

**FOIA CONFIDENTIAL TREATMENT
REQUESTED BY GOLDMAN, SACHS & CO.**

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

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In the Matter of ABACUS CDO	:	File No. HO-10911
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SUPPLEMENTAL SUBMISSION ON BEHALF OF GOLDMAN, SACHS & CO.

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I. FACTUAL QUESTIONS POSED BY THE STAFF

During the September 15, 2009 meeting, the Staff raised the following factual matters, which Goldman Sachs undertook to investigate and address:

1. The Staff inquired whether the 293 Baa2-rated securities from the 2006/2007 vintage included in the chart attached as Appendix 2 to Goldman Sachs' Wells Submission included securities backed by "midprime" as well as subprime loans, and thus whether the performance of all subprime and "midprime" Baa2-rated RMBS differed materially from that of the Reference Portfolio.
2. The Staff also raised the issue whether certain undisclosed criteria – such as average borrower FICO scores and geographical concentration of loans – restricted the ability of ACA Capital Management LLC ("ACA") to include in the Reference Portfolio certain securities from within the category of 2006/2007 Baa2-rated RMBS backed by subprime and "midprime" mortgage loans.
3. The Staff asserted its belief that in transactions marketed as having a portfolio selected by a Portfolio Selection Agent, other market participants had disclosed the participation in the portfolio selection process of a party taking a short position with respect to the portfolio and cited the Auriga CDO, Norma CDO I and Sorrento 2006-1 CDOs as examples.

We address these factual matters in sequence.

A. The 293 Securities Described in Appendix 2 to Goldman Sachs' Initial Submission Included "Midprime" RMBS.

The 293 securities in Goldman Sachs' summary of performance of subprime RMBS in Appendix 2 to Goldman Sachs' Wells Submission included "midprime" RMBS. To gather the information set forth in the column labeled "Subprime Deals From 2006/1Q07" in Appendix 2, Goldman Sachs compiled data for all securitizations other than those classified as "prime" or "alt-A" by LoanPerformance. The 293 securities thus consisted of "midprime" and

submission not be disclosed in response to any request made under the Freedom of Information Act, 5 U.S.C. § 552.

“subprime” securitizations.² As the Appendix (a copy of which is attached to this submission) illustrates, this universe of Baa2-rated, 2006/2007-vintage mid and subprime RMBS suffered losses that were materially similar to those of the Reference Portfolio, because nearly all mid and subprime RMBS of that rating and vintage – including those initially proposed by ACA without Paulson’s involvement – have performed poorly.

B. The Portfolio Selection Criteria Were Fully Disclosed in the Offering Documents.

At our September 15 meeting, the Staff asserted that criteria such as average borrower FICO scores and geographic concentration of loans restricted the ability of ACA to include in the Reference Portfolio certain securities from within the category of 2006/2007 Baa2-rated RMBS backed by subprime and “midprime” mortgage loans.

Based on the record available to Goldman Sachs, the only evidence of criteria in addition to the limitation to 2006/2007 Baa2-rated RMBS backed by sub and midprime mortgage loans are draft engagement letters between Goldman Sachs and Paulson & Co., Inc. (“Paulson”), which contain additional criteria initially discussed by Goldman Sachs and Paulson prior to the

² The term “midprime” is used by Moody’s Investor Service, which defines “midprime” RMBS as having a weighted-average borrower FICO score between 625 and 700. “Prime” loans have FICO scores greater than 700: of the 222 RMBS issued in 2006 and the first quarter of 2007 and characterized as “prime” by LoanPerformance, only two had average borrower FICO scores less than 700, and in these two securities the average borrower FICO score was 699.73 and 696.36, respectively. Alt-A securitizations generally contain loans that do not fully meet the definition of “prime.” The Federal Housing Finance Authority defines an “alt-A” loan as “[a] conventional single-family mortgage made to a borrower who typically provides limited income or asset verification or no evidence of an employer. Such loans may have other non-standard underwriting.” Federal Housing Finance Authority, Mortgage Market Note 07-1, *available at* <http://www.fhfa.gov/webfiles/1246/MMNOTE9607.pdf> (last visited Sept. 24, 2009). Of the 634 securitizations issued in 2006 and the first quarter of 2007 and characterized as “alt-A” by LoanPerformance, 111 had average borrower FICO scores of less than 700. The average borrower FICO score among these 111 securities, however, was 690.97.

