

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66791 / April 12, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14845

In the Matter of

GOLDMAN, SACHS & CO.

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Goldman, Sachs & Co. (“Respondent” or “Goldman”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings as well as those fact findings herein to the extent also contained in Section V of the Consent Order with the Commonwealth of Massachusetts Securities Division, Docket No. 2009-079, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

RESPONDENT

Goldman, a New York limited partnership with its principal offices in New York, New York, is a broker-dealer and investment adviser registered with the Commission pursuant to Section 15 of the Exchange Act and Section 203 of the Investment Advisers Act of 1940.

Goldman is an affiliate of The Goldman Sachs Group, Inc., whose common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange. Goldman engages in a nationwide securities business. In 2003, Goldman, without admitting or denying the findings, consented to the issuance of a Commission order finding, among other violations, that Goldman violated Section 15(f) of the Exchange Act by failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information obtained from outside consultants concerning U.S. Treasury 30-year bonds. In re Goldman Sachs & Co., Exchange Act Rel. No. 48436 (Sept. 4, 2003). Goldman paid a \$5 million civil penalty and disgorgement and interest totaling more than \$4.3 million.

SUMMARY

This matter concerns Goldman’s failure to establish, maintain, and enforce adequate policies and procedures concerning its trading “huddle” program – a practice where Goldman’s equity research analysts provided their best trading ideas to firm traders and a select group of Goldman’s top clients. From 2006 to 2011, Goldman typically held weekly huddle meetings in each of the firm’s research sectors, during which the firm’s equity research analysts met with traders and sometimes sales persons to discuss the analysts’ “high-conviction” short-term trading ideas and other “market color” concerning stocks they covered, as well as traders’ views on the market. Beginning in 2007, Goldman began a program known as the Asymmetric Service Initiative (“ASI”), pursuant to which research analysts called a select group of priority clients to share information and trading ideas from the huddles. The huddles and ASI were an extensive undertaking created by Goldman with the goals of improving the performance of the firm’s traders and generating increased commission revenues from ASI clients.

At the same time, Goldman analysts were told that the performance of their trading ideas would be monitored by both Research and Trading. Analysts’ contributions to huddles and ASI, such as increased commissions generated from ASI clients, were discussed in analysts’ written performance reviews and in other documents used in connection with analyst evaluations.

Goldman’s huddle program created a serious and substantial risk that analysts would share material, nonpublic information concerning their published research with ASI clients and firm traders. Many of these clients and traders were frequent, high-volume traders, and the potential for misuse of material, nonpublic information concerning Goldman’s published research in connection with the huddles was high. However, Goldman did not establish, maintain, and enforce adequate policies and procedures to prevent such misuse in light of the risks arising from the huddles and ASI. In addition, its surveillance of trading ahead of research changes, both in connection with huddles and otherwise, was deficient. As a result, Goldman willfully violated Section 15(g) of the Exchange Act.

FACTS

A. Goldman’s Equity Research Division

Goldman’s Global Investment Research division (“GIR”) includes the Americas Equity Research group (“Americas Research Group”), comprised of research professionals responsible for covering equity securities issued in the United States, Canada, and Latin America. The Americas Research Group is divided into six, formerly seven, subject-matter sectors.

Goldman's equity research analysts provide the firm's clients with investment recommendations and analysis on public companies and their stocks through published research reports. For each stock they cover, Goldman analysts publish an investment rating, an estimate of the target price they expect the stock to reach in six or twelve months, and an estimate of expected earnings per share. They also publish a coverage view concerning the investment outlook for all the stocks within their specific subsector or coverage group (e.g., Asset Managers or Oil Refiners). Since June 2006, Goldman has utilized a rating system of Buy, Neutral, and Sell relative to each coverage group. These ratings are based on a stock's expected return over a defined time period, typically six or twelve months. The Americas Research Group generally maintains a distribution of stocks limiting the number of Buys to 25-35% and Sells to 10-15% within each coverage group.

