

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU

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IN THE MATTER OF :

GOLDMAN, SACHS & CO. :
:-----X

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

On April 14, 2008, the Office of the Attorney General of the State of New York (the “Attorney General”), commenced an investigation, pursuant to Article 23-A of the General Business Law (the “Martin Act”), of Goldman, Sachs & Co. (“Goldman Sachs”) and its subsidiaries and affiliates, concerning Goldman Sachs’s marketing, sale and distribution of auction rate securities (the “Investigation”). This Assurance of Discontinuance (“Assurance”) contains the findings of the Attorney General’s Investigation and the relief agreed to by the Attorney General and Goldman Sachs.

FINDINGS

The Attorney General finds as follows:

I. Relevant Entity

1. Goldman Sachs is a New York limited partnership and a wholly-owned affiliate of The Goldman Sachs Group, Inc. It is licensed to do business in the State of New York and its principal executive offices are located in New York City. Goldman Sachs is a registered broker-dealer that offers, among other things, brokerage and investment services to investors across the United States.

II. Background on Auction Rate Securities

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

3. At a Dutch auction, bidders generally state the number of auction rate securities they wish to purchase and the minimum interest rate or dividend rate they are willing to accept. Bids are ranked, from lowest to highest, according to the minimum interest rate or dividend each bidder is willing to accept. The lowest interest rate required to sell all of the auction rate securities available at auction, known as the “clearing rate,” becomes the rate paid to all holders of that particular security until the next auction. The process is then repeated, typically every 7, 28 or 35 days.

4. When there are not enough orders to purchase all of the auction rate securities being sold, a “failed” auction occurs. In the event of a failed auction, investors who wish to sell their auction rate securities cannot do so in that auction.

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

III. Goldman Sachs Made Representations that were Misleading to Certain Investors in Connection With the Sale of Auction Rate Securities

6. Goldman Sachs represented to certain of its customers that auction rate securities were secure, liquid securities that were a suitable alternative for cash management purposes. It did so through its sales force, some of whom represented to certain investors that auction rate securities were highly liquid, safe investments for cash management purposes.

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

8. Since it began participating in the auction rate securities market, Goldman Sachs submitted “cover” bids, purchase orders for the entirety of an auction rate security issue for which it acted as the sole or lead auction manager. Such “cover” bids were Goldman Sachs proprietary orders that would be filled, in whole or in part, to the extent there was otherwise insufficient demand in an auction. When Goldman Sachs purchased auction rate securities through “cover” bids, those securities were then owned by Goldman Sachs as principal and the holdings were recorded on Goldman Sachs’ balance sheet. For risk management purposes, Goldman Sachs imposed limits on the amounts of

securities its Municipal Money Markets unit could hold (which included Goldman Sachs' auction rate securities holdings).

9. Because many investors could not ascertain how much of an auction was filled through Goldman Sachs "cover" bids, those investors could not determine if auctions were clearing because of normal marketplace demand, or because Goldman Sachs was making up for the lack of demand through "cover" bids. Many investors were also not aware that the liquidity of these auction rate securities was dependent upon Goldman Sachs's use of "cover" bids for its operation. While Goldman Sachs could track its own inventory as a measure of the supply and demand for auction rate securities, many investors had no comparable ability to assess the operation of the auctions. There was no way for those investors to monitor supply and demand in the market or to assess when broker-dealers might decide to stop supporting the market, which could cause its collapse.

IV. In the Fall of 2007, The Auction Rate Securities Market Faced Dislocation

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

11. The resulting market dislocation should have been evident to Goldman Sachs. When customer demand for its auction rate securities declined, Goldman Sachs' "cover" bids filled the increasing shortfall, thereby sustaining the impression for certain investors that auctions managed by Goldman Sachs were functioning. As a result, Goldman Sachs's auction rate securities inventory grew significantly, requiring

Goldman Sachs to raise its risk management limits for its Municipal Money Markets business (which included auction rate securities) several times.

