, they suffered steep losses.

A handful of investors and Wall Street traders, however, anticipated the crisis. In 2006, Wall Street had introduced a new index, called the ABX, that became a way to invest in the direction of mortgage securities. The index allowed traders to bet on or against pools of mortgages with different risk characteristics, just as stock indexes enable traders to bet on whether the overall stock market, or technology stocks or bank stocks, will go up or down.

Goldman, among others on Wall Street, has said since the collapse that it made big money by using the ABX to bet against the housing market. Worried about a housing bubble, top Goldman executives decided in December 2006 to change the firm's overall stance on the mortgage market, from positive to negative, though it did not disclose that publicly.

Even before then, however, pockets of the investment bank had also started using C.D.O.'s to place bets against mortgage securities, in some cases to hedge the firm's mortgage investments, as protection against a fall in housing prices and an increase in defaults.

Mr. Ego was a prime mover behind these securities. Beginning in 2004, with housing prices soaring and the mortgage mania in full swing, Mr. Ego began creating the deals known as Abacus. From 2004 to 2008, Goldman issued 25 Abacus deals, according to Bloomberg, with a total value of \$10.9 billion.

Abacus allowed investors to bet for or against the mortgage securities that were linked to the deal. The C.D.O.'s didn't contain actual mortgages. Instead, they consisted of credit-default swaps, a type of insurance that pays out when a borrower defaults. These swaps made it much easier to place large bets on mortgage failures.

Rather than persuading his customers to make negative bets on Abacus, Mr. Ego kept most of these wagers for his firm, said five former Goldman employees who spoke on the condition of anonymity. On occasion, he allowed some hedge funds to take some of the short trades.

Mr. Ego and Fabrice Tourre, a French trader at Goldman, were aggressive from the start in trying to make the assets in Abacus deals look better than they were, according to notes taken by a Wall Street investor during a phone call with Mr. Tourre and another Goldman employee in May 2005.

On the call, the two traders noted that they were trying to persuade analysts at Moody's Investors Service, a credit rating agency, to assign a higher rating to one part of an Abacus C.D.O. but were having trouble, according to the investor's notes, which were provided by a colleague who asked for anonymity because he was not authorized to release them. Goldman declined to discuss the selection of the assets in the C.D.O.'s, but a spokesman said investors could have rejected the C.D.O. if they did not like the assets.

Goldman's bets against the performances of the Abacus C.D.O.'s were not worth much in 2005 and 2006, but they soared in value in 2007 and 2008 when the mortgage market collapsed. The trades gave Mr. Egol a higher profile at the bank, and he was among a group promoted to managing director on Oct. 24, 2007.

"Egol and Fabrice were way ahead of their time," said one of the former Goldman workers. "They saw the writing on the wall in this market as early as 2005." By creating the Abacus C.D.O.'s, they helped protect Goldman against losses that others would suffer.

As early as the summer of 2006, Goldman's sales desk began marketing short bets using the ABX index to hedge funds like Paulson & Company, Magnetar and Soros Fund Management, which invests for the billionaire George Soros. John Paulson, the founder of Paulson & Company, also would later take some of the shorts from the Abacus deals, helping him profit when mortgage bonds collapsed. He declined to comment.

A Deal Gone Bad, for Some

The woeful performance of some C.D.O.'s issued by Goldman made them ideal for betting against. As of September 2007, for example, just five months after Goldman had sold a new Abacus C.D.O., the ratings on 84 percent of the mortgages underlying it had been downgraded, indicating growing concerns about borrowers' ability to repay the loans, according to research from UBS, the big Swiss bank. Of more than 500 C.D.O.'s analyzed by UBS, only two were worse than the Abacus deal.

Goldman created other mortgage-linked C.D.O.'s that performed poorly, too. One, in October 2006, was a \$800 million C.D.O. known as Hudson Mezzanine. It included credit insurance on mortgage and subprime mortgage bonds that were in the ABX index; Hudson buyers would make money if the housing market stayed healthy -- but lose money if it collapsed. Goldman kept a significant amount of the financial bets against securities in Hudson, so it would profit if they failed, according to three of the former Goldman employees.

A Goldman salesman involved in Hudson said the deal was one of the earliest in which outside investors raised questions about Goldman's incentives. "Here we are selling this, but we think the market is going the other way," he said.

A hedge fund investor in Hudson, who spoke on the condition of anonymity, said that because Goldman was betting against the deal, he wondered whether the bank built Hudson with "bonds they really think are going to get into trouble."

Indeed, Hudson investors suffered large losses. In March 2008, just 18 months after Goldman created that C.D.O., so many borrowers had defaulted that holders of the security paid out about \$310-million to Goldman and others who had bet against it, according to correspondence sent to Hudson investors.

The Goldman salesman said that C.D.O. buyers were not misled because they were advised that Goldman was placing large bets against the securities. "We were very open with all the risks that we thought we sold. When you're facing a tidal wave of people who want to invest, it's hard to stop them," he said. The salesman added that investors could have placed bets against Abacus and similar C.D.O.'s if they had wanted to.

A Goldman spokesman said the firm's negative bets didn't keep it from suffering losses on its mortgage assets, taking \$1.7 billion in write-downs on them in 2008; but he would not say how much the bank had since earned on its short positions, which former Goldman workers say will be far more lucrative over time. For instance, Goldman profited to the tune of \$1.5 billion from one series of mortgage-related trades by Mr. Egol with Wall Street rival Morgan Stanley, which had to book a steep loss, according to people at both firms.

Tetsuya Ishikawa, a salesman on several Abacus and Hudson deals, left Goldman and later published a novel,

"How I Caused the Credit Crunch." In it, he wrote that bankers deserted their clients who had bought mortgage bonds when that market collapsed: "We had moved on to hurting others in our quest for self-preservation." Mr. Ishikawa, who now works for another financial firm in London, declined to comment on his work at Goldman.

Profits From a Collapse

Just as synthetic C.D.O.'s began growing rapidly, some Wall Street banks pushed for technical modifications governing how they worked in ways that made it possible for C.D.O.'s to expand even faster, and also tilted the playing field in favor of banks and hedge funds that bet against C.D.O.'s, according to investors.

In early 2005, a group of prominent traders met at Deutsche Bank's office in New York and drew up a new system, called Pay as You Go. This meant the insurance for those betting against mortgages would pay out more quickly. The traders then went to the International Swaps and Derivatives Association, the group that governs trading in derivatives like C.D.O.'s. The new system was presented as a fait accompli, and adopted.

Other changes also increased the likelihood that investors would suffer losses if the mortgage market tanked. Previously, investors took losses only in certain dire "credit events," as when the mortgages associated with the C.D.O. defaulted or their issuers went bankrupt.

But the new rules meant that C.D.O. holders would have to make payments to short sellers under less onerous outcomes, or "triggers," like a ratings downgrade on a bond. This meant that anyone who bet against a C.D.O. could collect on the bet more easily.

"In the early deals you see none of these triggers," said one investor who asked for anonymity to preserve relationships. "These things were built in to provide the dealers with a big payoff when something bad happened."

Banks also set up ever more complex deals that favored those betting against C.D.O.'s. Morgan Stanley established a series of C.D.O.'s named after United States presidents (Buchanan and Jackson) with an unusual feature: short-sellers could lock in very cheap bets against mortgages, even beyond the life of the mortgage bonds. It was akin to allowing someone paying a low insurance premium for coverage on one automobile to pay the same on another one even if premiums over all had increased because of high accident rates.

At Goldman, Mr. Ego structured some Abacus deals in a way that enabled those betting on a mortgage-market collapse to multiply the value of their bets, to as much as six or seven times the face value of those C.D.O.'s. When the mortgage market tumbled, this meant bigger profits for Goldman and other short sellers -- and bigger losses for other investors.

Selling Bad Debt

Other Wall Street firms also created risky mortgage-related securities that they bet against.

At Deutsche Bank, the point man on betting against the mortgage market was Greg Lippmann, a trader. Mr. Lippmann made his pitch to select hedge fund clients, arguing they should short the mortgage market. He sometimes distributed a T-shirt that read "I'm Short Your House!!!" in black and red letters.

Deutsche, which declined to comment, at the same time was selling synthetic C.D.O.'s to its clients, and those deals created more short-selling opportunities for traders like Mr. Lippmann.

Among the most aggressive C.D.O. creators was Tricadia, a management company that was a unit of Mariner Investment Group. Until he became a senior adviser to the Treasury secretary early this year, Lewis Sachs was Mariner's vice chairman. Mr. Sachs oversaw about 20 portfolios there, including Tricadia, and its documents also show that Mr. Sachs sat atop the firm's C.D.O. management committee.

From 2003 to 2007, Tricadia issued 14 mortgage-linked C.D.O.'s, which it called TABS. Even when the market was starting to implode, Tricadia continued to create TABS deals in early 2007 to sell to investors. The deal documents referring to conflicts of interest stated that affiliates and clients of Tricadia might place bets against

the types of securities in the TABS deal.

Even so, the sales material also boasted that the mortgages linked to C.D.O.'s had historically low default rates, citing a "recently completed" study by Standard & Poor's ratings agency -- though fine print indicated that the date of the study was September 2002, almost five years earlier.

At a financial symposium in New York in September 2006, Michael Barnes, the co-head of Tricadia, described how a hedge fund could put on a negative mortgage bet by shorting assets to C.D.O. investors, according to his presentation, which was reviewed by The New York Times.

Mr. Barnes declined to comment. James E. McKee, general counsel at Tricadia, said, "Tricadia has never shorted assets into the TABS deals, and Tricadia has always acted in the best interests of its clients and investors."

Mr. Sachs, through a spokesman at the Treasury Department, declined to comment.

Like investors in some of Goldman's Abacus deals, buyers of some TABS experienced heavy losses. By the end of 2007, UBS research showed that two TABS deals were the eighth- and ninth-worst performing C.D.O.'s. Both had been downgraded on at least 75 percent of their associated assets within a year of being issued.

Tricadia's hedge fund did far better, earning roughly a 50 percent return in 2007 and similar profits in 2008, in part from the short bets.

PHOTOS: One former Goldman salesman wrote a novel about the crisis. A Deutsche Bank trader passed out T-shirts for investors hoping to profit on a housing bust. (PHOTOGRAPH BY WILLIAM P. O'DONNELL/THE NEW YORK TIMES) ;Lewis Sachs, top, who oversaw C.D.O.'s before becoming a Treasury adviser, and John Paulson, whose company profited as the housing market collapsed. (PHOTOGRAPHS BY TREASURY DEPARTMENT; KEVIN WOLF/ASSOCIATED PRESS) (B4)

CHARTS: Profits in a Crisis: Goldman Sachs fared better than most banks in the financial crisis. This, in no small part, is because of mortgage investment deals that it created called synthetic collateralized debt obligations. Investors in the deals bet that the housing market would stay healthy, and if it collapsed, Goldman stood to gain.; How a synthetic collateralized debt obligation (C.D.O.) works: 10 of the worst-performing C.D.O.'s, as of the fall of 2007 (Sources: Abacus marketing documents; UBS; Dealogic; Total Securitization and Credit Investment) (B4)

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RE: ABACUS 2007-AC1 (HO-10911) for Regular Calendar on 12/17/09 -- withdrawn

1/4/2010 7:16:37 PM

From: Cohen, Stephen L.
To: Muoio, Reid (b)(7)(C)

Whatever you all want. We are just trying to be accommodating.

From: Muoio, Reid
To: Cohen, Stephen L.
Sent: Mon Jan 04 18:56:33 2010
Subject: Fw: ABACUS 2007-AC1 (HO-10911) for Regular Calendar on 12/17/09 -- withdrawn

OK?

Sent from my BlackBerry Wireless Handheld

From: Khuzami, Robert
To: Muoio, Reid; Reisner, Lorin L.; Scarboro, Cheryl
Sent: Mon Jan 04 18:41:26 2010
Subject: RE: ABACUS 2007-AC1 (HO-10911) for Regular Calendar on 12/17/09 -- withdrawn

I think the 14th is a bit aggressive and probably unnecessary -- let's stick with the 21st.

Rob

From: Muoio, Reid
Sent: Monday, January 04, 2010 6:18 PM
To: Khuzami, Robert; Reisner, Lorin L.; Scarboro, Cheryl
Cc: Muoio, Reid
Subject: FW: ABACUS 2007-AC1 (HO-10911) for Regular Calendar on 12/17/09 -- withdrawn

Steve Cohen called to say that he will instruct the Office of the Secretary to place this matter on the calendar for January 14 so long as we get the memo to the Commission early this Friday January 8 which obviously we will do. Steve agreed that it made sense to file against Goldman and Tourre and then amend if the evidence supports charging Egol. Reid (b)(7)(C)

From: Muoio, Reid
Sent: Monday, January 04, 2010 4:15 PM
To: (b)(7)(C) Murphy, Elizabeth, (b)(7)(C)
Cc: Scarboro, Cheryl; Muoio, Reid
Subject: RE: ABACUS 2007-AC1 (HO-10911) for Regular Calendar on 12/17/09 -- withdrawn

We will be re-sending this recommendation up to the Commission on Friday January 8. ENF's Front Office has asked that the matter be calendared for the second or third week in January. I see there is a meeting scheduled for January 14. Is that doable? If not what is the soonest we can get on after that? This is a high-profile enforcement case that recently became time sensitive. Thanks. Reid (b)(7)(C)

<< File: Abacus.ho.10911.Goldman.Tourre.action.memo.final.12.5.09.doc >>

From: (b)(7)(C)
Sent: Tuesday, December 08, 2009 4:09 PM
To: #COMMISSION COUNSELS; Becker, David M.; Mitchell, Meridith; Cahn, Mark D.; (b)(7)(C)
(b)(7)(C)
Cc: (b)(7)(C)
Cc: Murphy, Elizabeth; (b)(7)(C) Scarboro, Cheryl; Muoio, Reid; (b)(7)(C)
(b)(7)(C)
Subject: ABACUS 2007-AC1 (HO-10911) for Regular Calendar on 12/17/09 -- withdrawn

The above-captioned matter has been withdrawn from the December 17 Closed Meeting agenda by the staff. (b)(7)(C)

(b)(5), (b)(7)(C)

Office of the Secretary

Securities and Exchange Commission

100 F Street, N.E., Room 10921

Washington, DC 20549-1090

(b)(7)(C)

63

RE: Synthetic CDO

12/24/2009 10:09:22 AM

From: Muoio, Reid

To: Khuzami, Robert (b)(7)(C)

Cc: Scarboro, Cheryl

Quite frankly my preference is to send the memo up Monday for calendaring in early January. (b)(5)

(b)(5) Everyone in the building has reviewed the memo recommending charges against Goldman and Tourre. They'll be some push back from the Trial Unit maybe. But I can deal with that.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Khuzami, Robert

To: Muoio, Reid

Cc: Scarboro, Cheryl; (b)(7)(C)

Sent: Thu Dec 24 09:03:59 2009

Subject: Re: Synthetic CDO

OK. I have the action memo with me. What is our projected calendar date?

Rob

----- Original Message -----

From: Muoio, Reid

To: Khuzami, Robert

Cc: Scarboro, Cheryl; (b)(7)(C)

Sent: Thu Dec 24 08:55:02 2009

Subject: Re: Synthetic CDO

Egol is scheduled for January 7. And yes he's the last. He is pretty clean on the papers. Abacus 2007-AC1 was clearly Tourre's deal. (b)(5) But we'll see what we see.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Khuzami, Robert

To: Muoio, Reid

Cc: Scarboro, Cheryl; (b)(7)(C)

Sent: Thu Dec 24 08:52:18 2009

Subject: Re: Synthetic CDO

Saw it -- any sense it was coming? Is Egol the last deposition to be taken, and if so when is it scheduled for?

RK

----- Original Message -----

From: Muoio, Reid
To: Khuzami, Robert
Cc: Scarboro, Cheryl; [REDACTED]
Sent: Thu Dec 24 08:49:26 2009
Subject: Synthetic CDOs

Rob: Hate to bother you during the holidays but I assume you've seen today's NYT article which touches upon pretty much every major issue and subject we've been investigating these past couple of years. Not sure what to do about it but here are my phone numbers in case there is a need to talk: [REDACTED] Ps iphone is preferable. Reid

[REDACTED]

Sent from my BlackBerry Wireless Handheld

64

RE: PSI

1/5/2010 7:52:00 PM

From: Khuzami, Robert**To:** Spitler, Eric J. (b)(7)(C)

Cohen, Stephen L. (b)(7)(C)

Davis, Julie Z. (b)(7)(C)

Reisner, Lorin L.

Cc: Henseler, Timothy (b)(7)(C)

Thx.

From: Spitler, Eric J.**Sent:** Tuesday, January 05, 2010 10:08 AM**To:** Khuzami, Robert; Cohen, Stephen L.; Davis, Julie Z.; Reisner, Lorin L.**Cc:** Henseler, Timothy**Subject:** RE: PSI

Just for information, the Senate will be in recess until January 19 so that week would be the earliest they would likely schedule a hearing.

Eric

From: Khuzami, Robert**Sent:** Monday, January 04, 2010 6:42 PM**To:** Cohen, Stephen L.; Davis, Julie Z.; Reisner, Lorin L.**Cc:** Henseler, Timothy; Spitler, Eric J.**Subject:** RE: PSI

Too soon, and no real threat at this point that PSI is moving that fast. Plus, I will get the heads up when it is scheduled from an outside source.

Rob

From: Cohen, Stephen L.**Sent:** Monday, January 04, 2010 6:19 PM**To:** Khuzami, Robert; Davis, Julie Z.; Reisner, Lorin L.**Cc:** Henseler, Timothy; Spitler, Eric J.**Subject:** RE: PSI

Rob,

We can calendar it for the 14th to be safe, unless you think that is too soon? That should help, right?

From: Khuzami, Robert**Sent:** Monday, January 04, 2010 5:53 PM**To:** Davis, Julie Z.; Reisner, Lorin L.; Cohen, Stephen L.**Cc:** Henseler, Timothy; Spitler, Eric J.**Subject:** RE: PSI

(b)(5)

(b)(5)

The way it looks now, we are

shooting for Jan. 21 to present our case to the Commission, so that is early enough that I am hopeful we will beat them to the punch. So, for now, just get a sense if you can of when they are scheduled to hold their hearing.

Thx

Rob

From: Davis, Julie Z.

Sent: Monday, January 04, 2010 5:43 PM

To: Khuzami, Robert; Reisner, Lorin L.; Cohen, Stephen L.

Cc: Henseler, Timothy; Spitler, Eric J.

Subject: RE: PSI

(b)(5)

From: Khuzami, Robert

Sent: Monday, January 04, 2010 1:45 PM

To: Schapiro, Mary L.; Nisanci, Didem A.; Spitler, Eric J.; Davis, Julie Z.; Cohen, Stephen L.

Cc: Reisner, Lorin L.

Subject: PSI

(b)(5)

Rob

65

RE: Abacus

1/5/2010 7:07:37 PM

From: Cohen, Stephen L.

To: Reisner, Lorin L. (b)(7)(C) Khuzami, Robert (b)(7)(C)

Will do.

-----Original Message-----

From: Reisner, Lorin L.

Sent: Tuesday, January 05, 2010 5:03 PM

To: Cohen, Stephen L.; Khuzami, Robert

Subject: RE: Abacus

My vote is 1/28.

L.

-----Original Message-----

From: Cohen, Stephen L.

Sent: Tuesday, January 05, 2010 3:13 PM

To: Reisner, Lorin L.; Khuzami, Robert

Subject: RE: Abacus

There is no meeting on the 21st. Despite Mary's willingness to do it from LA, Aguilar, Casey and Walter are all out. So, should we calendar this for the 28th?

If it matters, we will be unable move it to the 14th after Friday. Whatever you all prefer.

-----Original Message-----

From: Reisner, Lorin L.

Sent: Monday, January 04, 2010 10:55 PM

To: Khuzami, Robert; Cohen, Stephen L.

Subject: Re: Abacus

January 21 is best. If that's not possible, I think that January 28 is the better alternative unless there is a vital need to target January 14 (and the latest intelligence is that there may be no need to expedite). (b)(5)

(b)(5)
(b)(5) That will be difficult to accomplish by the 14th. Do-able if essential but the 28th seems preferable if the 21st is not possible.

L.

----- Original Message -----

From: Khuzami, Robert

To: Cohen, Stephen L.

Cc: Reisner, Lorin L.

Sent: Mon Jan 04 21:50:42 2010

Subject: Re: Abacus

I think the 14th if the 21st is out, although I'd like Lorin's view on this as well.

RK

Subject: RE: Abacus

(b)(5) I believe Elisse and Kathy are out. Mary will be in CA (as will you) on the 21st, but she may do the meeting from the LA office. Her schedule hasn't been nailed down yet. I can try to figure that out tomorrow if it will make a difference, but can't guarantee we will know. If MLS doesn't participate, there will be no meeting on the 21st.

Subject: Re: Abacus

Might be . . .

Subject: Abacus

Will this case be controversial? There may be quorum issues on the 21st...

67

RE: Priority Case Report Updates Due Monday, January 4th by 3:00 EST thanks 1/7/2010 4:36 PM

From: Muoio, Reid

To: Scarboro, Cheryl (b)(7)(C)

When we get to Penn Station around 6:30, yes.

Sent from my BlackBerry Wireless Handheld

From: Scarboro, Cheryl

To: Muoio, Reid

Sent: Thu Jan 07 16:16:00 2010

Subject: RE: Priority Case Report Updates Due Monday, January 4th by 3:00 EST thanks

Do you have a minute to call re Ego?

From: Muoio, Reid

Sent: Thursday, January 07, 2010 4:05 PM

To: (b)(7)(C)

Cc: (b)(7)(C); Scarboro, Cheryl; Muoio, Reid

Subject: Re: Priority Case Report Updates Due Monday, January 4th by 3:00 EST thanks

Current pland is to calendar Abacus 2007-AC1 for January 28 with a view towards filing on Friday January 29 or Monday February 1, 2010.

Satyam will probably not be filed until March 2010.

Sent from my BlackBerry Wireless Handheld

From: (b)(7)(C)

To: Muoio, Reid

Cc: (b)(7)(C)

Sent: Thu Jan 07 16:01:57 2010

Subject: FW: Priority Case Report Updates Due Monday, January 4th by 3:00 EST thanks

Reid:

Both ABACUS and Satyam have January as target filing date. Can it stand for the moment or you'd like to push it back.

Thanks and regards,

(b)(7)(C)

Division of Enforcement
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5546
Direct: (b)(7)(C)

From: Muoio, Reid

Sent: Wednesday, December 30, 2009 1:20 PM

To: (b)(7)(C)

Cc: Scarboro, Cheryl; (b)(7)(C) Muoio, Reid

Subject: RE: Priority Case Report Updates Due Monday, January 4th by 3:00 EST thanks

(b)(5)

(b)(7)(C) could you please do J&J and other high priority FCPA? Tyanks. Reid (b)(7)(C)

From: (b)(7)(C)

Sent: Wednesday, December 30, 2009 11:58 AM

To: Romero, Rose L.; Korotash, Stephen J.; Hoerl, Donald M.; (b)(7)(C) Fagel, Marc J.; Dicke, Michael S.; Gordon, Glenn S.; Tyson, Rosalind R.; Petillon, Andrew G.; Layne, Michele W.; Calamari, Andrew M.; Rosenfeld, David; Gillette, Merri Jo; Burson, Robert J.; Warren, Timothy L.; Hawke, Daniel; Greenberg, Elaine C.; Bergers, David; Dugan, John T. (BRO); Chion, Antonia; Firestone, Rick; Scarboro, Cheryl; Conte, Christopher; Friestad, Scott; Blackburn, Robert B.; (b)(7)(C)

(b)(7)(C) Canellos, George; (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

Cc: (b)(7)(C)

Subject: Priority Case Report Updates Due Monday, January 4th by 3:00 EST thanks

Importance: High

All,

Please update all of your priority cases by **3:00, Monday, January 4th**. (Last report is attached for your convenience). In updating:

- i. please check all items in the blue box, especially "Initial Target Date (or Revised)" and "Coordinating" with other regulators.
- ii. please keep the "Activity in Last Three Weeks" field to no more than 1-2 sentences.
- iii. please check all information in the case name, case number and the main summary. You may (but do not need to) make edits to the main summary if it is inaccurate – do not make it longer, if you add, you must also delete.

Please copy me and (b)(7)(C) (cc'd above) on your responses.

<< File: Enforcement Priority Case Report (12 18 09).doc >>

Thank you for your help!

Happy New Year!

(b)(7)(C)

(b)(7)(C)

Division of Enforcement
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5546

Direct:

(b)(7)(C)

68

RE: Goldman - Senate Inquiry

1/9/2010 10:52:17 AM

From: Scarboro, Cheryl
To: Muoio, Reid (b)(7)(C)

No attachment.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Muoio, Reid
To: Khuzami, Robert
Cc: Scarboro, Cheryl; Muoio, Reid
Sent: Sat Jan 09 07:39:55 2010
Subject: Goldman - Senate Inquiry

1 Attachment

Rob: If I've done this correctly on my blackberry, attached is a copy of the subpoena Goldman received in connection with the upcoming Senate hearings. We have been receiving copies of documents produced in response thereto. We have also learned that Goldman's outside counsel (Sullivan + Cromwell) is meeting with Senate staffers the week of January 25 to brief them on these issues. Other major firms have received and responded to similar requests. Reid (b)(7)(C)

(b)(7)(C)

Sent from my BlackBerry Wireless Handheld

RE: ABACUS 2007-AC1 -- Senate Inquiry

1/15/2010 10:51:50 AM

From: Khuzami, Robert

To: Muoio, Reid (b)(7)(C); Reisner, Lorin L. (b)(7)(C); Scarboro, Cheryl (b)(7)(C)

Cc: (b)(7)(C)

I thought about this after our meeting last night, and the inquiry may be one add'l reason to proceed with the case and Wells Ego on parallel tracks, assuming that is the result we reach with Ego.

From: Muoio, Reid

Sent: Friday, January 15, 2010 10:44 AM

To: Khuzami, Robert; Reisner, Lorin L.; Scarboro, Cheryl

Cc: Muoio, Reid; (b)(7)(C)

Subject: ABACUS 2007-AC1 -- Senate Inquiry

According to outside counsel (Sullivan & Cromwell), Goldman has provided copies to the Senate of all documents produced to the SEC pursuant to a me-too request. (b)(5)

(b)(5) Reid (b)(5)

70

RE: ABACUS 2007-AC1 -- Senate Inquiry

1/15/2010 5:38:53 PM

From: (b)(7)(C)**To:** Muoio, Reid (b)(7)(C)

Yes, it is the one attached. The Permanent Subcommittee on Investigations, chaired by Senator Levin. Goldman believes they are working somewhat in tandem, but separately, from the separate investigation into the causes of the financial crisis chaired by Mr. Angelides.

From: Muoio, Reid**Sent:** Friday, January 15, 2010 11:29 AM**To:** (b)(7)(C)**Subject:** FW: ABACUS 2007-AC1 -- Senate Inquiry

Please confirm with Klapper.

From: Muoio, Reid**Sent:** Friday, January 15, 2010 11:29 AM**To:** Cohen, Stephen L.**Subject:** RE: ABACUS 2007-AC1 -- Senate Inquiry

I believe this one (see attached) but we are seeking to confirm. Reid (b)(7)(C)

From: Cohen, Stephen L.**Sent:** Friday, January 15, 2010 11:27 AM**To:** Muoio, Reid**Subject:** Re: ABACUS 2007-AC1 -- Senate Inquiry

Do we know who in Senate asked for docs? What Ctee?

From: Muoio, Reid**To:** Cohen, Stephen L.**Sent:** Fri Jan 15 10:45:02 2010**Subject:** FW: ABACUS 2007-AC1 -- Senate Inquiry**From:** Muoio, Reid**Sent:** Friday, January 15, 2010 10:44 AM**To:** Khuzami, Robert; Reisner, Lorin L.; Scarboro, Cheryl**Cc:** Muoio, Reid; (b)(7)(C)**Subject:** ABACUS 2007-AC1 -- Senate Inquiry

According to outside counsel (Sullivan & Cromwell), Goldman has provided copies to the Senate of all documents produced to the SEC pursuant to a me-too request. (b)(7)(C)

Reid x (b)(7)(C)

(b)(7)(C)

71

RE: ABACUS 2007-AC1 -- Senate Inquiry

1/15/2010 11:25:20 AM

From: Muoio, Reid
To: Cohen, Stephen L. (b)(7)(C)

Agreed. We are meeting again to discuss the matter again on Tuesday 1/19 at 4:30 pm with Rob and Lorin and members of the Trial Unit.

From: Cohen, Stephen L.
Sent: Friday, January 15, 2010 11:24 AM
To: Muoio, Reid
Subject: Re: ABACUS 2007-AC1 -- Senate Inquiry

We really need to bring this case on the 28th...

From: Muoio, Reid
To: Cohen, Stephen L.
Sent: Fri Jan 15 10:45:02 2010
Subject: FW: ABACUS 2007-AC1 -- Senate Inquiry

From: Muoio, Reid
Sent: Friday, January 15, 2010 10:44 AM
To: Khuzami, Robert; Reisner, Lorin L.; Scarboro, Cheryl
Cc: Muoio, Reid; (b)(7)(C)
Subject: ABACUS 2007-AC1 -- Senate Inquiry

According to outside counsel (Sullivan & Cromwell), Goldman has provided copies to the Senate of all documents produced to the SEC pursuant to a me-too request. (b)(7)(C)

(b)(7)(C) Reid (b)(7)(C) (b)(7)(C)

72

RE: ABACUS 2007-AC1 -- Senate Inquiry

1/15/2010 12:52:28 PM

From: Henseler, Timothy**To:** Davis, Julie Z. (b)(7)(C)

Cohen, Stephen L. (b)(7)(C)

Nisanci, Didem A. (b)(7)(C)

Spitler, Eric J.

Which knowing PSI is almost certainly accurate given that they are just getting large volume of docs (they almost certainly wouldn't hold the hearing w/o going through them in some level of detail).

From: Davis, Julie Z.**Sent:** Friday, January 15, 2010 11:48 AM**To:** Cohen, Stephen L.; Nisanci, Didem A.; Spitler, Eric J.; Henseler, Timothy**Subject:** RE: ABACUS 2007-AC1 -- Senate Inquiry

For what it's worth, the soft touch intel we're getting from PSI is that they are not doing a hearing on this anytime soon.

From: Cohen, Stephen L.**Sent:** Friday, January 15, 2010 11:43 AM**To:** Nisanci, Didem A.; Spitler, Eric J.; Davis, Julie Z.; Henseler, Timothy**Subject:** RE: ABACUS 2007-AC1 -- Senate Inquiry

We're pressing them to bring it at the next closed meeting on the 28th. There are some internal issues about which individuals to charge that they are working through. I'll let you know if that does NOT happen.

From: Nisanci, Didem A.**Sent:** Friday, January 15, 2010 11:14 AM**To:** Cohen, Stephen L.; Spitler, Eric J.; Davis, Julie Z.; Henseler, Timothy**Subject:** Re: ABACUS 2007-AC1 -- Senate Inquiry

Right, so all the more important to bring the case.

From: Cohen, Stephen L.**To:** Spitler, Eric J.; Davis, Julie Z.; Henseler, Timothy; Nisanci, Didem A.**Sent:** Fri Jan 15 11:06:37 2010**Subject:** Fw: ABACUS 2007-AC1 -- Senate Inquiry**From:** Muoio, Reid**To:** Cohen, Stephen L.**Sent:** Fri Jan 15 10:45:02 2010**Subject:** FW: ABACUS 2007-AC1 -- Senate Inquiry**From:** Muoio, Reid**Sent:** Friday, January 15, 2010 10:44 AM**To:** Khuzami, Robert; Reisner, Lorin L.; Scarboro, Cheryl**Cc:** Muoio, Reid; (b)(7)(C)**Subject:** ABACUS 2007-AC1 -- Senate Inquiry

According to outside counsel (Sullivan & Cromwell), Goldman has provided copies to the Senate of all documents produced to the SEC pursuant to a me-too request. (b)(7)(C)

(b)(7)(C)

Reid

(b)(7)(C)

73

RE: ABACUS 2007-AC1 -- Senate Inquiry

1/15/2010 11:54:19 AM

From: Cohen, Stephen L.**To:** Muoio, Reid (b)(7)(C)

(b)(5)

From: Muoio, Reid**Sent:** Friday, January 15, 2010 11:47 AM**To:** Cohen, Stephen L.**Subject:** FW: ABACUS 2007-AC1 -- Senate Inquiry

The answer is yes, it's the Senate Permanent Subcommittee on Investigations. You should also know that FINRA opened a related matter on xmas eve in response to the NYT article (see doc request attached). Reid

(b)(7)(C)

From: Muoio, Reid**Sent:** Friday, January 15, 2010 11:29 AM**To:** Cohen, Stephen L.**Subject:** RE: ABACUS 2007-AC1 -- Senate Inquiry

I believe this one (see attached) but we are seeking to confirm. Reid

(b)(7)(C)

From: Cohen, Stephen L.**Sent:** Friday, January 15, 2010 11:27 AM**To:** Muoio, Reid**Subject:** Re: ABACUS 2007-AC1 -- Senate Inquiry

Do we know who in Senate asked for docs? What Ctee?

From: Muoio, Reid**To:** Cohen, Stephen L.**Sent:** Fri Jan 15 10:45:02 2010**Subject:** FW: ABACUS 2007-AC1 -- Senate Inquiry**From:** Muoio, Reid**Sent:** Friday, January 15, 2010 10:44 AM**To:** Khuzami, Robert; Reisner, Lorin L.; Scarboro, Cheryl**Cc:** Muoio, Reid (b)(7)(C)**Subject:** ABACUS 2007-AC1 -- Senate Inquiry

According to outside counsel (Sullivan & Cromwell), Goldman has provided copies to the Senate of all documents produced to the SEC pursuant to a me-too request.

(b)(7)(C)

Reid

(b)(7)(C)

(b)(7)(C)

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RE: ABACUS 2007-AC1 (HO-10911)

1/19/2010 6:41:21 PM

From: Muoio, Reid**To:** (b)(7)(C) Scarboro, Cheryl (b)(7)(C)**Cc:** Cohen, Stephen L. (b)(7)(C)

We met again this afternoon with the Front Office to discuss this matter. We would like to have our recommendation against Goldman and Tourre considered at the January 28 closed commission meeting and will get you a final action memo within the next day or so. We will then place Wells calls to Egol and perhaps one additional individual defendant. Reid (b)(7)(C)

From: (b)(7)(C)**Sent:** Thursday, January 14, 2010 11:34 AM**To:** Muoio, Reid; Scarboro, Cheryl**Cc:** Cohen, Stephen L.**Subject:** RE: ABACUS 2007-AC1 (HO-10911)

OK

From: Muoio, Reid**Sent:** Thursday, January 14, 2010 11:34 AM**To:** (b)(7)(C) Scarboro, Cheryl**Cc:** Cohen, Stephen L.**Subject:** RE: ABACUS 2007-AC1 (HO-10911)

We are meeting with the Front Office today at 4:30 pm to discuss this recommendation. We will email you an answer after that meeting. OK? Reid (b)(7)(C)

From: (b)(7)(C)**Sent:** Thursday, January 14, 2010 11:32 AM**To:** Scarboro, Cheryl; Muoio, Reid**Cc:** Cohen, Stephen L.**Subject:** FW: ABACUS 2007-AC1 (HO-10911)

When will we get the memo? I am holding a spot for the 1/28 calendar -- which currently has 8 items calendared.

From: Muoio, Reid**Sent:** Monday, January 04, 2010 4:15 PM**To:** (b)(7)(C) Murphy, Elizabeth; (b)(7)(C)

75

RE: 070207 tourre informs all of plan.pdf - Adobe Acrobat Professional 22/2010 6:09:14 PM

From: Scarboro, Cheryl

To: Muoio, Reid (b)(7)(C)

I disagree.

Sent from my BlackBerry Wireless Handheld

From: Muoio, Reid**To:** Scarboro, Cheryl**Sent:** Fri Jan 22 17:05:17 2010**Subject:** RE: 070207 tourre informs all of plan.pdf - Adobe Acrobat Professional

I realize that's the approach we have taken in the past. But my sense is that we really are on a 24-7 news cycle nowadays. Look at how much attention Gretchen's NYT's article got and it ran on Xmas eve.

From: Scarboro, Cheryl**Sent:** Friday, January 22, 2010 4:57 PM**To:** Muoio, Reid; Reisner, Lorin L.; (b)(7)(C)**Cc:** (b)(7)(C) Lench, Kenneth; (b)(7)(C)**Subject:** Re: 070207 tourre informs all of plan.pdf - Adobe Acrobat Professional

I would prefer not to file on a Friday. I suggest Monday, Feb 1.

Sent from my BlackBerry Wireless Handheld

From: Muoio, Reid**To:** Reisner, Lorin L.; (b)(7)(C) Scarboro, Cheryl**Cc:** (b)(7)(C) Lench, Kenneth; (b)(7)(C)**Sent:** Fri Jan 22 16:01:24 2010**Subject:** RE: 070207 tourre informs all of plan.pdf - Adobe Acrobat Professional

(b)(5), (b)(7)(C)

From: Reisner, Lorin L.**Sent:** Friday, January 22, 2010 3:10 PM**To:** (b)(7)(C) Muoio, Reid; Scarboro, Cheryl**Subject:** RE: 070207 tourre informs all of plan.pdf - Adobe Acrobat Professional

(b)(5)

L.

76

RE: 070207 tourre informs all of plan.pdf - Adobe Acrobat Professional 1/22/2010 6:36:24 PM

From: Muoio, Reid
To: Lench, Kenneth (b)(7)(C)

(b)(5)

Sent from my BlackBerry Wireless Handheld

From: Lench, Kenneth
To: Muoio, Reid
Sent: Fri Jan 22 17:31:47 2010
Subject: Re: 070207 tourre informs all of plan.pdf - Adobe Acrobat Professional

I can't recall now, but wasn't there a reason we couldn't wait until Monday?

From: Muoio, Reid
To: Reisner, Lorin L. (b)(7)(C); Scarboro, Cheryl
Cc: (b)(7)(C); Lench, Kenneth; (b)(7)(C)
Sent: Fri Jan 22 16:01:24 2010
Subject: RE: 070207 tourre informs all of plan.pdf - Adobe Acrobat Professional

(b)(5),(b)(7)(C)

From: Reisner, Lorin L.
Sent: Friday, January 22, 2010 3:10 PM
To: (b)(7)(C); Muoio, Reid; Scarboro, Cheryl
Subject: RE: 070207 tourre informs all of plan.pdf - Adobe Acrobat Professional

(b)(5)

L.