In addition to its relative rating system, Goldman also publishes an Americas Conviction List ("Conviction List"), which represents a "focused list of [Goldman's] best ideas" from its Americas Research Group analysts. Stocks on the Conviction List could have an underlying investment rating of either Buy or Sell, but a Neutral-rated stock could not be added to the Conviction List.¹ Each sector business unit within the Americas Research Group generally contributes at least one stock to the Conviction List. An addition to, or removal from, the Conviction List is considered by Goldman's written policies to be material information, as is a change to a stock's investment rating. Changes to ratings and the Conviction List require approval from Goldman's GIR Americas Investment Review Committee ("IRC").

Since at least 2006, Goldman has employed a performance evaluation and compensation system that includes measuring an analyst's commercial impact. Goldman evaluates research analysts using an Analyst Scorecard ("Scorecard"), which plays an integral role in determining the bonus portion of an analyst's compensation. The Scorecard allocates points for, among other things, the accuracy and quality of research and evaluations from internal Goldman personnel, including sales persons and traders. The Scorecard also includes feedback received directly from Goldman clients through a process known as "broker votes." Many institutional investors use broker votes to rate research analysts and other personnel across the industry, and then allocate their trading — and resulting commissions — to the firms whose personnel they rate most highly.

B. "Huddles" and Asymmetric Service Initiative

Beginning in 2006, Goldman began holding weekly huddle meetings in each of its seven equity research sectors. Huddles were internal meetings in which Goldman's equity research analysts and traders, and sometimes sales persons, discussed, among other things, recent developments, market color and short-term trade ideas.² A primary purpose of the huddle meetings was to allow Goldman's equity research analysts and traders to engage in "a focused dialogue of the highest conviction ideas in that sector" and to spotlight "commercially oriented trading ideas." For example, a manager in the Financials sector emailed her team that they had a responsibility to generate trade ideas for huddles "based on your view of the stocks that will move short term . . . and make the [trading] desk money."

The Goldman traders who participated in huddles were primarily those who dealt directly with the firm's customers, including market-making and client-facilitation traders from Goldman's

¹ As of January 2011, stocks with an investment rating of Sell were no longer added to the Conviction List.

² Generally, there were seven different huddle meetings held each week, and each meeting could include discussions of as many as 15-20 different stocks.

Securities Division. However, until 2009, members of Goldman's Franchise Risk Management ("FRM") group, who also were authorized to establish large, long-term positions on behalf of the firm, attended huddles, as well. FRM advised market-makers, client-facilitation traders, and salespeople, but did not interact with clients.

In January 2007, Goldman launched its Asymmetric Service Initiative, which was an effort to generate additional revenue for the firm by providing market commentary and trading ideas in a structured format to a select group of approximately 180 hedge fund and investment management clients ("ASI clients"). As part of ASI, research analysts prepared scripts regarding the ideas discussed at huddles, and then used those scripts to call ASI clients concerning their ideas. Analysts were instructed to use the script as a guideline when making ASI calls, and to "lead with trading color . . . and with the most interesting and actionable ideas." Analysts were also permitted to discuss the ideas from huddles, including short-term trading ideas, with non-ASI clients.

In return for sharing trading ideas and market color through the ASI service, Goldman hoped to generate increased trading commissions from ASI clients. Goldman selected clients that would be offered the ASI service based on the actual amount of trading commissions received from the client, or the potential for Goldman to earn greater trading commissions from the client in the future. Revenues received by Goldman's Securities Division from certain ASI clients significantly increased after Goldman began conducting ASI in 2007. For example, a July 2007 document prepared by GIR identified "\$2M incremental new revenue associated with the accounts under [the Communications, Media, and Entertainment sector's] Asymmetric Service Initiative . . . YTD is \$14 million."

Research analysts were acutely aware of the importance of huddles and ASI to Goldman and to their own evaluations and potentially their compensation. Beginning in late 2006, Goldman began tracking the performance of a small subset of trade ideas raised by research analysts during huddles, using a spreadsheet known internally as the "Record of Ideas." Research analysts decided which of their specific trade ideas would be tracked on these spreadsheets, and typically selected their best or highest conviction ideas for inclusion on the tracking spreadsheets.