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

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

VI. Violations

14. The foregoing acts and practices of Goldman Sachs violated the Martin Act, Article 23-A of the General Business Law.

15. The foregoing acts and practices of Goldman Sachs violated § 349 of the General Business Law.

16. The foregoing acts and practices of Goldman Sachs violated § 63(12) of the Executive Law.

AGREEMENT

WHEREAS, the parties agree to settle allegations that Goldman Sachs' conduct violated the Martin Act, General Business Law § 349 and Executive Law § 63(12) and

the Attorney General can bring an action when representations are misleading in connection with the sale of securities and scienter need not be proven to establish a violation of the Martin Act, General Business Law § 349 and Executive Law § 63(12);

WHEREAS, Goldman Sachs neither admits nor denies the Attorney General's Findings set forth above;

WHEREAS, the Attorney General is willing to accept the terms of the Assurance pursuant to New York Executive Law § 63(15), and to discontinue, as described in paragraph 56 below, its Investigation of Goldman Sachs;

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties, that:

I. Relief for Auction Rate Security Investors

A. Buybacks from Auction Rate Securities Investors

17. Goldman Sachs shall have provided liquidity to Eligible Investors by offering to buy back Eligible Auction Rate Securities that since February 11, 2008 have not been auctioning, at par, in the manner described below.

18. "Eligible Auction Rate Securities," for the purposes of this Assurance, shall mean auction rate securities purchased from Goldman Sachs on or before February 11, 2008.

19. "Eligible Investors," for the purposes of this Assurance, shall mean:

- i. Natural persons (including their IRA accounts, testamentary trust and guardianship accounts) who purchased Eligible Auction Rate Securities from Goldman Sachs;

- ii. Charities, endowments or foundations with Internal Revenue Code Section 501(c)(3) status that purchased Eligible Auction Rate Securities from Goldman Sachs, with the exception of educational endowments and health care organizations that had more than \$10 million in assets in their accounts with Goldman Sachs; and
- iii. Small Businesses that purchased Eligible Auction Rate Securities at Goldman Sachs. For purposes of this provision, “Small Businesses” does not include (i) broker-dealers, banks or other financial services firms acting as conduits for their customers, or (ii) Goldman Sachs customers not otherwise covered by paragraph 19(i) and (ii) above that had over \$10 million in assets in their accounts with Goldman Sachs (or if the customer custodied portions of its investment purchased from Goldman Sachs away from Goldman Sachs, then, had over \$10 million in assets purchased from Goldman Sachs, net of margin loans, plus those assets purchased from Goldman Sachs but custodied elsewhere).
- iv. In no event shall Goldman Sachs be required by this Assurance to purchase more than \$10 million of auction rate securities from any Small Business.

20. Goldman Sachs shall have offered to purchase, at par plus accrued and unpaid dividends/interest, from Eligible Investors their Eligible Auction Rate Securities that since February 11, 2008 have not been auctioning (“Buyback Offer”), and explain what Eligible Investors must do to accept, in whole or in part, the Buyback Offer. The

Buyback Offer shall have remained open until at least November 12, 2008 (“Offer Period”). Goldman Sachs may extend the Offer Period beyond this date.

21. Goldman Sachs shall have undertaken its best efforts to identify and provide notice to Eligible Investors who invested in Eligible Auction Rate Securities that since February 11, 2008 have not been auctioning, of the relevant terms of the settlement between Goldman Sachs and the Attorney General.

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

23. No later than December 31, 2009, any Eligible Investor who for good cause (including but not limited to incapacity or failure to receive the notice provided for in paragraph 21) did not accept the Buyback Offer pursuant to paragraph 22 above, shall be entitled to sell their Eligible Auction Rate Securities, at par, to Goldman Sachs for

(30) days after establishing such good cause, and Goldman Sachs shall purchase such Eligible Investor's Eligible Auction Rate Securities promptly.

24. No later than October 20, 2008, Goldman Sachs shall have established a dedicated toll-free telephone assistance line, with appropriate staffing, to provide information and to respond to questions from clients concerning the terms of the settlement between Goldman Sachs and the Attorney General.

B. Relief for Eligible Investors Who Sold Below Par

25. By November 12, 2008, Goldman Sachs shall have undertaken its best efforts to identify any Eligible Investor who sold Eligible Auction Rate Securities below par between February 11, 2008 and August 21, 2008 and shall have paid any such Eligible Investor the difference between par and the price at which the Eligible Investor sold the Eligible Auction Rate Securities.

C. Reimbursement for Related Loan Expenses

26. Goldman Sachs shall have made best efforts to identify Eligible Investors who took out loans from Goldman Sachs, between February 11, 2008 and the date of this Assurance, that were secured by Eligible Auction Rate Securities that were not successfully auctioning at the time the loan was taken out from Goldman Sachs, and paid interest associated with the auction rate securities based portion of those loans in excess of the total interest and dividends received on the auction rate securities during the duration of the loan. Goldman Sachs shall have reimbursed such customers for the excess expense, plus reasonable interest thereon. Such reimbursement shall have occurred no later than March 31, 2009.