From: (b)(7)(C)
Sent: Friday, January 22, 2010 2:33 PM
To: Muoio, Reid; Scarboro, Cheryl; Reisner, Lorin L.
Subject: 070207 tourre informs all of plan.pdf - Adobe Acrobat Professional

<< File: 070207 tourre informs all of plan >> The question came up at our meeting earlier this week if Lehman and Sparks, higher up the food chain, knew the gist of the

Abacus-01. See attached.

77

Re:

1/24/2010 10:21:23 AM

From: Schapiro, Mary L.
To: Cohen, Stephen L. (b)(7)(C)

Yes, thanks

From: Cohen, Stephen L.
To: Schapiro, Mary L.
Sent: Sun Jan 24 08:52:40 2010
Subject: Re:

(b)(5)

From: Schapiro, Mary L.
To: Cohen, Stephen L.
Sent: Sun Jan 24 08:19:58 2010
Subject: Re:

I am very anxious to get the GS case out - do we name individual? No settlement, right?

From: Cohen, Stephen L.
To: Schapiro, Mary L.
Sent: Sun Jan 24 08:17:15 2010
Subject: Re:

Hmmm. That'd be something. Thanks!

We have some good cases coming down the pike in the next couple of weeks. Goldman/cdo this week. State Street the week after. And I think more down the stretch.

Will have a draft CCO Outreach speech for you in the morning (unless you want it sooner).

From: Schapiro, Mary L.
To: Cohen, Stephen L.
Sent: Sun Jan 24 08:12:43 2010
Subject: Re:

No. But they did talk about getting our relationship back on track.

From: Cohen, Stephen L.
To: Schapiro, Mary L.
Sent: Sun Jan 24 08:04:45 2010
Subject: Re:

No mention of BoA I assume?

From: Schapiro, Mary L.
To: Cohen, Stephen L.
Sent: Sun Jan 24 07:58:30 2010
Subject: Re:

Yes, twice. And Cuomo conveyed to R's lawyers that he was watching closely the disposition of our matter with him and that we were working together.

From: Cohen, Stephen L.
To: Schapiro, Mary L.
Sent: Sat Jan 23 17:07:14 2010
Subject:

Do you know if Rob ever talked to Cuomo?

Stephen L. Cohen
Senior Advisor to the Chairman
Securities and Exchange Commission

(b)(7)(C)

78

Re:

1/25/2010 7:51:28 AM

From: Cohen, Stephen L.

To: Muoio, Reid (b)(7)(C)

Thanks. I'll poll folks and let you know our thoughts.

From: Muoio, Reid

To: Cohen, Stephen L.

Sent: Mon Jan 25 06:38:48 2010

Subject: Re:

(b)(5)

(b)(5)

Reid (b)(7)(C)

Sent from my BlackBerry Wireless Handheld

From: Muoio, Reid

To: Cohen, Stephen L.

Sent: Mon Jan 25 04:33:20 2010

Subject: Re:

(b)(5)

(b)(5)

Reid (b)(7)(C)

Sent from my BlackBerry Wireless Handheld

From: Cohen, Stephen L.

To: Muoio, Reid

Sent: Sun Jan 24 22:41:14 2010

Subject:

When would you file Goldman if approved?

Stephen L. Cohen

Senior Advisor to the Chairman

Securities and Exchange Commission

(b)(7)(C)

79

RE:

1/25/2010 11:53:19 AM

From: Muoio, Reid
To: Cohen, Stephen L. (b)(7)(C)

Works for me. You might want to check with Lorin.

From: Cohen, Stephen L.
Sent: Monday, January 25, 2010 10:19 AM
To: Muoio, Reid
Subject: RE:

Any chance we can file Thursday afternoon?

From: Muoio, Reid
Sent: Monday, January 25, 2010 6:39 AM
To: Cohen, Stephen L.
Subject: Re:

(b)(5)

(b)(5) Reid (b)(7)(C)

Sent from my BlackBerry Wireless Handheld

From: Muoio, Reid
To: Cohen, Stephen L.
Sent: Mon Jan 25 04:33:20 2010
Subject: Re:

(b)(5)

(b)(5) Reid (b)(7)(C)

Sent from my BlackBerry Wireless Handheld

From: Cohen, Stephen L.
To: Muoio, Reid
Sent: Sun Jan 24 22:41:14 2010
Subject:
When would you file Goldman if approved?

Stephen L. Cohen
Senior Advisor to the Chairman
Securities and Exchange Commission

(b)(7)(C)

80

1/26/2010 1:24:40 PM

RE: Abacus

From: Reisner, Lorin L.
To: Cohen, Stephen L. (b)(7)(C)

I think that we are targeting Monday 2/1 for filing if approved by the Commission.

From: Cohen, Stephen L.

Sent: Tuesday, January 26, 2010 12:23 PM

To: Reisner, Lorin L.

Subject: Abacus

Assuming the Comm'n approves, do you want to bring it Thursday afternoon?

Stephen L. Cohen

Senior Advisor to the Chairman

Securities and Exchange Commission

(b)(7)(C)

Abacus

1/26/2010 1:27:40 PM

From: Cohen, Stephen L.
To: Marlin, Myron L. (b)(7)(C)

(b)(5)

Stephen L. Cohen

Senior Advisor to the Chairman

Securities and Exchange Commission

(b)(7)(C)

82

RE: abacus

1/26/2010 11:38:59 AM

From: (b)(7)(C)

To: Muoio, Reid (b)(7)(C)

Cc: (b)(7)(C)

Thanks. I hear the chairman wants to file Thursday, so you'll need to have someone standing by at the courthouse, I guess. I'll prepare a civil cover sheet. (b)(7)(C) is admitted in the SDNY so he can sign the complaint since he will be part of the litigation team.

(b)(7)(C)

Securities and Exchange Commission
100 F St., NE
Washington, D.C. 20549-4010

(b)(7)(C)

From: Muoio, Reid

Sent: Tuesday, January 26, 2010 11:36 AM

To: (b)(7)(C)

Cc: Scarboro, Cheryl; Muoio, Reid; (b)(7)(C)

Subject: RE: ABACUS

(b)(5)

(b)(5)

Reid (b)(7)(C)

From: (b)(7)(C)

Sent: Tuesday, January 26, 2010 11:18 AM

To: Muoio, Reid; (b)(7)(C)

Subject: RE: ABACUS

Did not see this until 11:15 so decided I was too late.

(b)(7)(C)

Securities and Exchange Commission
100 F St., NE
Washington, D.C. 20549-4010

(b)(7)(C)

(202) 772-9246 (fax)

(b)(7)(C)

From: Muoio, Reid

Sent: Tuesday, January 26, 2010 11:04 AM

To: (b)(7)(C)

Subject: Fw: ABACUS

On the way

Sent from my BlackBerry Wireless Handheld

From: (b)(7)(C)
To: Muoio, Reid; (b)(7)(C)
Cc: Scarboro, Cheryl; (b)(7)(C)
Sent: Tue Jan 26 10:06:38 2010
Subject: Re: ABACUS
11 it is. Thanks a lot.

On 1/26/10 10:06 AM, "Muoio, Reid" (b)(7)(C) wrote:

I think Cheryl and I are both available at 11 today. Does that work?

Sent from my BlackBerry Wireless Handheld

From: (b)(7)(C)
To: (b)(7)(C) Muoio, Reid
Cc: Scarboro, Cheryl; (b)(7)(C)
Sent: Tue Jan 26 10:04:51 2010
Subject: RE: ABACUS

Let me double check with Reid, but I believe we are generally available except between 1 and 2. Note, I've also copied Cheryl Scarboro on this email; she may want to participate.

(b)(7)(C)

From: (b)(7)(C)
Sent: Tuesday, January 26, 2010 10:02 AM
To: Muoio, Reid; (b)(7)(C)
Subject: ABACUS

Hello. Are you folks, or others on the ABACUS matter, available to discuss the case today? I have a couple questions, primarily on the pros and cons of charging Paulson and the GS wells argument.

Thank you.

Best regards,

(b)(7)(C)

(b)(7)(C)
Counsel to Commissioner Luis A. Aguilar
US Securities & Exchange Commission
(b)(7)(C)

83

RE: Abacus 2007-AC1 case

1/25/2010 2:37:54 PM

From: Muoio, Reid (b)(7)(C)
To: Scarboro, Cheryl (b)(7)(C)

Yes with a hard stop just before 2.

Sent from my BlackBerry Wireless Handheld

From: Scarboro, Cheryl
To: Muoio, Reid
Sent: Mon Jan 25 14:37:18 2010
Subject: Re: Abacus 2007-AC1 case

Is Lorin attending?
Sent from my BlackBerry Wireless Handheld

From: Muoio, Reid (b)(7)(C)
To: (b)(7)(C)
Cc: (b)(7)(C); Reisner, Lorin L.; Scarboro, Cheryl; Muoio, Reid; (b)(7)(C)
(b)(7)(C)
Sent: Mon Jan 25 14:22:06 2010
Subject: Re: Abacus 2007-AC1 case

Looks like we have a quantum mass available at 1:00 pm tomorrow. We'll come up to your offices. Thanks. Reid

(b)(7)(C)

Sent from my BlackBerry Wireless Handheld

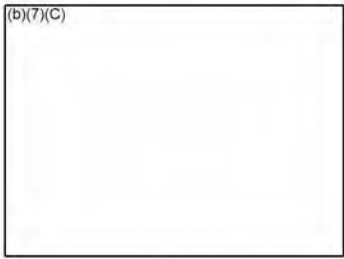
From: (b)(7)(C)
To: Scarboro, Cheryl; Muoio, Reid
Cc: (b)(7)(C)
Sent: Mon Jan 25 14:04:48 2010
Subject: Abacus 2007-AC1 case

Commissioner Paredes would like to meet with you and your team tomorrow to discuss this case. He is available Tuesday after 9:30. Please let me know a time that is convenient for you; we should budget one hour. Thanks.

(b)(7)(C)

Counsel to Commissioner Troy A. Paredes
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

(b)(7)(C)



84

RE: ABACUS -- urgent

1/27/2010 12:25:03 PM

From: Scarboro, Cheryl

To: Muoio, Reid (b)(7)(C)

Ok

Sent from my BlackBerry Wireless Handheld

From: Muoio, Reid

To: Scarboro, Cheryl; Lench, Kenneth

Sent: Wed Jan 27 11:24:21 2010

Subject: ABACUS -- urgent

Lorin is available right now through 12:00 noon to discuss whether or not to pull the recommendation from tomorrow's calendar, which he is inclined to do. Asks that we drop by asap to discuss. Reid (b)(7)(C)

85

RE:

1/27/2010 1:12:26 PM

From: (b)(7)(C)
To: Cohen, Stephen L. (b)(7)(C)
Cc: (b)(7)(C)

ok

-----Original Message-----

From: Cohen, Stephen L.

Sent: Wednesday, January 27, 2010 12:04 PM

To: (b)(7)(C)

Cc:

Subject:

Please pull the abacus from the calendar at the request of the enf division. It will be rescheduled shortly.

86

RE: ABACUS 2007-AC1, calendared for 1/28/10

1/27/2010 2:21:10 PM

From: (b)(7)(C)
To: Muoio, Reid (b)(7)(C)

thanks

From: Muoio, Reid
Sent: Wednesday, January 27, 2010 1:14 PM
To: (b)(7)(C)
Subject: RE: ABACUS 2007-AC1, calendared for 1/28/10

(b)(5)

From: (b)(7)(C)
Sent: Wednesday, January 27, 2010 1:02 PM
To: Muoio, Reid; (b)(7)(C)
Subject: RE: ABACUS 2007-AC1, calendared for 1/28/10

Thanks. (b)(5)

From: Muoio, Reid
Sent: Wednesday, January 27, 2010 12:56 PM
To: (b)(7)(C)
Subject: RE: ABACUS 2007-AC1, calendared for 1/28/10

(b)(5)

From: (b)(7)(C)
Sent: Wednesday, January 27, 2010 12:32 PM
To: Muoio, Reid; (b)(7)(C)
Subject: FW: ABACUS 2007-AC1, calendared for 1/28/10

Why was this pulled?

From: (b)(7)(C)
Sent: Wednesday, January 27, 2010 12:21 PM
To: #COMMISSION COUNSELS
Cc: Murphy, Elizabeth; (b)(7)(C); Scarboro, Cheryl; Muoio, Reid;
(b)(7)(C)
Subject: ABACUS 2007-AC1, calendared for 1/28/10

Please note that the above-captioned matter has been pulled from the January 28th Closed Meeting agenda, at staff's request, and will be re-calendared at a later date.

(b)(7)(C)

(b)(7)(C)

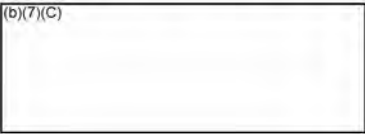
A rectangular box with a black border, used to redact information. It is located below the first redaction code.

Securities and Exchange Commission

100 F Street, N.E., Room 10921

Washington, DC 20549-1090

(b)(7)(C)

A rectangular box with a black border, used to redact information. It is located below the address information.

RE: January 28, 2010 Closed Commission Meeting

1/28/2010 3:56:49 PM

From: (b)(7)(C)
To: (b)(7)(C)
Cc:

Thanks

(b)(7)(C)

Denver Regional Office
U.S. Securities & Exchange Commission

(b)(7)(C)

Denver, Colorado
80202

From: (b)(7)(C)

Sent: Thursday, January 28, 2010 1:53 PM

To: (b)(7)(C)

Cc:

Subject: RE: January 28, 2010 Closed Commission Meeting

Here's the memo.

We pulled to give time to Wells another possible D.

(b)(7)(C)

<< File: Abacus.ho.10911.Goldman.Tourre.action.memo.final.1.21.10.doc >>

From: (b)(7)(C)

Sent: Thursday, January 28, 2010 3:50 PM

To: (b)(7)(C)

Cc:

Subject: RE: January 28, 2010 Closed Commission Meeting

Yes. (b)(7)(C) and (b)(7)(C) highlighted some of these facts for us early on and it would be helpful to see how they are laid out in their memo. (b)(7)(C) could we take a look at your memo? Also, I saw that you'd pulled the recommendation for now. Are you getting push back?

(b)(7)(C)

Denver Regional Office
U.S. Securities & Exchange Commission

(b)(7)(C)

Denver, Colorado
80202

From: (b)(7)(C)

Sent: Thursday, January 28, 2010 1:39 PM

To: (b)(7)(C)

Subject: FW: January 28, 2010 Closed Commission Meeting

I thought the ABACUS 2007 Home Office matter sounded familiar to Vanderbilt. Would it be worthwhile to get the memo? If so, I would like a copy. Thanks.

(b)(7)(C)

ABACUS 2007-AC1

(HO)

(Glenn)

Summary:

(b)(5)

(b)(5)

Significant Issues:

(b)(5)

From:

(b)(7)(C)

Sent: Wednesday, January 27, 2010 10:09 AM

To: #FNF - HO & Regions

Cc:

(b)(7)(C)

Subject: January 28, 2010 Closed Commission Meeting

Attached is a summary of recommendations and possible issues for Thursday's closed Commission meeting. The pre-calendar briefing is at 3 pm today in room 5000. Please note the NEW call-in number and meeting ID number.

(b)(7)(C)

<< File: 01-28-2010.doc >>

88

RE: Follow-up Reminder for National Priority Case Report Updates

2/16/2010 2:34:36 PM

From: Muoio, Reid

(b)(7)(C)

To: (b)(7)(C)**Cc:** Muoio, Reid

(b)(7)(C)

Scarboro, Cheryl

(b)(7)(C)

Lench, Kenneth

(b)(7)(C)

(b)(5)

From: (b)(7)(C)**Sent:** Tuesday, February 16, 2010 12:19 PM**To:** Romero, Rose L.; Korotash, Stephen J.; Hoerl, Donald M.; (b)(7)(C) Fagel, Marc J.; Dicke, Michael S.; Gordon, Glenn S.; Tyson, Rosalind R.; Petillon, Andrew G.; Layne, Michele W.; Calamari, Andrew M.; Rosenfeld, David; Gillette, Merri Jo; Burson, Robert J.; Warren, Timothy L.; Hawke, Daniel; Greenberg, Elaine C.; Bergers, David; Dugan, John T. (BRO); Chion, Antonia; Firestone, Rick; Scarboro, Cheryl; Conte, Christopher; Friestad, Scott; Blackburn, Robert B.; (b)(7)(C)

(b)(7)(C) Canellos, George; (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

Muoio, Reid; (b)(7)(C)

Cc: (b)(7)(C)

(b)(7)(C)

(b)(7)(C)

Subject: Follow-up Reminder for National Priority Case Report Updates

Good afternoon,

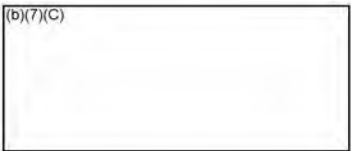
Please be advised that as of noon, February 16, 2010, we have not yet received all of the National Priority Case Report Updates. This is a reminder that if you have not yet sent your National Priority Case Report Updates to us, please forward them along by the close of business today. We appreciate your anticipated cooperation.

Sincerely,

(b)(7)(C)

U.S. Securities & Exchange Commission

(b)(7)(C)



89

FW: ABACUS 2007-AC1 (HO-10911) -- Next Steps?

3/5/2010 10:41:23 AM

From: Muoio, Reid**To:** (b)(7)(C)

Let's talk. Reid (b)(7)(C)

From: Reisner, Lorin L.**Sent:** Friday, March 05, 2010 10:24 AM**To:** Muoio, Reid**Cc:** (b)(7)(C) Scarboro, Cheryl; Khuzami, Robert; (b)(7)(C)**Subject:** Re: ABACUS 2007-AC1 (HO-10911) -- Next Steps?

Reid,

Rob wants a short memo on two issues:

(b)(5)

I think (b)(7)(C) is already at work on these issues. (b)(7)(C) can give us an estimate of when the memo will be completed. After that, we can come to closure on charging decisions and proceed accordingly. Hopefully (b)(7)(C) can get us something by early next week. Thanks!

Lorin

From: Muoio, Reid**To:** Reisner, Lorin L.**Cc:** Lench, Kenneth; Scarboro, Cheryl**Sent:** Fri Mar 05 09:27:42 2010**Subject:** ABACUS 2007-AC1 (HO-10911) -- Next Steps?**Lorin:**

(b)(5)

(b)(5)

(b)(5),(b)(7)(C)

Reid

(b)(7)(C)

90

RE: Priority Case Report Updates Due COB, Tuesday, March 9, 2010

3/8/2010 5:06:09 PM

From: Muoio, Reid**To:** (b)(7)(C)**Cc:** (b)(7)(C)

Muoio, Reid (b)(7)(C)

Scarboro, Cheryl

(b)(7)(C)

Lench, Kenneth (b)(7)(C)

(b)(7)(C)

(b)(5)

(b)(7)(C)

will you please update (b)(7)(C) and other FCPA? Thanks. Reid (b)(7)(C)

From: (b)(7)(C)**Sent:** Monday, March 08, 2010 8:43 AM

To: (b)(7)(C) Romero, Rose L.; Korotash, Stephen J.; Hoerl, Donald M.; (b)(7)(C) D.; Fagel, Marc J.; Dicke, Michael S.; Gordon, Glenn S.; Tyson, Rosalind R.; Petillon, Andrew G.; Layne, Michele W.; Calamari, Andrew M.; Rosenfeld, David; Gillette, Merri Jo; Burson, Robert J.; Warren, Timothy L.; Hawke, Daniel; Greenberg, Elaine C.; Bergers, David; Dugan, John T. (BRO); Chion, Antonia; Scarboro, Cheryl; Conte, Christopher; Friestad, Scott; Blackburn, Robert B.; (b)(7)(C)

(b)(7)(C) Canellos, George; (b)(7)(C)

(b)(7)(C)

(b)(7)(C) Muoio, Reid; (b)(7)(C)

(b)(7)(C) Lench, Kenneth; (b)(7)(C)

Cc: (b)(7)(C)**Subject:** Priority Case Report Updates Due COB, Tuesday, March 9, 2010

Good morning,

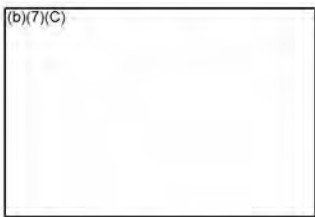
Please update all of your priority cases by the **close of business** (in each of your respective time zones), on **Tuesday, March 9, 2010**. In updating, please:

1. check and edit all items in the blue box, especially the target date and coordinating information;
2. keep the "Activity in Last Three Weeks" field to no more than 1-2 sentences; and
3. check all case information, specifically the name, number and the main summary for errors.

Please copy (b)(7)(C) and myself (b)(7)(C) on your responses. Thank you for your anticipated cooperation and please let us know if you have any questions.

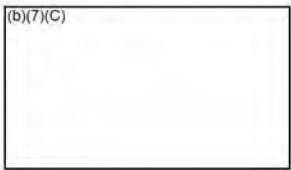
Sincerely,

(b)(7)(C)

A large rectangular box with a black border, used to redact information. The text "(b)(7)(C)" is written in the top-left corner.

U.S. Securities & Exchange Commission

(b)(7)(C)

A rectangular box with a black border, used to redact information. The text "(b)(7)(C)" is written in the top-left corner.

RE: Goldman/Abacus: Egol Wells etc.--Privileged and Confidential

2/25/2010 12:57:42 PM

From: (b)(7)(C)
To: (b)(7)(C); Muoio, Reid; (b)(7)(C)
(b)(7)(C)

We've been pulling the chart together for Paredes, but it's not complete yet. Given the change in timing, I temporarily moved to different projects. I will work to complete a draft of the chart and exhibits by tomorrow COB. I will also provide any additional thoughts on Egol's submission and begin to answer Lorin's questions below.

(b)(7)(C)

From: (b)(7)(C)
Sent: Thursday, February 25, 2010 12:13 PM
To: Muoio, Reid; (b)(7)(C)
Subject: FW: Goldman/Abacus: Egol Wells etc.--Privileged and Confidential

I wasn't involved in the latest go-round on the complaint, but I think you guys had annotated it. Don't know if you will want to supplement it with more evidence. I'm working on the expert getting the review of the RMBS bonds. As per my last e-mail on the subject. Don't know the status of the Paredes "chart." Let me know how I can help, if at all, other than on the expert.

(b)(7)(C)

Securities and Exchange Commission

100 F St., NE

Washington, D.C. 20549-4010

(b)(7)(C)

From: Reisner, Lorin L.
Sent: Thursday, February 25, 2010 12:07 PM
To: Muoio, Reid; (b)(7)(C)
Cc: Khuzami, Robert; (b)(7)(C) Lench, Kenneth
Subject: Goldman/Abacus: Egol Wells etc.--Privileged and Confidential

Reid, (b)(7)(C)

For what it's worth, here are some of my initial reactions/questions/comments on the Egol Wells submission, in particular, the Egol declaration:

(b)(5)

(b)(7)(C)

. when you have a chance, can you please send me a copy of the current draft of the complaint and a binder with the key documents (or excerpts of documents) on which we will rely to prove our case (excerpts of offering materials, term sheet, emails, memo to Goldman's approval committee etc). Also, have we prepared the chart requested by Commissioner Paredes listing: (1) the specific allegedly misleading statements, (2) the source of the misleading statements and (3) the true facts/source of the true facts not disclosed.

Thanks!!

Lorin

Lorin L. Reisner

Deputy Director of Enforcement

Securities & Exchange Commission

100 F Street, NE

Washington, DC 20549

(b)(7)(C)



92

FW: Egol

3/23/2010 3:19:29 PM

From: (b)(7)(C)**To:** Adler, Mark A. (b)(7)(C)

(b)(7)(C)

out.

From: (b)(7)(C)**Sent:** Tuesday, March 23, 2010 3:19 PM**To:** (b)(7)(C)**Subject:** FW: Egol

I'm out.

(b)(7)(C)

Assistant Chief Litigation Counsel

Securities and Exchange Commission

100 F St., NE

Washington, D.C. 20549-4010

(b)(7)(C)

From: Khuzami, Robert**Sent:** Tuesday, March 23, 2010 2:24 PM**To:** Muoio, Reid; Reisner, Lorin L.; Lench, Kenneth;

(b)(7)(C)

(b)(7)(C)

Subject: Egol

(b)(5)

The case against Tourre and Goldman is a good case and an important one to bring.

(b)(5)

(b)(5)

I am extremely proud of the professional collaboration among the team, the exchange of sincerely-held views and your principled approach to this decision. No other group of enforcement personnel or prosecutors could have done a better job.

Sorry to do this by email, but I don't want to hold things up any more than necessary.

Rob

93

Unknown

From: (b)(7)(C)
Sent: Wednesday, March 24, 2010 11:18 AM
To: Cohen, Stephen L.
Cc: (b)(7)(C)
Subject: RE: ABACUS 2007-AC1, calendared for 1/28/10

Noted.

From: Cohen, Stephen L.
Sent: Wednesday, March 24, 2010 11:16 AM
To: (b)(7)(C)
Cc:
Subject: FW: ABACUS 2007-AC1, calendared for 1/28/10

Please hold a spot for this on 4/14 (between us) but keep the pressure on for the memo... Out of fairness, for the moment some decisions still remain that are in Khuzami's hands.

Thanks!

From: Muoio, Reid
Sent: Wednesday, March 24, 2010 8:14 AM
To: (b)(7)(C)
Cc: Murphy, Elizabeth; (b)(7)(C)
Subject: RE: ABACUS 2007-AC1, calendared for 1/28/10

We'd like to reserve a spot for the above-referenced matter on the calendar for the closed commission meeting scheduled for Wednesday April 14. Reid (b)(7)(C)

From: (b)(7)(C)
Sent: Wednesday, January 27, 2010 12:21 PM
To: #COMMISSION COUNSELS
Cc: Murphy, Elizabeth; (b)(7)(C) Scarborough, Cheryl; Muoio, Reid; (b)(7)(C)
Subject: ABACUS 2007-AC1, calendared for 1/28/10

Please note that the above-captioned matter has been pulled from the January 28th Closed Meeting agenda, at staff's request, and will be re-calendared at a later date.

(b)(7)(C)
Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E., Room 10921
Washington, DC 20549-1090

(b)(7)(C)

RE: ABACUS 2007-AC1 -- Revised draft action memo is attached . . . 3/29/2010 12:49:06 PM

From: (b)(7)(C)
To: Muoio, Reid (b)(7)(C)
Cc: (b)(7)(C)

Reid,

(b)(5),(b)(7)(C)

From: Muoio, Reid
Sent: Monday, March 29, 2010 11:54 AM
To: (b)(7)(C)
Subject: RE: ABACUS 2007-AC1 -- Revised draft action memo is attached . . .

<< File: Abacus.ho.10911.Goldman.Tourre.action.memo.draft.3.26.10.doc >>

From: (b)(7)(C)
Sent: Monday, March 29, 2010 11:19 AM
To: Muoio, Reid
Subject: RE: ABACUS 2007-AC1 -- Revised draft action memo is attached . . .

Reid,

Can you send the doc in word? both Martin and I are out of the office until Thurs. I will try to read this on my laptop but am having problems with the pdf format. Or you could cut and paste the body of the text into an email

thx

(b)(7)(C)

From: Muoio, Reid
Sent: Friday, March 26, 2010 1:33 PM
To: Enforcement Action Memos; GC-Advance Review ENF Memos; #TM-LIAISON-ALL: #IM-ENFORCEMENT LIAISON
Cc: Reisner, Lorin L.; Lench, Kenneth; Muoio, Reid; Scarboro, Cheryl; (b)(7)(C)
(b)(7)(C) Cohen, Stephen L.

Subject: ABACUS 2007-AC1 -- Revised draft action memo is attached . . .

. . . for your expedited comment and review. This is a national priority case against Goldman Sachs for misconduct related to the recent financial crisis. We are shooting to send this to the Commission on or before April 1 with a view towards having the matter calendared on April 14. As a result, we are asking for everyone's comments by COB March 31 at the latest. This is the same recommendation we circulated for pre-review four months ago on November 24, 2009 except we have added an "Issues Presented" at page 2 and related discussion at pages 19-20 explaining our decision not to charge an additional individual defendant. Reid

(b)(7)(C)

(b)(7)(C)

<< File: abacus.cdo.ho.10911.draft.action.memo.3.26.10.pdf >>

ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release . . .

4/8/2010 6:47:07 PM

From: Muoio, Reid (b)(7)(C)
To: Reisner, Lorin (b)(7)(C); Lench, Kenneth (b)(7)(C)
Cc: Scarboro, Cheryl (b)(7)(C); Muoio, Reid (b)(7)(C)
(b)(7)(C)

Attachments: ABACUS CDO Complaint draft 4.8.10.doc, Abacus Goldman Tourre Press Rel draft 4 8 10.doc, Abacus Goldman Tourre Lit Rel draft 4 8 10.doc

. . . are attached for your comment and review. Please make sure you are comfortable with, *inter alia*, a) ¶¶ 25, 61 and 64 of the draft complaint which relate to the affidavits obtained recently from ACA and IKB, b) Rob Khuzami and Ken Lench's quotes in the draft press release and c) the proposed language used to say "our investigation continues" which tracks closely the Chairman's recent Congressional testimony. Please also try to get me your comments, if any, by COB this Tuesday April 13. Assuming Commission approval, we'd like to fedex a signed original complaint to (b)(7)(C) in NYC that evening for filing either the afternoon of Wednesday April 14 or morning of Thursday April 15.

<<...>> <<...>> <<...>>

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Re: Detail to the Hill--Any Limits on Disclosure of SEC-related Info?

2/25/2010 5:25:41 PM

From: Henseler, Timothy
To: Calande, Pauline E. (b)(7)(C)

Got it – thanks – that makes perfect sense.

From: Calande, Pauline E.
Sent: Thursday, February 25, 2010 5:19 PM
To: Henseler, Timothy
Subject: RE: Detail to the Hill--Any Limits on Disclosure of SEC-related Info?

I left it that we were going to clear these issues and then I will call and set up an in-person meeting just as you said—I'm thinking maybe Monday or Tuesday. I still need to work out some details with Rob re re-entry too, and he's not back until Monday. On office space, I don't expect to be working over here—I just wanted to keep some occasional refuge space from the submarine. I would still want to hold an office here even if I did no PSI work in it, provided I wouldn't be depriving someone else of necessary space.

Pauline

From: Henseler, Timothy
Sent: Thursday, February 25, 2010 5:04 PM
To: Calande, Pauline E.
Subject: RE: Detail to the Hill--Any Limits on Disclosure of SEC-related Info?

Pauline – thanks. I'm free whenever tomorrow save a meeting from 12 until about 1 or so. I was thinking the office space thing might be an issue – not in the sense that you couldn't have some, but only that you may not be able to use it for PSI related work. I'm just thinking out loud, and obviously don't know, but Bill may have some thoughts on this.

One question I meant to ask before – how did you leave it with Ross in terms of next steps? A call is fine if it's easier . . . thanks again, and have a great night.

Tim

From: Calande, Pauline E.
Sent: Thursday, February 25, 2010 4:43 PM
To: (b)(7)(C)
Cc: Henseler, Timothy
Subject: Detail to the Hill--Any Limits on Disclosure of SEC-related Info?

(b)(7)(C) I'm considering a detail to the Hill to work for Senator Levin's Permanent Subcommittee on Investigations, which is looking into the role of subprime mortgage-backed securities in the financial crisis. I need some advice as to whether there's anything related to the SEC that I can't say, or anyone at the SEC I can't talk with as a detailee.

I would like to discuss with you what I know on this subject matter (subprime mortgage-backed securities investigations) and any limits there may be on sharing info about completed and ongoing SEC investigations into the same subject matters. (b)(5)

(b)(5)

Tim Henseler in OLA suggested that the two of you meet with me jointly to discuss these issues. I'm available anytime tomorrow, and I have only an 11:30 meeting on Monday.

Is there a particular time that works for you?

Pauline E. Calande
Counsel to the Director and Deputy Director
Division of Enforcement
United States Securities and Exchange Commission
100 F Street, NE
Washington DC 20549

(b)(7)(C)

RE: Detail to the Hill

2/26/2010 12:43:46 PM

From: Calande, Pauline E.**To:** (b)(7)(C)

Henseler, Timothy

(b)(7)(C)

(b)(7)(C)

Got it.

Pauline

From: (b)(7)(C)**Sent:** Friday, February 26, 2010 10:12 AM**To:** (b)(7)(C)

Calande, Pauline E.

Subject: RE: Detail to the Hill

Pauline

According the OGE Standards of Ethical Conduct for Employees of the Executive Branch, if you are detailed to the legislature for more than 30 days, you are subject to its ethics rules. You do remain subject, however, to the financial conflict provisions of 18 USC 208. You also remain subject to statutory requirements and the regulatory implementation of those statutes that cover you as an SEC employee. Thus, you remain subject to the non-disclosure provisions of the Securities Act. As you are probably aware from your current job, there are procedures governing our sharing of information with other governmental bodies, such as Tim has referenced. You may always still call me or the Ethics staff if you have any questions.

(b)(7)(C)

From: Henseler, Timothy**Sent:** Thursday, February 25, 2010 5:52 PM**To:** Calande, Pauline E., (b)(7)(C)**Subject:** RE: Detail to the Hill

Thanks, Pauline. For what it's worth, I would think that you could talk to SEC staff on PSI or SEC specific stuff in the same way that folks at PSI could talk to them now, i.e., by contacting us in leg affairs and then letting us set up a phone call or meeting with PSI (now including you) and the SEC staff. To the extent you have any non-public info about SEC investigations, I would think you would not be permitted to share that with them, but obviously can apply your general skills and knowledge to investigate anything to the same extent that they can.

From: Calande, Pauline E.**Sent:** Thursday, February 25, 2010 5:39 PM**To:** (b)(7)(C)

Henseler, Timothy

Subject: Detail to the Hill

Just FYI in terms of thinking about this—The Subcommittee (PSI) has unilateral and pretty much unlimited subpoena power. In making document requests to witnesses, they very often say, "Give us all the documents you gave to anyone else" (in this instance, the SEC). They also tend to set up informal interviews rather than formal depositions, and can call just about anyone to come in and talk to them. So, with respect to SEC info, it may be just a matter of whether or not the Committee is required to go through formalities—if the Committee wanted any information from the SEC, they can get it fairly easily. With respect to Goldman, for example, they

probably already have (from Goldman) all the documents it produced to the SEC. The question might be whether I can talk with the attorneys who did Goldman (or any other investigation) about what they found and why they reached whatever conclusions they did.

Pauline E. Calande
Counsel to the Director and Deputy Director
Division of Enforcement
United States Securities and Exchange Commission
100 F Street, NE
Washington DC 20549

(b)(7)(C)

FW: Goldman/Abacus

4/7/2010 10:40:17 AM

From: Muoio, Reid

To: Reisner, Lorin L (b)(7)(C)

Lench, Kenneth (b)(7)(C)

Scarboro, Cheryl (b)(7)(C)

Thoughts/comments? Keep in mind that we are shooting to file out litigated action against Goldman and Tourre relating to ABACUS 2007-AC1 on or about April 14. Reid (b)(7)(C)

-----Original Message-----

From: Calande, Pauline E.

Sent: Wednesday, April 07, 2010 10:04 AM

To: Henseler, Timothy; Muoio, Reid

Subject: Goldman/Abacus

(b)(5)

Pauline

Sent from my BlackBerry Wireless Handheld

RE: Goldman/Abacus

4/7/2010 11:14:39 AM

From: Henseler, Timothy
To: Cohen, Stephen L. (b)(7)(C)

Definitely - thanks, Steve.

From: Cohen, Stephen L.
To: Henseler, Timothy
Sent: Wed Apr 07 11:12:43 2010
Subject: RE: Goldman/Abacus

(b)(5)

From: Henseler, Timothy
Sent: Wednesday, April 07, 2010 10:25 AM
To: Khuzami, Robert; Becker, David M.; Reisner, Lorin L.; Spitler, Eric J.; Cohen, Stephen L.; Cahn, Mark D.;
(b)(7)(C) Muoio, Reid; Lench, Kenneth
Subject: FW: Goldman/Abacus

(b)(5)

-----Original Message-----

From: Calande, Pauline E.
Sent: Wednesday, April 07, 2010 10:04 AM
To: Henseler, Timothy; Muoio, Reid
Subject: Goldman/Abacus

(b)(5)

Pauline

Sent from my BlackBerry Wireless Handheld

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RE: Goldman/Abacus

4/7/2010 4:45:37 PM

From: Henseler, Timothy
 To: Muoio, Reid (b)(7)(C)

Agreed . . .

From: Muoio, Reid
Sent: Wednesday, April 07, 2010 4:44 PM
To: Henseler, Timothy
Subject: RE: Goldman/Abacus

Cool. Maybe a gentle reminder is in order.

From: Henseler, Timothy
Sent: Wednesday, April 07, 2010 4:42 PM
To: Muoio, Reid
Subject: RE: Goldman/Abacus

Thanks, Reid – I'll give her a call – now that she's on detail w/ PSI, everything she does should flow through leg affairs just like any other PSI request. Have a good day.

Tim

From: Muoio, Reid
Sent: Wednesday, April 07, 2010 4:32 PM
To: Henseler, Timothy
Subject: FW: Goldman/Abacus

You want to get back to Pauline or should I? Reid (b)(7)(C)

From: Khuzami, Robert
Sent: Wednesday, April 07, 2010 4:24 PM
To: Reisner, Lorin L.; Henseler, Timothy; Cohen, Stephen L.; Becker, David M.; Spitler, Eric J.; Cahn, Mark D.; (b)(7)(C) Muoio, Reid; Lench, Kenneth (b)(7)(C)
Subject: RE: Goldman/Abacus

I agree.

From: Reisner, Lorin L.
Sent: Wednesday, April 07, 2010 4:03 PM
To: Henseler, Timothy; Cohen, Stephen L.; Khuzami, Robert; Becker, David M.; Spitler, Eric J.; Cahn, Mark D.; (b)(7)(C) Muoio, Reid; Lench, Kenneth; (b)(7)(C)
Subject: RE: Goldman/Abacus

(b)(5)

L.

From: Henseler, Timothy

Sent: Wednesday, April 07, 2010 2:14 PM

To: Reisner, Lorin L.; Cohen, Stephen L.; Khuzami, Robert; Becker, David M.; Spitler, Eric J.; Cahn, Mark D.;
(b)(7)(C); Muoio, Reid; Lench, Kenneth

Subject: RE: Goldman/Abacus

(b)(5)

From: Reisner, Lorin L.