Moreover, GIR management informed research analysts that the performance of ideas from huddles would be tracked. For example, an internal memorandum concerning huddles described the Record of Ideas and stated that, "Research would monitor the quality of ideas, accuracy of the call/return generated." The memorandum further stated, "Employing the Research record of ideas, trading will evaluate how research recommendations contributed to their performance. Aggregated impact on trading may be shared with research management."

Goldman's huddle program affected research analyst evaluations and potentially their compensation in numerous ways. First, the huddle and ASI program was part of a concerted effort within GIR to improve or maintain the broker votes of Goldman's highest priority clients, including ASI clients, and accordingly, generate greater trading commissions. In furtherance of this goal, analysts received more credit on Scorecards – and therefore their evaluations – for the broker votes of Goldman's priority clients, including those who received ASI, than those of other Goldman clients. Second, Goldman sales and trading personnel, including staff who attended huddles and/or serviced ASI clients, provided feedback on research analysts through Scorecards and written annual evaluations. Finally, analysts themselves commented on huddles in their own written annual evaluations. For example, one analyst specifically noted how huddle performance

would “add value to traders’ P&Ls,” and another analyst touted that his huddle ideas had generated the “highest total return of all analysts contributing to the huddle list.”

During 2011, Goldman discontinued both the huddles and ASI.

C. Goldman Failed to Establish, Maintain, and Enforce Adequate Policies and Procedures to Prevent the Misuse of Material, Nonpublic Information Regarding Equity Research in Connection with the Huddles and ASI

Having created the huddles and ASI, Goldman failed to establish adequate policies, or adequately enforce and maintain its existing policies, to prevent the misuse of material, nonpublic information concerning upcoming changes to its research in connection with these programs. In the first instance, Goldman did not establish adequate written policies and procedures to address the issues arising from the new huddle program that it created. In addition, Goldman did not maintain and enforce adequate controls to monitor huddles and ensure that research analysts were not using the huddle program to prematurely disclose material, nonpublic information concerning their published research. Finally, Goldman’s surveillance of trading ahead of research changes – both in connection with huddles and otherwise – was materially deficient in numerous ways.

1. Deficiencies in Goldman’s Written Policies and Procedures

During the relevant period, huddles were subject to Goldman’s existing written policies and procedures. These policies generally prohibited equity research analysts from discussing unpublished research with clients or anyone outside of GIR other than members of the firm’s Legal or Compliance departments. Moreover, analysts were prohibited from selectively disclosing any new “material statements” regarding companies under their coverage before those statements were broadly disseminated to all of the firm’s clients. Goldman did not establish a specific written policy or procedure concerning huddles.³ However, in January 2008 research management issued an internal memorandum concerning huddles which stated that huddles were subject to the firm’s existing policies and procedures and that during huddles, “analysts must not engage in selective disclosure of unpublished research or indicate pending changes in ratings, conviction list designations, price targets or earnings estimates, or in any way disavow their published views.” Analysts were also instructed not to “save” for the huddle any information concerning short-term events that the analyst believed might be of interest to clients.

Prior to November 2006, Goldman’s written policies and procedures required that “any new, material statements” by an analyst about a covered company must be disseminated broadly to all clients of the firm. Broad dissemination was required for all research reports, as well as statements prepared by the analyst for circulation to sales and trading, unless the statement fell into one of two exceptions: a purely factual announcement, or a reiteration, elaboration, or review of previously-published research without any new analysis.

In November 2006, as Goldman was placing more emphasis on the huddles program, Goldman revised its dissemination policy. The revised policy still required broad dissemination of any “new material statements” and defined these to include changes to “key quantum data” – *i.e.*, changes to ratings, price targets, earnings forecasts, and coverage views – as well as reaffirmations of price targets or ratings in light of major news, when that news would call the analyst’s prior

³ During 2007, members of Goldman’s Compliance Division drafted a proposed insert concerning huddles for the GIR Global Policies and Procedures Manual, but no such policy was ever implemented.

rating into question. However, the November 2006 policy also provided that “[a]ll other statements, including internal messages commenting on short-term trading issues or market color, shall not require broad dissemination unless they would call into question published price targets or recommendations.” Goldman’s policies and procedures did not define the terms “short-term trading issues” or “market color.” Nor did the policies and procedures provide any guidance concerning what statements would call into question an analyst’s published price targets or ratings.