selection of ACA as Portfolio Selection Agent.³ (*See* GS MBS-E-002755993-2756029.) As Goldman Sachs witnesses testified, however, these criteria were used to guide Goldman Sachs' preliminary search for potential reference securities. (Gerst Tr. 134-36; Tourre Tr. Vol. 1, 47-49.) No formal engagement letter was ever executed, and Goldman Sachs has seen no evidence that the criteria listed in the draft engagement letters were ever conveyed to ACA. (Gerst Tr. 51-53.) Indeed, Mr. Tourre testified that the only criteria conveyed to ACA were that the securities be 2006/2007-vintage, Baa2-rated and backed by sub or midprime loans. (Tourre Tr. Vol. 1, 62.) Further, counsel for Paulson deleted the reference to these criteria in the last draft of the engagement letter. (*See* GS MBS-E-006121092.) The record available to Goldman Sachs does not indicate that *any* restrictions were imposed on ACA's selection process other than those set forth in the various term sheets, namely, that the portfolio would be comprised of 2006/2007-vintage, Baa2-rated mid and subprime RMBS.

C. Market Practice Did Not Entail Disclosure of a Short Investor's Participation.

At our meeting, the Staff suggested that at least some market participants disclosed the involvement in the portfolio selection process of third parties that took short positions with respect to the CDO's portfolio and referenced as examples the Auriga, Norma and Sorrento transactions. Respectfully, those examples are readily distinguishable, and we have identified no evidence of any such general market practice.

³ The draft of the Engagement Letter dated January 3, 2007, lists six criteria disclosed in the Term Sheet, plus two additional criteria: (i) the value of collateral in the securitization must exceed \$500 million, and (ii) at least 80% of the collateral should consist of adjustable-rate mortgages. (GS MBS-E-002756016.) The draft also limits the reference securities to those issued after March 1, 2006, while the Term Sheet refers to 2006- and 2007-vintage securities. The Reference Portfolio, however, contained eight securities issued in January and February 2006, one security with less than \$500 million in collateral and 20 securities in which less than 80% of the collateral consisted of adjustable-rate mortgages.

Auriga, unlike 2007-AC1, is an actively-managed CDO transaction without a static Reference Portfolio. (Auriga Offering Circular at 200.) Its collateral manager is 250 Capital LLC, a subsidiary of Merrill Lynch & Co., the underwriter of the transaction. (*Id.* at 197.) At our meeting, the Staff made no reference to particular disclosures used in the Auriga, Norma or Sorrento transactions. Our own examination of the Auriga Offering Circular has revealed no relevant disclosures, but we have excerpted three provisions that the Staff may have had in mind.

First, the Auriga Offering Circular discloses that an “Initial Preferred Securityholder”⁴ may take a position opposite that of the noteholders:

Initial Preferred Securityholder may enter into credit derivative transactions relating to Reference Obligations or Cash Collateral Debt Securities in the Issuer’s portfolio. On or after the Closing Date, the Initial Preferred Securityholder may enter into credit derivative transactions relating to Reference Obligations or Cash Collateral Debt Securities in the Issuer’s portfolio, under which it takes a short position (for example, by buying protection under a credit default swap relating to such obligation or security) or otherwise hedges certain of the risks to which the Issuer is exposed. The Issuer and Noteholders will not receive the benefit of these transactions by the Initial Preferred Securityholder and, as a result of these transactions, the interests of the Initial Preferred Securityholder may not be consistent with those of Noteholders.

(*Id.* at 55.) Goldman Sachs understands that the Initial Preferred Securityholder was Magnetar Capital LLC (“Magnetar”), but this information is not disclosed in the offering circular.