Sent: Wednesday, April 07, 2010 2:01 PM

To: Cohen, Stephen L.; Henseler, Timothy; Khuzami, Robert; Becker, David M.; Spitler, Eric J.; Cahn, Mark D.;
(b)(7)(C); Muoio, Reid; Lench, Kenneth

Subject: RE: Goldman/Abacus

(b)(5)

L.

From: Cohen, Stephen L.

Sent: Wednesday, April 07, 2010 1:49 PM

To: Reisner, Lorin L.; Henseler, Timothy; Khuzami, Robert; Becker, David M.; Spitler, Eric J.; Cahn, Mark D.;
(b)(7)(C); Muoio, Reid; Lench, Kenneth

Subject: Re: Goldman/Abacus

(b)(7)(C)

From: Reisner, Lorin L.

To: Henseler, Timothy; Khuzami, Robert; Becker, David M.; Spitler, Eric J.; Cohen, Stephen L.; Cahn, Mark D.;
(b)(7)(C); Muoio, Reid; Lench, Kenneth

Sent: Wed Apr 07 13:40:27 2010

Subject: RE: Goldman/Abacus

Tim,

(b)(5)

Lorin

From: Henseler, Timothy

Sent: Wednesday, April 07, 2010 10:25 AM

To: Khuzami, Robert; Becker, David M.; Reisner, Lorin L.; Spittler, Eric J.; Cohen, Stephen L.; Cahn, Mark D.;

(b)(7)(C) Muoio, Reid; Lench, Kenneth

Subject: FW: Goldman/Abacus

FYI - unless anyone disagrees, I plan on calling her and telling her that, as we discussed prior to her taking the detail, (b)(5)

-----Original Message-----

From: Calande, Pauline E.

Sent: Wednesday, April 07, 2010 10:04 AM

To: Henseler, Timothy; Muoio, Reid

Subject: Goldman/Abacus

Pauline

Sent from my BlackBerry Wireless Handheld

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RE: Chat re: possible conflicts

2/22/2010 2:50:40 PM

From: Henseler, Timothy**To:** (b)(7)(C)**Cc:** Spittler, Eric J.; (b)(7)(C)

Cohen, Stephen L.; (b)(7)(C)

I'll swing by at 3:30 tomorrow. Thank you, (b)(7)(C)

From: (b)(7)(C)**Sent:** Monday, February 22, 2010 1:45 PM**To:** Henseler, Timothy**Cc:** Spittler, Eric J.; (b)(7)(C) Cohen, Stephen L.**Subject:** RE: Chat re: possible conflicts

I am available between 11 and 1:30 and after 3 tomorrow.

Bill

From: Henseler, Timothy**Sent:** Monday, February 22, 2010 1:37 PM**To:** (b)(7)(C)**Cc:** Spittler, Eric J.; (b)(7)(C) Cohen, Stephen L.**Subject:** Chat re: possible conflicts

(b)(7)(C) I hope all is well. Rick Bookstaber and I just returned from a meeting with Sen. Levin. Sen. Levin chairs the Senate Permanent Subcommittee on Investigations (PSI). One of the issues PSI is looking at involves Goldman, and specifically whether they did anything wrong in taking proprietary positions on certain mortgage related asset backed securities that were antithetical to their underwriting of these products. My understanding is that the SEC also is investigating this issue, a fact that has been publicly reported. Sen. Levin would like to establish an ongoing relationship with Rick to pick his brain (and allow PSI staff to pick his brain) about, among other issues, the Goldman issue, provided that Rick is ethically permitted to do so and so long as that assistance does not harm the SEC's separate investigation. For example, Sen. Levin has asked if Rick can review certain what I understand to be Goldman documents with PSI staff to help them decipher their meaning.

I'm not sure what if any ethical issues are presented by this – in general, the staff would provide technical assistance to Senate Committees on these and other sorts of issues as a matter of course. It was simply the fact that we are simultaneously looking at this very issue, and that the technical assistance being sought appears to not be hypothetical but rather specific to that issue, that led me to conclude I should flag this for you.

The way we left it w/ Sen. Levin's staff is that we'd talk internally to ethics to figure out what we can and cannot do. Are you free to talk about this in more detail at some point in the next day or so?

Thanks in advance.

Tim

(b)(7)(C)

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RE: ABACUS 2007-AC1 (HO-10911) -- IKB

3/22/2010 7:36:37 PM

From: Lench, Kenneth**To:** Muoio, Reid (b)(7)(C); Reisner, Lorin L. (b)(7)(C)**Cc:** (b)(7)(C)

Did counsel say which office or committee the Hill staffer was from? I'm tending to agree with your inclination not to reach out to him because it could delay us and we can't really tell him much of anything anyway. Thanks for following up.

From: Muoio, Reid**Sent:** Monday, March 22, 2010 7:29 PM**To:** Reisner, Lorin L.; Lench, Kenneth**Cc:** (b)(7)(C)

Muoio, Reid

Subject: RE: ABACUS 2007-AC1 (HO-10911) -- IKB

Lorin & Ken:

(b)(5)

Reid

(b)(7)(C)

From: Muoio, Reid**Sent:** Thursday, March 18, 2010 1:29 PM**To:** Reisner, Lorin L.; Lench, Kenneth**Cc:** Muoio, Reid; (b)(7)(C)**Subject:** ABACUS 2007-AC1 (HO-10911) -- IKB

Lorin & Ken:

IKB's outside counsel received a call from a Hill staffer who was asking about the "Abacus transaction(s)" generally and (b)(7)(C) in particular. That's all I know right now. I am trying to get more information from IKB's attorney. My inclination is not to reach out to the Hill staffer (b)(7)(C) But that is something we may want to think about/discuss.

Reid

(b)(7)(C)

103

FW: SEC CHARGES GOLDMAN SACHS WITH FRAUD IN STRUCTURING/MARKETING OF CDO TIED TO SUBPRIME MORTGAGES

4/16/2010 11:37:04 AM

From: Henseler, Timothy

To: Nisanci, Didem A. (b)(7)(C); Delfin, Ricardo R. (b)(7)(C); Spitler, Eric J. (b)(7)(C); Davis, Julie Z.

(b)(7)(C); Kelley, Anne Marie (b)(7)(C); Cohen, Stephen L. (b)(7)(C); Marlin, Myron L. (b)(7)(C)

(b)(7)(C); Khuzami, Robert (b)(7)(C); Reisner, Lorin L. (b)(7)(C)

FYI – just got a couple of VMs from PSI – have not talked to them yet. It's non-public, but they have a Goldman hearing set for April 27. They have requested the following:

- 1.
- 2.
- 3.
- 4.
- 5.

(b)(5),(b)(7)(C)

Steve or Lorin – can we talk when you get a chance? Thanks.

Tim

From: Henseler, Timothy

Sent: Friday, April 16, 2010 11:04 AM

To: Davis, Julie Z.; (b)(7)(C) (HSGAC); (b)(7)(C) (HSGAC); (b)(7)(C); (b)(7)(C) (HSGAC)

Subject: RE: SEC CHARGES GOLDMAN SACHS WITH FRAUD IN STRUCTURING/MARKETING OF CDO TIED TO SUBPRIME MORTGAGES

Folks – just got out of a meeting and got (b)(7)(C) voicemails. Attached is a copy of the complaint. We'll talk in a bit. Thans.

<http://www.sec.gov/litigation/complaints/2010/comp-pr2010-59.pdf>

From: Davis, Julie Z.

Sent: Friday, April 16, 2010 10:44 AM

To: (b)(7)(C); (b)(7)(C) (HSGAC); (b)(7)(C); (b)(7)(C) (HSGAC)

Cc: Henseler, Timothy

Subject: FW: SEC CHARGES GOLDMAN SACHS WITH FRAUD IN STRUCTURING/MARKETING OF CDO TIED TO SUBPRIME MORTGAGES

Perhaps Tim already sent this to you, but he's in a meeting so I wanted to make sure you got it. Hope you're all well!

Defense Counsel

For Goldman: Richard H. Klapper at Sullivan & Cromwell LLP in New York – (b)(7)(C)

For Toure: (b)(7)(C) at Allen & Overy LLP in New York – (b)(7)(C)

FOR IMMEDIATE RELEASE

2010-59

SEC CHARGES GOLDMAN SACHS WITH FRAUD IN STRUCTURING AND MARKETING OF CDO TIED TO SUBPRIME MORTGAGES

Washington, D.C., April 16, 2010 – The Securities and Exchange Commission today charged Goldman, Sachs & Co. and one of its vice presidents for defrauding investors by misstating and omitting key facts about a financial product tied to subprime mortgages as the U.S. housing market was beginning to falter.

The SEC alleges that Goldman Sachs structured and marketed a synthetic collateralized debt obligation (CDO) that hinged on the performance of subprime residential mortgage-backed securities (RMBS). Goldman Sachs failed to disclose to investors vital information about the CDO, in particular the role that a major hedge fund played in the portfolio selection process and the fact that the hedge fund had taken a short position against the CDO.

“The product was new and complex but the deception and conflicts are old and simple,” said Robert Khuzami, Director of the Division of Enforcement. “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.”

Kenneth Lench, Chief of the SEC’s Structured and New Products Unit, added, “The SEC continues to investigate the practices of investment banks and others involved in the securitization of complex financial products tied to the U.S. housing market as it was beginning to show signs of distress.”

The SEC alleges that one of the world’s largest hedge funds, Paulson & Co., paid Goldman Sachs to structure a transaction in which Paulson & Co. could take short positions against mortgage securities chosen by Paulson & Co. based on a belief that the securities would experience credit events.

According to the SEC’s complaint, filed in U.S. District Court for the Southern District of New York, the marketing materials for the CDO known as ABACUS 2007-AC1 (ABACUS) all represented that the RMBS portfolio underlying the CDO was selected by ACA Management LLC (ACA), a third party with expertise in analyzing credit risk in RMBS. The SEC alleges that undisclosed in the marketing materials and unbeknownst to investors, the Paulson & Co. hedge fund, which was poised to benefit if the RMBS defaulted, played a significant role in selecting which RMBS should make up the portfolio.

The SEC’s complaint alleges that after participating in the portfolio selection, Paulson & Co. effectively shorted the RMBS portfolio it helped select by entering into credit default swaps (CDS) with Goldman Sachs to buy protection on specific layers of the ABACUS capital structure. Given that financial short interest, Paulson & Co. had an economic incentive to select RMBS that it expected to experience credit events in the near future. Goldman Sachs did not disclose Paulson & Co.’s short position or its role in the collateral selection process in the term sheet, flip book, offering memorandum, or other marketing materials provided to investors.

The SEC alleges that Goldman Sachs Vice President Fabrice Tourre was principally responsible for ABACUS 2007-AC1. Tourre structured the transaction, prepared the marketing materials, and communicated directly with investors. Tourre allegedly knew of Paulson & Co.’s undisclosed short interest and role in the collateral selection process. In addition, he misled ACA into believing that Paulson & Co. invested approximately \$200 million in the equity of ABACUS, indicating that Paulson & Co.’s interests in the collateral selection process were closely aligned with ACA’s interests. In reality, however, their interests were sharply conflicting.

According to the SEC's complaint, the deal closed on April 26, 2007, and Paulson & Co. paid Goldman Sachs approximately \$15 million for structuring and marketing ABACUS. By Oct. 24, 2007, 83 percent of the RMBS in the ABACUS portfolio had been downgraded and 17 percent were on negative watch. By Jan. 29, 2008, 99 percent of the portfolio had been downgraded.

Investors in the liabilities of ABACUS are alleged to have lost more than \$1 billion.

The SEC's complaint charges Goldman Sachs and Tourre with violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5. The Commission seeks injunctive relief, disgorgement of profits, prejudgment interest, and financial penalties.

###

For more information about this enforcement action, contact:

Lorin L. Reisner
Deputy Director, SEC Enforcement Division

(b)(7)(C)

Kenneth R. Lench
Chief, Structured and New Products Unit, SEC Enforcement Division

(b)(7)(C)

Reid A. Muoio
Deputy Chief, Structured and New Products Unit, SEC Enforcement Division

(b)(7)(C)

RE: Goldman briefing for PSI

4/17/2010 5:37:07 PM

From: Muoio, Reid
To: Khuzami, Robert (b)(7)(C); Henseler, Timothy (b)(7)(C); Lench, Kenneth (b)(7)(C); Reisner, Lorin L. (b)(7)(C)
Cc: Cohen, Stephen L. (b)(7)(C); Spitler, Eric J. (b)(7)(C)

We've known about the PSI investigation for some time. But we have had no contact with them to date. We know that they subpoenaed GS and DB for docs over a year ago. The subpoena request covers many of issues in our generic CDO investigation. We have been receiving copies of all docs produced in response thereto. We know they recently reached out to IKB and have attempted to interview (b)(7)(C). We know that they are speaking soon with Dan Sparks who is the head of GS mortgage department. We endeavoring to take testimony from Sparks in our generic CDO investigation. Reid (b)(7)(C)

Sent from my BlackBerry Wireless Handheld

From: Khuzami, Robert
To: Henseler, Timothy; Lench, Kenneth; Muoio, Reid; Reisner, Lorin L.; (b)(7)(C)
Cc: Cohen, Stephen L.; Spitler, Eric J.
Sent: Sat Apr 17 17:21:26 2010
Subject: Re: Goldman briefing for PSI

Some questions:

(b)(5)

RK

From: Henseler, Timothy
To: Lench, Kenneth; Muoio, Reid; Reisner, Lorin L.; Khuzami, Robert; (b)(7)(C)
Cc: Cohen, Stephen L.; Spitler, Eric J.
Sent: Sat Apr 17 15:58:20 2010
Subject: Goldman briefing for PSI

Folks – first, congrats on the case. I was shadow boxing in my office yesterday as I was listening to the press conference.

Second, I just got off the phone w/ PSI – though non-public, it will be holding a hearing on April 27 on Goldman and Abacus. They would like to have a briefing from ENF folks on the case, perhaps this Tuesday (time TBD) and if not then Wednesday at 4:30. They understand that we're limited to the four corners of the complaint.

Obviously your call as to who you think should attend – thanks in advance.

Tim

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(b)(5)

4/14/10, Closed Meeting – Minute:

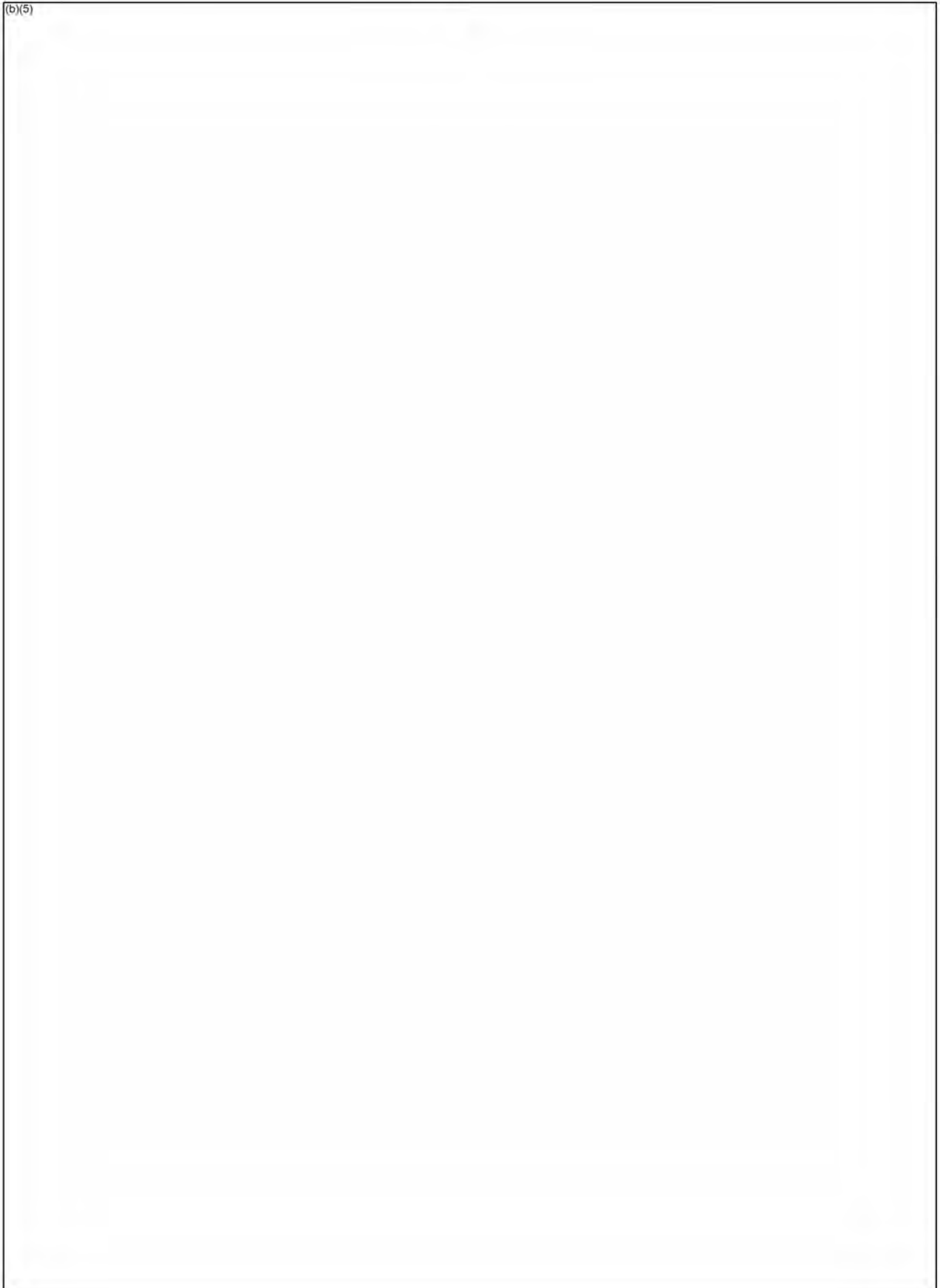
(b)(5)

Commissioner Casey raised a question about what the staff had learned about how these kinds of synthetic CDO transactions were structured.

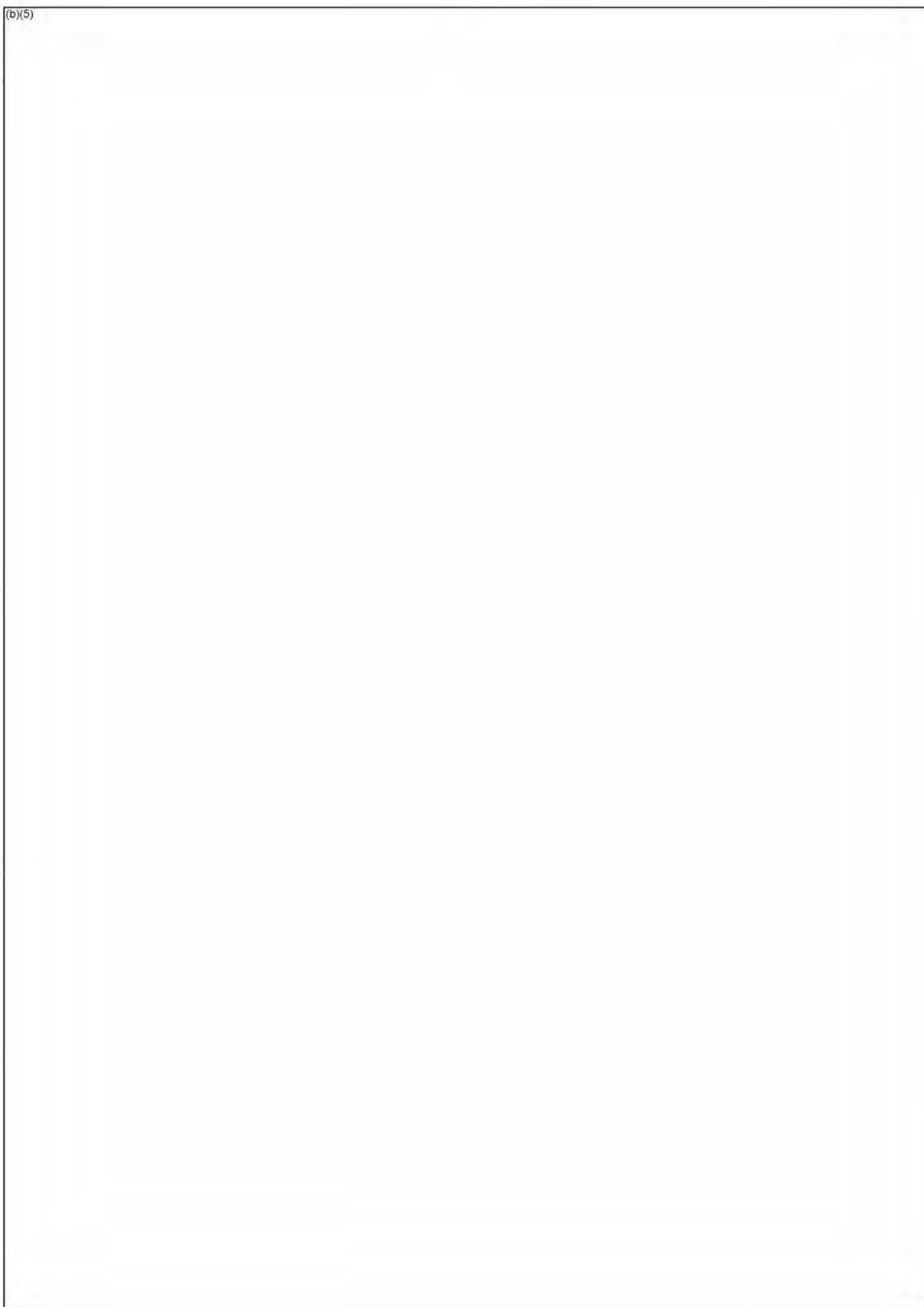
(b)(5)

(b)(5)

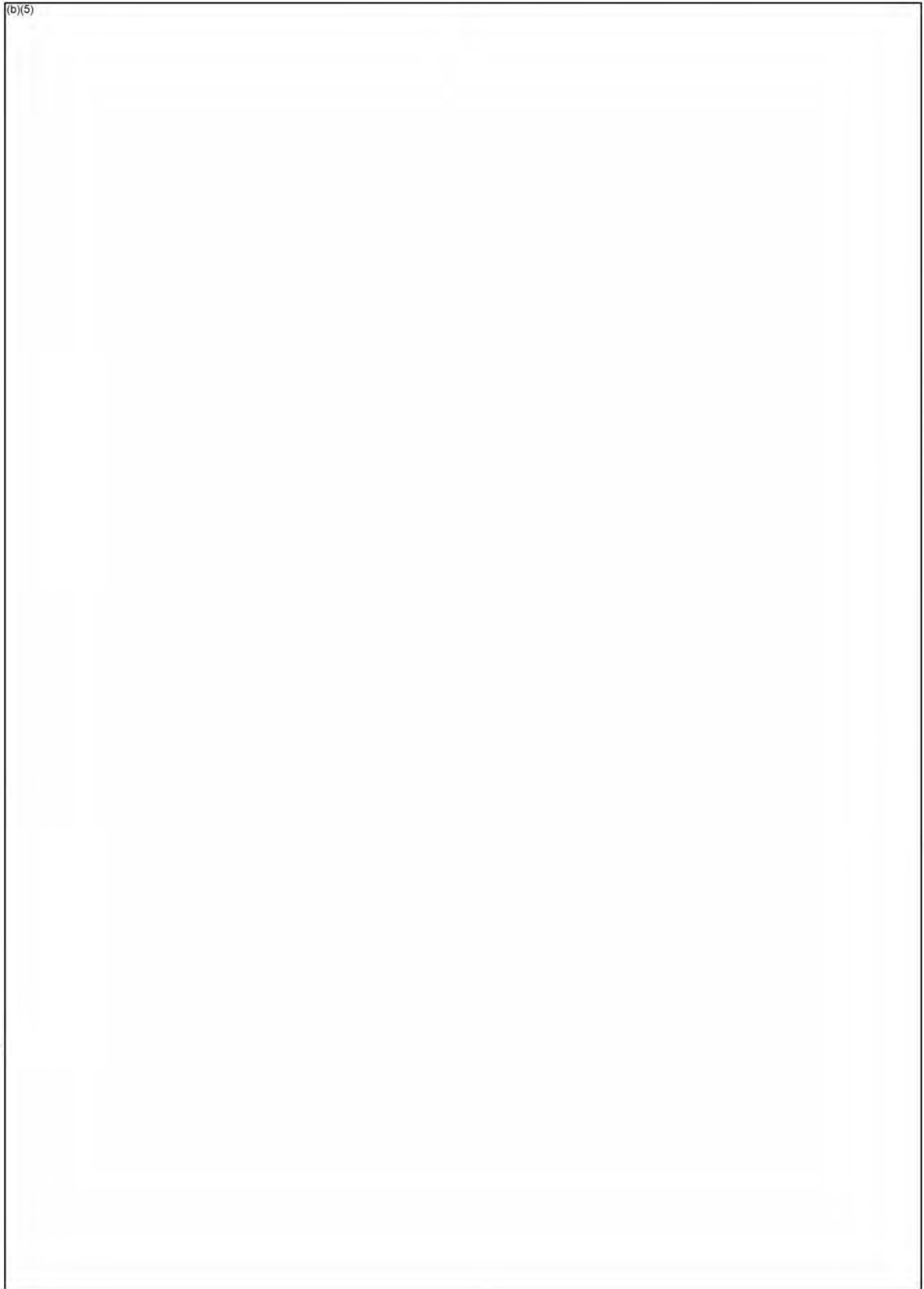
(b)(5)



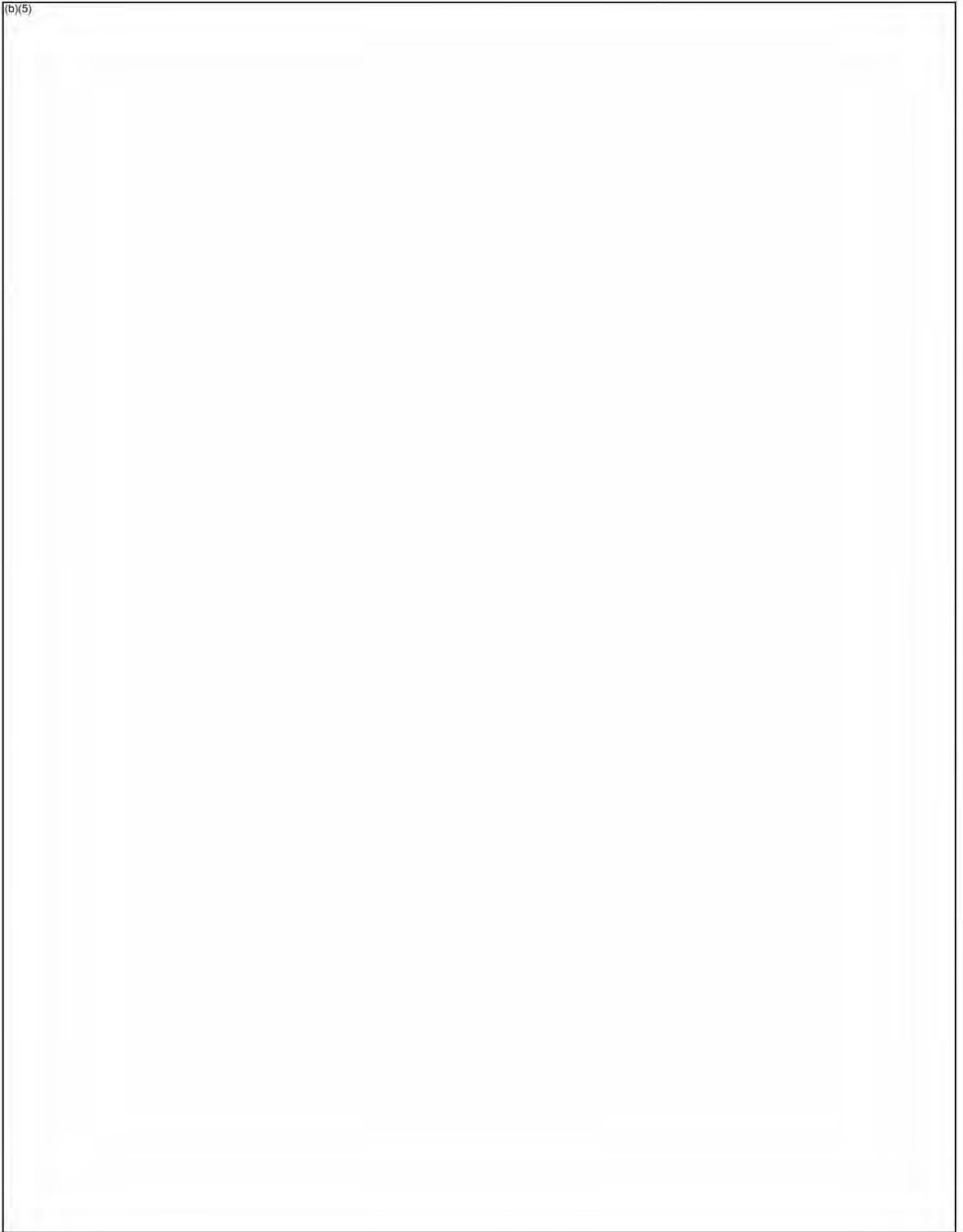
(b)(5)



(b)(5)



(b)(5)



(b)(5)



106

(b)(7)(C)

From: Rosenfeld, David
Sent: Monday, April 12, 2010 3:08 PM
To: Khuzami, Robert
Subject: FW: (b)(5)

Rob - (b)(5)
(b)(5)

From: (b)(7)(C)
Sent: Monday, April 12, 2010 2:02 PM
To: Rosenfeld, David: (b)(7)(C)
Subject: (b)(5)

(b)(5), (b)(7)(C)

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(b)(7)(C)

From: Rosenfeld, David
Sent: Monday, April 12, 2010 6:02 PM
To: Khuzami, Robert
Subject: FW: Quadrangle

-----Original Message-----

From: Lewis, Maureen
Sent: Monday, April 12, 2010 6:00 PM
To: Rosenfeld, David; (b)(7)(C)
Subject: FW: Quadrangle

FYI.

-----Original Message-----

From: (b)(7)(C)
Sent: Monday, April 12, 2010 5:59 PM
To: (b)(7)(C)
Subject: Quadrangle

Our internal schedule changed and we now intend to announce Wed rather than Thurs.

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RE: (b)(5)
From: Khuzami, Robert
To: Schapiro, Mary L. (b)(7)(C)
Cc: Cohen, Stephen L.

4/12/2010 10:54:02 PM

Ours is a penalty based on 1x pecuniary gain (which gain is based on fees earned by Quadrangle). This is the most aggressive measure (b)(5) going back to the Fund.

No agmt on bar with Rattner yet.

This would be Wednesday, Goldman likely Thursday.

RK

From: Schapiro, Mary L.
To: Khuzami, Robert
Sent: Mon Apr 12 20:09:51 2010
Subject: Re: Quadrangle/Rattner

We should still update fee amount so we get full disgorgement. Any penalty at all?
We don't have agreement on the bar yet do we?
Let's make sure we don't announce Goldman same day.

From: Khuzami, Robert
To: Schapiro, Mary L.
Sent: Mon Apr 12 20:07:30 2010
Subject: Re: Quadrangle/Rattner

Yep.

From: Schapiro, Mary L.
To: Khuzami, Robert
Cc: Cohen, Stephen L.
Sent: Mon Apr 12 20:07:01 2010
Subject: Re: Quadrangle/Rattner

Can we announce at the same time?

From: Khuzami, Robert
To: Schapiro, Mary L.
Cc: Cohen, Stephen L.
Sent: Mon Apr 12 19:36:12 2010
Subject: Quadrangle/Rattner

(b)(5)

(b)(5)



Rob

109

4/13/2010 12:28:00 AM

From: Cohen, Stephen L.
To: Schapiro, Mary L. (b)(7)(C)

Mary,

We'll go ahead with duty officer (Troy) in the morning on Quadrangle and file (with Cuomo) on Wednesday (if approved). Then, we'll do Goldman on Thursday.

I'll have a somewhat lengthy memo for you on Goldman/CDO in the afternoon. I've largely drafted it but need to pare it down a bit. Let me know if you've already read the memo.

Stephen L. Cohen

(b)(7)(C)

Securities and Exchange Commission

(b)(7)(C)

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RE: quick abacus question

4/13/2010 9:12:21 PM

From: (b)(7)(C)**To:** (b)(7)(C)

Muoio, Reid (b)(7)(C)

No word either way today. I think staff's preference (ie Reid, (b)(7)(C) and me) is still Thursday morning, but will let you know if we are instructed otherwise.

From: (b)(7)(C)**To:** (b)(7)(C)

Muoio, Reid

Sent: Tue Apr 13 18:55:48 2010**Subject:** quick abacus question

Just curious, did we ever hear back whether we intend to file tomorrow after the meeting, or Thursday morning?
Thanks,

(b)(7)(C)

111

FW: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release ...

4/13/2010 11:03:09 PM

From: Muoio, Reid

To: (b)(7)(C)

FYI – let's discuss filing mechanics tomorrow. Reid x1-4488

From: Reisner, Lorin L.

Sent: Tuesday, April 13, 2010 11:01 PM

To: Muoio, Reid

Subject: Re: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release ...

Thanks Reid. FYI, I will have some additional comments but I will probably not be able to get them to you until late tomorrow night. My day is fully scheduled tomorrow from 8am to 8pm. Very sorry for this inconvenience but I'm sure we'll make it work.

Lorin

From: Muoio, Reid

To: Muoio, Reid; Reisner, Lorin L.; Lench, Kenneth; (b)(7)(C)

Cc: Scarboro, Cheryl; (b)(7)(C)

(b)(7)(C)

Sent: Tue Apr 13 22:41:03 2010

Subject: RE: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release ...

<<ABACUS CDO Complaint draft 4.13.10.doc>>

Revised complaint is attached incorporating Lorin's thoughtful comments and (b)(7)(C) careful fact check. We'll proofread tomorrow morning and incorporate any last-minute edit received before COB tomorrow Wednesday April 14.

Reid (b)(7)(C)

From: Muoio, Reid

Sent: Thursday, April 08, 2010 6:47 PM

To: Reisner, Lorin L.; Lench, Kenneth; (b)(7)(C)

Cc: Scarboro, Cheryl; Muoio, Reid; (b)(7)(C)

(b)(7)(C)

Subject: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release ...

... are attached for your comment and review. Please make sure you are comfortable with, *inter alia*, a) ¶¶ 25, 61 and 64 of the draft complaint which relate to the affidavits obtained recently from ACA and IKB, b) Rob Khuzami and Ken Lench's quotes in the draft press release and c) the proposed language used to say "our investigation continues" which tracks closely the Chairman's recent Congressional testimony. Please also try to get me your comments, if any, by COB this Tuesday April 13. Assuming Commission approval, we'd like to fedex a signed original complaint to (b)(7)(C) in NYC that evening for filing either the afternoon of Wednesday April 14 or morning of Thursday April 15.

<< File: ABACUS CDO Complaint draft 4.8.10.doc >> << File: Abacus Goldman Tourre Press Rel draft 4 8 10.doc >> << File: Abacus Goldman Tourre Lit Rel draft 4 8 10.doc >>

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(b)(7)(C)

From: Rosenfeld, David
Sent: Tuesday, April 13, 2010 2:14 PM
To: Khuzami, Robert
Subject: FW: Quadrangle

FYI

-----Original Message-----

From: (b)(7)(C)
Sent: Tuesday, April 13, 2010 2:12 PM
To: (b)(7)(C) Rosenfeld, David
Cc:
Subject: Quadrangle

I am informed we are moving back to Thursday, around 11 am. So nothing tomorrow.

I hope this bit of extra time helps.

(b)(7)(C)

113

RE: Thurs

4/14/2010 10:12:28 AM

From: Marlin, Myron L.
To: Nester, John J. (b)(7)(C)

Gs is now friday. Quad is thurs.

----- Original Message -----

From: Nester, John J.
To: Marlin, Myron L.
Sent: Wed Apr 14 10:05:20 2010
Subject: Thurs

Since doing two pressers same day might not be favorably received on hill, maybe we just throw Rob on CNBC, etc on the enf action

FW: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release . . .

4/14/2010 10:09:59 PM

From: Lench, Kenneth

To: (b)(7)(C)

Attachments: ABACUS CDO Complaint draft 4.14.10 (with Lorin's edits).doc

(b)(7)(C) Are you concerned we will lose press by filing Friday? Maybe that's the point given the litigation risk. I don't know whose idea it was to file Friday, but I know we usually don't. Ken

From: (b)(7)(C)

To: Muoio, Reid; Reisner, Lorin L.; Lench, Kenneth; (b)(7)(C)

Cc: Scarboro, Cheryl; (b)(7)(C)

Sent: Wed Apr 14 21:54:52 2010

Subject: RE: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release . . .

Please find attached a new draft complaint, incorporating Lorin's most recent comments and Cree and my 'nit' edits. As an fyi – I understand the current plan is to file the complaint on Friday morning.

(b)(7)(C)

<<ABACUS CDO Complaint draft 4.14.10 (with Lorin's edits).doc>>

From: Muoio, Reid

Sent: Tuesday, April 13, 2010 10:41 PM

To: Muoio, Reid; Reisner, Lorin L.; Lench, Kenneth; (b)(7)(C)

Cc: Scarboro, Cheryl; (b)(7)(C)

(b)(7)(C)

Subject: RE: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release . . .

<< File: ABACUS CDO Complaint draft 4.13.10.doc >>

Revised complaint is attached incorporating Lorin's thoughtful comments and (b)(7)(C) careful fact check. We'll proofread tomorrow morning and incorporate any last-minute edit received before COB tomorrow Wednesday April 14.

Reid (b)(7)(C)

From: Muoio, Reid

Sent: Thursday, April 08, 2010 6:47 PM

To: Reisner, Lorin L.; Lench, Kenneth; (b)(7)(C)

Cc: Scarboro, Cheryl; Muoio, Reid; (b)(7)(C)

(b)(7)(C)

Subject: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release . . .

. . . are attached for your comment and review. Please make sure you are comfortable with, *inter alia*, a) ¶¶ 25, 61 and 64 of the draft complaint which relate to the affidavits obtained recently from ACA and IKB, b) Rob Khuzami and Ken Lench's quotes in the draft press release and c) the proposed language used to say "our investigation continues" which tracks closely the Chairman's recent Congressional testimony. Please also try to get me your comments, if any, by COB this Tuesday April 13. Assuming Commission approval, we'd like to fedex a signed original complaint to (b)(7)(C) in NYC that evening for filing either the afternoon of Wednesday April 14 or morning of Thursday April 15.