Shortly after the new dissemination policy was formally adopted, a December 2006 internal training presentation concerning information exchanges between research analysts and other personnel in Goldman’s Securities Division stated that analysts were free to share short-term trading ideas, even if those ideas were “not necessarily in the same direction as the investment rating” (e.g., a short-term idea to sell a stock with a published Buy rating), but did not define the limits of when that was acceptable without broad dissemination. This concept was reiterated in the January 2008 memorandum concerning huddles, which stated that, “[a]s with any client, dialogue as to events that may have a near-term or short-term impact on stocks is permissible.”

Although Goldman’s policies specifically permitted analysts to discuss “short term” trading ideas without broad dissemination – and analysts were encouraged to share their short-term trading ideas with clients and firm traders through huddles and the ASI program – Goldman did not define or provide adequate guidance or training to research analysts concerning the limits of what constituted a “short-term” or “near term” trading idea. Goldman employees’ understanding of the meaning of this term varied, with some analysts stating that they understood a “short-term” idea potentially could be as long as eleven months, provided that the time horizon for their published rating or price target was twelve months. Accordingly, Goldman’s written policies and procedures failed to adequately define the difference between “material statements” that required broad dissemination and “short-term” trading ideas that did not.

Furthermore, although huddles and ASI increased the risk of misuse of material, nonpublic information concerning upcoming changes to analysts’ published research, Goldman’s written policies and procedures did not restrict an analyst from proposing a trade idea for a specific stock during a huddle when the analyst had already contacted the IRC or begun drafting a report to change the rating on that stock. For example:

- Company A – In April 2009, the Goldman equity research analyst covering Company A discussed the stock during a huddle, even though four days earlier he had recommended the stock to the IRC as a potential addition to Goldman’s Conviction List. The script for the huddle noted that, while investor sentiment was negative on Company A, the analyst covering the stock expected that interest in stocks in that industry would increase before an upcoming industry conference. Five days later, the analyst’s rating on Company A was upgraded from Neutral to Buy, and the stock was added to the Conviction List. There is no record of anyone from Goldman’s compliance group having attended this huddle.
- Company B – In April 2008, the Goldman equity research analyst covering Company B discussed the stock during a huddle, after he had already drafted a report upgrading Company B from Neutral to Buy. The script for the huddle noted that the analyst looked to turn more positive on his group, and highlighted Company B. Company B was also added to the Financials sector Record of Ideas that day. Within hours after the huddle, the analyst recommended an upgrade of Company B at an internal meeting.

Four business days later, Goldman upgraded Company B from Neutral to Buy. The following day, the analyst removed Company B from the Record of Ideas. A representative from Goldman's compliance group did not attend the huddle.

- Company C – In July 2008, the analyst covering Company C discussed the stock during a huddle, even though he had already proposed a potential downgrade of the stock and scheduled an IRC meeting to discuss the downgrade. The script for the huddle stated that the analyst expected certain companies to be “under pressure,” including Company C. The next day, the analyst downgraded Company C from a Neutral to Sell. Compliance did not attend the huddle.

2. Deficiencies in Goldman's Controls over the Huddles

Goldman's policies explicitly required that analysts broadly disseminate any new material statements or changes to key quantum data, such as a rating change. However, Goldman lacked adequate controls to ensure that analysts were not using huddles or ASI as a forum to preview rating changes to firm traders and ASI clients.

Goldman's Global Compliance Division had a specific group that attended to research-related compliance issues (“Research Compliance Group”). Representatives of Goldman's Research Compliance Group attended some, but not all, huddles between 2006 and sometime in 2008, when attendance by Compliance became less frequent. More frequent Compliance monitoring of the huddles recommenced in August 2009, after publication of a media report concerning huddles and the initiation of the SEC's and other regulatory investigations. Thus, hundreds of huddles were not monitored by representatives of the firm's Compliance Division.