Goldman Sachs does not know the extent to which Magnetar played a role in the selection of the Auriga portfolio, and this too is not disclosed in the offering circular. In fact, other than listing 18 pages of “eligibility criteria” (*id.* at 143-161), which state in general terms what the portfolio may contain, the Auriga offering circular does not mention the contents of the portfolio *at all*.

⁴ The “Initial Preferred Securityholder” was the purchaser of the Class H Notes, Class I Notes and the “Preferred Securities,” which were the three most subordinate classes of securities issued in the Auriga transaction. (Auriga Offering Circular at 1-3.) These three classes of securities were sold in a separate offering and are not described in detail in the Auriga Offering Circular.

Second, the Auriga Offering Circular discloses that the Credit Default Swap Counterparty, Merrill Lynch International (“MLI”), “is likely to seek to eliminate any credit exposure to the Reference Obligations by entering into back-to-back hedging transactions.” (*Id.* at 56.) This disclosure is materially similar to that stated in the 2007-AC1 Offering Circular. (*See* GS MBS 0000010105 (“The Protection Buyer is not required to have any credit exposure to any Reference Entity or any Reference Obligation.”); GS MBS 0000010127 (“[T]he Protection Buyer . . . may hold long or short positions with respect to Reference Obligations . . . and may enter into credit derivative or other derivative transactions with other parties pursuant to which it sells or buys credit protection with respect to one or more related Reference Entities and/or Reference Obligations. . . .”)).

Finally, the Auriga Offering Circular discloses that, in its capacity as Credit Default Swap Counterparty, MLI may have conflicts of interest because the terms of the transaction permit it to determine when defaults of the Reference Obligations – events that trigger payment to it under the Credit Default Swap – have occurred:

Conflicts of Interest of Credit Default Swap Counterparty. MLI will, in its role as Credit Default Swap Counterparty for all of the Credit Default Swaps, have the right to make determinations regarding the Reference Obligations (including a decision to give notice that a credit event or “floating amount event” has occurred and require the Issuer to make payments to it). In addition, MLI, as Credit Default Swap Counterparty to the Synthetic Securities, will have sole discretion to determine whether and when to declare a Credit Event and to deliver any notice that a Credit Event or a Floating Amount Event has occurred under a Synthetic Security.

(Auriga Offering Circular at 69.) This disclosure, however, relates not to the selection of the reference securities but to the determination that certain credit events have occurred with respect

to them.⁵ Moreover, Auriga's structure is so radically different from that of 2007-AC1 that any attempt to analogize the two transactions would be futile.

The Norma CDO, which also was an actively managed transaction underwritten by Merrill Lynch & Co., contained disclosures that were materially similar to those used in Auriga. (Norma Offering Circular at 56, 67.) We understand that Magnetar was the "Initial Preference Shareholder"⁶ for the Norma transaction, but this information is not disclosed in the offering circular. Similarly, we do not know whether Magnetar played a role in the selection of the Norma portfolio, and this too is not disclosed in the offering circular.⁷

⁵ The 2007-AC1 Offering Circular disclosed that Goldman Sachs, as Protection Buyer, would have certain conflicts of interest, including that it might enter into other transactions that have an adverse effect on the reference securities. (GS MBS 0000010126-10127.)

⁶ The "Initial Preference Shareholder" was the purchaser of the Class G Notes, Class H Notes and the "Preference Shares," which were the three most subordinate classes of securities issued by the Norma CDO. (Norma Offering Circular at 1-3.) These three classes of securities were sold in a separate offering and are not described in detail in the Norma Offering Circular.