<< File: ABACUS CDO Complaint draft 4.8.10.doc >> << File: Abacus Goldman Tourre Press Rel
draft 4 8 10.doc >> << File: Abacus Goldman Tourre Lit Rel draft 4 8 10.doc >>

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tomorrow

4/11/2010 10:53:11 PM

From: Cohen, Stephen L.

To: Schapiro, Mary L. (b)(7)(C)

Cc: Gillan, Kayla J. (b)(7)(C)

Nisanci, Didem A. (b)(7)(C)

Marlin, Myron L. (b)(7)(C)

I'll probably be at the Financial Fraud Enforcement Task Force Meeting tomorrow morning during the staff meeting. A few things to mention this week:

- 1) Wednesday's CCM calendar includes a number of serious items. The Goldman/CDO case (Abacus) is on for this week. I'm preparing a memo about Goldman case and will be happy to discuss any time. There is still a live issue that I've discussed with Myron and Rob about whether to do a press conference. Double edged sword, as I am sure Myron has or will discuss... Finally, the (b)(7)(A) case is here (about which Mary receives numerous emails). The recommendation to settle with David Stockman/Collins & Aikman and resolve that matter is on the calendar, so that'll garner a fair amount of press. Also, the (b)(7)(A) case (b)(7)(A) is back for a repeat recommendation for a settlement. You may recall the Commission rejected the staff's recommendation to settle in January. Jen is handling this. Finally, there is a recommendation by Miami, OIA and OIEA to issue an Investor Warning concerning Eric Bartoli, a defendant in a 1999 Commission action who is a fugitive residing in Peru and appears to be continuing his fraud. We have received investor complaints and Congressional inquiries about this.
- 2) Lots of folks are participating in a NASAA conf here in DC on Tuesday.
- 3) I begin meetings this week with FinCEN to negotiate an unprecedented MOU to obtain bulk Bank Secrecy Act Data (sort of like the FBI gets), which is a goldmine of tips for ENF, and expand our access to FinCEN's database. This includes information reported by broker-dealers to FinCEN that we now get in a limited way. We've managed to break through an historic loghead on these issues.
- 4) We need to discuss you calling Holder about the expanded access to grand jury provision in the legislation.

Stephen L. Cohen

Senior Advisor to the Chairman

Securities and Exchange Commission

(b)(7)(C)

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RE: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release . . .

4/14/2010 11:06:51 PM

From: Muoio, Reid
To: Lench, Kenneth

Front Office. Just don't know their thinking.

Sent from my BlackBerry Wireless Handheld

From: Lench, Kenneth

To: (b)(7)(C)

Cc: Muoio, Reid

Sent: Wed Apr 14 23:05:44 2010

Subject: Re: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release . . .

(b)(7)(C)

Whose idea was it to file Friday? Thanks. Ken

From: (b)(7)(C)

To: Muoio, Reid; Reisner, Lorin L.; Lench, Kenneth; (b)(7)(C)

Cc: Scarboro, Cheryl; (b)(7)(C)

Sent: Wed Apr 14 21:54:52 2010

Subject: RE: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release . . .

Please find attached a new draft complaint, incorporating Lorin's most recent comments and (b)(7)(C) and my 'nit' edits. As an fyi - I understand the current plan is to file the complaint on Friday morning.

(b)(7)(C)

<<ABACUS CDO Complaint draft 4.14.10 (with Lorin's edits).doc>>

From: Muoio, Reid

Sent: Tuesday, April 13, 2010 10:41 PM

To: Muoio, Reid; Reisner, Lorin L.; Lench, Kenneth; (b)(7)(C)

Cc: Scarboro, Cheryl; (b)(7)(C)

(b)(7)(C)

Subject: RE: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release . . .

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Revised complaint is attached incorporating Lorin's thoughtful comments and (b)(7)(C) careful fact check. We'll proofread tomorrow morning and incorporate any last-minute edit received before COB tomorrow Wednesday April 14.

Reid

From: Muoio, Reid

Sent: Thursday, April 08, 2010 6:47 PM

To: Reisner, Lorin L.; Lench, Kenneth; (b)(7)(C)

Cc: Scarboro, Cheryl; Muoio, Reid; (b)(7)(C)

(b)(7)(C)

Subject: ABACUS 2007-AC1 (HO-10911) -- Draft Complaint, Press Release and Litigation Release . . .

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<< File: ABACUS CDO Complaint draft 4.8.10.doc >> << File: Abacus Goldman Tourre Press Rel draft 4 8 10.doc >> << File: Abacus Goldman Tourre Lit Rel draft 4 8 10.doc >>

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RE: Current timeline...

4/15/2010 9:44:52 AM

From: Cohen, Stephen L.**To:** (b)(7)(C)

Marlin, Myron L.

(b)(7)(C)

Nester, John J.

(b)(7)(C)

Right...so why file at 9:30?

From: (b)(7)(C)**Sent:** Thursday, April 15, 2010 9:43 AM**To:** Cohen, Stephen L.; Marlin, Myron L.; Nester, John J.**Subject:** RE: Current timeline...

Clerk's office opens at 8:30.

(b)(7)(C)

From: Cohen, Stephen L.**Sent:** Thursday, April 15, 2010 9:41 AM**To:** Marlin, Myron L.; Nester, John J.**Cc:** (b)(7)(C)**Subject:** RE: Current timeline...

Why file GS tomorrow at 9:30? Sometimes, things are not always that smooth when filing.
Why not give a little more lead time... 9?

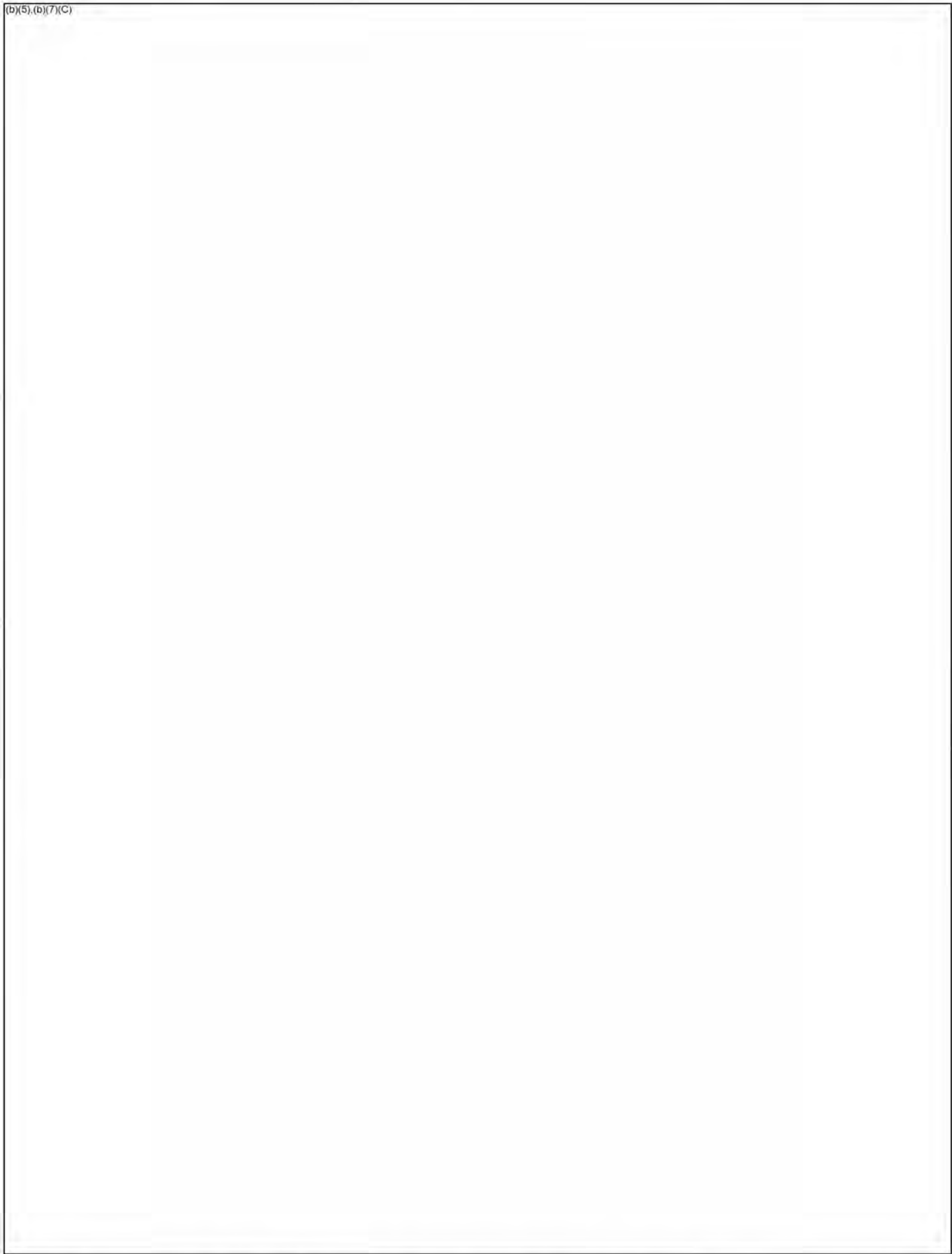
From: Marlin, Myron L.**Sent:** Thursday, April 15, 2010 2:38 AM**To:** Nester, John J.**Cc:** (b)(7)(C) Cohen, Stephen L.; Khuzami, Robert**Subject:** Current timeline...

John,

Here's the timeline as I know it:

(b)(5)

(b)(5),(b)(7)(C)



(b)(5)

###

***** MEDIA ADVISORY *******Thursday at 10:30 am: SCHUMER,
SCHAPIRO & FIVE FORMER SEC CHAIRS
TO URGE SENATE TO PASS MEASURE TO
PERMANENTLY BOOST AGENCY'S
BUDGET**

*Schumer's Legislation Would Allow SEC To Fund Itself By
Retaining Fees It Collects*

*Measure Cleared Senate Banking Panel Last Month As Part of
Financial Reform Bill—Now Headed to Floor for Full Senate
Consideration*

*Ruder, Breeden, Pitt, Levitt, Donaldson To Endorse Measure As
Critical Step Towards Modernizing Agency*

WASHINGTON, DC—U.S. Senator Charles E. Schumer (D-NY) and Securities and Exchange Commission (SEC) Chairman Mary Schapiro will hold a news conference call **THURSDAY, April 15, 2010 at 10:30 am** to urge the Senate to approve important legislation that would allow the SEC to fund itself by retaining the fees it collects. The measure, if passed, would provide a permanent boost to the agency's annual budget.

Schumer and Schapiro will be joined on the call by five former heads of the SEC, including four who served during Republican administrations: David Ruder (who served from 1987-1989), Richard Breeden (1989-1993), Arthur Levitt (1993-2001), Harvey Pitt (2001-2003), and William Donaldson (2003-2005).

Currently, the SEC raises millions more dollars every year in registration and transaction fees than it is allocated through the appropriations process. But its budget is limited to the amount approved by Congress. In 2007, the SEC brought in \$1.54 billion in fees, but secured just \$881.6 million in funding from Congress. Had the agency simply been able to hold onto all the fees it collected, it would have

represented a 75 percent increase over the budget it was allotted through the appropriations process.

The SEC is one of only two financial regulators in the U.S. that must go through the annual Congressional appropriations process. U.S. banking regulators such as the FDIC and the Federal Reserve, on the other hand, can use what they collect in fees, deposit insurance and interest income to fund their operations.

WHO: U.S. Senator Charles E. Schumer
SEC Chairman Mary Schapiro
Fmr. SEC Chairman David Ruder (1987-1989)
Fmr. SEC Chairman Richard Breeden (1989-1993)
Fmr. SEC Chairman Arthur Levitt (1993-2001)
Fmr. SEC Chairman Harvey Pitt (2001-2003)
Fmr. SEC Chairman William Donaldson (2003-2005)
DATE: Thursday, April 15, 2010
TIME: 10:30 am
DIAL IN: 202-228-2663 OR 1-866-909-2663
PASSCODE: 8108769

###

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RE: ABACUS 2007-AC1 (HO-10911) -- Complaint and service papers

4/15/2010 6:33:39 PM

From: Muoio, Reid**To:** (b)(7)(C)

Sorry dude. 9:30.

From: (b)(7)(C)

[mailto:(b)(7)(C)]

Sent: Thursday, April 15, 2010 6:33 PM**To:** Muoio, Reid**Subject:** RE: ABACUS 2007-AC1 (HO-10911) -- Complaint and service papers

9:30 or 8:30? 9:30 I will do, but it's might make me late to court (b)(7)(C)

From: Muoio, Reid [mailto:(b)(7)(C)]**Sent:** Thursday, April 15, 2010 6:27 PM**To:** (b)(7)(C)**Cc:** (b)(7)(C)**Subject:** RE: ABACUS 2007-AC1 (HO-10911) -- Complaint and service papers

Yes – but you need to shoot to file this bad boy at 9:30 am sharp! I know this sounds crazy but it's true. Then call and email me and (b)(7)(C) with the docket number and name of the judge. OK? Reid (b)(7)(C)

From: (b)(7)(C)

[mailto:(b)(7)(C)]

Sent: Thursday, April 15, 2010 6:25 PM**To:** Muoio, Reid**Cc:** (b)(7)(C)**Subject:** RE: ABACUS 2007-AC1 (HO-10911) -- Complaint and service papers

Is this good to go?

From: Muoio, Reid [mailto:(b)(7)(C)]**Sent:** Thursday, April 15, 2010 5:31 PM**To:** (b)(7)(C)**Cc:** (b)(7)(C)**Subject:** FW: ABACUS 2007-AC1 (HO-10911) -- Complaint and service papers

OK?

From: (b)(7)(C)**Sent:** Thursday, April 15, 2010 5:29 PM**To:** (b)(7)(C)

Muoio, Reid; Reisner, Lorin L.; Lench, Kenneth; (b)(7)(C)

Cc: Scarboro, Cheryl; (b)(7)(C)

Khuzami, Robert

Subject: ABACUS 2007-AC1 (HO-10911) -- Complaint and service papers

Team: Please find attached a final version of the complaint, reflecting Lorin's comments from this afternoon. I've also attached the accompanying cover sheet and service papers drafted by (b)(7)(C)

I've called it 'final,' but of course please email me if you have any edits or suggestions. Unless we make further changes, I believe the plan is to have (b)(7)(C) file this version tomorrow morning at 8:30, signing on behalf of (b)(7)(C)

Thanks,

(b)(7)(C)

<<ABACUS CDO Complaint final.doc>>

<<goldman – civil cover sheet new address v2.pdf>> <<goldman – summons goldman new date.pdf>>
<<goldman – summons toure new addressv2>>

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RE: SEC CHARGES GOLDMAN SACHS WITH FRAUD IN STRUCTURING AND MARKETING OF CDO TIED TO SUBPRIME MORTGAGES

4/16/2010 10:45:31 AM

From: (b)(7)(C)
To: (b)(7)(C)

You are the Sphinx!

(b)(7)(C)

U.S. Senator (b)(7)(C)
383 Russell Senate Building
Washington, DC 20510

(b)(7)(C)

From: Davis, Julie Z. (b)(7)(C)
Sent: Friday, April 16, 2010 10:45 AM
To: (b)(7)(C)

Subject: RE: SEC CHARGES GOLDMAN SACHS WITH FRAUD IN STRUCTURING AND MARKETING OF CDO TIED TO SUBPRIME MORTGAGES

Do you know how hard I was biting my tongue yesterday??

From: (b)(7)(C)

Sent: Friday, April 16, 2010 10:44 AM

To: Kelley, Anne Marie

Cc: Davis, Julie Z.

Subject: RE: SEC CHARGES GOLDMAN SACHS WITH FRAUD IN STRUCTURING AND MARKETING OF CDO TIED TO SUBPRIME MORTGAGES

Wow!

(b)(7)(C)

U.S. Senator (b)(7)(C)
383 Russell Senate Building
Washington, DC 20510

(b)(7)(C)

From: Kelley, Anne Marie (b)(7)(C)

Sent: Friday, April 16, 2010 10:35 AM

Subject: SEC CHARGES GOLDMAN SACHS WITH FRAUD IN STRUCTURING AND MARKETING OF CDO TIED TO SUBPRIME MORTGAGES

SEC CHARGES GOLDMAN SACHS WITH FRAUD IN STRUCTURING AND MARKETING OF CDO TIED TO SUBPRIME MORTGAGES

Washington, D.C., April 16, 2010 – The Securities and Exchange Commission today charged Goldman, Sachs & Co. and one of its vice presidents for defrauding investors by misstating and omitting key facts about a financial product tied to subprime mortgages as the U.S. housing market was beginning to falter.

The SEC alleges that Goldman Sachs structured and marketed a synthetic collateralized debt obligation (CDO) that hinged on the performance of subprime residential mortgage-backed securities (RMBS).

Goldman Sachs failed to disclose to investors vital information about the CDO, in particular the role that a major hedge fund played in the portfolio selection process and the fact that the hedge fund had taken a short position against the CDO.

"The product was new and complex but the deception and conflicts are old and simple," said Robert Khuzami, Director of the Division of Enforcement. "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."

Kenneth Lench, Chief of the SEC's Structured and New Products Unit, added, "The SEC continues to investigate the practices of investment banks and others involved in the securitization of complex financial products tied to the U.S. housing market as it was beginning to show signs of distress."

The SEC alleges that one of the world's largest hedge funds, Paulson & Co., paid Goldman Sachs to structure a transaction in which Paulson & Co. could take short positions against mortgage securities chosen by Paulson & Co. based on a belief that the securities would experience credit events.

According to the SEC's complaint, filed in U.S. District Court for the Southern District of New York, the marketing materials for the CDO known as ABACUS 2007-AC1 (ABACUS) all represented that the RMBS portfolio underlying the CDO was selected by ACA Management LLC (ACA), a third party with expertise in analyzing credit risk in RMBS. The SEC alleges that undisclosed in the marketing materials and unbeknownst to investors, the Paulson & Co. hedge fund, which was poised to benefit if the RMBS defaulted, played a significant role in selecting which RMBS should make up the portfolio.

The SEC's complaint alleges that after participating in the portfolio selection, Paulson & Co. effectively shorted the RMBS portfolio it helped select by entering into credit default swaps (CDS) with Goldman Sachs to buy protection on specific layers of the ABACUS capital structure. Given that financial short interest, Paulson & Co. had an economic incentive to select RMBS that it expected to experience credit events in the near future. Goldman Sachs did not disclose Paulson & Co.'s short position or its role in the collateral selection process in the term sheet, flip book, offering memorandum, or other marketing materials provided to investors.

The SEC alleges that Goldman Sachs Vice President Fabrice Tourre was principally responsible for ABACUS 2007-AC1. Tourre structured the transaction, prepared the marketing materials, and communicated directly with investors. Tourre allegedly knew of Paulson & Co.'s undisclosed short interest and role in the collateral selection process. In addition, he misled ACA into believing that Paulson & Co. invested approximately \$200 million in the equity of ABACUS, indicating that Paulson & Co.'s interests in the collateral selection process were closely aligned with ACA's interests. In reality, however, their interests were sharply conflicting.

According to the SEC's complaint, the deal closed on April 26, 2007, and Paulson & Co. paid Goldman Sachs approximately \$15 million for structuring and marketing ABACUS. By Oct. 24, 2007, 83 percent of the RMBS in the ABACUS portfolio had been downgraded and 17 percent were on negative watch. By Jan. 29, 2008, 99 percent of the portfolio had been downgraded.

Investors in the liabilities of ABACUS are alleged to have lost more than \$1 billion.

The SEC's complaint charges Goldman Sachs and Tourre with violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule

10b-5. The Commission seeks injunctive relief, disgorgement of profits, prejudgment interest, and financial penalties.

###

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RE: Timeline

4/17/2010 10:48:58 PM

From: Cohen, Stephen L.

To: Khuzami, Robert (b)(7)(C)

Cc: Marlin, Myron L.

Nester, John J. (b)(7)(C)

Reisner, Lorin L. (b)(7)(C)

As the person responsible for the calendaring, that is not only true but documented. So, someone can feel very comfortable that there is literally evidence to demonstrate the timing of this was not politically motivated.

----- Original Message -----

From: Khuzami, Robert

To: Nester, John J.; Reisner, Lorin L.

Cc: Marlin, Myron L.; Cohen, Stephen L.

Sent: Sat Apr 17 22:44:07 2010

Subject: Re: Timeline

(b)(5)

RK

----- Original Message -----

From: Nester, John J.

To: Khuzami, Robert; Reisner, Lorin L.

Cc: Marlin, Myron L.; Cohen, Stephen L.

Sent: Sat Apr 17 20:53:53 2010

Subject: Re: Timeline

(b)(5), (b)(7)(C)

----- Original Message -----

From: Khuzami, Robert

To: Nester, John J.; Reisner, Lorin L.

Cc: Marlin, Myron L.; Cohen, Stephen L.

Sent: Sat Apr 17 19:32:18 2010

Subject: Re: Timeline

(b)(5)

RK

----- Original Message -----

From: Nester, John J.

To: Khuzami, Robert; Reisner, Lorin L.

Cc: Marlin, Myron L.; Cohen, Stephen L.

Sent: Sat Apr 17 19:13:35 2010

Subject: Fw: Timeline

I've chatted with Rob about this.

(b)(5)

(b)(5)

----- Original Message -----

From: Scannell, Kara

(b)(7)(C)

To: Nester, John J.

Sent: Sat Apr 17 19:02:54 2010

Subject: Timeline

August 2008 - GS received subpoena for information

GS responds.

July 2009 - Wells notice to Tourre and GS

GS and Tourre respond in September.

A month ago GS called enforcement and doesn't hear back

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Release of OIG Stanford Report

4/16/2010 1:57:21 PM

From: SEC NEWS

To:

Attachments: SEC Fact Sheet 4-16-10.doc, 2010-60.doc

The SEC today released OIG Report 526: "Investigation of the SEC's Response to Concerns Regarding Robert Allen Stanford's Alleged Ponzi Scheme" ...

It is available at the following link: <http://www.sec.gov/news/studies/2010/oig-526.pdf>

Attached please find:

- Chairman Schapiro's statement
- A Fact Sheet addressing issues raised in the OIG report.

FOR IMMEDIATE RELEASE**2010-60****STATEMENT FROM CHAIRMAN SCHAPIRO ON OIG REPORT 526:*****"Investigation of the SEC's Response to Concerns Regarding Robert Allen Stanford's Alleged Ponzi Scheme"***

Washington, D.C., April 16, 2010 – The following is a statement from SEC Chairman Mary L. Schapiro regarding SEC Office of the Inspector General (OIG) Report 526 – *"Investigation of the SEC's Response to Concerns Regarding Robert Allen Stanford's Alleged Ponzi Scheme"*:

"This report recounts events that occurred at the Commission between 1997 and 2005. Since that time, much has changed and continues to change regarding the agency's leadership, its internal procedures and its culture of collaboration. The report makes seven recommendations, most of which have been implemented since 2005. We will carefully analyze the report and implement any additional reforms as necessary for effective investor protection."

###

Additional Materials:**FACT SHEET: SEC Addressing Issues Raised in the Inspector General's Stanford Report**

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THE WALL STREET JOURNAL.

WSJ.com

APRIL 20, 2010

The SEC's Impeccable Timing

The Goldman suit helped to hide the IG report on the Stanford debacle.

The Securities and Exchange Commission fraud case against Goldman Sachs may be settled before it ever sees a courtroom. Yet intentionally or not, the SEC has already secured at least one victory in the court of media opinion.

Last Friday, the same day that the government unexpectedly announced its Goldman lawsuit, the SEC's inspector general released his exhaustive, 15-page report on the agency's failure to investigate alleged fraudster R. Allen Stanford. Mr. Stanford was indicted last June for operating a Ponzi scheme that bilked investors out of \$8 billion. He has pleaded not guilty.



Associated Press

Texas financier R. Allen Stanford

Guess which of these two stories was pushed to the back pages? The SEC did its part by publishing

the Stanford report so deep in its Web site that more than a few of our readers had trouble finding it. Yesterday, the SEC management's response to the report was available on the agency's homepage, yet it provided no links to the report itself.

Little wonder. The report is damning for an SEC that wants the public to believe it has turned the corner after the Bernie Madoff disaster. The commission has made young Fabrice Tourre of Goldman Sachs a household name for his debatable disclosures to institutional investors. But many individual investors will be more interested in learning the story of Spencer Barasch. He's the SEC enforcement official who sat on various referrals to investigate Allen Stanford and then, after leaving the SEC, performed legal work for ... Allen Stanford.

In its own way, the Stanford calamity is arguably worse than the SEC's Madoff bungle. In the Madoff case, passionate outsider Harry Markopolos could find no one at the SEC who took the time to understand the scam, cared enough and had enough authority to shut down the fraud. In the Stanford case, we see numerous SEC *insiders* over many years urging—at times begging—the enforcement staff to take action, to no avail.

The examination staff at the SEC's district office in Fort Worth, Texas reviewed the Stanford Group's operations in 1997, concluded that its sale



We focus on automating Marriott® Hotels' global invoice process. So they don't have to.

Learn more at RealBusiness.com

Ready For Real Business **xerox** 

Print Powered By  FormatDynamics

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certificates of deposit likely constituted a Ponzi scheme, and referred the matter to SEC enforcement staff. Mr. Stanford kept on selling his seemingly too-good-to-be-true CDs, so SEC examiners investigated again in 1998, 2002 and 2004. Each time, they concluded that the Stanford operation was a probable Ponzi scheme and urged SEC action. Each time, the enforcement staff failed to act.

Along the way, SEC enforcers also ignored warnings from the daughter of an elderly investor in the Stanford scheme, the Texas State Securities Board, an anonymous insider in the Stanford operation, and U.S. Customs, which suspected that the Stanford organization was laundering money. SEC at times would open preliminary investigations. When the Stanford Group declined to provide information, the inquiry would end.

Particularly tragic is that almost all of the \$8 billion that Mr. Stanford collected from investors was gathered after the SEC's first round of inquiries, so if SEC enforcers had acted on the first referral from their colleagues, this alleged fraud would be measured in millions of dollars, not billions. Later, some investors increased their investments with Stanford Group after they learned that the SEC had investigated in 2005 and took no action. They viewed it as a clean bill of health.

In the wake of its Goldman lawsuit, the SEC is being hailed for returning to a "tough" enforcement line, but this is deceiving. The contrast between the SEC inspector general's report on Stanford and the zeal of the SEC's lawsuit against Goldman Sachs is far more revealing about why the agency fails to stop genuine fraudsters.

While taking testimony and conducting interviews with dozens of agency staffers on Stanford, SEC's David Kotz asked the enforcement staff how it could possibly have failed to prosecute someone who was believed by so many others to be running a fraud. The staff told him that senior SEC management did not favor the pursuit of Ponzi schemes and other frauds that were difficult to investigate and time-consuming to prosecute. He also told that management favored "quick

hits" and "Wall Street" cases.

This makes perfect sense when you think about the political incentives. Why do the painstaking work of tracking down actual criminals when you can score favorable headlines with a drive-by lawsuit against a large public company that will have a strong incentive to settle quickly?

In other words, the SEC is a dreadful failure in fulfilling its core mission of protecting individual investors, as the Stanford and Madoff cases show. But the SEC is very good at nailing politically correct targets like Goldman years after the fact on charges that have little or nothing to do with the investing public. On the Goldman case, by the way, the news broke yesterday that the SEC commissioners split 3-2 on whether to bring the lawsuit—a rare partisan split on such a prominent case and further evidence of its thin legal basis.

In the cases of Stanford and Madoff, thousands of small investors lost their life savings. In the case of Goldman, some masters of the financial universe lost money on what they knew was a calculated gamble. Which did more societal harm?

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RE:

4/16/2010 4:16:52 PM

From: (b)(7)(C)

To: (b)(7)(C)

Call me for a brief second. (b)(7)(C)

From: (b)(7)(C)

Sent: Friday, April 16, 2010 4:13 PM

To: (b)(7)(C)

Subject: Re:

So, had I made the bet, you would have won, correct?

On Fri, Apr 16, 2010 at 4:09 PM, (b)(7)(C)

wrote:

Here you go ...

<http://www.sec.gov/news/studies/2010/oig-526.pdf>

This has not made it to the NY Times. That story about Goldman seems to have drawn all of the attention today. What a coincidence that those two stories came out today. ;-)

From: (b)(7)(C)

Sent: Friday, April 16, 2010 11:25 AM

To: (b)(7)(C)

Subject: Re:

I see. I down.

On Fri, Apr 16, 2010 at 11:05 AM, (b)(7)(C)

wrote:

Check out the lead story on the NY Times ... that is part of what I have been working on ...

<http://www.nytimes.com/>

<http://www.nytimes.com/2010/04/17/business/17goldman.html?hp>

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Bloomberg

Madoff Scam Reached Family of SEC Official Whose Unit Got Tip

By David Scheer and Joshua Gallu - Sep 07, 2009

Sept. 7 (Bloomberg) -- Family members of a U.S. Securities and Exchange Commission enforcement official, whose unit got a tip in 2005 that Bernard Madoff may be running a Ponzi scheme, entrusted \$2 million to the scam, the agency's watchdog said.

The anonymous e-mailed tip to the Office of Internet Enforcement was among at least six "substantive complaints" the SEC didn't fully investigate during 16 years, Inspector General H. David Kotz said Sept. 4 in a report released before he testifies before the Senate. Investments by two of the official's relatives were disclosed as a footnote in the 457-page report, which doesn't identify him or specify losses. He wasn't part of any Madoff probe, Kotz noted.

Kotz's eight-month inquiry offers the most exhaustive look yet at how the agency missed chances since 1992 to detect a \$65 billion fraud that burned thousands of investors. The inspector faulted the agency for inadequately pursuing tips, assigning inexperienced staff to conduct reviews and failing to seek trading records that would have revealed the scam.

"It is a failure that we continue to regret, and one that has led us to reform in many ways how we regulate markets and protect investors," SEC Chairman Mary Schapiro said in a statement. "In the coming weeks we will continue to closely review the full report and learn every lesson we can."

Though the report describes dozens of contacts between Madoff and senior SEC officials, including former chairmen, it doesn't find that managers improperly influenced or interfered with inquiries. Nor did Kotz find that an SEC employee's romantic relationship with Madoff's niece had any affect on the agency's examinations.

Instead, Kotz said the SEC failed to scrutinize Madoff during a 1992 probe of a firm that funneled him money. Years later, employees failed to scrutinize his consistently strong profits, didn't press harder when they caught him in lies and abruptly ended an examination to focus on mutual-fund abuses.

Exhibits Withheld

The SEC didn't release more than 500 exhibits referenced in the report, including testimony from Madoff in June. The agency released the report after 5 p.m. on Sept. 4, the Friday before a three-day U.S. holiday weekend. A 22-page executive summary was issued Sept. 2.

Kotz will testify on his findings before the Senate Banking Committee on Sept. 10. Other witnesses include SEC Enforcement Director Robert Khuzami and Harry Markopolos, a former money manager who repeatedly gave the

agency details on Madoff's scheme, according to the panel's Web site.

The anonymous tip to the Internet unit, received in October 2005, claimed to be from a former client at Madoff's New York-based investment advisory business.

Very Secretive

"I know that Madoff company is very secretive about their operations and they refuse to disclose anything," it said. "If my suspicions are true, then they are running a highly sophisticated scheme on a massive scale. And they have been doing it for a long time."

The informant also added, "After a short period of time, I decided to withdraw all my money (over \$5 million)."

The Internet enforcement official told Kotz he first became aware of the warning the day Madoff was arrested in December, after asking his staff to search the office's archives for complaints relating to the scam, according to the report. The official said the tip should have been flagged for further investigation in 2005. An attorney working in the office testified she couldn't remember whether she referred it. It apparently wasn't passed along, Kotz concluded.

Kotz and SEC spokesman John Nester declined to comment beyond the report. John Reed Stark, who has led the SEC's Internet program since 1995, couldn't be reached after normal business hours on Sept. 4.

Renaissance Signals

Kotz also found that examiners failed to follow up on signs of fraud found during a routine examination of Renaissance Technologies LLC. An SEC compliance examiner informed his supervisor about internal e-mails at Renaissance, which indirectly invested in Madoff's fund through a swap agreement with another firm, saying Madoff's business may be a fraud, Kotz wrote. While the agency examined Madoff's firm, it didn't return to Renaissance to examine its information.

Renaissance e-mails said Madoff's secrecy, auditor and fee structure were significant red flags, according to the report. Nathaniel Simons, portfolio manager for a Renaissance fund, said he didn't understand how Madoff made money or why he used a fee structure that gave such a large percentage of profits to feeder funds.

"We don't know why he does what he does, we have no idea if there are conflicts in his business that could come to some regulator's attention," Simons said in an e-mail dated Nov. 13, 2003, according to the report. "Throw in that his father-in-law is his auditor and his son is also high up in the organization and you have the risk of some nasty allegations."

Madoff Sentence

Madoff, 71, is serving a 150-year prison sentence after pleading guilty to a fraud that federal investigators said dated to at least the 1980s. The scam funneled funds from new clients to pay returns that were purportedly generated by a

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THE WALL STREET JOURNAL.

WSJ.com

OCTOBER 31, 2009

Madoff: SEC Agent Was a 'Blowhard'

E. SARAH N. LYNCH

WASHINGTON -- Bernard Madoff was dismissive of a compliance examiner involved in a Securities and Exchange Commission inspection into his firm, calling the man a "blowhard" who "talked tough, but didn't look at anything."

The disclosure came in details of Mr. Madoff's janhouse interview with SEC Inspector General H. David Kotz. The SEC released more than 500 exhibits late Friday that buttress a previously released 477-page report on why the SEC failed to uncover the Madoff scandal earlier.

The report found that the SEC received six substantive tips over 16 years but still failed to detect the fraud because of inexperienced staff, delays and a lack of communication.

One of those failures occurred during a 2006 examination when senior compliance examiner William Ostrow and another examiner visited the Madoff office over a period of two months.

The examiners spent "90% of their time looking through emails," Mr. Madoff said, and never once asked him for records of the trades through the Leucosy Trust Corp. The idea of a Ponzi scheme didn't seem to cross their minds, Mr. Madoff said.

"It's very easy if you want. You must do a third-party check. It's an absolute must," Mr. Madoff said of how one investigates a Ponzi scheme. "It's

accounting 101."

Mr. Ostrow in particular got on Mr. Madoff's nerves, he told Mr. Kotz. It got so tense that at one point, he said he "almost came to blows with him."

"Madoff indicated that Ostrow was an 'obnoxious guy' and noted that Mr. Ostrow wore an SEC jacket with the word 'enforcement' emblazoned across the back," the account of the interview says. "Madoff ... stated that this jacket 'caused an uproar' " in the office.

Mr. Ostrow declined to comment on Friday about Mr. Madoff's remarks.

Mr. Madoff said he thought he might get caught during another enforcement investigation when officials asked for his DTC number. He credited them with "asking all the right questions" and was later shocked to learn the investigation would be closed.

He said he was always worried during SEC exams or investigations that he might get caught and wished he had been caught "six years ago, eight years ago."

"I got myself in a terrible situation," Mr. Madoff told Mr. Kotz. "It's a nightmare."

Other exhibits released on Friday include emails



The advertisement features the Dish Network logo on the left, followed by the NFL RedZone logo in the center. To the right of the RedZone logo, it says "7.99 /MONTH". At the bottom right, it says "ONLY AVAILABLE WITH QUALIFYING PROGRAMING PACKAGES."

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Between staffers probing Mr. Madoff and records of the tips the SEC received over the years.

Cox's letter, sent to then-SEC Chairman Christopher Cox in December 2006, asked him to look into the "scandal of major proportion which was executed by the investment firm Bernard L. Madoff."

"This is an extreme example of uncontrollable greed which should be investigated," the person wrote, signing the letter "a concerned citizen."

Email traffic between SEC staffers, meanwhile, shows they were asking some good questions about Mr. Madoff's claims that he was making profits from a proprietary options-trading strategy. (Read the email.)

"I'm still puzzled that Bernie is able to always find counterparties willing to trade options in the size that he needs to for the strategy without freaking out the market," one SEC examiner wrote in an email. "Maybe the counterparties are able to hedge themselves somehow, but I don't see how."

Madoff is serving 150 years in federal prison after pleading guilty to 11 felony counts in March.

Write to Sarah N. Lynch at sarah.

sch@dowjones.com Printed in The Wall Street Journal, page B4

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NATIONAL BRIEFING

BANKING

Regulators Clear Wachovia Deal

Federal antitrust regulators cleared Wells Fargo's \$11.7 billion acquisition of Wachovia, capping a weeklong battle for the Charlotte, N.C.-based bank.

The rapid approval comes after Citigroup walked away late Thursday from its own efforts to buy Wachovia. Citigroup broke off talks with Wells Fargo and federal regulators after the suitors failed to reach an agreement over how to split up the bank.

San Francisco-based Wells Fargo plans to complete the deal by the end of the fourth quarter. The acquisition still needs the approval of Wachovia shareholders.

REGULATORS

SEC Faulted Over Bear Probe

An official at the Securities and Exchange Commission failed to properly enforce securities laws in the agency's investigation of investment bank Bear Stearns' valuation of complex securities, the agency's watchdog said in a report made public yesterday.

The SEC inspector general, H. David Kotz, found that the SEC's Miami office should have brought a case against Bear Stearns and another company rather than closing the inquiry in the summer of 2007 without enforcement action.

Members of the SEC staff "expressed surprise that the case had been closed, and no plausible reasons for its closing were provided" by managers in the Miami office, the report says.

The SEC's enforcement staff disputed the report's findings.

The critical report follows another issued by Kotz late last month that found the SEC's oversight of Bear Stearns and other big Wall Street banks was lacking. Bear Stearns nearly collapsed in March and was purchased by rival J.P. Morgan Chase with a \$29 billion federal backstop.

EXECUTIVES

Ford Replaces CFO

Ford said Chief Financial Officer Don LeClair will retire, ending his 32-year career at one of the most tumultuous and uncertain times in the automaker's history. LeClair joined Ford in 1976 and became chief financial officer in 2003. His departure is effective Nov. 1.

The automaker named Lewis Booth as LeClair's replacement. Booth previously served as executive vice president for Ford of Europe, Volvo and Ford Export Operations and Global Growth Initiatives. He also served as chairman of Ford of Europe and remains chairman of Volvo.