Goldman did not conduct any regular review or comprehensive audit to identify or review the circumstances when ratings changes occurred shortly after a stock was discussed in a huddle. In fact, between January 2007 and August 2009, there were hundreds of instances when a ratings change occurred within five business days after the stock was discussed at a huddle, referenced in a huddle script, or included on the Record of Ideas. However, with few exceptions, there are no records of any investigation or inquiry by Goldman concerning whether analysts had disclosed an upcoming rating change to ASI clients and firm traders through the huddles process.⁴ Whether or not any information regarding the impending ratings changes was communicated during those huddles, the sheer volume of those instances, had they been adequately identified and investigated by Goldman, should have alerted Goldman to the risk that material, nonpublic information concerning its analysts' published research could be improperly disclosed and misused.

The circumstances concerning these huddles were red flags that should have alerted Goldman to the need for both adequate review of the instances and stronger controls surrounding the huddles and ASI in order to prevent the potential misuse of material, nonpublic information concerning its analysts' published research. Analysts' communications at huddles and with ASI

⁴ In October 2007, Goldman's Compliance Testing Group conducted a limited review of the huddles program after an analyst made comments during a huddle indicating that his price target on a stock might be revised downward. The review was based only on the subset of trade ideas tracked on the Record of Ideas, and did not include thousands of stocks referenced in the scripts from that time period. Consequently, the review encompassed only a portion of all stocks discussed in huddles or huddle scripts during the relevant period. Ultimately, Goldman took no action or implemented any changes as a result of this review.

clients shortly before rating changes presented a serious risk and opportunity for the misuse of material, nonpublic information concerning analysts' published research. However, Goldman did not have adequate controls and procedures in place to even identify, much less review, any of these incidents to determine whether analysts had previewed upcoming rating changes in the huddles.

In addition, Goldman did not respond adequately to a red flag concerning the potential misuse of material, nonpublic information concerning published research by a Goldman analyst. The 2007 written evaluation for one Goldman analyst included a comment from a junior analyst stating that the analyst "needs to be more careful with the substance of his conversations with clients as some are aware of upgrades/downgrades ahead of the event." However, the analyst was never questioned about this allegation, and there is no record of any follow-up or inquiry conducted by GIR management or the Research Compliance Group concerning this issue.

Goldman's monitoring of huddles and ASI was further undermined by the fact that Goldman did not maintain complete documentation concerning those programs. Huddle scripts, Records of Ideas, or other records were not prepared for every huddle, and those records that exist do not reliably reflect all stocks discussed during a huddle or the comments made about each stock. Similarly, Goldman maintained very few records concerning which ASI clients were called with ideas discussed during any particular huddle, when they were called, and what was said. Although there was no specific regulatory requirement to create and maintain such records, the absence of documentation concerning the huddles and ASI compromised Goldman's ability to effectively monitor the potential misuse of material, nonpublic information concerning analysts' published research in connection with the programs. For example, when the Compliance Testing Group conducted its October 2007 review, they noted that "huddle sheets" – a document reflecting trading ideas that some sectors created for use in huddles – were not available for 15 of the 20 instances it sought to review.

Moreover, Goldman's Research Compliance Group did not keep complete records of all compliance questions arising from huddles. Goldman only kept records of instances when it determined there was an *actual* violation of Goldman policies and procedures by research employees. Goldman did not track compliance issues concerning research employees that ultimately were deemed not to have violated firm policies. Although there was no specific regulatory requirement to create and maintain records concerning potential violations of firm policy, the lack of such records also undermined Goldman's ability to monitor huddles and ASI for the misuse of material, nonpublic information concerning analysts' published research – including the ability of Goldman to assess how frequently issues relating to huddles or particular analysts were raised, as well as the adequacy of the review of any such incident.

3. Deficiencies in Goldman's Surveillance of Trading Ahead of Research Changes

During the relevant period, Goldman conducted limited surveillance of trading ahead of research changes, but it did not perform any surveillance specifically relating to huddles. Furthermore, Goldman's surveillance of trading ahead of research changes was not reasonably designed to ensure that analysts were not prematurely disclosing material research changes to firm traders and clients, either through the huddles, ASI or otherwise.