⁷ The Norma CDO was the subject of a December 27, 2007 Wall Street Journal article entitled "Wall Street Wizardry Amplified Credit Crisis – A CDO Called Norma Left 'Hairball of Risk.'" The article states that Norma was "[c]reated at the behest of an Illinois hedge fund" understood by "people familiar with the matter" to be Magnetar. Carrick Mollenkamp and Serena Ng, *Wall Street Wizardry Amplified Credit Crisis – A CDO Called Norma Left 'Hairball of Risk,'* THE WALL STREET JOURNAL, Dec. 27, 2007, at A1. The article goes on to note that:

Most [of the collateral was] not actual securities, but derivatives linked to triple-B-rated mortgage securities. Called credit default swaps, these derivatives worked like insurance policies on subprime residential mortgage-backed securities or on the CDOs that held them. Norma, acting as the insurer, would receive a regular premium payment, which it would pass on to its investors. The buyer of protection, which was initially Merrill Lynch, would receive payouts from Norma if the insured securities were hurt by losses. *It is unclear whether Merrill retained the insurance, or resold it to other investors who were hedging their subprime exposure or betting on a meltdown.*

Id. (emphasis added).

Sorrento was a \$67.4-million bespoke CDO transaction. Goldman Sachs has been unable locate the offering documents used in the transaction. In any event, the disclosure practices used in a \$67.4-million offering cannot be said to reflect market norms for multi-billion-dollar transactions such as 2007-AC1.

More fundamentally, if it were market practice to disclose reverse inquiries and participation by entities with long or short positions in selecting the reference portfolio, we would have expected to see many examples of that disclosure, because those activities were a regular feature of synthetic CDO transactions. Even the existing record reflects that ACA and IKB themselves offered views on reference portfolios in transactions in which they participated. We have confirmed with outside counsel experienced in the drafting of CDO offering materials that market participants were well aware that participants in CDO transactions routinely provided input on selection of the portfolio securities, and that it was not market practice to disclose their involvement in the portfolio selection process. Goldman Sachs has no doubt that a fully developed record would reflect that both long and short investors often initiated transactions through reverse inquiries, and that they and other potential participants regularly expressed views as to the reference portfolio's composition. Market participants understood that those activities occurred, and in the end all were fully capable of analyzing the resulting portfolio and making their investment decision on the merits of the portfolio.

II. THE OFFERING MATERIALS DISCLOSED ALL MATERIAL FACTS.

The September 15 meeting was very useful in helping us understand the Staff's evolving thinking. We appreciate the Staff's willingness to engage in an open and robust discussion of the issues, and take this occasion to offer several additional observations based on the additional insights gained as to the Staff's theory.

Goldman Sachs had prepared its Wells Submission in response to the proposed charges as outlined in the Staff's Wells call and ensuing letter in early August, which appeared to highlight the role of Paulson, as well as ACA's apparent belief that Paulson was an equity investor. The Staff clarified at the meeting that its theory does not turn on disclosure of Paulson's name or on anything unique to Paulson, but rather rests on the degree of participation by *any* entity in the selection of a reference portfolio when the offering documents refer to a portfolio selection agent and the entity participating in the selection process intends to take a short position with respect to the reference portfolio. As we understand the Staff's position, participation by that entity in that manner would have qualified the offering materials' statement that ACA was the Portfolio Selection Agent, because that statement implied that the Agent acted without input or comment from others in selecting the portfolio.

With the benefit of this clarification of the Staff's position, we revisit below several points we have previously made to sharpen our observations:

- *First*, investors already understood and therefore required no disclosure that (i) a synthetic CDO transaction could not occur absent market participants absorbing both the long and short side of the exposure, and (ii) it is a regular aspect of the market for those participants to make reverse inquiries about transactions and express their views as to the reference portfolio. The reference to a Portfolio Selection Agent did not suggest otherwise or impliedly disclaim the normal interaction among participants in the transaction, and so needed no qualification as to the degree of investor participation in the process. (Section A)
- *Second*, to the extent that investors took comfort in ACA's role in selecting the Reference Portfolio, they received the benefit of ACA's participation, because in the end the Portfolio *was selected* by ACA, and no transaction could have occurred absent its approval. There can simply be no question as to ACA's

satisfaction with the Reference Portfolio as it invested its own capital heavily in the transaction. (Section B)

- *Third*, however the Reference Portfolio came to be, the sophisticated institutional investors in the resulting ABACUS private placement were well-equipped to perform their own objective analysis of the underlying assets, which turned on information equally available to all participants. (Section C)

A. All Investors Understood That Synthetic CDO Transactions Emanate From Inquiries by Market Participants and That Those Participants Provide Input Into the Portfolio's Composition.