BY GERALD MARTINEAU — THE WASHINGTON

Amtrak ridership rose 11 percent, to 28.7 million passengers, in the fiscal year ended Sept. 30.

TRANSPORTATION

Amtrak Ridership Sets Record

Amtrak said annual ridership rose to a record for the sixth year in a row as higher gasoline prices led more travelers to use trains.

Ridership increased by about 2.9 million passengers, or 11 percent, to 28.7 million in the first year ending Sept. 30, according to the railroad. Ticket revenue rose 14.2 percent, to \$1.7 billion.

The U.S. Senate passed a bill Oct. 1 that would more than double funding for Amtrak, to \$1.1 billion over five years.

RETAIL

Macy's Lowers Profit Forecast

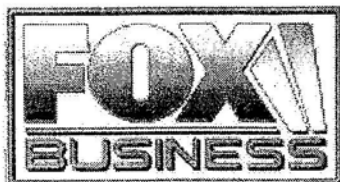
Macy's, the second-biggest U.S. department store chain, said profit this year would fall more than it anticipated as the U.S. economy and consumer confidence weaken. The shares fell as much as 19 percent.

Macy's is the latest retailer to project earnings declines as the global credit crisis deepens, retirement accounts plunge and shoppers spend less. Department stores have been hit especially hard because people aren't spending much on anything other than the basics. J.C. Penney, Kohl's and Nordstrom lowered their forecasts for the third quarter earlier this week.

Macy's said earnings per share may fall to \$1.30 to \$1.50 for the year ending Jan. 31, rather than its Aug. 13 projection of \$1.70 to \$1.85. Sixteen analysts surveyed by Bloomberg estimated profit of \$1.74. Last year, the company earned \$2.15.

Compiled from reports by Washington Post staff writers, the Associated Press and Bloomberg News.

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Print Close

SEC Inspector General Slams Agency, Again

By Peter Barnes

Published May 03, 2010 | FOXBusiness

The inspector general of the Securities and Exchange Commission has issued yet another scathing report about the agency, this time for responding improperly and too slowly to allegations of fraud at a communications company that filed for bankruptcy last year.

SEC inspector general David Kotz found "multiple instances of mishandling and mismanagement" in more than 20 complaints submitted to the agency from 2005 to 2007 by an Iowa stockbroker, Kevin McLaughlin, about Metromedia International Group Inc., which filed for bankruptcy in June after a costly ruling in an ongoing investor lawsuit.

Kotz's report, titled "Failure to Timely Investigate Allegations of Financial Fraud," said at least 16 of McLaughlin's complaints were provided to current and former staff members in the SEC's division of enforcement.

In similar, previous reports, Kotz criticized the division for failing to catch Ponzi-schemer Bernie Madoff and alleged investment scammer Robert Allen Stanford. The division last month filed a civil lawsuit against Goldman Sachs (GS), charging it with investor fraud.

Madoff pleaded guilty and is now serving time in jail; Stanford and Goldman have denied the SEC's charges.

The McLaughlin report, which Kotz completed in February, has not received wide notice; the SEC released it last month on the same day it issued his report on the agency's botched efforts to detect Stanford.

The McLaughlin report found that SEC employees made mistakes with his complaints, including passing them around to each other without concrete action or decisions; not sending them to appropriate colleagues; failing to review the charges properly, or dismissing them as outdated.

"It looked real complicated, like it would require some work," one unnamed SEC staff member

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assigned in 2005 to review two of the complaints told Kotz. The staff person also told him the case "needed more information."

But in 2006, about a year after he was given the assignment, a colleague asked the staff person about his progress and he responded, "I don't think there is anything you can do. I just haven't been focusing on (the Metromedia International complaints) for a while," the inspector general's report said.

"It's been a long while, but I could have sworn the Metromedia matter was closed," another SEC staff person wrote in an 2006 email to a colleague, saying "no action" was required on McLaughlin's filings. "Ah, the joys of the bureaucracy!"

When officials finally began an "appropriate examination" of McLaughlin's charges at the end of 2007, the report said, they determined it was too late to do anything about them. The agency closed the case in October last year.

"It seems like everybody and their mother heard my complaints and nobody did a thing," McLaughlin said in an interview Sunday. "I laid this thing out for them over years."

He said he lost about \$300,000 investing in Metromedia International and spent hundreds of thousands of dollars more on legal fees and other expenses. He also recommended the stock to relatives and clients.

An SEC spokesperson declined to comment on the report. But as part of its post-Madoff reforms, the agency has said it is revamping its complaint-handling process and has created a new Office of Market Intelligence to better manage tips, complaints and referrals. Officials also told Kotz they are working to improve the agency's system for closing cases.

"We have taken significant steps to make the SEC more vigilant, sharp and responsive," SEC Chairman Mary Schapiro said at a Senate subcommittee hearing last week.

An attorney for Mark Hauf, the former CEO of Metromedia International, did not immediately respond to requests for comment. But in an interview last month with McClatchy Newspapers, Hauf called McLaughlin's charges "completely unfounded."

You can read the inspector general's report here. McLaughlin also took his case to the Iowa General Assembly; you can see some of his research on it here.

Metromedia International was formed in 1995 by billionaire investor John Kluge, who created it out of a group of cable, media and telecommunications companies that operated mainly in Eastern Europe, Russia and Asia.

Kluge took the company public in 1997; its stock peaked at more than \$15 a share in 1998. In fall 2007, amid accounting controversies and disputes with some large shareholders, an investment group bought the firm for \$1.80 a share. It filed for bankruptcy last year after a Delaware corporate law tribunal ruled it owed preferred stockholders more money from the 2007 sale.

News Corp. (NWSA), parent company of FOX Business, was a 10% stakeholder in Metromedia International as a result of a 1999 merger of a company in which News Corp. was a major shareholder with Metromedia International.

McLaughlin said he began investing in Metromedia International in the 1990s after he read positive news reports about the company's prospects and thought it could be a profitable play on emerging markets. But he said he eventually grew suspicious of the company's finances and certain transactions.

After receiving one of his complaints in 2006, the SEC sent him a letter stating, "We are taking your complaint very seriously and have referred it to the appropriate people within the SEC."

But in Kotz's investigation, an SEC staff member told him that the document was a form letter mailed "in response to complaints that are referred to (the) Enforcement (division) whether or not Enforcement actually investigates."

"If we don't refer it, we say — you know, we give (complaint filers) the investigation policy language about how investigations are confidential and we have done everything we can for you," the staff member added. "I really can't speak for the Division of Enforcement as to whether they're taking something seriously or not."

In 2007, the SEC warned Metromedia International that it could be delisted for failing to file certain 2005 and 2006 financial reports on time.

McLaughlin said he is taking a wait-and-see position on the agency's plans for changes.

"They will have to prove themselves, in new actions where credible whistleblowers are concerned, in order to suit me," he said.

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FW: Stanford release now set for 2:30 PM

4/16/2010 1:30:25 PM

From: McKown, Joan**To:** Korotash, Stephen J.

(b)(7)(C)

Romero, Rose L.

(b)(7)(C)

Change!

Sent from my BlackBerry Wireless Handheld

From: Marlin, Myron L.**To:** Nester, John J.; Gillan, Kayla J.;

(b)(7)(C)

McKown, Joan; Cohen, Stephen L.

Cc: Nisanci, Didem A.; Spitler, Eric J.; Davis, Julie Z.**Sent:** Fri Apr 16 12:34:44 2010**Subject:** RE: Stanford release now set for 2:30 PM

OK. We're going to revert back to a 1:30 release of the Stanford report.

Thanks.

From: Nester, John J.**Sent:** Friday, April 16, 2010 12:14 PM**To:** Gillan, Kayla J.; Marlin, Myron L.;

(b)(7)(C)

McKown, Joan; Cohen, Stephen L.

Cc: Nisanci, Didem A.; Spitler, Eric J.; Davis, Julie Z.**Subject:** RE: Stanford release now set for 2:30 PM

my view is that we have a responsibility to effectively communicate the commission's actions. We have every hand on deck finishing the media calls on the goldman case (with the TV networks working to arrange interviews with Khuzami in New Orleans), and don't immediately have sufficient resources to ensure an effective release of the IG report.

From: Gillan, Kayla J.**Sent:** Friday, April 16, 2010 12:07 PM**To:** Marlin, Myron L.;

(b)(7)(C)

McKown, Joan; Cohen, Stephen L.; Nester, John J.

Cc: Nisanci, Didem A.; Spitler, Eric J.; Davis, Julie Z.**Subject:** Re: Stanford release now set for 2:30 PM

Really? Are you comfortable w/how that's going to be portrayed (i.e., they had it ready but help it so it wouldn't make so much news)? Kotz knows that the redacted version is prepared and ready to go out...

From: Marlin, Myron L.**To:** Marlin, Myron L.;

(b)(7)(C)

Gillan, Kayla J.; McKown, Joan; Khuzami, Robert;

(b)(7)(C)

Cohen, Stephen L.; Nester, John J.; di Florio, Carlo V.

Cc: Nisanci, Didem A.; Spitler, Eric J.; Davis, Julie Z.**Sent:** Fri Apr 16 12:00:52 2010**Subject:** Stanford release now set for 2:30 PM**NOTE:** We are shifting the release of the Stanford report to 2:30 PM – instead of 1:30 PM.**Draft Fact Sheet**

- This is the current version of the fact sheet that has been reviewed by (b)(7)(C) Cohen, Joan, Kayla and others. The redlines reflect the changes I received this morning. **PLEASE LET ME KNOW IF YOU HAVE ANY CONCERNS.**

Statement by Chairman Mary Schapiro:

- The following statement has been approved by Mary and will be provided to reporters at the time we release the report.

"Today's report recounts events that occurred at the Commission between 1997 and 2005. Since that time, much has changed and continues to change regarding the agency's leadership, its internal procedures and its culture of collaboration. The report makes seven recommendations, most of which have been implemented since 2005. We will carefully analyze the report and implement any additional reforms as necessary for effective investor protection."

The Joint e-mail from Rob & Carlo will now go out at 2:15:

- Rob, Carlo and Lorin have approved.

Dear Colleagues:

Very shortly, the SEC will be releasing a report by the Office of the Inspector General regarding an investigation of the Stanford Group. It will be available on our website.

The report focuses on the period from 1997 to 2005, and concludes that the Enforcement Division did not properly investigate referrals from OCIE and other sources expressing concern about Stanford during that time.

While we are confident that much has changed since then, we will examine the report closely and determine whether the Inspector General's analysis and conclusions warrant further changes in our current program. Various initiatives, both past and current, have been undertaken to ensure that the SEC has the optimal organizational structure, procedures and communications to fully utilize, and benefit from, the talent and dedication of the Enforcement and OCIE staff.

Although the report may generate attention, we should all continue to stay focused on our job at hand: protecting investors. Working together there is much we can achieve.

Rob & Carlo

Friday Timeline

@ 2:15 PM – **Stanford:** Rob & Carlo send emails to staff notifying them about the release of the report. [Note: They have signed off on their joint email.]

@ 2:30 PM – **Stanford:** Report is sent to the Hill along with the statement and fact sheet. [Julie]

@ 2:30 PM – **Stanford:** Nester/IT posts the fact sheet online.

@ 2:32 PM – **Stanford:** Report is sent to reporters along with the statement and the fact sheet. [OPA]

@ 2:31 PM – **Stanford:** Report is sent to FOIA requesters. [Barry Walters]

@ 2:30 PM – **Metromedia:** Report is posted on the website.

Unknown – **Stockman:** The SEC issues a lit release perhaps on Friday.

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RE: Exec Summary of Stanford OIG report

4/2/2010 6:14:00 AM

From: Schapiro, Mary L.**To:** Gillan, Kayla J. (b)(7)(C)**Cc:** Nisanci, Didem A. (b)(7)(C)

Our response needs to include a formal process for examiner escalation of concerns if they are rebuffed by their supervisors or enforcement. Carlo may have some ideas on this. It needs to be real so we can point to it as a lesson learned.

From: Gillan, Kayla J.**To:** Schapiro, Mary L.**Cc:** Nisanci, Didem A.**Sent:** Thu Apr 01 17:25:56 2010**Subject:** RE: Exec Summary of Stanford OIG report

I don't think there is. ENF seems to have so much autonomy it's scary.

Kayla J. Gillan

Deputy Chief of Staff

Office of the Chairman

U.S. Securities and Exchange Commission

(b)(7)(C)

From: Schapiro, Mary L.**Sent:** Thursday, April 01, 2010 5:19 PM**To:** Gillan, Kayla J.**Cc:** Nisanci, Didem A.**Subject:** Re: Exec Summary of Stanford OIG report

I am mystified by enforcement ignoring ocie. Isn't there a mechanism for escalation?

From: Gillan, Kayla J.**To:** Schapiro, Mary L.**Cc:** Nisanci, Didem A.**Sent:** Thu Apr 01 17:14:00 2010**Subject:** RE: Exec Summary of Stanford OIG report

Yep, the report specifically calls out for consideration of possible discipline (without identifying specifically who should be considered). We spoke to Cahn earlier this week and he agreed (but needed to confirm w/Becker) that we should use the same process that we used for the Madoff report. We'll also be using the same "light touch" redaction principles that we used with Madoff – i.e., no "deliberative process" redactions, keep in the names of everyone at the SK-17 level and above; we will, however, need to respect redactions that are necessary for ongoing ENF or Justice cases.

Kayla J. Gillan

Deputy Chief of Staff

Office of the Chairman

U.S. Securities and Exchange Commission

(b)(7)(C)

From: Schapiro, Mary L.
Sent: Thursday, April 01, 2010 5:10 PM
To: Gillan, Kayla J.
Cc: Nisanci, Didem A.
Subject: Re: Exec Summary of Stanford OIG report

We need to know who is on the staff still and whether disciplinary action shd be considered.

From: Gillan, Kayla J.
To: Schapiro, Mary L.
Cc: Nisanci, Didem A.
Sent: Thu Apr 01 17:05:58 2010
Subject: Exec Summary of Stanford OIG report

We received the Stanford report a couple of hours ago. The troops are working on redactions, and we'll work up message points after we've all had a chance to digest. But here's a brief summary, if you want to read on BB:

The OIG investigation found that the SEC's Fort Worth office was aware since 1997 that Robert Allen Stanford was likely operating a Ponzi scheme, having come to that conclusion a mere two years after Stanford Group Company ("SGC"), Stanford's investment adviser, registered with the SEC in 1995. We found that over the next 8 years, the SEC's Fort Worth Examination group conducted four examinations of Stanford's operations, finding in each examination that the CDs could not have been "legitimate," and that it was "highly unlikely" that the returns Stanford claimed to generate could have been achieved with the purported conservative investment approach. Fort Worth examiners dutifully conducted examinations of Stanford in 1997, 1998, 2002 and 2004, concluding in each case that Stanford's CDs were likely a Ponzi scheme or a similar fraudulent scheme. The only significant difference in the Examination group's findings over the years was that the potential fraud grew exponentially, from \$250 million to \$1.5 billion.

While the Fort Worth Examination group made multiple efforts after each examination to convince the Fort Worth Enforcement program ("Enforcement") to open and conduct an investigation of Stanford, no meaningful effort was made by Enforcement to investigate the potential fraud or to bring an action to attempt to stop it until late 2005. In 1998, Enforcement opened a brief inquiry, but then closed it after only 3 months, when Stanford failed to produce documents evidencing the fraud in response to a voluntary document request from the SEC. In 2002, no investigation was opened even after the examiners specifically identified multiple violations of securities laws by Stanford in an examination report. In 2003, after receiving three separate complaint letters about Stanford's operations, Enforcement decided not to open an investigation or even an inquiry, and did not follow up to obtain more information about the complaints.

In late 2005, after a change in leadership in Enforcement and in response to the continuing pleas by the Fort Worth Examination group, who had been watching the potential fraud grow in examination after examination, Enforcement finally agreed to seek a formal order from the Commission to investigate Stanford. However, even at that time, Enforcement missed an opportunity to bring an action against SGC for its admitted failure to conduct any due diligence regarding Stanford's investment portfolio, which could have potentially completely stopped the sales of the Stanford International Bank ("SIB")

CDs though the SGC investment adviser, and provided investors and prospective investors notice that the SEC considered SGC's sales of the CDs to be fraudulent. The OIG investigation found that this particular action was not considered, partially because the new head of Enforcement in Fort Worth was not apprised of the findings in the investment advisers' examinations in 1998 and 2002, or even that SGC had registered as an investment adviser, a fact she learned for the first time in the course of this OIG investigation in January 2010.

The OIG did not find that the reluctance on the part of the SEC's Fort Worth Enforcement group to investigate Stanford was related to any improper professional, social or financial relationship on the part of any former or current SEC employee. We found evidence, however, that SEC-wide institutional influence within Enforcement did factor into its repeated decisions not to undertake a full and thorough investigation of Stanford, notwithstanding staff awareness that the potential fraud was growing. We found that senior Fort Worth officials perceived that they were being judged on the numbers of cases they brought, so-called "stats," and communicated to the Enforcement staff that novel or complex cases were disfavored. As a result, cases like Stanford, which were not considered "quick-hit" or "slam-dunk" cases, were not encouraged.

The OIG investigation also found that the former head of Enforcement in Fort Worth, who played a significant role in multiple decisions over the years to quash investigations of Stanford, sought to represent Stanford on three separate occasions after he left the Commission, and in fact represented Stanford briefly in 2006 before he was informed by the SEC Ethics Office that it was improper to do so.

Otherwise, 159 pages of disappointments...

Kayla J. Gillan

Deputy Chief of Staff

Office of the Chairman

U.S. Securities and Exchange Commission



130

Re: IG Report to SEC Chairman Mary Schapiro on Stanford Group Co. 3/26/2010 9:52:14 AM

From: (b)(7)(C)

To: Becker, David M. (b)(7)(C)

Humes, Richard M. (b)(7)(C)

Cahn, Mark D. (b)(7)(C)

We are meeting Monday afternoon to get a team set up. Thanks.

(b)(7)(C)

Securities and Exchange Commission

(b)(7)(C)

Sent from BlackBerry Wireless

From: Becker, David M.

To: (b)(7)(C)

Humes, Richard M.; Cahn, Mark D.

Sent: Fri Mar 26 09:50:48 2010

Subject: FW: IG Report to SEC Chairman Mary Schapiro on Stanford Group Co.

From: Schapiro, Mary L.

Sent: Friday, March 26, 2010 9:18 AM

To: Gillan, Kayla J.; Cohen, Stephen L.; Becker, David M.

Subject: Re: IG Report to SEC Chairman Mary Schapiro on Stanford Group Co.

Thanks.

From: Gillan, Kayla J.

To: Schapiro, Mary L.; Cohen, Stephen L.; Becker, David M.

Sent: Fri Mar 26 08:53:24 2010

Subject: RE: IG Report to SEC Chairman Mary Schapiro on Stanford Group Co.

These Stanford victims are asking for release of the IG's report. The first IG's report re Stanford has been publicly released. The second one hasn't yet been received by us. I expect it within the next few days, and I recommend that we treat it as we did the Madoff reports – promptly work to redact as necessary and publicly release. (It will be quite critical of ENF.) As we did w/Madoff, we'll need a team rapidly deployed to handle the redactions and Commission approval of release.

Kayla J. Gillan

Deputy Chief of Staff

Office of the Chairman

U.S. Securities and Exchange Commission

(b)(7)(C)

From: Schapiro, Mary L.

Sent: Friday, March 26, 2010 8:47 AM

To: Cohen, Stephen L.; Becker, David M.; Gillan, Kayla J.

Subject: Fw: IG Report to SEC Chairman Mary Schapiro on Stanford Group Co.

From: (b)(7)(C)

To: Schapiro, Mary L.

Sent: Fri Mar 26 08:33:44 2010

Subject: IG Report to SEC Chairman Mary Schapiro on Stanford Group Co.

SEC Chairman Mary Schapiro

Please help us by reading the attached letter.

Respectfully,

(b)(7)(C)

Stanford Fraud Victims

Hotmail is redefining busy with tools for the New Busy. Get more from your inbox. [Sign up now.](#)

The New Busy is not the old busy. Search, chat and e-mail from your inbox. [Get started.](#)

131

RE: Status of Stanford OIG Report Review/Redactions

4/7/2010 9:50:11 AM

From: Gillan, Kayla J.**To:** (b)(7)(C) Humes, Richard M.; (b)(7)(C) Cahn, Mark D.; (b)(7)(C) Walters,

Barry (b)(7)(C)

Cc: Spitler, Eric J. (b)(7)(C)

The closer that we get to April 20 (the date of Mary's testimony on Lehman), the more difficult that hearing will be for her.

Kayla J. Gillan

Deputy Chief of Staff

Office of the Chairman

U.S. Securities and Exchange Commission

(b)(7)(C)

From: (b)(7)(C)**Sent:** Wednesday, April 07, 2010 9:49 AM**To:** Gillan, Kayla J.; Humes, Richard M.; Cahn, Mark D.; Walters, Barry**Cc:** Spitler, Eric J.**Subject:** RE: Status of Stanford OIG Report Review/Redactions

It will be tight, but I believe that we can accommodate this goal or come very close (i.e., Thursday, April 15th or Friday, April 16th).

From: Gillan, Kayla J.**Sent:** Wednesday, April 07, 2010 9:48 AM**To:** (b)(7)(C) Humes, Richard M.; Cahn, Mark D.; Walters, Barry**Cc:** Spitler, Eric J.**Subject:** RE: Status of Stanford OIG Report Review/Redactions

Just to be more clear about Mary's goal, it would be most ideal if we could release this report no later than next Wed, April 14 (sooner would even be better).

Kayla J. Gillan

Deputy Chief of Staff

Office of the Chairman

U.S. Securities and Exchange Commission

(b)(7)(C)

From: Gillan, Kayla J.

Sent: Wednesday, April 07, 2010 9:42 AM

To: (b)(7)(C) Humes, Richard M.; Cahn, Mark D.; Walters, Barry

Cc: Spitler, Eric J.

Subject: Status of Stanford OIG Report Review/Redactions

Donning my "nag hat" (which, unfortunately, fits quite comfortably), I need to ask how this review is progressing... Do we know when Justice and ENF will complete their review? Mary is quite anxious to get this report released as soon as possible, so I need to give her an ETA. Thanks!

Kayla J. Gillan

Deputy Chief of Staff

Office of the Chairman

U.S. Securities and Exchange Commission

(b)(7)(C)

A rectangular box representing a redacted area, containing the text (b)(7)(C) in the top left corner.

132

FW: OIG Report 526 (Stanford Matter)

4/9/2010 2:30:32 PM

From: (b)(7)(C)
To: Kotz, David (b)(7)(C) Frangipane, Noelle L. (b)(7)(C)
Cc: Gillan, Kayla J. (b)(7)(C)

David/Noelle: FYI below.

From: (b)(7)(C)
Sent: Friday, April 09, 2010 2:30 PM
To: #COMMISSION COUNSELS
Cc: (b)(7)(C)
Subject: OIG Report 526 (Stanford Matter)

On Monday afternoon, the OGC will circulate an expedited seriatim requesting by COB Wednesday (April 14th) Commission authority to release publicly the above-referenced OIG Report.

OGC is currently working with the Enforcement Division to finalize the proposed redactions (which we anticipate will be relatively modest).

To facilitate the expedited seriatim schedule, however, the OGC will provide two copies of the unredacted report to each Commissioners Office later this afternoon.

Finally, we apologize for the expedited schedule, but we hope that our providing the Report now will permit you to begin a preliminary review over the weekend should you wish.

Best,

(b)(7)(C)

133

(b)(7)(C)

From: (b)(7)(C)
Sent: Monday, April 12, 2010 6:54 PM
To: #COMMISSION COUNSELS
Subject: Stanford Report

Although it had been our hope to provide your offices with the proposed redactions to the Stanford report late this afternoon, the OGC and Enforcement are still considering certain redactions in light of the views of the OIG. We should be in a position to circulate the proposed redactions to you by mid-morning. We apologize for this delay.

(b)(7)(C)

Securities and Exchange Commission

(b)(7)(C)

Sent from BlackBerry Wireless

134

Fw: Seriatim for the OIG Stanford Report (action memo and attachments) 10 12:30:50 PM

From: (b)(7)(C)

To: Walters, Barry

Cc: Cahn, Mark D. (b)(7)(C)

Gillan, Kayla J.

(b)(7)(C)

Kotz, David

(b)(7)(C)

(b)(7)(C)

Attachments: Red Box - version 9 - 526 STANFORD FINAL REPORT (3-31-2010)(NF).pdf, Stanford.Trans.Ltr.doc, Stanford.ActionMemo.v3.pdf

<<...>> I apologize. My earlier email did not include the action memo and the transmittal letter. I am attaching those now.

-----Original Message-----

From: (b)(7)(C)

Sent: Wednesday, April 14, 2010 12:28 PM

To: Walters, Barry

Cc: Cahn, Mark D.; Gillan, Kayla J.; Kotz, David;

(b)(7)(C)

Subject: Seriatim for the OIG Stanford Report (action memo and attachments)

Attached are the following items that were just delivered to the Commissioners:

1. The OGC action memo with a rider from the OIG.
2. The final redactions to the Stanford report (attachment A to the memo).
3. The draft transmittal letter to members of Congress (attachment B to the memo).

Please be mindful that the attachments to this email are sensitive and should be kept extremely confidential.

Thanks.

(b)(7)(C)

135

Re: Stanford Seriatim and Rider B (from Commissioner Paredes' Office) 5/2010 6:36:22 PM

From: (b)(7)(C)
To: Cohen, Stephen L. (b)(7)(C)
Cc: (b)(7)(C)

Steve: Would you mind handing it off to (b)(7)(C) Tomorrow morning will be crazy on our end to finish up the redactions.

(b)(7)(C) Would you (or (b)(7)(C) mind picking up the signed seriatim from Steve tomorrow morning?

(b)(7)(C)

Securities and Exchange Commission

(b)(7)(C)

Sent from BlackBerry Wireless

From: Cohen, Stephen L.
To: (b)(7)(C) Gillan, Kayla J.
Cc: Cahn, Mark D.; Humes, Richard M.
Sent: Thu Apr 15 18:29:35 2010
Subject: Re: Stanford Seriatim and Rider B (from Commissioner Paredes' Office)

(b)(7)(C) swing by at 9, and I'll hand it off (presumably) signed. If you miss me, I'll put it on my chair.

From: (b)(7)(C)
To: Gillan, Kayla J.; Cohen, Stephen L.
Cc: Cahn, Mark D.; Humes, Richard M.
Sent: Thu Apr 15 18:25:03 2010
Subject: Stanford Seriatim and Rider B (from Commissioner Paredes' Office)

Kayla/Steve:

The OIG Stanford seriatim along with Rider B (from Commissioner Paredes' Office) has now been approved by the 4 Commissioners. I just placed the seriatim on Steve Cohen's chair. All that is needed at this point is the Chairman's approval. Finally, I am attaching Rider B below should you wish to forward it to David Kotz to advise him.

(b)(7)(C)

Securities and Exchange Commission

(b)(7)(C)

Sent from BlackBerry Wireless

From: (b)(7)(C)
To: (b)(7)(C)
Cc: (b)(7)(C)
Sent: Thu Apr 15 18:00:59 2010
Subject: Stanford Seriatim Rider B

<<Stanford Seriatim Rider B.doc>>

Rider B

The Office of General Counsel is directed to make the following additional recommendation:

That the names of all Stanford employees included in the Report be redacted who occupied junior positions and have not yet been publicly named in a Government or Commission action, or are not yet otherwise publicly associated with the Stanford matter. For example, two Stanford employees who have sued Stanford for wrongful termination because they would not participate in the fraud would qualify as "otherwise publicly associated with the Stanford matter."

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Re: Stanford materials and logistics...

4/16/2010 9:14:29 AM

From: Gillan, Kayla J.**To:** (b)(7)(C) Cohen, Stephen L. (b)(7)(C)

Yes, Steve already let him know.

From: (b)(7)(C)**To:** Cohen, Stephen L.; Gillan, Kayla J.**Sent:** Fri Apr 16 09:08:12 2010**Subject:** Re: Stanford materials and logistics...

Kayla / Steve: Kotz wanted OGC to notify him when the seriatim has been signed off. I am assuming, however, that you will let him know at the appropriate time.

(b)(7)(C)

Securities and Exchange Commission

(b)(7)(C)

Sent from BlackBerry Wireless

From: Cohen, Stephen L.**To:** Marlin, Myron L.; (b)(7)(C) Gillan, Kayla J.; McKown, Joan; Khuzami, Robert; (b)(7)(C)

(b)(7)(C) Nester, John J.; di Florio, Carlo V.

Cc: (b)(7)(C) Nisanci, Didem A.; Spitler, Eric J.; Davis, Julie Z.**Sent:** Fri Apr 16 09:03:26 2010**Subject:** RE: Stanford materials and logistics...

The seriatim has been signed by the Chairman and will be delivered to OS momentarily.

From: Marlin, Myron L.**Sent:** Friday, April 16, 2010 1:22 AM**To:** (b)(7)(C) Gillan, Kayla J.; McKown, Joan; Khuzami, Robert; (b)(7)(C)

(b)(7)(C) Cohen, Stephen L.; Nester, John J.; di Florio, Carlo V.

Cc: (b)(7)(C) Nisanci, Didem A.; Spitler, Eric J.; Davis, Julie Z.**Subject:** Stanford materials and logistics...

Here's an update on the Stanford materials. The logistics remain the same:

Draft Fact Sheet

- The following fact sheet has been reviewed by (b)(7)(C) Cohen, Joan, Kayla and others. The redlines reflect the changes I received last night. **PLEASE LET ME KNOW IF YOU HAVE ANY CONCERNS.**

<< File: Stanford OIG response 1200 FRI.doc >>

Statement by Chairman Mary Schapiro:

- The following statement will be provided to reporters at the time we release the report. **NOTE: PLEASE**

LET ME KNOW IF WE SHOULD SWITCH "MOST" to "ALL."

"Today's report recounts events that occurred at the Commission between 1997 and 2005. Since that time, much has changed and continues to change regarding the agency's leadership, its internal procedures and its culture of collaboration. The report makes seven recommendations, most of which have been implemented since 2005. We will carefully analyze the report and implement any additional reforms as necessary for effective investor protection."

Joint e-mail from Rob & Carlo:

- Rob, Carlo and Lorin have approved.

Dear Colleagues:

Very shortly, the SEC will be releasing a report by the Office of the Inspector General regarding an investigation of the Stanford Group. It will be available on our website.

The report focuses on the period from 1997 to 2005, and concludes that the Enforcement Division did not properly investigate referrals from OCIE and other sources expressing concern about Stanford during that time.

While we are confident that much has changed since then, we will examine the report closely and determine whether the Inspector General's analysis and conclusions warrant further changes in our current program. Various initiatives, both past and current, have been undertaken to ensure that the SEC has the optimal organizational structure, procedures and communications to fully utilize, and benefit from, the talent and dedication of the Enforcement and OCIE staff.

Although the report may generate attention, we should all continue to stay focused on our job at hand: protecting investors. Working together there is much we can achieve.

Rob & Carlo

Response regarding redactions:

- This is the comment to be used by Nester (and perhaps OLA) regarding redactions. A document with additional information is attached.

"Redactions have been kept to a minimum. We have only removed such things as the names of those non-senior officials of the SEC and other law enforcement agencies who did not play a central role in the events at issue; the names of certain *low-level* Stanford employees who have not been charged with wrongdoing; and, certain information that could prejudice the Commission's ongoing litigation against Stanford or related investigations."

<< File: Stanford Redactions Points.doc >>

Friday Timeline

- 8:45 AM – **Goldman:** The SEC pre-circulates its press release internally.
- @ 9:30 AM – **Goldman:** The SEC files its complaint.
- @ 9:45 AM – **Goldman:** The SEC distributes its press release to reporters.

@ 9:45 AM – **Goldman:** OPA issues an advisory informing them that Rob will conduct a press conference call.

10:15 AM – **Goldman/Tulane:** Internal prep-call with Rob in advance of the press conference-call and the Tulane panel.

11:00 AM – **Goldman:** Rob conducts a press conference-call with reporters. Reid and Ken to be on the line to field detailed questions only. Erik to accompany him in New Orleans.

11:30 AM – **Goldman:** Rob's press conference-call concludes.

11:45 AM – **Tulane:** Rob starts his panel discussion.

(10:45 CST)

1:15 PM – **Tulane:** Rob ends his panel discussion.

(12:15 CST)

@ 1:15 PM – **Stanford:** Rob & Carlo send emails to staff notifying them about the release of the report. [Note: They have signed off on their joint email.]

@ 1:30 PM – **Stanford:** Report is sent to the Hill along with the statement and fact sheet. [Julie]

@ 1:30 PM – **Stanford:** Nester/IT posts the fact sheet online.

@ 1:32 PM – **Stanford:** Report is sent to reporters along with the statement and the fact sheet. [OPA]

@ 1:31 PM – **Stanford:** Report is sent to FOIA requesters. [Barry Walters]

@ 2:00 PM – **Metromedia:** Report is posted on the website.

Unknown – **Stockman:** The SEC issues a lit release perhaps on Friday.

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SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

*125 Broad Street
New York, NY 10004-2498*

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FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

August 9, 2010

Via Federal Express

(b)(7)(C)

Office of Inspector General,
U.S. Securities and Exchange Commission,
100 F Street, N.E.,
Washington, D.C. 20549.

Re: Office of Inspector General (OIG-534)

Dear

(b)(7)(C)

The Office of Inspector General of the Securities and Exchange Commission has requested that Sullivan & Cromwell LLP produce certain telephone records. Pursuant to your request, attached please find a telephone log for the office telephone line of Richard H. Klapper for the period beginning the evening of April 15, 2010 through April 16, 2010. Also pursuant to your request, attached please find a Microsoft Excel spreadsheet containing the first ten telephone calls that were made to Mr. Klapper's office telephone line on April 16, 2010, including information located concerning the name of the individual or entity originating the call.

If you have any questions concerning this response, please call me at

(b)(7)(C)

* * *

Pursuant to Rule 83 of the Commission's Rules on Information and Requests, 17 C.F.R. § 200.83, I hereby request on behalf of Sullivan & Cromwell LLP that this letter and the material to which it refers not be disclosed in response to any request under the Freedom of Information Act, 5 U.S.C. § 552. If this letter or any of the material to which it refers is or becomes the subject of a Freedom of Information Act

FOIA Confidential Treatment Requested by Sullivan & Cromwell LLP

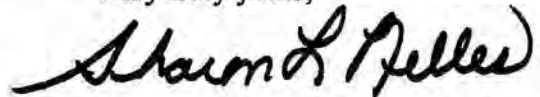
(b)(7)(C)

-2-

request, please inform me at (b)(7)(C) and Sullivan & Cromwell LLP will provide further substantiation of this request for confidential treatment.

A copy of this letter has been mailed to the Freedom of Information Act Officer of the Securities and Exchange Commission.

Very truly yours,



Sharon L. Nelles

(Attachments)

cc: Freedom of Information Act Officer

Sullivan & Cromwell LLP

Call Detail with Caller ID

Filter Name QReport_100806140409
Interval Name QReport_100806140409
Report Parameter

FOIA Confidential Treatment Requested by Sullivan & Cromwell LLP

Attachment 1

Total Calls:	44
Total Ring Time:	00:02:21
Total Calls Duration:	00:59:42
Total Cost (\$):	40.00

Source	Dest'n	Orig Location	Date/Time	Duration	Ring time	Cost (\$)	Caller ID	Access Dialed Number Code	City, State or Country
T2006003	E3555	Broad St	04/15/2010 07:14:46	00:00:14	00:14*	0.00	6177426200		Boston - MA
T2006002	E3555	Broad St	04/15/2010 07:23:30	00:00:30	00:00	0.00	6177426200		Boston - MA
E3555	T229038	Broad St	04/15/2010 07:23:30	00:00:30	00:00	0.00		82229 5583000	MM: VM Broad St.
T2006006	E3555	Broad St	04/15/2010 08:04:48	00:00:12	00:12*	0.00	6177426200		Boston - MA
T2006018	E3555	Broad St	04/15/2010 09:56:41	00:01:19	00:05	0.00	2155973100		Philadelphia - PA
E3555	T229034	Broad St	04/15/2010 09:57:09	00:00:51	00:00	0.00		002295583000	
E3445	E3555	Broad St	04/15/2010 10:59:16	00:00:44	00:00	0.00		3555	
T2006016	E3555	Broad St	04/15/2010 16:33:05	00:00:55	00:07	0.00	2126106300		Manhattan, NYC
T2006030	E3555	Broad St	04/16/2010 10:38:25	00:00:35	00:02	0.00	2024341800		Washington - DC
T2006002	E3555	Broad St	04/16/2010 10:39:52	00:01:08	00:02	0.00	2025512000		Washington - DC
T2006025	E3555	Broad St	04/16/2010 10:40:12	00:01:48	00:05	0.00	1111111111		
T2006026	E3555	Broad St	04/16/2010 10:46:20	00:00:40	00:10	0.00	2127288503		Manhattan, NYC
T2006012	E3555	Broad St	04/16/2010 10:52:13	00:00:47	00:04	0.00	9173531314		New York
T2006014	E3555	Broad St	04/16/2010 11:00:05	00:00:55	00:03	0.00	2026829031		Washington - DC
T2006034	E3555	Broad St	04/16/2010 11:01:42	00:01:18	00:03	0.00	2129028319		Manhattan, NYC
T2006013	E3555	Broad St	04/16/2010 11:22:21	00:01:39	00:08	0.00	3015852636		Ashton - MD
T2006012	E3555	Broad St	04/16/2010 11:27:13	00:02:47	00:06	0.00	2023097040		Washington - DC
T2006002	E3555	Broad St	04/16/2010 11:28:48	00:02:12	00:10	0.00	2122757800		Manhattan, NYC
E3555	T2003081	Broad St	04/16/2010 11:29:39	00:01:21	00:00	0.00		92003 12129022669	Manhattan, NYC
T2006016	E3555	Broad St	04/16/2010 11:29:52	00:00:08	00:04	0.00	2023097040		Washington - DC
T2006003	E3555	Broad St	04/16/2010 11:40:13	00:02:47	00:04	0.00	2023836000		Washington - DC
E3555	T2003073	Broad St	04/16/2010 11:41:12	00:01:48	00:00	0.00		92003 12129022669	Manhattan, NYC
T2006013	E3555	Broad St	04/16/2010 12:30:43	00:02:17	00:00	0.00	9174704953		New York
E3555	T2003075	Broad St	04/16/2010 12:31:50	00:01:10	00:00	0.00		92003 12129022669	Manhattan, NYC
T2006006	E3555	Broad St	04/16/2010 13:03:20	00:04:40	00:01	0.00	2028285180		Washington - DC
E3555	T2003074	Broad St	04/16/2010 13:04:20	00:03:40	00:00	0.00		92003 12129022669	Manhattan, NYC
E4974	E3555	Broad St	04/16/2010 13:10:25	00:00:35	00:00	0.00		3555	
T2006022	E3555	Broad St	04/16/2010 13:25:16	00:02:44	00:13	0.00	9172242825		New York
T2006002	E3555	Broad St	04/16/2010 13:40:24	00:01:36	00:07	0.00	2129562221		Manhattan, NYC
T2006004	E3555	Broad St	04/16/2010 13:57:23	00:01:37	00:00	0.00	16462203620		Manhattan, NYC
E3555	T229034	Broad St	04/16/2010 13:57:39	00:01:21	00:00	0.00		002295583000	
T2006024	E3555	Broad St	04/16/2010 14:22:10	00:00:50	00:07	0.00	2155973100		Philadelphia - PA
E3555	T229008	Broad St	04/16/2010 14:22:32	00:00:28	00:00	0.00		002295583000	
E3750	E3555	Broad St	04/16/2010 14:58:36	00:00:24	00:00	0.00		3555	
T2006007	E3555	Broad St	04/16/2010 15:22:44	00:01:16	00:04	0.00	9176705564		New York
T2006001	E3555	Broad St	04/16/2010 16:13:41	00:02:19	00:05	0.00	2169253113		Cleveland - OH
E3555	T2003082	Broad St	04/16/2010 16:14:31	00:01:29	00:00	0.00		92003 12129022669	Manhattan, NYC
E3738	E3555	Broad St	04/16/2010 16:26:44	00:00:16	00:00	0.00		3555	

Sullivan & Cromwell LLP

FOIA Confidential Treatment Requested by Sullivan & Cromwell LLP

Call Detail with Caller ID

Filter Name QReport_100806140409

Interval Name QReport_100806140409

Report Parameter

Source	Dest'n	Orig Location	Date/Time	Duration	Ring time	Cost (\$)	Caller ID	Access Code	Dialed Number	City, State or County
T2006010	E3555	Broad St	04/16/2010 17:14:17	00:03:43	00:05	0.00	2124783151			Manhattan, NYC
E3555	T2003071	Broad St	04/16/2010 17:15:13	00:02:47	00:00	0.00		92003	12129022669	Manhattan, NYC
E3534	E3555	Broad St	04/16/2010 17:30:50	00:00:10	00:00	0.00			3555	
E4115	E3555	Broad St	04/16/2010 17:33:02	00:00:58	00:00	0.00			3555	
T2006013	E3555	Broad St	04/16/2010 17:59:53	00:00:07	00:00	0.00				
E3555	T229034	Broad St	04/16/2010 17:59:53	00:00:07	00:00	0.00		82229	5583000	MM: VM Broad St.