Goldman's surveillance of trading in advance of research changes was flawed in several material aspects. First, prior to September 2008, Goldman did not conduct surveillance of trading ahead of all changes to Goldman's Conviction List, even though Goldman's internal policies

required broad dissemination of changes to the Conviction List. For example, Goldman did not conduct surveillance of trading when a stock previously rated Buy or Sell was added to or removed from the Conviction List without any change to its Buy or Sell rating. Similarly, Goldman did not conduct surveillance of institutional client trading ahead of *any* rating changes until March 2009. Further, although market-making and customer-facilitation traders participated in huddles, Goldman did not conduct any surveillance of trading in those accounts.

Additionally, the surveillance group analysts reviewing trading ahead of ratings changes did not know that a stock was discussed in a huddle before the rating change. Without this key information, the surveillance group could not adequately investigate whether research analysts were improperly conveying material, nonpublic information to firm traders and ASI clients through the huddle program.

Since November 2008, Goldman has relied on its proprietary, algorithm-driven surveillance system called Global Surveillance Architecture to review trading ahead of rating changes. The system generates alerts based solely on the profitability of trading. Moreover, during the relevant period, Goldman's Surveillance Architecture system only generated an alert when an account's trading in a particular security was extremely profitable. For example, in order to trigger an alert for a rating or Conviction List change, a Goldman firm account had to reach a profitability threshold of \$650,000 and a "high activity" institutional account (defined as an account that trades \$46 million or more over a four-month period) had to reach a profitability threshold of at least \$3 million.⁵

LEGAL ANALYSIS

Section 15(g) of the Exchange Act requires broker-dealers to establish, maintain and enforce written policies and procedures, reasonably designed, taking into consideration the nature of the broker's or dealer's business, to prevent the misuse, in violation of the Exchange Act or the rules and regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.⁶ The internal controls requirements imposed by Section 15(g) are essential to protect against the risk of misuse of material, nonpublic information, which can undermine investor confidence in the integrity of the markets. Section 15(g) is intended to guard against a broad range of potential market violations, including insider trading and trading in advance of material research changes.

Broker-dealers must be cognizant of their duties under Section 15(g) and the need to tailor their policies to the specific activities of the individual firm, particularly as their businesses evolve. The Commission has long held that the requirement that broker-dealers implement and maintain policies and procedures consistent with the nature of its business "is critical to effectively preventing the misuse of material, nonpublic information." *In re Gabelli & Co., Inc.*, Exchange Act Rel. No. 35057 (Dec. 8, 1994). The Commission also has consistently made clear that broker-dealers must take seriously their responsibilities to design and enforce sufficiently robust

⁵ Between the implementation of the Global Surveillance Architecture in November 2008 and May 2011, 740 alerts were triggered based on trading ahead of research rating and Conviction List changes. However, Goldman's surveillance analysts determined after only a limited review that all but one could be closed without any further action.

⁶ Section 15(g) of the Exchange Act was formerly Section 15(f). The provision was renumbered in 2010 by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

policies and procedures to prevent the misuse of material, nonpublic information. See, e.g., In re Goldman Sachs & Co., Exchange Act Rel. No. 48436 (Sept. 4, 2003) (finding Section 15(f) violation where Goldman Sachs failed to prevent the misuse of material, nonpublic information potentially obtained by its paid outside consultants); In re Merrill Lynch, Pierce, Fenner & Smith Inc., Exchange Act Rel. No. 63760 (Jan. 25, 2011) (finding Section 15(g) violation where Merrill Lynch failed to prevent the misuse of customer order information); In re Merrill Lynch, Pierce, Fenner & Smith, Inc., Exchange Act Rel. No. 59555 (March 11, 2009) (finding Section 15(f) violation where Merrill Lynch failed to limit or monitor traders' access to the equity squawk box which broadcast material, nonpublic information); In re Banc of America Securities LLC, Exchange Act Release No. 55466 (March 14, 2007) (finding Section 15(f) violation where Banc of America failed to establish and enforce policies and procedures to protect against the misuse of material, nonpublic research information). The mere establishment of policies and procedures alone is not sufficient to prevent the misuse of material, nonpublic information. It also is necessary to implement measures to monitor compliance with and enforcement of those policies and procedures. See, e.g., In re Morgan Stanley & Co. Inc., et al., Exchange Act Release No. 54047 (June 27, 2006) (finding Section 15(f) violation where Morgan Stanley failed to enforce existing policies and procedures concerning surveillance over a four-year period).