The Staff's theory hinges on the proposition that investors assumed by virtue of the reference to a Portfolio Selection Agent that the Agent would operate alone and without input from other participants in the transaction, and that the transaction had emanated from Goldman Sachs rather than from a reverse inquiry. Respectfully, the very sophisticated participants involved in 2007-AC1 knew differently, and required no disclosure regarding the role of participants taking a short position.

These and other regular CDO investors were fully aware that a synthetic CDO transaction can occur only if there are market participants taking long and short exposure to the reference portfolio. They also understood that synthetic CDOs routinely arose as a result of reverse inquiries; indeed, they had themselves made such inquiries from time to time. For example, IKB's own inquiry led to the initial ABACUS transaction. Finally, they were also fully aware that in synthetic CDO transactions, participants often express their views as to the composition of the portfolio; they had all expressed their views in such circumstances in the past. Accordingly, they had every reason to assume that these same dynamics – participants shorting

the portfolio, reverse inquiries and interactions as to the portfolio composition – would exist in the case of 2007-AC1.⁸

The reference in the offering materials to a Portfolio Selection Agent did not imply otherwise. The Staff expressed the view that such a selection agent presumptively assembles a portfolio without input from investors or reference to selection criteria, but provided no basis in industry practice or otherwise for such a presumption. Certainly there was nothing in the offering materials that so suggested.⁹ All those materials said was that *this* agent would select the ultimate portfolio, subject to disclosed criteria, and even under the Staff’s theory there cannot be any question that ACA made the selections. That ACA had input from interested participants does not diminish its exclusive authority to select the portfolio, its thorough review

⁸ Goldman Sachs does not understand the Staff to contend that it should have disclosed the participation of *any* entity that intended to take a short position, no matter how little that entity had participated in the portfolio selection process. Further, customary market practices do not generally have to be disclosed to investors. *See In re Worlds of Wonder Sec. Litig.*, 35 F.3d 1407, 1417-18 (9th Cir. 1994) (common industry practices require no disclosure).

⁹ The offering circular described the role of the Portfolio Selection Agent as follows:

The Portfolio Selection Agent will, pursuant to the terms of the Portfolio Selection Agreement, (a) select the Initial Reference Portfolio and (b) have the right to review the calculations of the Credit Default Swap Calculation Agent and the Trustee on any Determination Date. The Portfolio Selection Agent will not be responsible for producing or providing reports, notices or other information relating to the Notes or the Reference Portfolio. The Portfolio Selection Agent will not provide any other services to the Issuer or act as the “collateral manager” for the Collateral. The Portfolio Selection Agent will not have any fiduciary duties or other duties to the Issuer or to the holders of the Notes and will not have any ability to direct the Trustee to dispose of any items of Collateral.

(GS MBS 0000010178.) The Portfolio Selection Agreement gave ACA the authority to select the Reference Portfolio, and said nothing about whether ACA would act with or without input from third parties. (*See* GS MBS-E-0003639016.)

of each security included using its proprietary analytic models, and its complete satisfaction with the resulting portfolio as evidenced by its investment of its own cash in the deal.

We also pause to consider precisely what the additional disclosure advocated by the Staff would say. Based on our discussion at the September 15 meeting, Goldman Sachs understands that the Staff apparently has in mind the addition of a disclosure such as the following:

The Portfolio Selection Agent may, from time to time, receive recommendations as to the content of the Reference Portfolio from third parties, including third parties whose interests are adverse to those of the noteholders. The Portfolio Selection Agent may consider and accept or reject such recommendations, with the result that any or all of the Reference Obligations may have initially been proposed by such third parties, and that Reference Obligations originally proposed for inclusion by the Portfolio Selection Agent may be deleted from the Reference Portfolio. Investors should review the list of Reference Obligations set forth herein and conduct their own investigation and analysis with respect to the creditworthiness of each Reference Obligation.