Attachment 2**FOIA Confidential Treatment Requested by Sullivan & Cromwell LLP**

Incoming or Outgoing	Phone	Time Of Call	Duration	City State Country	Individual or Entity Description
INCOMING	2024341800	4/16/2010 10:38:25 AM	00:00:35	Washington - DC	Bloomberg Business News
INCOMING	2025512000	4/16/2010 10:39:52 AM	00:01:08	Washington - DC	Securities and Exchange Commission
INCOMING	1111111111	4/16/2010 10:40:12 AM	00:01:48		Masked Number
INCOMING	2127288503	4/16/2010 10:46:20 AM	00:00:40	Manhattan, NYC	Paulson & Co.'s counsel, Willkie Farr & Gallagher
INCOMING	633	4/16/2010 10:52:13 AM	00:00:47	New York	633
INCOMING	2026829031	4/16/2010 11:00:05 AM	00:00:55	Washington - DC	Unknown
INCOMING	2129028319	4/16/2010 11:01:42 AM	00:01:18	Manhattan, NYC	Goldman, Sachs & Co.
INCOMING	633	4/16/2010 11:22:21 AM	00:01:39	633	633
INCOMING	2023097040	4/16/2010 11:27:13 AM	00:02:47	Washington - DC	CNN News Desk

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RE: Comment

4/18/2010 11:04:10 AM

From: Friestad, Scott
To: McKown, Joan (b)(7)(C)

No. That's inconceivable....

----- Original Message -----

From: McKown, Joan
To: Friestad, Scott
Sent: Sun Apr 18 09:54:03 2010
Subject: Fw: Comment

Did you know Reid hadn't spoken to GS since September?

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: McKown, Joan
To: Khuzami, Robert
Sent: Sat Apr 17 22:41:03 2010
Subject: Re: Comment

Rob, we were out and I just got this. I assume you have long since given a response. The portion of the manual they are referring to is the post wells process. The defense counsel are reading way more into the language than is there. That having been said normally we do give counsel a heads up that we are filing because we usually want to settle. I had wondered why the GS pr folks weren't in high gear on this and I guess this explains it. I would note that if they had wanted the meeting their counsel damn well knew how to ask for it and would have received it. We are home now if you need anything more.

(b)(7)(C)

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Khuzami, Robert
To: McKown, Joan
Sent: Sat Apr 17 18:11:17 2010
Subject: Fw: Comment

Do you know what the ENF manual says about telling persons they will be charged and giving them a chance to negotiate?

RK

----- Original Message -----

From: Nester, John J.
To: Khuzami, Robert; Reisner, Lorin L.
Cc: Marlin, Myron L.; Cohen, Stephen L.
Sent: Sat Apr 17 18:04:32 2010
Subject: Fw: Comment

How say we?

----- Original Message -----

From: Scannell, Kara <(b)(7)(C)>
To: Nester, John J.
Sent: Sat Apr 17 17:55:36 2010
Subject: Comment

Our reporting tells us the SEC sent Goldman a wells. The firm responded around September. Our understanding is that was the last exchange and there was no notice to Goldman that the staff was moving forward to recommend a lawsuit. Former SEC folks say its highly unusual that the bank wouldn't be given notice it was being charged with fraud and a last chance to attempt to negotiate a settlement. And some point to the enforcement manual that states on pages 30-31.... Contemplates at least one meeting and also contemplates notice by the staff if it is not going to engage in settlement negotiations. Our deadline is actually tonight even though we don't have a paper until monday. Thanks

Kara

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RE: GS follow up

4/17/2010 1:07:53 PM

From: Reisner, Lorin L. (b)(7)(C)
To: Nester, John J. (b)(7)(C); Khuzami, Robert (b)(7)(C)
Cc: Cohen, Stephen L. (b)(7)(C); Marlin, Myron L. (b)(7)(C)

The "blindsided" whining is baseless. There were multiple opportunities for Goldman to pursue settlement. After the Wells notice (oral and written) was sent, there was a formal written Wells submission by Goldman--no mention of pursuing settlement. Goldman's counsel had numerous discussions with staff and a senior-level meeting in DC with Rob and me. No mention of pursuing settlement by Goldman. It was obvious that we were serious and planned to pursue charges. We gave them prompt (virtually simultaneous) notice of the filing of the complaint.

I would not get into what in-house counsel might have done or not done in connection with Abacus. Certainly nothing public.

L.

----- Original Message -----

From: Nester, John J.
To: Khuzami, Robert; Reisner, Lorin L.
Cc: Cohen, Stephen L.; Marlin, Myron L.
Sent: Sat Apr 17 12:24:10 2010
Subject: Fw: GS follow up

Seems like you've ruffled some feathers at GS.

On the first question, we've made no secret that we have made it a priority to investigate and prosecute cases related to the financial crisis, and that we created a specialized unit focused on structured products. I don't think we need to go beyond yesterday's statements as to the number of such probes or the timeline of this investigation.

On the second, I presume the yearlong recusal from DB matters has expired, or is the recusal still in effect? As for the rest of that section of questions, I can tell her the same thing that I told (b)(7)(C) on the advice of (b)(7)(C) that recusal issues generally arise only with respect to specific parties, products and transactions, not types of parties, products and transactions. A deal done by a particular firm is not related to anyone but the parties involved in the transaction. (And I can also note, not for attribution to SEC, that her use of the word "similar" is rather broad. We did not allege impropriety in the deal's structure, we alleged a disclosure violation.)

I can also inform her that as a general matter, in house counsel does not participate in or review transactions. Can I tell her that, for example, the GS deal was through outside counsel. Would that info be public?

Let me know, call if easier at (b)(7)(C)

----- Original Message -----

From: Scannell, Kara (b)(7)(C)
To: Nester, John J.
Sent: Sat Apr 17 11:48:35 2010
Subject: GS follow up

Hi, John

We're doing a number of stories stemming from the Goldman lawsuit.

Can you guys provide us with any insight into why this case was chosen, how many similar investigations are in the pipeline, the timeline of the investigation, etc?

Also, is Rob Khuzami recused from the SEC investigation into Deutsche Bank? Some lawyers have suggested it's odd for him to have a conference call condemning the practice since he was general counsel at DB at the time the firm itself structured similiar deals with Paulson. Did he know about the DB deals then?

And, I've also heard that GS received a wells, submitted a response and was rejected. GS submitted a supplemental wells response. The firm had no further communications with the SEC. GS learned about the lawsuit after it was filed. Any discrepencies in that timeline?

I'm on my cell (b)(7)(C) if you want to discuss anything.

Thanks,

Kara

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RE: An off-the-record question

4/17/2010 12:12:44 PM

From: Khuzami, Robert

To: Nester, John J. (b)(7)(C)

Reisner, Lorin L.

Cc: Cohen, Stephen L. (b)(7)(C)

Marlin, Myron L.

We don't solicit settlements; they had every opportunity to raise settlement from the point of the Wells notice until yesterday.

From: Nester, John J.

To: Khuzami, Robert; Reisner, Lorin L.

Cc: Cohen, Stephen L.; Marlin, Myron L.

Sent: Sat Apr 17 11:31:17 2010

Subject: Fw: An off-the-record question

Is there any reason to push back on the notion the firm wasn't given an oppty to settle?

From:

To: Nester, John J.

Sent: Sat Apr 17 11:24:39 2010

Subject: An off-the-record question

John.

Sorry to disturb at the weekend but I wanted to run this past you. On this Goldman situation, the other camp says that the commission did not give them a chance to settle and just announced the charges after a nine-month silence (the Wells notice was in September, I think).

Could we talk on background about this?

I am on (b)(7)(C) Also, should Goldman not have disclosed the receipt of the Wells to investors ?

Is a Wells on fraud charges not a price-sensitive piece of information?

I would be grateful for any steer or guidance on this.

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RE: Hey,

4/18/2010 5:03:54 PM

From: Nester, John J. (b)(7)(C)
To: Khuzami, Robert (b)(7)(C); Reisner, Lorin L. (b)(7)(C); Cohen, Stephen L. (b)(7)(C); Marlin, Myron L. (b)(7)(C)

Totally setting aside the reality that they had every opportunity to present their case, I don't think they will gain much public sympathy for their argument that they didn't get a chance to settle on what the public might consider lesser charges.

From: Khuzami, Robert
To: Nester, John J.; Reisner, Lorin L.; Cohen, Stephen L.; Marlin, Myron L.
Sent: Sun Apr 18 16:54:01 2010
Subject: Re: Hey,

(b)(5)

RK

From: Nester, John J.
To: Khuzami, Robert; Reisner, Lorin L.; Cohen, Stephen L.; Marlin, Myron L.
Sent: Sun Apr 18 16:28:24 2010
Subject: Fw: Hey,

Additional information coming public

From: Nester, John J.
To: (b)(7)(C)
Sent: Sun Apr 18 16:27:24 2010
Subject: Re: Hey,

Decline comment

From: (b)(7)(C)
To: Nester, John J.
Sent: Sun Apr 18 16:23:32 2010
Subject: Hey,

I have seen GS' Wells submission and a subsequent document attempting to debunk the SEc case. Would you guys like to comment ?

My deadline is around 6pm tonight.

Thank you.

(b)(7)(C)

From: "Nester, John J." (b)(7)(C)
Sent: 04/17/2010 12:50 PM AST
To: (b)(7)(C)
Subject: Re: An off-the-record question

Give me a call on cell (b)(7)(C)

From: (b)(7)(C)
To: Nester, John J.
Sent: Sat Apr 17 11:24:39 2010
Subject: An off-the-record question

John,

Sorry to disturb at the weekend but I wanted to run this past you. On this Goldman situation, the other camp says that the commission did not give them a chance to settle and just announced the charges after a nine-month silence (the Wells notice was in September, I think).

Could we talk on background about this ?

I am on (b)(7)(C) Also, should Goldman not have disclosed the receipt of the Wells to investors ?

Is a Wells on fraud charges not a price-sensitive piece of information ?

I would be grateful for any steer or guidance on this,

(b)(7)(C)

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Goldman Shares Tumble on SEC Fraud Allegations

By Joshua Galla and Christine Harper - Apr 16, 2010

Goldman Sachs Group Inc. was sued by U.S. regulators for fraud tied to collateralized debt obligations that contributed to the worst financial crisis since the Great Depression. The firm's shares tumbled 13 percent and financial stocks slumped.

Goldman Sachs created and sold CDOs linked to subprime mortgages in early 2007, as the U.S. housing market altered, without disclosing that hedge fund Paulson & Co. helped pick the underlying securities and bet against the securities, the Securities and Exchange Commission said today. Billionaire John Paulson's firm earned \$1 billion on the trade and wasn't accused of wrongdoing. The SEC also sued Fabrice Tourre, a Goldman Sachs vice president who helped create the CDOs, known as Abacus.

"The product was new and complex but the deception and conflicts are old and simple," SEC Enforcement Director Robert Khuzami said. "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."

Goldman Sachs became emblematic of public outrage at the banking industry after posting a record \$13.4 billion profit in 2009, a year after receiving \$10 billion in taxpayer aid during the financial crisis. It repaid the funds in June. The company, led by Chief Executive Officer Lloyd Blankfein, 55, has been criticized by lawmakers and pundits for issues from its pay practices to its role in helping Greece mask the size of its debts. It called the SEC's claims "unfounded."

Financial Stocks Slump

"Civil charges and the disgorgement are not the issue -- the threat to Goldman is reputational," said Brad Hintz, an analyst at Sanford C. Bernstein & Co. in New York. The danger is to "ultimately its market share with its prized institutional and corporate clients."

Shares of Goldman Sachs, based in New York, dropped \$23.57, or 13 percent, to \$160.70 as of 4:02 p.m. in New York Stock Exchange trading. It marked the biggest one-day decline since Jan. 20, 2009, and pushed the value of Warren Buffett's options to buy Goldman Sachs shares down by \$950 million.

Goldman's 'Integrity'

Buffett, Berkshire Hathaway Inc.'s chief executive officer, got the warrants on \$5 billion of Goldman Sachs stock as part of an agreement that extended financing to the bank during the depths of the 2008 credit crisis. The deal reflected

Buffett's belief in "not just the strength of Goldman but its integrity," Ronald Olson, a Berkshire director said this week in an interview.

The cost to protect against a default on Goldman Sachs's debt jumped 30.5 basis points, or 0.305 percentage point, to 12.5 basis points.

"The SEC's charges are completely unfounded in law and fact and we will vigorously contest them and defend the firm and its reputation," Goldman Sachs said in a statement today.

The firm put together the Abacus deal in 2007, a year in which Goldman Sachs earned a then-record \$11.6 billion, a figure it surpassed in 2009, when it earned \$13.4 billion. Goldman Sachs paid Blankfein \$68.5 million for 2007 -- \$100,000 in salary, plus a \$67.9 million bonus.

According to the SEC's complaint, Tourre, now 31, sent an e-mail to a friend in January 2007 saying, "The whole building is about to collapse" in reference to CDOs tied to subprime mortgages.

The Fabulous Fab

"Only potential survivor, the fabulous Fab standing in the middle of all these complex, highly leveraged, exotic trades is created without necessarily understanding all of the implications of those monstrosities!!!" Tourre wrote in the e-mail, according to the SEC. The agency didn't identify the recipient of the note.

Reached at his London office today, Tourre declined to comment. "I need to jump, thank you, goodbye," he told Bloomberg News before hanging up. A call to Pamela Chepiga, a lawyer for Tourre at Allen & Overy LLP, wasn't returned. Tourre, a graduate of Ecole Centrale Paris, one of France's top engineering schools, and Stanford University, joined Goldman Sachs in July 2001, according to his LinkedIn profile.

Goldman Sachs and Tourre knew it would be difficult, if not impossible, to sell the CDO if they disclosed to investors that Paulson played a significant role in selecting the collateral and was also betting against it, the SEC said.

The 'Surreal' ACA Meeting

The bank also knew that at least one potential investor, Dusseldorf, Germany-based IKB Deutsche Industriebank AG, wasn't likely to invest in a CDO that didn't have a collateral manager to analyze and select the portfolio, according to the complaint.

In January 2007, Goldman Sachs approached ACA Management LLC, a firm that analyzes credit risk, to select the portfolio for a CDO transaction sponsored by Paulson. In an internal memo on March 12, 2007, Goldman said it would "leverage ACA's credibility and franchise" to help distribute the transaction, the SEC said.

Paulson, Tourre and a representative from ACA met in February 2007 to discuss assets that would be included in the residential-mortgage backed security, the SEC said. While Paulson and Tourre knew Paulson intended to short the

security, ACA wasn't in the loop.

"I was at this ACA meeting," Tourre wrote in an e-mail to an unidentified Goldman Sachs employee during the meeting. "This is surreal."

Goldman's 'Extensive Disclosure'

Goldman Sachs also said that it lost more than \$90 million because it had an investment in the deal, overwhelming the \$15 million it made in fees. The firm said it provided "extensive disclosure" to IKB and ACA about the risk of the underlying mortgage securities. Goldman Sachs never told ACA that Paulson was going to be a "long" investor in Abacus, and ACA selected the underlying securities, the firm said.

Paulson & Co., which oversees \$32 billion, said in a statement that the fund didn't make any misrepresentations connected to the Abacus deal.

"While Paulson purchased credit protection from Goldman Sachs on securities issued under the Abacus ABS CDO program we were not involved in the marketing of any Abacus products to any third parties," the New York-based firm said. "ACA as collateral manager had sole authority over the selection of all collateral in the CDO."

Paulson could be the target of investor lawsuits now that the SEC is investigating how Abacus was put together, said Thomas Adams, who worked in the CDO groups for two bond insurers and is now a partner at New York-based Paykin, Leg & Adams LLP.

"There haven't been many investor lawsuits on these kinds of deals," Adams said. "This opens the door to civil claims across a number of transactions."

Bank of America Corp. and JPMorgan Chase & Co. lost at least 4 percent today as all 27 companies in the S&P 500 Diversified Financial Index declined. In Europe, Deutsche Bank AG dropped 8 percent.

The case is Securities and Exchange Commission v. Goldman Sachs, 10-cv-03229, U.S. District Court, Southern District of New York (Manhattan).

To contact the reporters on this story: Joshua Gallu in Washington at jgallu@bloomberg.net

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Goldman Sachs bonds suffer again on fraud fears

Stock options show less volatility expected after big jump on Friday

By Deborah Levine, MarketWatch

NEW YORK (MarketWatch) -- Goldman Sachs Group Inc.'s bonds fell on Monday, weighing on broader credit markets, as investors braced for a widening investigation over whether the firm, and maybe other banks, defrauded investors buying mortgage-related debt before the credit crisis.

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The Securities and Exchange Commission on Friday charged the investment firm with committing fraud in what it disclosed about certain mortgage-backed securities. The Wall Street Journal reported Monday that the SEC is investigating whether other deals may have crossed the line into misleading investors, increasing the cost for investors in Goldman and other companies' debt to insure their debt against the risk of default.

1,300 The spread between yields on Goldman Sachs' (NYSE:GS) 5.375% bonds maturing in 2020 and comparable Treasury debt widened by 23 basis points to 182 basis points, according to Andrew Brenner, head of emerging markets at Guggenheim Securities. A basis point is 0.01%.

1,200 A larger gap indicates investors are less comfortable holding the debt. Goldman Sachs' bonds make up three of the top 10 most actively-traded corporate bonds today, according to FINRA's trade-reporting system. Read story on SEC's suit against Goldman.

1,100 Reports that U.S. regulators are also looking into other mortgage-debt related deals at other firms also pushed up broader indications of credit risks.

1,000 "Having the SEC looking into other similar situations creates an anxiety about the whole large-bank sector," said Josh Stiles, bond market economist at IDEAGlobal. Read how Goldman may face U.K., German scrutiny.

Yield spreads between Treasuries and a broad index of corporate bonds had fallen to 1.52 percentage points on Thursday, smaller than had been seen in at least two years. Read about Treasury bonds.

"Spreads were tightening going into this story so there was some vulnerability there," Stiles said.

Credit-default swaps on Goldman Sachs' debt were trading around 136 basis points, up from 125 basis points on Friday.

A higher CDS price indicates a higher cost to insure against debt losses and indicates more concerns about creditworthiness.

Credit-default swaps on the Markit CDX North America Investment Grade Index, used as an indication of corporate credit risk, rose to 89.75 basis points in recent trade, up from 87 basis points on Friday, according to Markit.

Options volatility

Options trading for Goldman Sachs remained very active on Monday and volatility was higher than before the charges were announced, but lower than Friday levels, according to Interactive Brokers.

Implied volatility is a statistical measure that tends to rise along with uncertainty about the direction of the share price.

Implied volatility on Goldman's shares jumped above 54% on Friday -- near the highest it's been since July -- after the SEC's announcement, from about 27% before.

"Immediately there was a sense of having no idea where the stock may go," said Andrew Wilkinson, senior market analyst at Interactive Brokers. "Traders are uncertain how far the SEC's intrusion may be, and don't know how far reaching around the world it can be or what it may end up costing Goldman Sachs either as a fine or in relationships and its reputation."

The volatility slipped slightly on Monday, to around 41%, according to the firm. Before the SEC's charge, implied volatility was near the lowest in a year as markets seemed to be improving and traders were comfortable with the outlook for Goldman's share prices.

On Monday, Goldman's shares recently erased the day's loss to turn fractionally positive after falling 13% on Friday.

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Markets Brief

Market Crumbles After Goldman Fraud Charges

William Marcus, 04.16.10, 12:00 PM ET

The major indexes fell sharply Friday morning after the Securities and Exchange Commission slapped Goldman Sachs with civil fraud charges. The Dow Jones industrial average dropped more than 100 points and the Chicago Board Options Exchange Volatility Index, commonly called the VIX, spiked 18.6%.

Shares of Goldman Sachs dropped 12.6% late Friday morning after the SEC charged the investment bank and one of its executives with civil fraud after the bank sold collateralized debt obligations to investors without disclosing that a major hedge fund run by billionaire John Paulson was involved in creating the securities and then bet against them. (See "Goldman Smacked" and "Goldman Sachs Slapped With Fraud Charge.")

U.S. equities were already struggling at the open to extend recent gains even after General Electric and Bank of America posted stronger-than-expected earnings reports. Upbeat news that housing construction and applications for housing permits rose last month was also drowned out by the Goldman charges. The Commerce Department said home construction rose 1.6% in March to a seasonally-adjusted rate of 626,000. The SPDR S&P Homebuilders exchange-traded fund was 1.9% lower in late-morning trading.

The Reuters/University of Michigan consumer sentiment index for early April dipped unexpectedly to a reading of 69.5, its lowest level in 5 months, likely reflecting Americans' attitudes that the economy is not improving quickly enough based on stubbornly high unemployment and still-rising home foreclosures.

Just before midday the major indexes fell sharply amid surging volume and soaring volatility. (See "Where Has All The Volatility Gone?") The Dow Jones industrial average dropped 117 points to 11,027, the S&P 500 fell 19 points to 1,192 and the Nasdaq gave up 35 points to 2,481.

Software maker Oracle, run by billionaire Larry Ellison, said it will acquire small cap Phase Forward, maker of clinical drug trial software, for \$685 million in cash. Oracle shares fell .5% while Phase Forward jumped 28.4%.

Industrial conglomerate General Electric beat The Street by a nickel with adjusted quarterly earnings of 21 cents per share. Losses in its lending arm, GE Capital, were mitigated somewhat in the recent quarter. Still, top- and bottom-line figures came in below year-earlier results, sending shares down 3.4% in early trading. (See "GE Beats The Street.")

Bank of America crushed expectations with earnings of 28 cents per share helped by stronger trading revenues. Consumer loan losses weighed on results but showed some improvement in the quarter. (See "No Profit Pop For BofA.") When JPMorgan Chase (nyse: JPM - news - people) reported Wednesday, it too said delinquencies are beginning to ease. (See "JPMorgan Lifts The Tide For Financials.") Bank of America shares fell 4.8%.

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FW: Press Release re Goldman action this morning

4/16/2010 3:55:07 PM

From: Marlin, Myron L.
To: Nester, John J. (b)(7)(C)

Just fyi.

-----Original Message-----

From: Cohen, Stephen L.
Sent: Friday, April 16, 2010 2:53 PM
To: Nisanci, Didem A.; (b)(7)(C); Marlin, Myron L.
Subject: FW: Press Release re Goldman action this morning

Let's discuss.

-----Original Message-----

From: Reisner, Lorin L.
Sent: Friday, April 16, 2010 2:49 PM
To: Khuzami, Robert
Cc: Cohen, Stephen L.
Subject: FW: Press Release re Goldman action this morning

Attached FYI.

-----Original Message-----

From: (b)(7)(C)
Sent: Friday, April 16, 2010 2:37 PM
To: Reisner, Lorin L.
Cc: Sporkin, Thomas
Subject: FW: Press Release re Goldman action this morning

Lorin,

I just got off the phone with (b)(7)(C). He was seeking someone to discuss the SEC policies of press releases and the impact of these on U.S. Marketplaces. I provided him with your contact information. Please let me know if there is anything I can do to assist with this.

(b)(7)(C)

Securities & Exchange Commission
Division of Enforcement
Office of Market Surveillance
100 F St. NE
Washington DC 20549

(b)(7)(C)

-----Original Message-----

From: (b)(7)(C)
Sent: Friday, April 16, 2010 1:51 PM
To: (b)(7)(C)
Subject: Press Release re Goldman action this morning

(b)(7)(C)

I tried your phone but got vm. Can you let me know what would be a good time to give you a call? I know you spoke earlier to (b)(7)(C) but I just wanted to follow up to get your thoughts on whether it might be useful for the Exchange to have any follow up conversations with either Enforcement or the Office of Public Affairs at the SEC about how we can minimize the impact of announcements on market volatility.

Thanks.

(b)(7)(C)

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NYSE call

4/16/2010 4:57:12 PM

From: (b)(7)(C)
To: Reisner, Lorin L (b)(7)(C)
Cc: Nester, John J. (b)(7)(C)

Lorin,

I took a call this afternoon from (b)(7)(C) head of (b)(7)(C). He had tried to get through to you and was very understanding about the fact that your line was busy and your voicemail was probably overflowing.

However, he wants to talk with you and whoever else might be appropriate about the fact that the Goldman case has demonstrated that our enforcement actions can sometimes be market-moving. He and his staff were taken by surprise when they heard on the TV that there was a conference call going on about a major action against Goldman. I guess Goldman stock took a hit.

He would like to discuss ways the SEC can work with NYSE to ensure that market-moving news involving SEC enforcement actions might be handled more along the lines that the NYSE handles this sort of thing in other contexts.

His number is (b)(7)(C). He was very clear that he did not expect a call back until early next week but also that he would like to hear something on Monday or Tuesday.

Call me with any questions.

Thanks.

(b)(7)(C)

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Section 2 Disclosure and Reporting Material Information

201.00 Introduction

201.00 Introduction

A company which lists on the Exchange is expected to be guided by Exchange practices and procedures regarding disclosing and reporting material information as detailed in the Listing Agreement and in this Manual.

The Listing Agreement enumerates the general principles under which listed companies operate. The Exchange urges every listed company to be guided by the current form of agreement in the matters on which it bears even though the specific agreement last executed by it may have been less than comprehensive.

This Manual describes the policies, requirements, practices and procedures of the Exchange in greater detail.

The Exchange's current form of listing agreement generally seeks to achieve the following objectives:

- Ensure timely disclosure of information that may affect security values or influence investment decisions, and in which shareholders, the public and the Exchange have a warrantable interest.
- Ensure frequent, regular and timely publication of financial reports prepared in accordance with generally accepted accounting principles.
- Provide the Exchange with timely information to enable it to efficiently perform its function of maintaining an orderly market for the company's securities, to enable it to maintain necessary records and to allow it the opportunity to make comment as to certain matters before they become established facts.
- Preclude certain business practices not generally considered sound.

Neither the Listing Agreement nor this Manual can hope to cover every possible situation or transaction. The Exchange recommends that company officials make it a practice to discuss proposed transactions of their company with their Exchange representative on a confidential basis. These prior discussions have often proved helpful and avoided misunderstandings as to interpretations of policy.

The discussion which follows will assist a listed company in making adequate and timely disclosure to its shareholders, the financial community, and the investing public and thus provide the basis for a market for its securities which will be fair to all participants.

202.00 Material Information

202.01 Internal Handling of Confidential Corporate Matters

Unusual market activity or a substantial price change has on occasion occurred in a company's securities shortly before the announcement of an important corporate action or development. Such incidents are extremely embarrassing and damaging to both the company and the Exchange since the public may quickly conclude that someone acted on the basis of inside information.

Negotiations leading to mergers and acquisitions, stock splits, the making of arrangements preparatory to an exchange or tender offer, changes in dividend rates or earnings, calls for redemption, and new contracts, products, or discoveries are the type of developments where the risk of untimely and inadvertent disclosure of corporate plans are most likely to occur. Frequently, these matters require extensive discussion and study by corporate officials before final decisions can be made. Accordingly, extreme care must be used in order to keep the information on a confidential basis.

Where it is possible to confine formal or informal discussions to a small group of the top management of the company or companies involved, and their individual confidential advisors where adequate security can be maintained, premature public announcement may properly be avoided. In this regard, the market action of a company's securities should be closely watched at a time when consideration is being given to important corporate matters. If unusual market activity should arise, the company should be prepared to make an immediate public announcement of the matter.

At some point it usually becomes necessary to involve other persons to conduct preliminary studies or assist in other preparations for contemplated transactions, e.g., business appraisals, tentative financing arrangements, attitude of large outside holders, availability of major blocks of stock, engineering studies and market analyses and surveys. Experience has shown that maintaining security at this point is virtually impossible. Accordingly, fairness requires that the company make an immediate public announcement as soon as disclosures relating to such important matters are made to outsiders.

The extent of the disclosures will depend upon the stage of discussions, studies, or negotiations. So far as possible, public statements should be definite as to price, ratio, timing and/or any other pertinent information necessary to permit a reasonable evaluation of the matter. As a minimum, they should include those disclosures made to outsiders. Where an initial announcement cannot be specific or complete, it will need to be supplemented from time to time as more definitive or different terms are discussed or determined.

Corporate employees, as well as directors and officers, should be regularly reminded as a matter of policy that they must not disclose confidential information they may receive in the course of their duties and must not attempt to take advantage of such information themselves.

In view of the importance of this matter and the potential difficulties involved, the Exchange suggests that a periodic review be made by each company of the manner in which confidential information is being handled within its own organization. A

reminder notice of the company's policy to those in sensitive areas might also be helpful.

A sound corporate disclosure policy is essential to the maintenance of a fair and orderly securities market. It should minimize the occasions where the Exchange finds it necessary to temporarily halt trading in a security due to information leaks or rumors in connection with significant corporate transactions.

While the procedures are directed primarily at situations involving two or more companies, they are equally applicable to major corporate developments involving a single company.

202.02 Relationship between Company Officials and Others

(A) Security Analysts, Institutional Investors, Etc.

Security analysts play an increasingly important role in the evaluation and interpretation of the financial affairs of listed companies. Annual reports, quarterly reports, and interim releases cannot by their nature provide all of the financial and statistical data that should be available to the investing public. The Exchange recommends that companies observe an "open door" policy in their relations with security analysts, financial writers, shareholders, and others who have legitimate investment interest in the company's affairs.

A company should not give information to one inquirer which it would not give to another, nor should it reveal information it would not willingly give or has not given to the press for publication. Thus, for companies to give advance earnings, dividend, stock split, merger, or tender information to analysts, whether representing an institution, brokerage house, investment advisor, large shareholder, or anyone else, would clearly violate Exchange policy. On the other hand, it should not withhold information in which analysts or other members of the investment public have a warrantable interest.

If during the course of a discussion with analysts substantive material not previously published is disclosed, that material should be simultaneously released to the public. The various security analysts societies usually have a regular procedure to be followed where formal presentations are made. The company should follow these same precautions when dealing with groups of industry analysts in small or closed meetings.

(B) Member Firm Personnel Serving as Directors or Advisors to the Company

Every director has a fiduciary obligation not to reveal any privileged information to anyone not authorized to receive it. Not until there is full public disclosure of such data, particularly when the information might have a bearing on the market price of the securities, is a director released from the necessity of keeping information of this character to himself.

Any director of a company who is a partner, officer, or employee of a member

organization should recognize that his first responsibility in this area is to the company on whose board he serves. Thus, a member firm director must meticulously avoid any disclosure of inside information to his partners, employees of the firm, his customers or his research or trading departments.

Where a representative of a member organization is not a director but acts in an advisory capacity to a company, the rules regarding confidential matters should be substantially the same as those that apply to a director. Should any matter require consultation with other personnel of the organization, adequate measures should be taken to guard the confidential nature of the information to prevent its misuse within or outside the member organization.

202.03 Dealing with Rumors or Unusual Market Activity

The market activity of a company's securities should be closely watched at a time when consideration is being given to significant corporate matters. If rumors or unusual market activity indicate that information on impending developments has leaked out, a frank and explicit announcement is clearly required. If rumors are in fact false or inaccurate, they should be promptly denied or clarified. A statement to the effect that the company knows of no corporate developments to account for the unusual market activity can have a salutary effect. It is obvious that if such a public statement is contemplated, management should be checked prior to any public comment so as to avoid any embarrassment or potential criticism. If rumors are correct or there are developments, an immediate candid statement to the public as to the state of negotiations or of development of corporate plans in the rumored area must be made directly and openly. Such statements are essential despite the business inconvenience which may be caused and even though the matter may not as yet have been presented to the company's Board of Directors for consideration.

The Exchange recommends that its listed companies contact their Exchange representative if they become aware of rumors circulating about their company. Exchange Rule 435 provides that no member, member organization or allied member shall circulate in any manner rumors of a sensational character which might reasonably be expected to affect market conditions on the Exchange. Information provided concerning rumors will be promptly investigated.

202.04 Exchange Market Surveillance

The Exchange maintains a continuous market surveillance program through its Market Surveillance and Evaluation Division. An "on-line" computer system has been developed which monitors the price movement of every listed stock—on a trade-to-trade basis—throughout the trading session. The program is designed to closely review the markets in those securities in which unusual price and volume changes occur or where there is a large unexplained influx of buy or sell orders. If the price movement of a stock exceeds a predetermined guideline, it is immediately "flagged" and review of the situation is immediately undertaken to seek the causes of the exceptional activity. Under these circumstances, the company may be called by its Exchange representative to inquire about any company developments which have not been publicly announced but which could be responsible for unusual market activity. Where the market appears to reflect undisclosed information, the company will normally be requested to make the information public immediately.

Occasionally it may be necessary to carry out a review of the trading after the fact, and the Exchange may request such information from the company as may be necessary to complete the inquiry.

The Listing Agreement provides that a company must furnish the Exchange with such information concerning the company as the Exchange may reasonably require.

Special Initial Margin and Capital Requirements—

Occasionally, a listed issue may be placed under special initial margin and capital requirements. Such a restriction in no way reflects upon the quality of corporate management, but, rather indicates a determination by the Floor Officials of the Exchange that the market in the issue has assumed a speculative tenor and has become volatile due to the influence of credit, which, if ignored, may lead to unfair and disorderly trading.

The determination to impose restrictions is based on a careful inspection of the trading for the latest one week period, defined as the previous Friday through subsequent Thursday, matched against various criteria. Other factors, such as the capitalization turnover, the ratio of last year's average weekly volume to the volume for the period considered, arbitrage, stop order bans, short position, earnings and recent corporate news are also reviewed.

The restriction itself is aimed primarily at eliminating the extension of credit to those who buy a security and sell it the same day seeking a short term profit. Such customers must have the full purchase value in the account prior to the entry of an order. Concomitantly, a broader requirement is usually imposed on all other margin customers in that they must put up the full purchase price within five business days, rather than only the percentage required by the Federal Reserve Board. Cash customers, of course, must in all instances put up 100% of the cost in seven days.

202.05 Timely Disclosure of Material News Developments

A listed company is expected to release quickly to the public any news or information which might reasonably be expected to materially affect the market for its securities. This is one of the most important and fundamental purposes of the listing agreement which the company enters into with the Exchange.

A listed company should also act promptly to dispel unfounded rumors which result in unusual market activity or price variations.

The issuer of income deposit securities traded as a unit shall publicize any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such publication shall be made as soon as practicable in relation to the effective date of the change, and should otherwise be made in accordance with the procedures specified in Section 202.06 below. In addition, the issuer must provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant

tax attributes of any component), and the ratio of the components comprising the unit on its website.

202.06 Procedure for Public Release of Information

(A) Immediate Release Policy

Information required to be released quickly to the public under Section 202.05 above should be disclosed by means of any Regulation FD compliant method (or combination of methods). While foreign private issuers are not required to comply with Regulation FD, foreign private issuers must comply with the timely alert policy set forth in Section 202.05 and may do so by any method (or combination of methods) that would constitute compliance with Regulation FD for a domestic U.S. issuer. While not requiring them to do so, the Exchange encourages listed companies to comply with the immediate release policy by issuing press releases.

The spirit of the immediate release policy is not considered to be violated on weekends where a "Hold for Sunday or Monday A.M.'s" is used to obtain a broad public release of the news. This procedure facilitates the combination of a press release with a mailing to shareholders.

Annual and quarterly earnings, dividend announcements, mergers, acquisitions, tender offers, stock splits, major management changes, and any substantive items of unusual or non-recurrent nature are examples of news items that should be handled on an immediate release basis. News of major new products, contract awards, expansion plans, and discoveries very often fall into the same category. Unfavorable news should be reported as promptly and candidly as favorable news. Reluctance or unwillingness to release a negative story or an attempt to disguise unfavorable news endangers management's reputation for integrity. Changes in accounting methods to mask such occurrences can have a similar impact.