Goldman's policies and procedures were not reasonably designed, given the nature of its business, to prevent the misuse of material, nonpublic information concerning its analysts' published research. After creating the huddles and ASI programs, Goldman failed to adequately address the increased risk for the misuse of material, nonpublic information resulting from these programs. Goldman's policies and procedures did not define what constituted a "short term" idea that could be discussed at huddles without broad dissemination to all of the firm's clients. Goldman's policies and procedures also did not restrict analysts from proposing a trading idea for a specific stock during a huddle when the analyst had already contacted the IRC or begun drafting a report to change the rating on that stock. Goldman also failed to enforce its existing policies and lacked adequate controls to monitor the huddle program for the misuse of the firm's material, nonpublic research information. Compliance did not attend hundreds of huddles. Goldman had no process in place to identify the hundreds of instances when an analyst discussed a stock at a huddle and then changed the rating within days of the huddle. Moreover, Goldman did not review such incidents to determine whether the analyst had prematurely disclosed a rating change during the huddle. Goldman's surveillance of research changes also was deficient in several material aspects. For example, Goldman did not conduct surveillance of trading of all Conviction List changes until late 2008, and did not conduct surveillance of client trading ahead of *any* research changes until March 2009, approximately two years after it began the ASI program. In addition, Goldman surveillance analysts had no information concerning the matters that were discussed at huddles when they investigated suspicious trading. Even when alerts regarding trading ahead of research changes were triggered by Goldman's surveillance system, all but one were closed with no further action after only a limited review. Accordingly, Goldman willfully violated Section 15(g) of the Exchange Act.⁷

⁷A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

UNDERTAKINGS

Goldman has undertaken to, within ninety (90) days of the entry of this Order:

1. Goldman shall complete a comprehensive review, including recommendations, of the policies, procedures and practices maintained and implemented by the Respondent pursuant to Section 15(g) of the Exchange Act that relate to the findings of this Order;
2. Goldman shall adopt, implement and maintain practices and written policies and procedures pursuant to Section 15(g) of the Exchange Act that are consistent with the findings of this Order and the recommendations contained in the comprehensive review; and
3. Goldman shall submit a report, approved and signed by Goldman's Legal Department, to M. Alexander Koch, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-5041, which details the results of the review, the new policies, procedures and practices adopted pursuant to Section 15(g) of the Exchange Act, and the actions taken to implement the new policies and procedures.

Goldman shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to M. Alexander Koch, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street N.E., Washington, D.C. 20549-5041, with a copy to the Office of Chief Counsel of the Enforcement Division, Securities and Exchange Commission, no later than thirty (30) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

- A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 15(g) of the Exchange Act;
- B. Respondent is censured;
- C. Pursuant to Section 15(b)(4) of the Exchange Act, Respondent shall, within ten (10) days of the entry of this Order, pay a total civil money penalty in the amount of \$22 million, \$11 million of which shall be deemed satisfied upon payment by Respondent of a \$11 million civil penalty to the Financial Industry Regulatory Authority in a related proceeding, and \$11 million of which shall be paid to the Securities and Exchange Commission for remittance to the United States Treasury. Payment to the Securities and Exchange Commission shall be: (1) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Securities and Exchange Commission, Office of

Financial Management, Accounts Receivable, 100 F Street, N.E., Mail Stop 6042, Washington, D.C. 20549; and (4) submitted with a cover letter that identifies Goldman, Sachs & Co. as the Respondent in this proceeding and includes the file number of this proceeding, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street N.E., Washington, D.C. 20549-5041; and,

D. Respondent shall comply with the undertakings enumerated in Section III above.

By the Commission.

Elizabeth M. Murphy
Secretary