Such a disclosure would provide a potential investor with no information the investor did not already know, since the dynamics described represented a regular course of dealing in the market. A disclosure more narrowly tailored to the facts of the 2007-AC1 transaction would convey even less. For example, a potential disclosure of the discussions at issue here might read:

The Portfolio Selection Agent has received recommendations as to the content of the Reference portfolio from third parties, including a third party that intends to take a short position with respect to the Reference Portfolio (the "Third Party"). The Third Party initially suggested 123 securities to the Portfolio Selection Agent. The Portfolio Selection Agent evaluated these 123 securities, rejected 68 of these securities, accepted 55 of these securities and proposed an additional 31 securities. The Portfolio Selection Agent later proposed an additional 26 securities. Goldman Sachs requested that two of the proposed securities be rejected, and the Portfolio Selection Agent suggested three replacements. After a meeting between the Portfolio Selection Agent and the Third Party, the Portfolio Selection Agent circulated a spreadsheet of 100 securities, including the securities that the two parties had agreed upon, as well as several additional securities. The Third Party requested removal of eight of these securities and Goldman Sachs requested removal of two other securities. The Third Party then circulated a list of 90 securities. The Portfolio Selection Agent requested removal of 3 securities and proposed 11 alternative securities, 3 of which were agreed upon by the Third

Party. The parties then further discussed the substitution of a handful of securities and settled on the final portfolio.

The bottom line is that no amount of disclosure would change that the very sophisticated investors already knew that some entity or entities by necessity had to take a short position, and that any and all participants – including themselves – might express their views as to the reference portfolio. None of these descriptions contains any concrete, analyzable information that might educate the sophisticated institutional investors that typically purchase synthetic CDOs. Regardless of who selected them, the offering documents for each of the reference securities disclosed detailed information on their underlying assets, as required by Regulation AB. It is this concrete information on the assets – not the economic interest of the entity that selected them – that investors could analyze and use to inform their decisions.¹⁰

B. ACA Selected the Reference Portfolio, and the Offering Documents Properly Described ACA as Portfolio Selection Agent.

The Staff questioned at times during the September 15 meeting whether ACA actually selected the portfolio. The record in this investigation is clear that the overwhelming majority of the securities were identified by ACA. Of the 90 securities in the Reference Portfolio:

- 47 were among the 55 selected by ACA from the 123 securities initially sent to ACA (*see* GS MBS 0000010274-10277; GS MBS-E-007988151-007988152),

¹⁰ At the September 15 meeting, the Staff stated that it had asked some market participants whether they would have wanted to know prior to investing in a securitization that a participant in the portfolio selection process intended to take a short position, and that these market participants stated that they would have wanted to know this information. Leaving aside whether these market participants could truly and objectively recall – without hindsight – what they thought was material given the market conditions prevalent in 2006 and early 2007, it is unlikely that an informal survey, without reference to the specific, detailed information provided to investors here, would yield meaningful responses.

- 19 were among the 31 initially recommended by ACA for its first portfolio of 86 securities (*see id.*),
- 21 were initially recommended by ACA later in the process (*see* GS MBS 0000010274-10277; GS MBS-E-003026086; GS MBS-E-003838442-3838443; GS MBS-E-002444961-2444962; GS MBS-E-003740868) and
- 3 were initially recommended by Paulson (*see* GS MBS 0000010274-10277; GS MBS-E-003740868; GS MBS-E-007974382).

The record is equally clear that, regardless of who proposed or commented on any particular security, in the end, ACA carefully analyzed every security, and ACA alone selected the final portfolio and underscored its satisfaction by investing its own money. Only ACA had the authority to select and approve the Reference Portfolio; certainly Paulson had no such authority. If investors took any comfort from ACA's role as Portfolio Selection Agent, they got precisely what they were expecting.