It should be a company's primary concern to assure that news will be handled in proper perspective. This necessitates appropriate restraint, good judgment, and careful adherence to the facts. Any projections of financial data, for instance, should be soundly based, appropriately qualified, conservative and factual. Excessive or misleading conservatism should be avoided. Likewise, the repetitive release of essentially the same information is not appropriate.

Few things are more damaging to a company's shareholder relations or to the general public's regard for a company's securities than information improperly withheld. On the other hand, a volume of press releases is not to be used since important items can become confused with trivia.

Premature announcements of new products whose commercial application cannot yet be realistically evaluated should be avoided, as should overly optimistic forecasts, exaggerated claims and unwarranted promises. Should subsequent developments indicate that performance will not match earlier projections, this too should be reported and explained.

Judgment must be exercised as to the timing of a public release on those corporate

the ability, upon request, to receive a hard copy of the company's complete audited financial statements free of charge and simultaneously issue a press release stating that its annual report has been filed with the SEC. This press release must also specify the company's website address and indicate that shareholders have the ability to receive a hard copy of the company's complete audited financial statements free of charge upon request. The company must provide such hard copies within a reasonable period of time following the request. Moreover, the press release must be published pursuant to the Exchange's press release policy in Section 202.06(C) above. For purposes of this rule, a company may not utilize any method permitted under the immediate release policy other than a press release.

A listed company that:

- is subject to the U.S. proxy rules, or
- is an issuer not subject to the U.S. proxy rules that provides its audited financial statements (as included on Forms 10-K, 20-F and 40-F) to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in Rules 14a-3 and 14a-16 of the U.S. proxy rules,

is not required to issue the press release or post the undertaking required above.

A company that fails to file its annual report on Forms 10-K, 20-F, 40-F or N-CSR with the SEC in a timely manner is subject to the procedures in Section 802.01E.

Amended: October 1, 2009 (NYSE-2009-94).

203.02 Interim Earnings Release Requirement

Any company with voting or non-voting common securities listed on the Exchange that is required to file interim financial statements with the SEC is required to disseminate in a manner consistent with the Exchange's immediate release policy an interim earnings release as soon as its interim financial statements are available. See Section 202.06 above for the Exchange's immediate release policy.

While the Exchange does not require that the interim reports be sent to shareholders, as a matter of fairness, listed companies that distribute interim reports to shareholders should distribute such reports to both registered and beneficial shareholders.

Amended: October 1, 2009 (NYSE-2009-94).

204.00 Notice to and Filings with the Exchange

204.00 Notice to and Filings with the Exchange

(A) Prompt Written Notice to the Exchange

Prompt written notice from the listed company to the Exchange is required in

connection with certain actions or events as specified in Sections 204.01 through 204.25, in addition to notice required to be given through the Exchange's telephone alert procedures. (See Section 202.06(B).)

(B) Filings with the Exchange

The Exchange requires that listed companies file hard copies of certain SEC reports and other materials (such as proxies) with the Exchange. Since all listed companies are required to file their periodic and current reports, as well as other materials, through the SEC's Electronic Data Gathering Analysis and Retrieval (EDGAR) system, the Exchange will not also require a listed company to file hard copies of most SEC filings with the Exchange. Specifically, the Exchange only requires companies to file:

- one hard copy of materials necessary to support a listing application as required by Sections 702.04, 703.00 and 903.00,
- six hard copies of proxy materials not later than the date on which the material is physically or electronically delivered to shareholders (see Section 402.00),
- one hard copy of any filing made on Form 6-K that is not required to be filed through EDGAR not later than the date on which the Form 6-K is filed with the SEC, and
- one hard copy of notice to shareholders with respect to any proposed amendments to the company's charter, as well as a certified copy of the amended charter along with a letter of transmittal indicating the sections amended since the previous filing of amendments or amended documents, promptly following the date that the notice is given or the charter is amended. Similar procedure shall be followed with respect to resolutions of the Board of Directors, or any certificate or other document, having the effect of an amendment to the charter or by-laws.

204.01 Publicity

Immediate publicity must be given to the calling of a shareholders' meeting where any matter affecting the rights or privileges of shareholders or any other matter not of routine nature is to be considered. This publicity should adequately describe the matter to be considered.

204.02 Agencies, Changes in

Five business days' advance notice is required to be given to the Exchange with respect to the proposed appointment of a new transfer agent, registrar, trustee or fiscal agent for listed securities whether such appointment is to be made in addition to, or in replacement of, an existing facility. These agents must be qualified based on specific Exchange standards. Contact your Exchange representative for advice on this matter and see Section 6 hereof.

204.03 Auditors Changed

Prompt notice is required to be given to the Exchange in the event of a change of the accounting firm which regularly conducts the audit.

204.04 Business Purpose Changed

Prompt notice is required to be given to the Exchange of any material change in the general character or nature of the company's business. This may also require the filing of a listing application. (See Para. 903.00.)

204.05 Capital Surplus Charges

Prior notice is required to be given to the Exchange with respect to any substantial charge which the company, or any subsidiary directly or indirectly controlled, proposes to make against capital surplus.

204.06 Closing of Transfer Books

Prompt notice is required to be given to the Exchange of the fixing of a date for closing of the transfer books or taking of a record of shareholders (in respect to a listed security) for any purpose. This notice should be received by the Exchange not later than the tenth day prior to the closing or record date, unless arrangements have been made in advance for a shorter period of advance notice.

204.07 Collateral Removed or Changed

Prompt notice is required to be given to the Exchange of removal of, or change in, collateral deposited under any mortgage or trust indenture pursuant to which securities authorized to be listed have been, or are to be, issued.

204.08 Conversion Rate, Changes

Prompt publicity is required to be given to any change in a conversion rate or ratio of a convertible security, or to termination of a conversion privilege, when conversions have been occurring or appear imminent on the basis of relative prices. Such publicity should be timely in relation to the event which gives rise to the change or termination—as, for example, shortly before a scheduled date for a change provided for in the provisions of a security, upon declaration of a stock dividend which will activate anti-dilution provisions or upon publicity on redemption of a convertible security—and should include notice by mail to all holders of record of the security.

Prompt notice of all changes in conversion privileges is required to be given separately to the Exchange and to securities statistical services.

204.09 Decrease in Floating Supply of Stock

In the event of any diminution in the supply of listed stock available for the market occasioned by the deposit of stock under a voting trust agreement, or other deposit agreements, prompt notice is required to be given to the Exchange when such deposits, actual or proposed, come to the official attention of the directors or officers

- If there is a condition which must be satisfied, or governmental approval which must be secured, to enable the stock distribution to be made, give details. (See Para. 703.02 (B) "Conditionally Authorized Distributions".)
- Date for mailing of certificates if the stock distribution is to be effected by mailing certificates for additional shares. (It is essential that distribution be made as promptly as possible in order to reduce to the minimum the period during which due-bills are used. (See Para. 703.02 (B), "Trading with Due-Bills"), for details.)
- Method of settling fractional share interests, if any. If to be settled in cash, indicate the basis for determining cash value of fractional share interests. If to be settled by purchase or sale of fractional share interests, indicate mail and expiration dates of order forms. The name of the disbursing agent handling the settlement of fractions should be given. (See Para. 703.02 (B), "Fractional Share Interests: Methods of Settlement", for details.)
- Brokers' cut off date—Period to be allowed after record or effective date on which brokers and other nominees may advise the company or its disbursing agent as to their full and fractional share requirements. A broker or nominee cannot determine, until after the record date, just what his full share and fractional share requirements will be. Because of this problem, it is desirable to allow a period of one week after the record date during which brokers and nominees may advise the disbursing agent of their requirements. A minimum of three business days could be prearranged with the Exchange if a tighter schedule is necessary. As an alternative procedure applicable when the time between record date and payment date is too short to allow a one week period for advice of share requirements, it is the regular practice for the company to instruct the paying agent to issue fractional share payments to brokers and other nominees as required by them against full share certificates surrendered by them for a period of not less than a week after the payment date.

The company's notice to the Exchange should indicate which of the above methods will be followed in respect of brokers' and nominees' requirements and the date by which they must notify the disbursing agent of their full and fractional share requirements. The Exchange will publicize this information in its Weekly Bulletin or in special circulars so that those concerned will be informed as to the procedure to be followed. (See Para. 703.02 (B), "Full Share and Fractional Needs of Nominees", for details.)

Should any of the above information not be available at the time notice of the calling of the Board of Directors' meeting is given for the purpose of dividend action, the information shall be supplied to the Exchange as soon as it becomes available.

- Proposed effective date of charter amendment (if applicable).
- Date of Board action calling meeting of shareholders to approve charter, amendment or increase in authorized shares (if applicable). Such notice should also disclose: the date of the shareholders' meeting; the record date for determining holders entitled to vote at the meeting and matters to be acted upon at the meeting.

Declaration of a dividend necessitates that the Exchange give advance notice to its

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(b)(7)(C)

From: Reisner, Lorin L.
Sent: Monday, April 19, 2010 1:23 PM
To: Reisner, Lorin L.; Khuzami, Robert
Subject: RE: Goldman-Confidential

Also a b/d bar of Tourre.

L.

-----Original Message-----

From: Reisner, Lorin L.
Sent: Monday, April 19, 2010 1:20 PM
To: Khuzami, Robert
Subject: RE: Goldman-Confidential

R,

Settlement terms to consider:

(b)(5)

L.

-----Original Message-----

From: Khuzami, Robert
Sent: Monday, April 19, 2010 12:43 PM
To: (b)(7)(C); (b)(7)(C) Lench, Kenneth; Reisner, Lorin L.; Muoio, Reid;
(b)(7)(C)
Cc: (b)(7)(C)
Subject: Re: Goldman-Confidential

Settlement possibilities have been raised; pls come prepared to think about terms.

RK

----- Original Message -----

From: (b)(7)(C)
To: (b)(7)(C) Lench, Kenneth; Khuzami, Robert; Reisner, Lorin L.; Muoio, Reid;
(b)(7)(C)

Cc: (b)(7)(C)

Sent: Mon Apr 19 10:47:32 2010

Subject: RE: Goldman

I will be, too.

(b)(7)(C)

Securities and Exchange Commission
100 F St., NE

Washington, D.C. 20549-4010

(b)(7)(C)

-----Original Message-----

From: (b)(7)(C)

Sent: Monday, April 19, 2010 8:18 AM

To: Lench, Kenneth; Khuzami, Robert; Reisner, Lorin L.; Muoio, Reid; (b)(7)(C)

(b)(7)(C)

Cc: (b)(7)(C)

Subject: RE: Goldman

I'll be there.

-----Original Message-----

From: Lench, Kenneth

Sent: Sunday, April 18, 2010 9:59 PM

To: Khuzami, Robert; Reisner, Lorin L.; Muoio, Reid; (b)(7)(C)

(b)(7)(C)

Cc: (b)(7)(C) (b)(7)(C)

Subject: Re: Goldman

I'll be there.

----- Original Message -----

From: Khuzami, Robert

To: Reisner, Lorin L.; Muoio, Reid; Lench, Kenneth; (b)(7)(C)

(b)(7)(C) (b)(7)(C)

Cc: (b)(7)(C)

Sent: Sun Apr 18 18:39:23 2010

Subject: Goldman

Can we get together at 6:00 pm tomorrow by phone (I'm in NY) for a catch-up; either you can gather in Lorin's office and I can call or we can set up a call-in.

Thx

Rob

149

RE: smail documents

7/1/2010 2:43:13 PM

From: (b)(7)(C)

To: Lench, Kenneth (b)(7)(C)

Cc: Khuzami, Robert (b)(7)(C)

Muolo, Reid (b)(7)(C)

Reisner, Lorin L. (b)(7)(C)

Thanks very much. We will review these and get back to you. We also need to think about obtaining waivers from Corp. Fin. and Investment Management for GSAM to continue with investment advisory and distribution services before a settlement order is entered. Let me know your thoughts about working on this in advance of an announcement.

(b)(7)(C)

--- Original Message ---

(b)(7)(C)

At the request of Rob Khuzami and Lorin Reisner, attached are draft documents for your review. Please call to discuss at your convenience. \Ken

<<GS Consent 7.1.10.doc>> <<GS Judgment 7.1.10.doc>>

This message was secured by ZixCorp(R).

This message was secured by ZixCorp(R).

150

ABACUS 2007-AC1 (HO-10911) -- draft settlement action memo ... 7/2/2010 11:24:28 AM

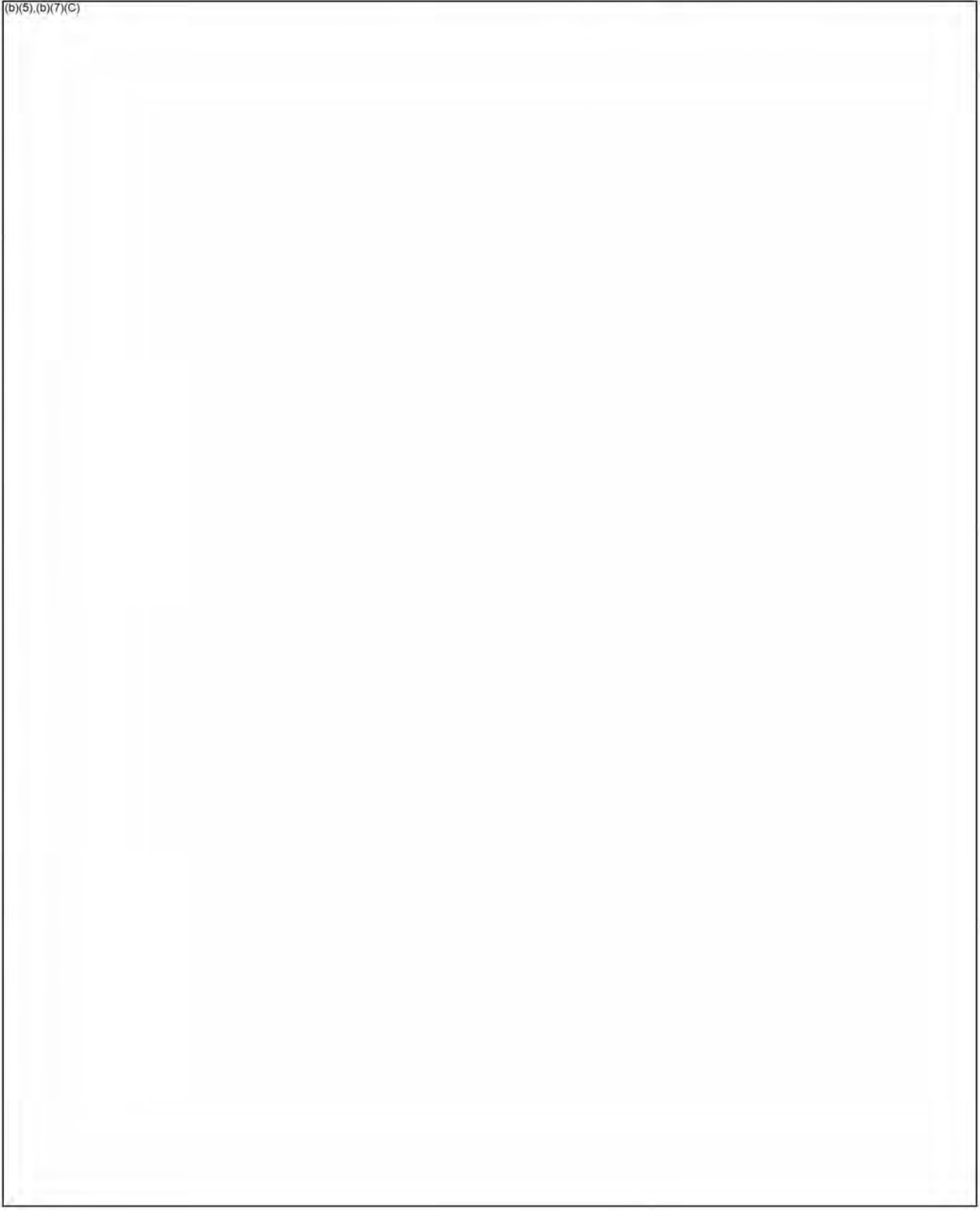
From: Muoio, Reid (b)(7)(C)
To: Lench, Kenneth (b)(7)(C)
Cc: Muoio, Reid (b)(7)(C)
Attachments: Abacus.ho.10911.Goldman.settlement.action.memo.draft.7.2.10.doc

... is attached. A copy is also on the case j: drive subdirectory. You'll recall I am off to the beach tomorrow morning for a week. I'd be freaking out about the GS&Co settlement but am confident you guys will be able to finalize the memo and otherwise cover things while I am gone. Lemme know how it goes. I will be reachable by email (b)(7)(C) and phone (b)(7)(C) Reid (b)(7)(C)

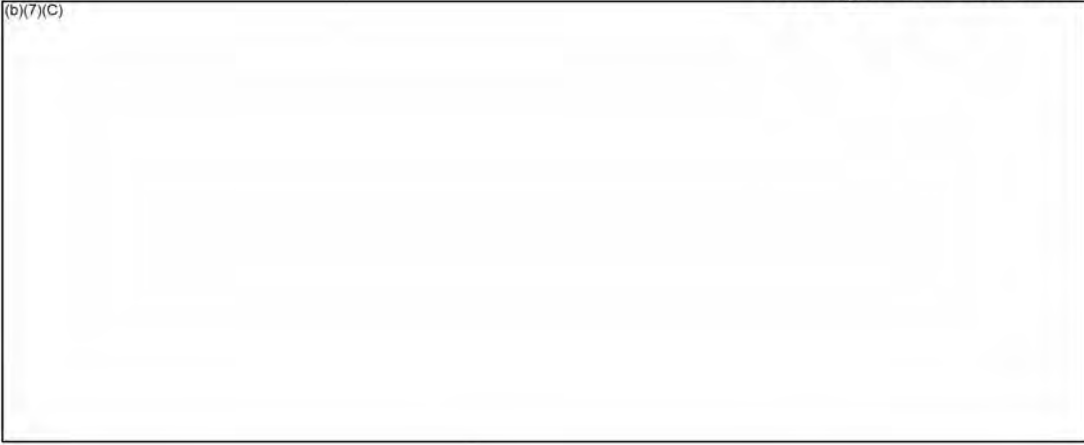
<<...>>

Privileged and Confidential

(b)(5),(b)(7)(C)



(b)(7)(C)



(b)(5)

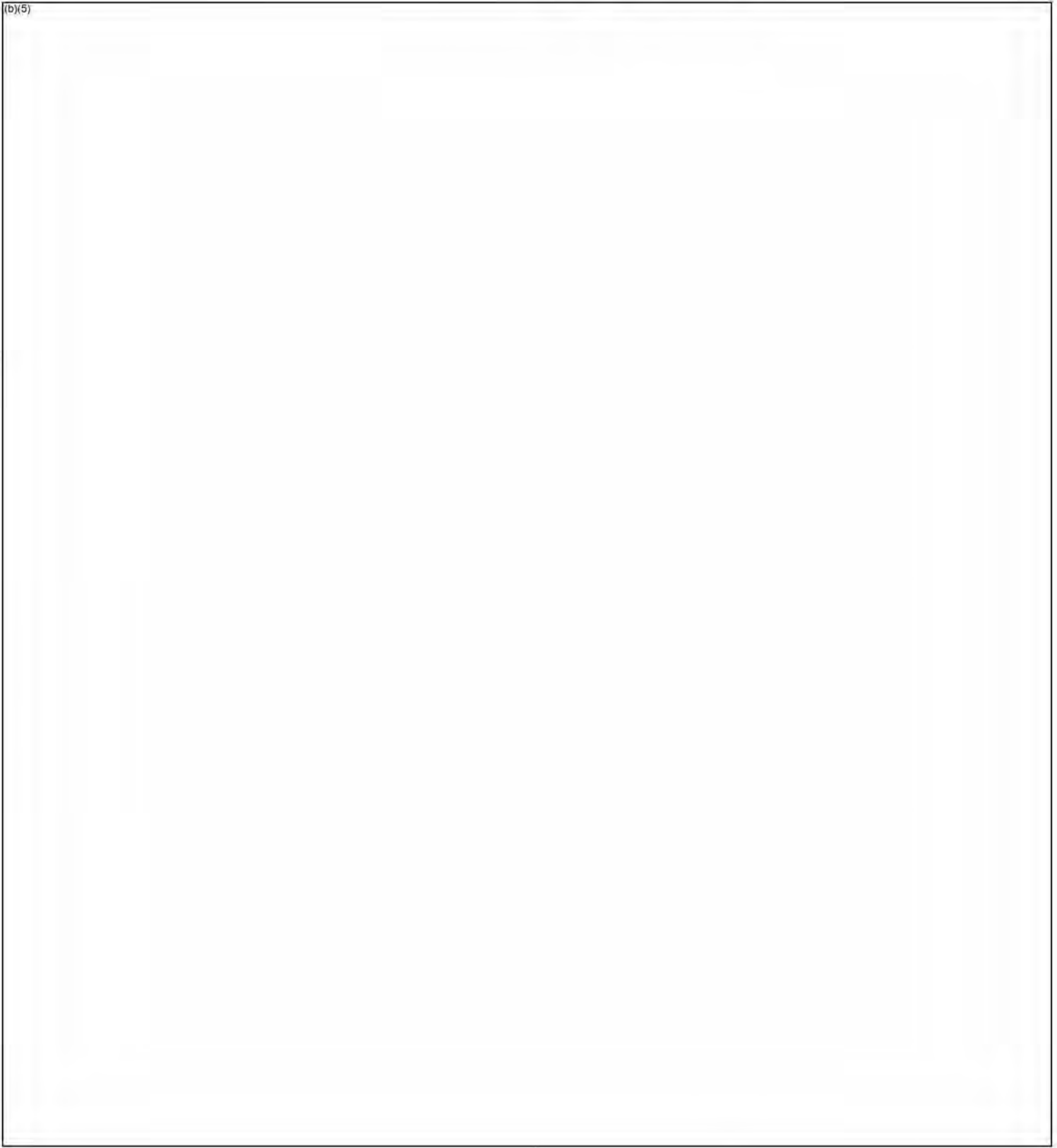
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Privileged and Confidential

(b)(5)



(b)(5)



151

Issues to raise with (b)(7)(C) on 4:00 call - please let me know if I'm missing anyth... Page 1 of 1

Re: Issues to raise with (b)(7)(C) on 4:00 call - please let me know if I'm missing anything

7/8/2010 2:17:59 PM

From: Reisner, Lorin L.

To: Lench, Kenneth (b)(7)(C)

Open to calling court next week to make sure Judge Jones around on either/both of July 16 and July 19 to receive/review papers.

I would let them know of our preliminary undertaking revisions during the call.

L.

From: Lench, Kenneth

To: Reisner, Lorin L. (b)(7)(C)

Sent: Thu Jul 08 14:08:41 2010

Subject: Issues to raise with (b)(7)(C) on 4:00 call - please let me know if I'm missing anything

(b)(5)

152

FW: ABACUS 2007-ACI: SEC v. Goldman Sachs & Co. and Fabrice Tourree 2010 4:57:38 PM

From: (b)(7)(C)
To: Aguilar, Luis A. (Commissioner) (b)(7)(C)
Cc: (b)(7)(C)

Goldman settlement is on for Thursday.

(b)(7)(C)

U.S. Securities and Exchange Commission

(b)(7)(C)

----- Forwarded Message

From: (b)(7)(C)
Date: Mon, 12 Jul 2010 16:56:17 -0400
To: #COMMISSION COUNSELS <#COMMISSIONCOUNSELS@SEC.GOV>
Cc: "Murphy, Elizabeth" (b)(7)(C) (b)(7)(C) (b)(7)(C) "Muio, Reid"
Subject: ABACUS 2007-ACI: SEC v. Goldman Sachs & Co. and Fabrice Tourree

Please be advised that this matter will be considered at this Thursday's closed commission meeting in Executive Session. Reid is walking around the copies of the action memo right now.

(b)(7)(C)

----- End of Forwarded Message

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ABACUS 2007-AC1 (HO-10911) -- Goldman Settlement Memo (final) 7/12/2010 6:30:34 PM

From: Muoio, Reid

To: Khuzami, Robert (b)(7)(C)

Reisner, Lorin L. (b)(7)(C)

Lench, Kenneth (b)(7)(C)

Cc: Muoio, Reid (b)(7)(C)

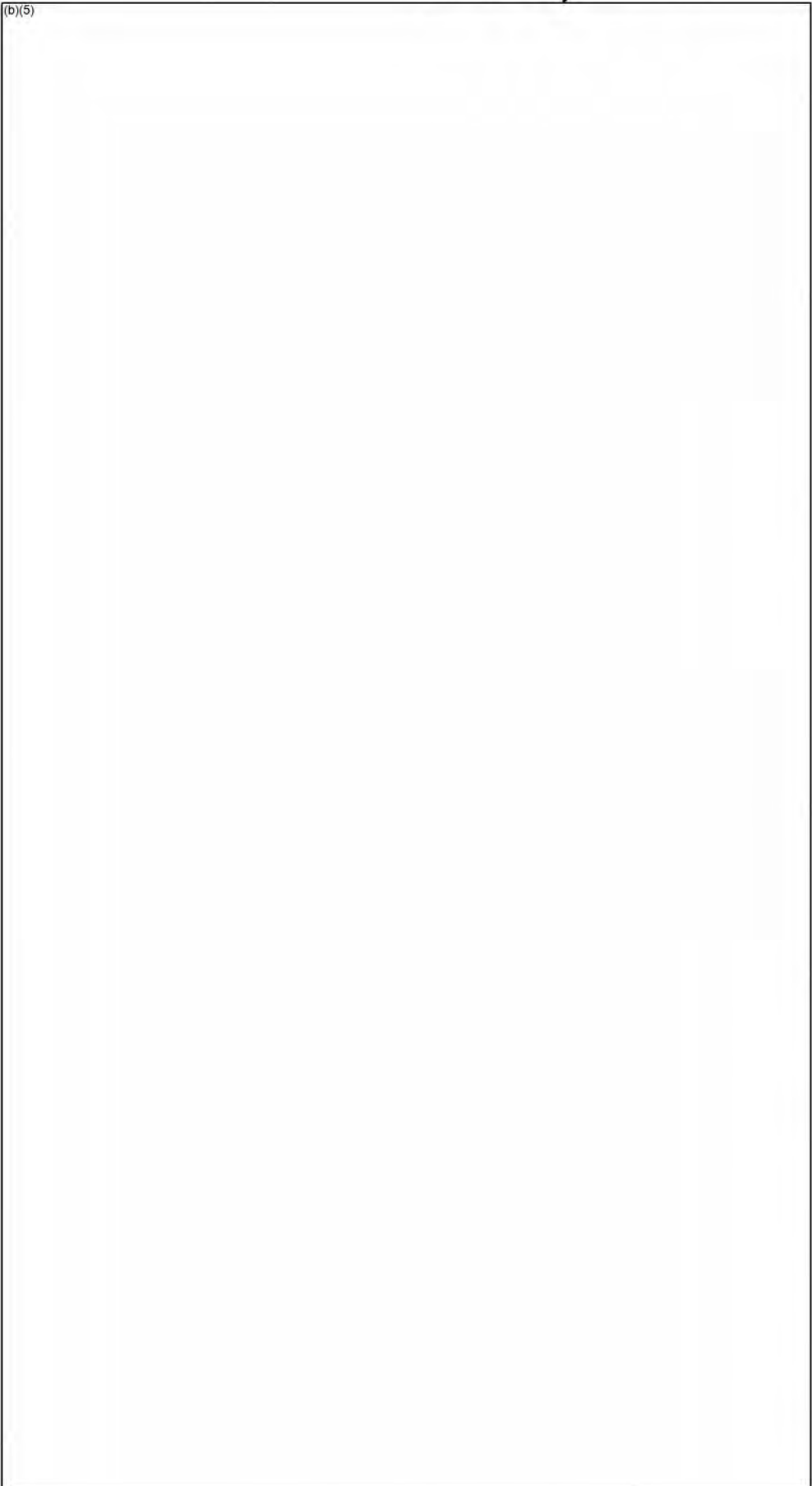
Attachments: abacus.ho.10911.goldman.settlement.action.memo.final.7.12.10.pdf

PRIVILEGED AND CONFIDENTIAL
Structured and New Products Unit
LIMITED DISTRIBUTION

(b)(5)

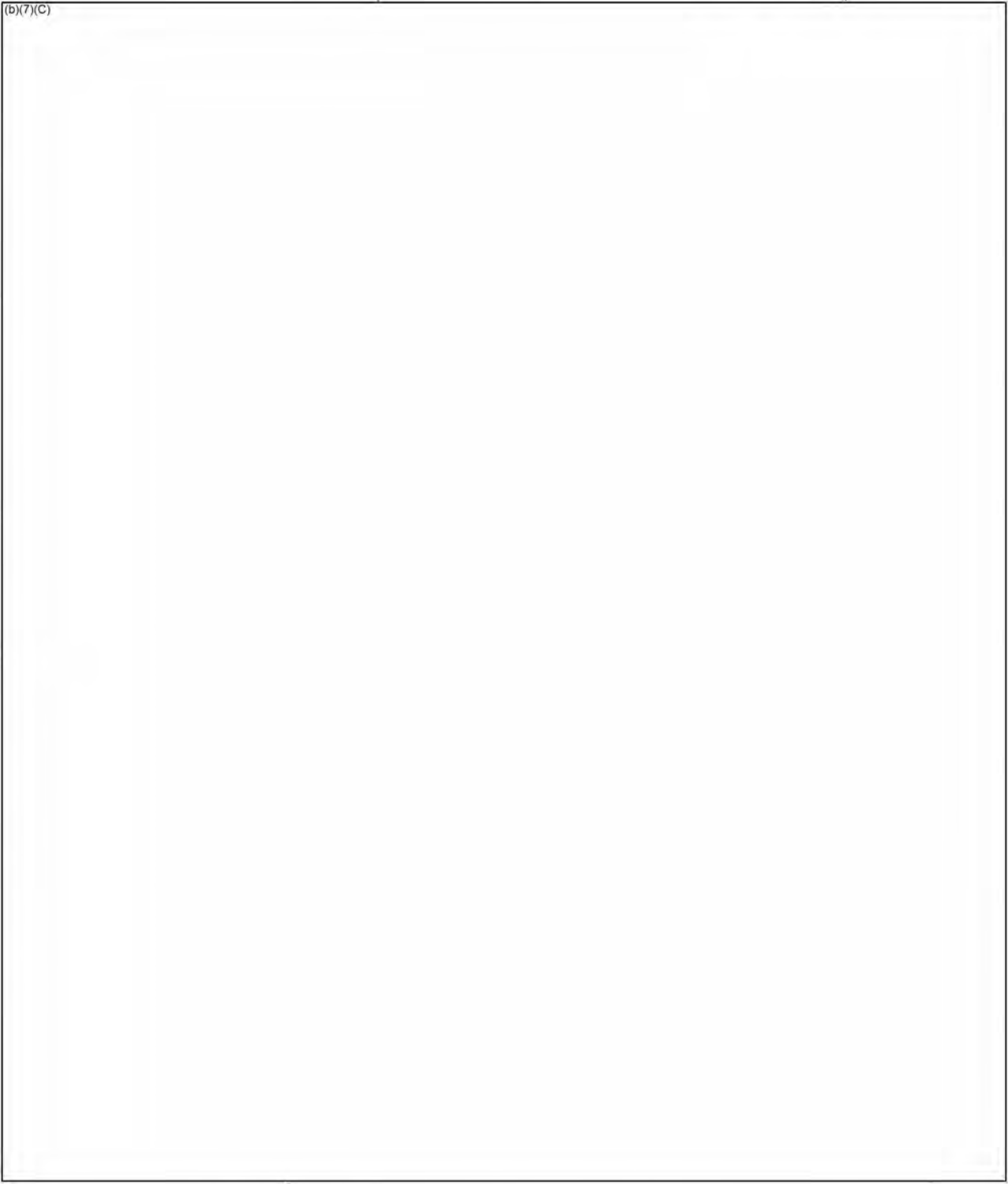
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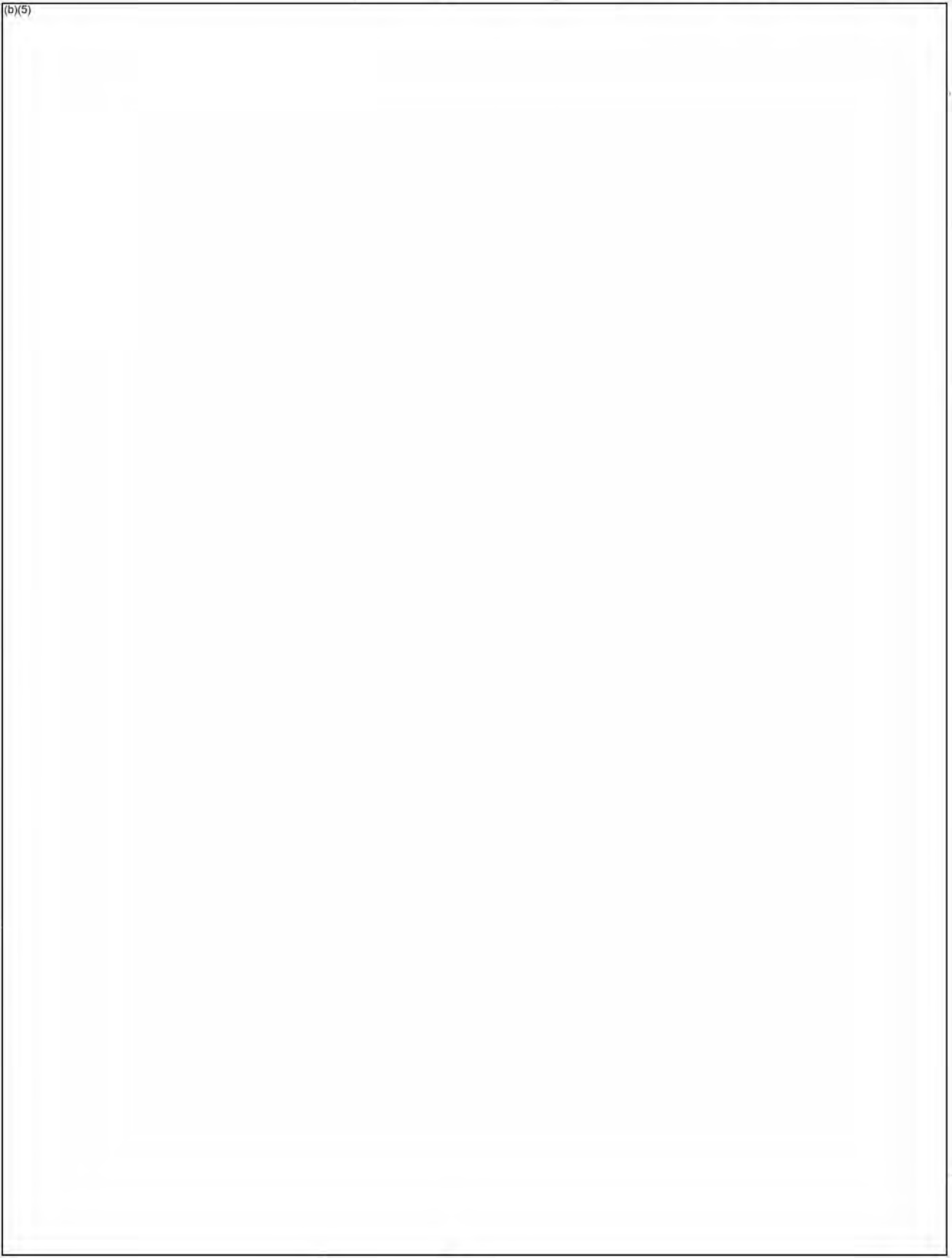
(b)(5)

(b)(7)(C)

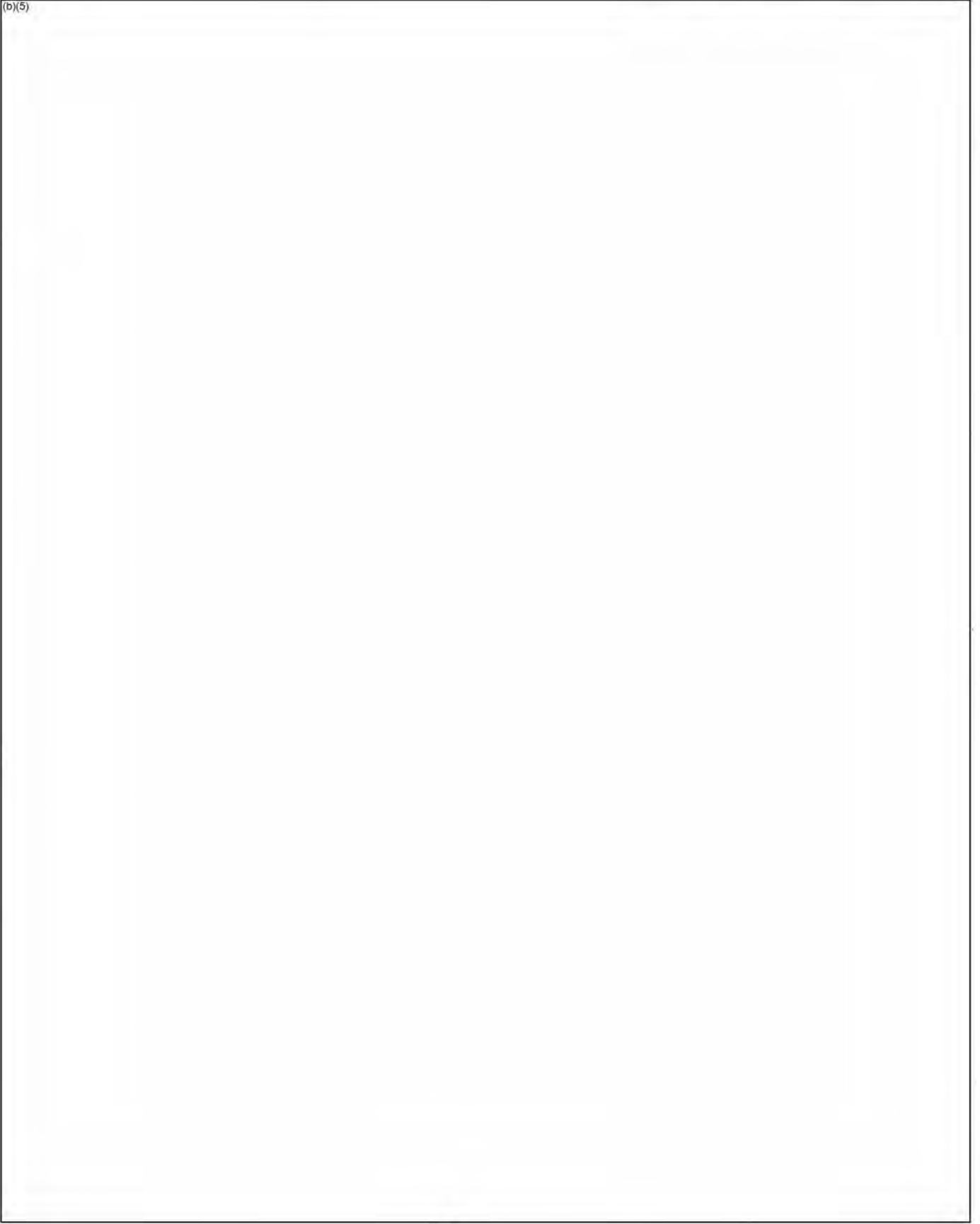


(b)(5)