C. Investors Had All the Objective Information They Required to Make an Informed Investment Decision.

As Goldman Sachs noted in its initial Submission, what mattered to investors – particularly the sophisticated institutions that invested here – were the details of the Reference Portfolio. Every investor was simply applying its own broad directional bet on macro-economic and housing trends to a portfolio of securities. That objective portfolio information was entirely static and involved no corporate inside knowledge. Regardless of how the Reference Portfolio was selected, the offering documents comprehensively described each individual asset backing the securities. Nothing about the selection process affected the inherent value or risks of the resulting Reference Portfolio. And nothing stopped any investor from adjusting its risk tolerance to the extent that its economic outlook and view of the housing market changed.

Knowledge that a participant in the portfolio selection process intended to short the portfolio – especially in a synthetic CDO, where there *must always* be participants shorting the portfolio – would not alter the “total mix” of information available, given the extensive, objective disclosures present here. *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). Regulation AB’s objective disclosure scheme reflects as much, *see, e.g.*, 17 C.F.R. §§ 229.1102, 229.1103, 229.1105, 229.1111, and the Staff has not suggested what – if any – additional analysis a description of the portfolio selection process would have permitted investors to perform on the underlying assets.

III. THERE IS NO BASIS FOR ALLEGING THAT GOLDMAN SACHS ACTED WITH SCIENTER OR INTENDED TO MISLEAD ANYONE.

While the September 15 meeting included a robust discussion of materiality, the issue of scienter was never raised. Although we are therefore hopeful that our Wells submission was sufficient to dispel any continuing consideration of charges requiring scienter, out of an abundance of caution we comment briefly as to this issue as well.

We respectfully believe that the Staff has at most shown that ACA may have been confused about the role of Paulson. But nothing in the record establishes that anyone at Goldman Sachs intended to mislead ACA, and the drafts of the offering materials Goldman Sachs provided to ACA expressly indicated that the first loss tranche was “N/A,” rather than identifying Paulson as the investor. The notion that ACA was misled into believing that Paulson was an equity investor is in all events difficult to reconcile with the Staff’s theory that Paulson proposed weaker securities to ACA, a trend that would have caused a market participant with ACA’s deep knowledge to question Paulson’s true interest.

Nor is there any basis to suggest that Goldman Sachs would have intentionally jeopardized its own reputation and relationship with established customers and counterparties.

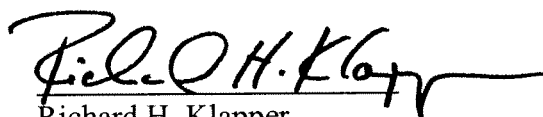
This transaction at the time was just one of many in the marketplace, and because it was a synthetic CDO, Goldman Sachs had no inventory of securities that it would need to dispose of if the transaction did not close, or any other reason to proceed with a transaction that could potentially damage its reputation or relationships. Goldman Sachs had no reason to mislead anyone.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Submission of Goldman, Sachs & Co. dated September 10, 2009, no enforcement action is warranted.

Dated: New York, New York
September 25, 2009

Respectfully submitted,



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Performance of the Reference Portfolio

Data	2007-AC1 Final Reference Portfolio	Initial Portfolio Suggested by ACA	Subprime Deals From 2006/1Q07*
Number of Bonds	90	86	293
Average % 60+ Days Delinquent Loans	46.2	45.9	44.4
Average Cumulative Loss on Loans	13.1	12.5	12.2
Average Borrower FICO Score	629	627	624
Average Loan-to-Value Ratio	80	80	81
Average % Limited Documentation	37	40	33
Average Original Credit Enhancement	4.5	4.6	4.6
Average Weighted Average Loan Age (months)	37	38	38
Average % Written Down	85	80	72
Average Time to Writedown (months)**	0.8	1.4	1.7

* All Subprime RMBS deals from 2006/1Q07 as classified by LoanPerformance, with a Moody's rating of Baa2 or S&P rating of BBB, without split ratings.

**Goldman Sachs estimate.