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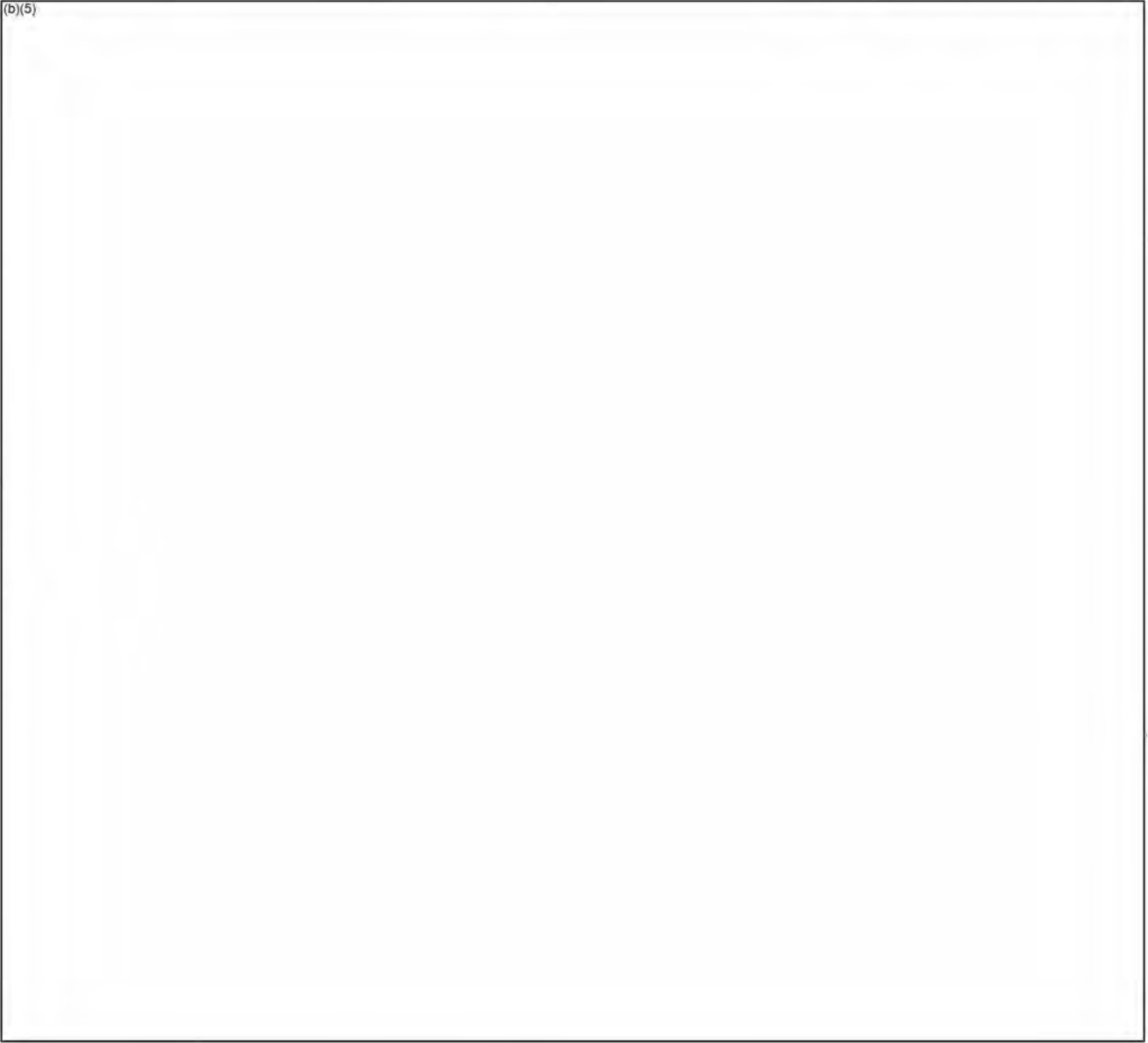


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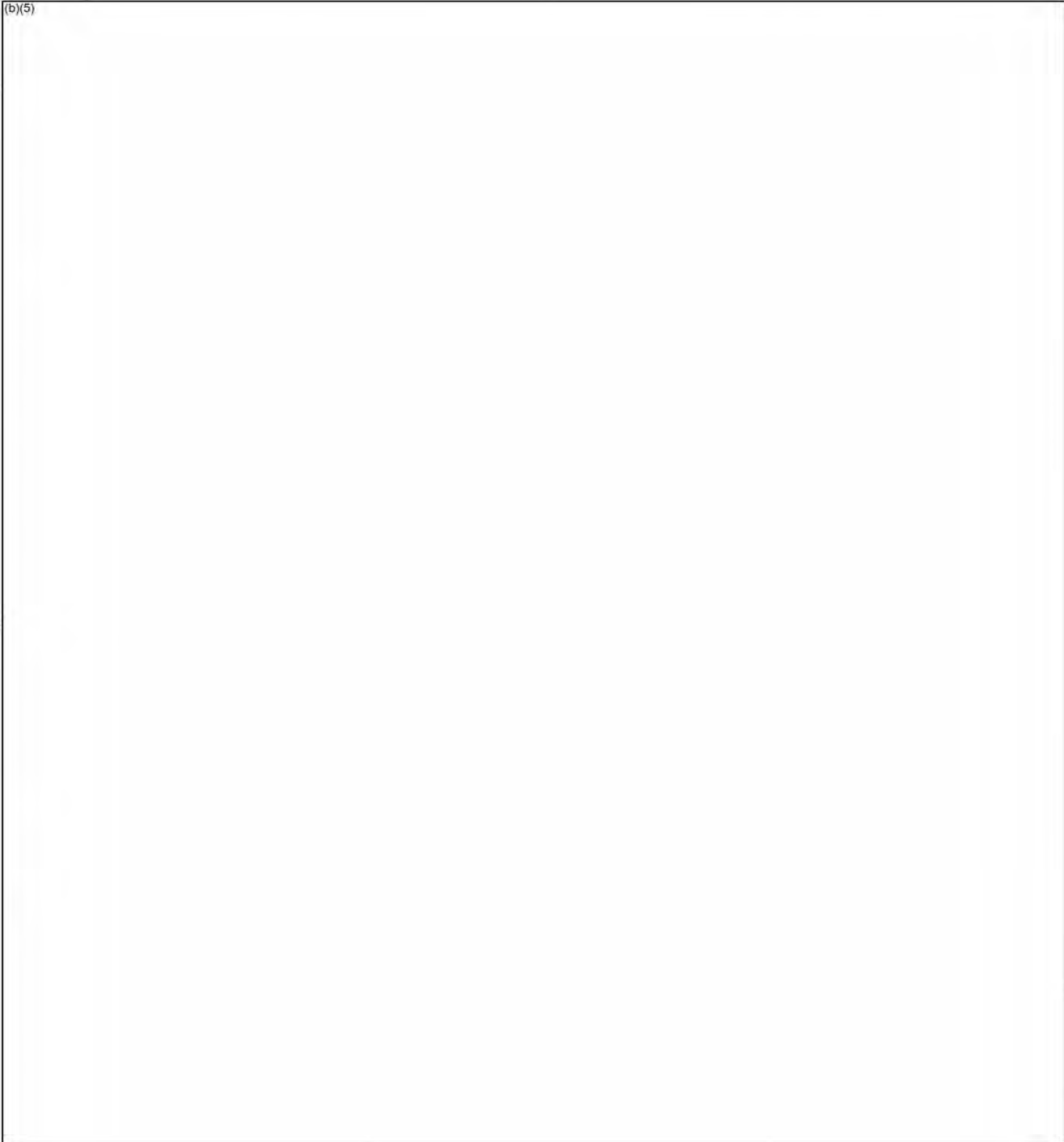
Privileged and Confidential

(b)(5)

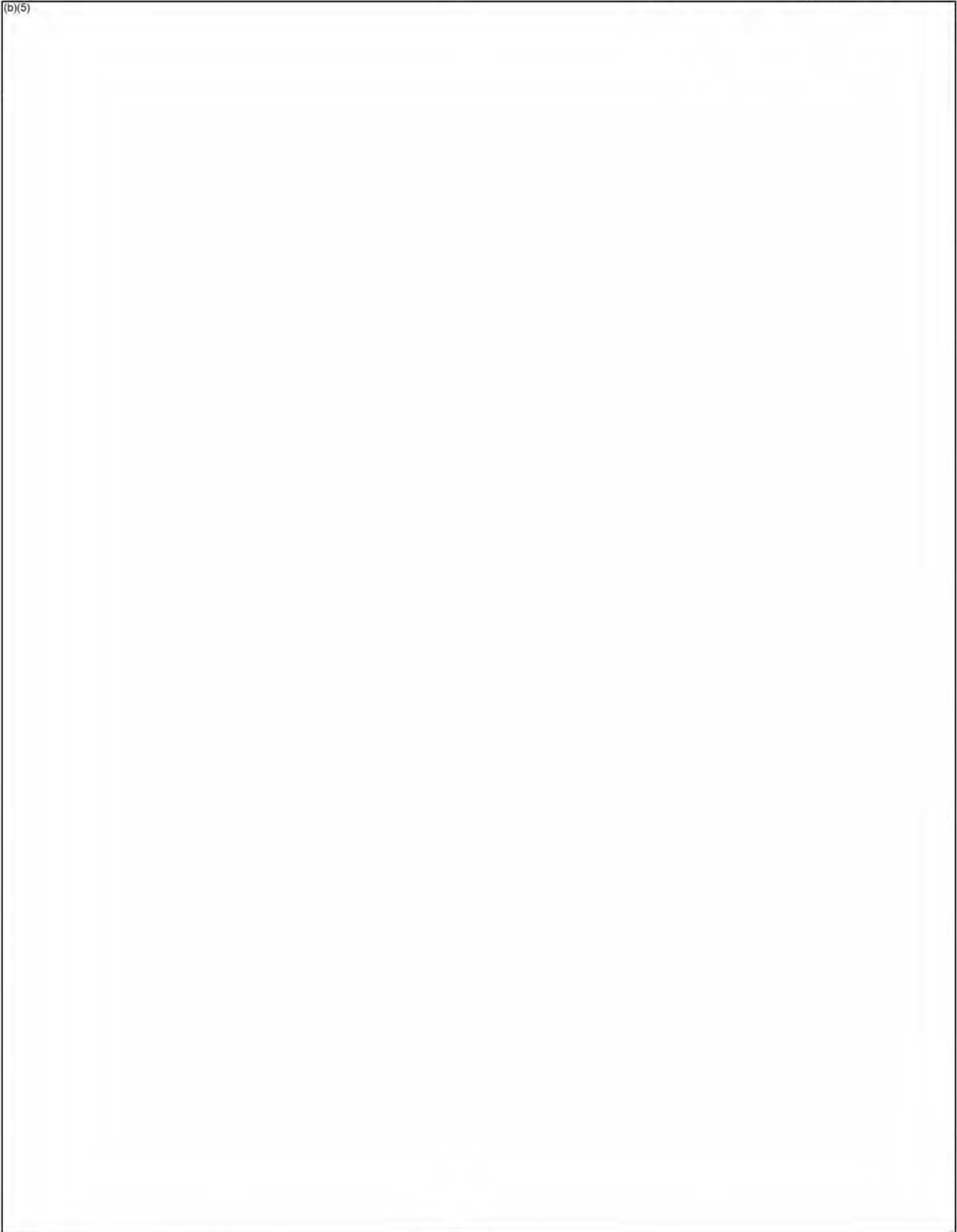


Privileged and Confidential

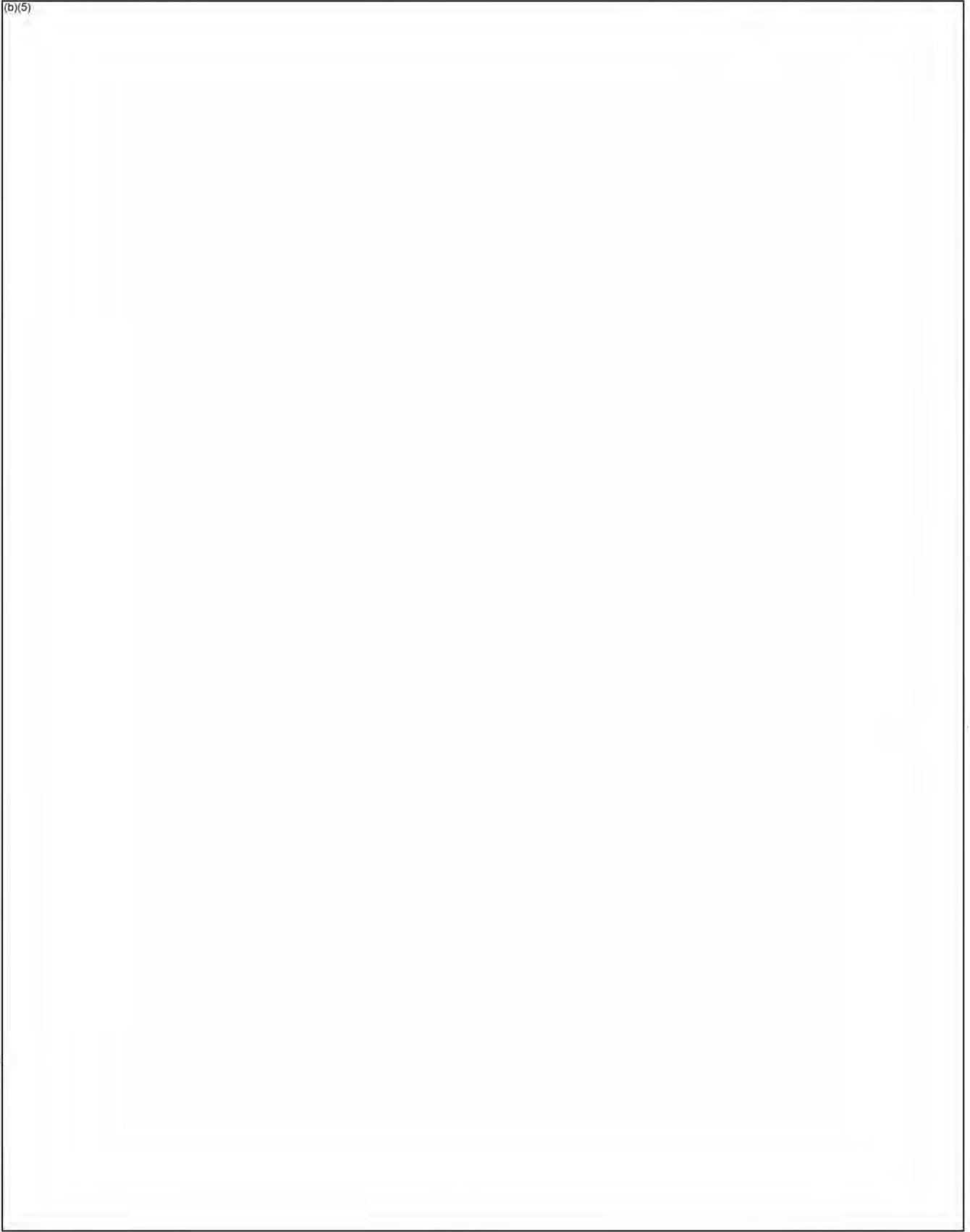
(b)(5)



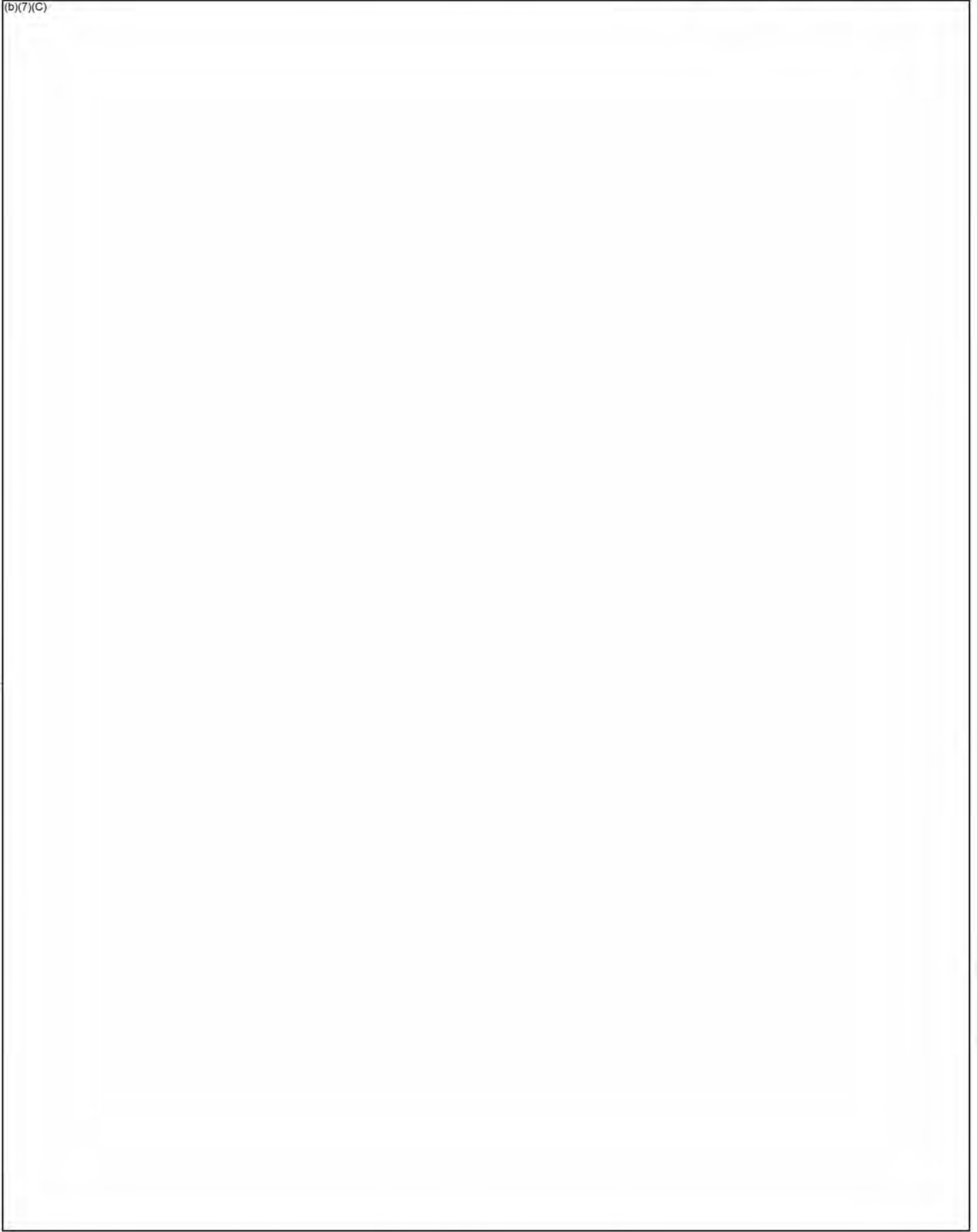
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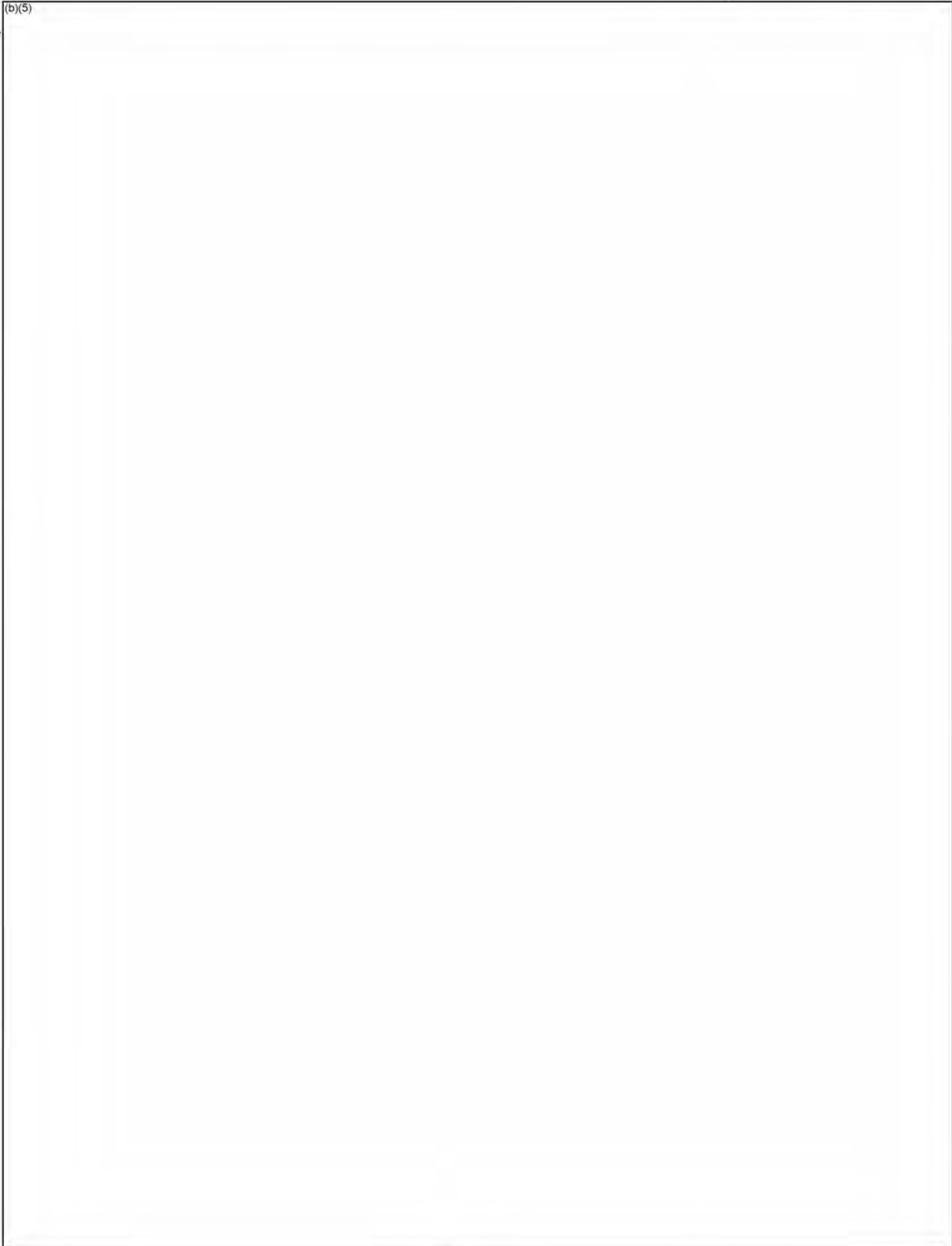
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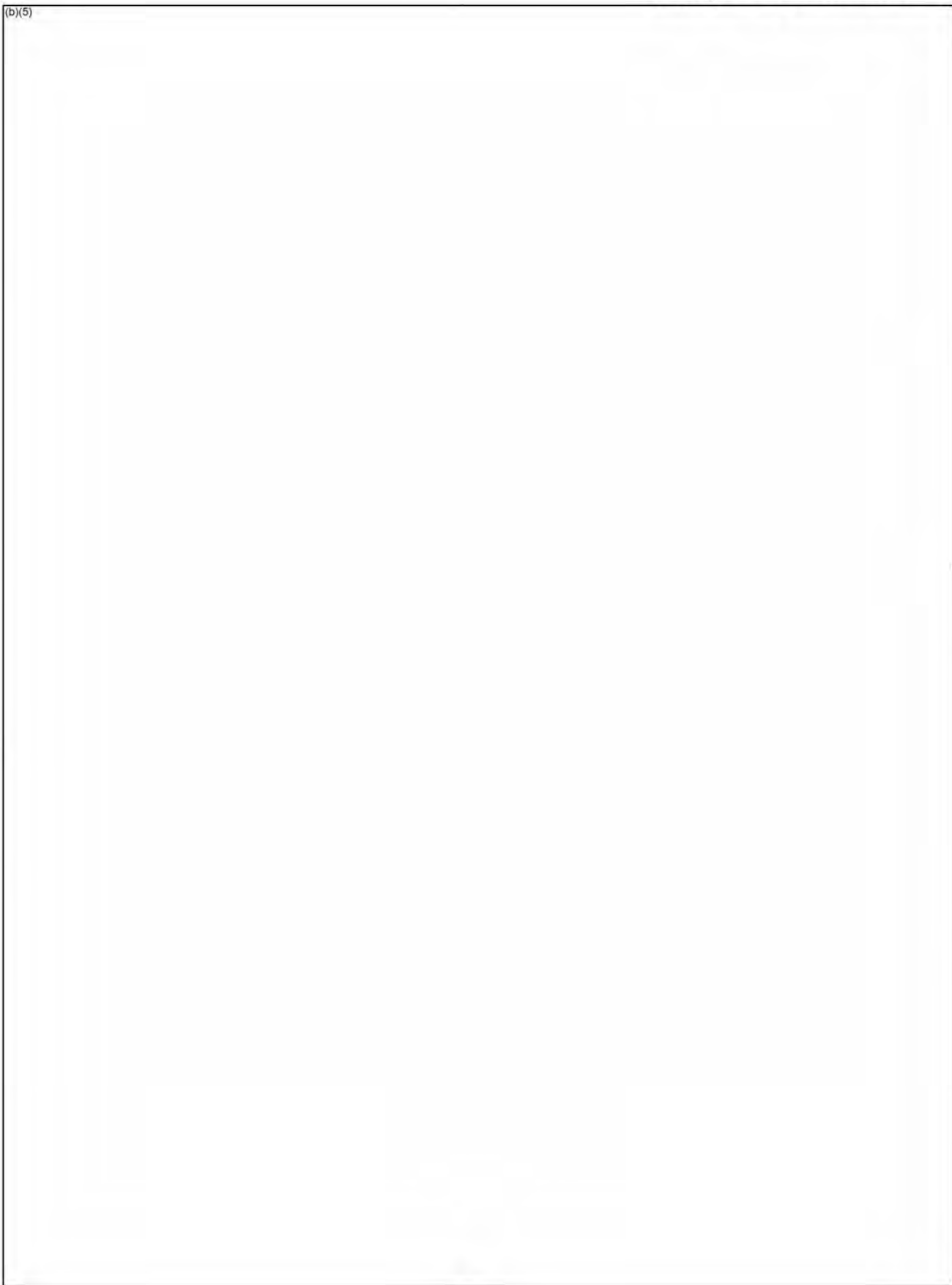
(b)(7)(C)



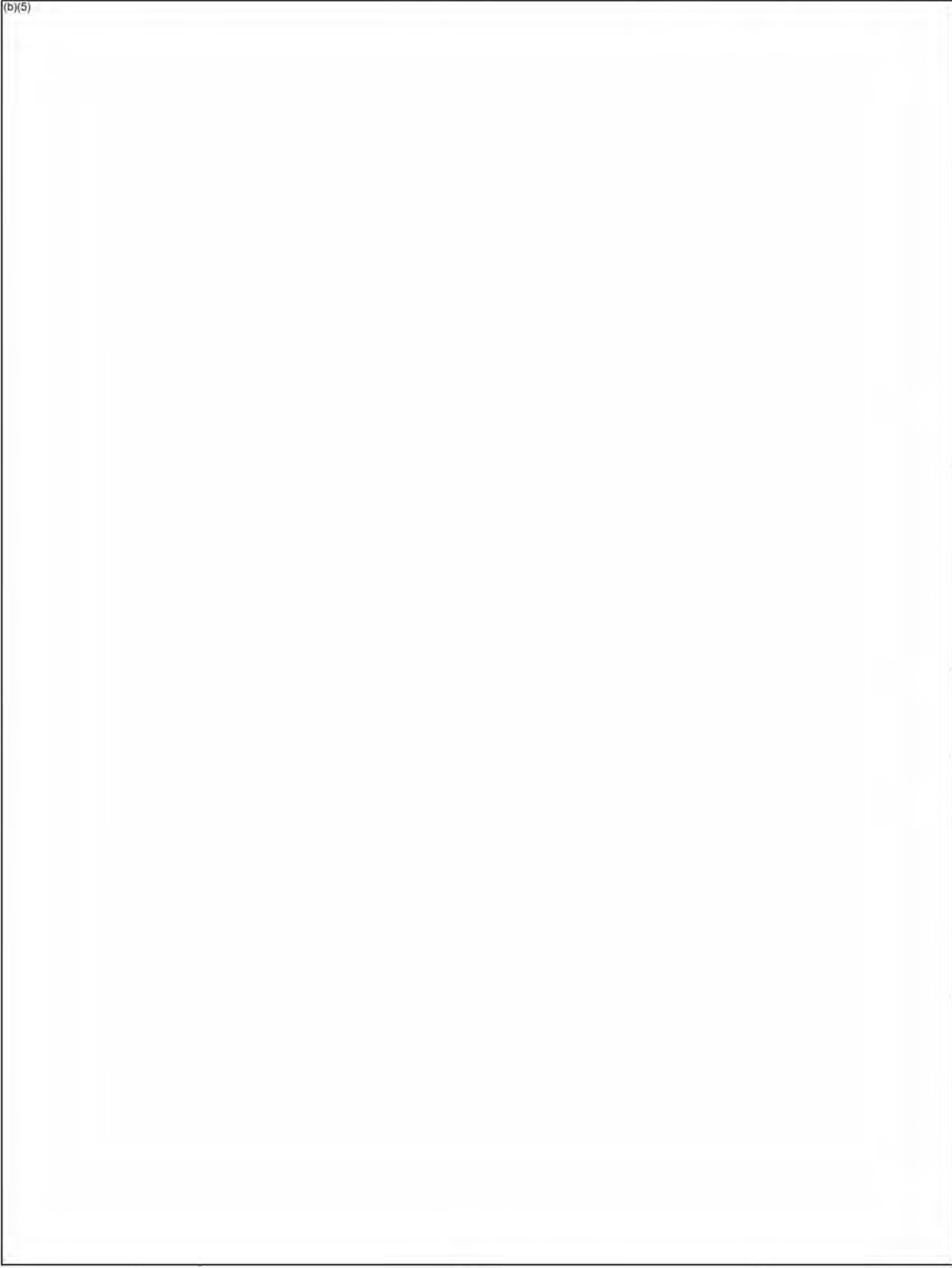
(b)(5)



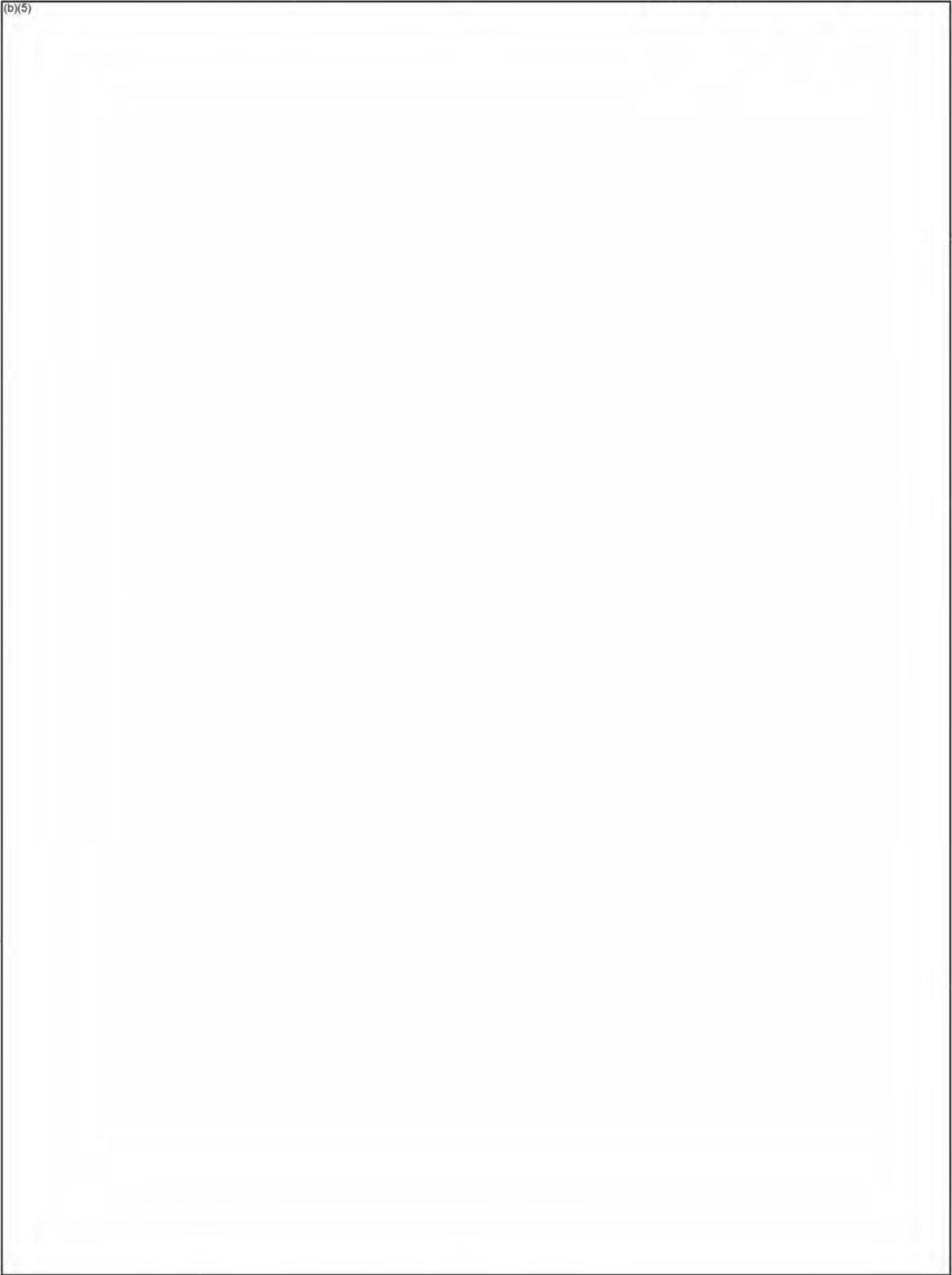
(b)(5)



(b)(5)



(b)(5)



Party name Goldman Sachs & Co
 Action name SEC v. Goldman Sachs & Co et al
 Case number HO-10911

Branch chief Reid Muoio
 Primary staff attorney Reid Muoio
 Telephone of primary staff (b)(7)(C)

Case Type (check only one): ☐ AP ☒ Civil If filed or instituted include docket or file number 10 CV 3229 (SDNY)

(Fill in all applicable fields. If not applicable, leave blank.)

	Disgorgement	Insider trading penalties	Remedies Act penalties	Other	Total
Amount ordered	\$15,000,000.00		\$535,000,000.00		\$550,000,000.00
Prejudgment interest					\$0.00
Amount waived					\$0.00
Total ordered	\$15,000,000.00	\$0.00	\$535,000,000.00	\$0.00	\$550,000,000.00
Payment plan (if yes, give details below)	No	No	No	No	
Penalties appropriate but not ordered		No	No		
Joint and several	No	No	No	No	
Other joint/several debtors					
Receiver or trustee appointed					
Pay to -- select from drop-down menu	Other		Other		

If applicable, describe the terms of any payment plan:
 (To be filled in if known or after judgment/order is executed.)

Payment plan details	Amounts	Comments

Has any portion of the money been escrowed?

☐ Yes - specify amount: _____ ☒ No

Will disgorgement and prejudgment interest be distributed to injured investors?

☐ Yes ☒ No, money is to be sent to the Treasury general fund. ☐ To be determined. ☐ N/A

Will penalties be distributed to injured investors through a fair fund?

☒ Yes ☐ No, money is to be sent to the Treasury general fund. ☐ To be determined. ☐ N/A

If distribution of disgorgement or penalties is undetermined, describe reason and target date for decision:

Will a criminal judgment offset any amount ordered in the Commission's case on this form? ☐ Yes ☐ No.

If yes, explain in comment section below.

If there will be a distribution, what is the earliest expected date that the money will be distributed?

(required for purposes of investing the funds pending distribution)

Additional comments: \$250,000,000 will be paid to injured investors; \$300,000,000 will be paid to SEC.

(To be filled in by the Office of the Secretary.)

Date approved by Commission _____	Tracking number _____
Reviewed by _____	Date _____

(To be filled in after order is executed. To be signed by the Office of the Secretary in administrative proceedings only.)

By: _____	Check box to confirm that orders are paid: ☐
Reviewed by (Secretary): _____	Date: _____

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Goldman -- meeting with Rob & Lorin

7/12/2010 6:19:31 PM

From: (b)(7)(C)

To: Aguilar, Luis A. (Commissioner)

(b)(7)(C)

Commissioner,

Rob and Lorin are available between 12-1 tomorrow to brief you on the proposed settlement with Goldman. Unless you object, I'll schedule for 12:00 because we have a 1:00 meeting with CME.

(b)(7)(C)

(b)(7)(C)

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Settlement Documents

7/14/2010 9:38:00 AM

From: (b)(7)(C)
To: Seymour, Karen (b)(7)(C)
Cc: Reisner, Lorin L. (b)(7)(C) Lench, Kenneth (b)(7)(C) Muoio, Reid (b)(7)(C)
Attachments: GS Judgment 7 14 10.doc, GS Consent 7 14 10.doc

Karen,

Attached are final versions of the Consent and the proposed Final Judgment. These documents are identical to the last set of documents we sent you, except the draft line and headers were removed and a few typos were corrected. Please have the Consent signed and sent back to us by close of business today.

Regards,

(b)(7)(C)

Division of Enforcement

U.S. Securities & Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549

(b)(7)(C)

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