D. Consequential Damages Arbitration Process

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

28. The Arbitration shall be conducted by a single public arbitrator (as defined by section 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007), under the auspices of FINRA. Goldman Sachs will pay all applicable forum and filing fees.

29. Any Eligible Investors who choose to pursue such claims in the Arbitration shall bear the burden of proving that they suffered consequential damages and that such damages were caused by their inability to access funds invested in Eligible Auction Rate Securities. In the Arbitration, Goldman Sachs shall be permitted to defend itself against such claims; provided, however, that Goldman Sachs shall not contest in these arbitrations liability related to the sale of auction rate securities or use as part of its defense any decision by an Eligible Investor not to borrow money from Goldman Sachs.

30. Eligible Investors who elect to use the special arbitration process provided for herein shall not be eligible for punitive or special damages, or for any other type of damages other than consequential damages.

31. Eligible Investors who elect to utilize the special arbitration process set forth above are limited to the remedies available in that process and may not bring or pursue a claim relating to Eligible Auction Rate Securities in another forum.

E. Municipal Issuers

32. Goldman Sachs shall promptly refund to municipal issuers refinancing fees paid to Goldman Sachs for the refinancing or conversion of their auction rate securities that occurred between February 11, 2008 and the date of this Assurance, where Goldman Sachs acted as underwriter for the initial primary offering of the auction rate securities between August 1, 2007 and February 11, 2008.

F. Institutional Investors

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

34. The Attorney General has refrained from taking legal action against Goldman Sachs with respect to Institutional Investors. The Attorney General shall issue continuances as it deems appropriate.

35. Beginning November 12, 2008 and within 45 days of the end of each Goldman Sachs fiscal quarter thereafter, Goldman Sachs shall submit to the Attorney General a written report outlining Goldman Sachs’s progress with respect to its obligations pursuant to this Assurance. Goldman Sachs shall, at the option of the Attorney General, confer with the Attorney General on a quarterly basis to discuss Goldman Sachs’s progress to date. Such quarterly reports and conferences shall continue until December 31, 2009. Following every quarterly report, the Attorney General shall advise Goldman Sachs of any concerns regarding Goldman Sachs’ progress and, in response, Goldman Sachs shall discuss how Goldman Sachs plans to

address such concerns. The reporting or meeting deadlines set forth above may be amended with written permission from the Attorney General.

G. Penalty and Remedial Procedures

36. Goldman Sachs shall pay a civil penalty of TWENTY-TWO MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$22,500,000.00), of which \$1,952,439.67 shall be paid to the State of New York no later than June 15, 2009, and the remainder to those states and territories that enter administrative or civil consent orders approving the terms of the North American Securities Administrators Association settlement in respect of all conduct relating to the marketing, sale and distribution of auction rate securities. The payment to the State of New York shall be in the form of a certified or bank check made out to "State of New York" and mailed to: Office of the Attorney General of the State of New York, 120 Broadway, 23rd Floor, New York, New York, 10271, Attn: David A. Markowitz, Chief, Investor Protection Bureau, or by wire.

37. Goldman Sachs agrees that it shall not, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, payment made pursuant to any insurance policy, with regard to any or all of the amounts payable pursuant to paragraph 36 above.

H. Other Relief

38. Goldman Sachs admits the jurisdiction of the Attorney General. Goldman Sachs will cease and desist from engaging in any acts in violation of the Martin Act, General Business Law § 349 and/or Executive Law § 63(12) and will comply with the Martin Act, General Business Law § 349 and Executive Law § 63(12).

II. Other Provisions

39. The Attorney General retains the right under Executive Law § 63(15) to compel compliance with this Assurance. Evidence of a violation of this Assurance proven in a court of competent jurisdiction shall constitute prima facie proof of a violation of the Martin Act, General Business Law § 349 and/or Executive Law § 63(12) in any civil action or proceeding hereafter commenced by the Attorney General against Goldman Sachs.

40. Should the Attorney General prove in a court of competent jurisdiction that a material breach of this Assurance by Goldman Sachs has occurred, Goldman Sachs shall pay to the Attorney General the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses and court costs.

41. If Goldman Sachs defaults on any obligation under this Assurance, the Attorney General may terminate this Assurance, at his sole discretion, upon 10 days' written notice to Goldman Sachs. Goldman Sachs agrees that any statute of limitations or other time related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event of such termination, Goldman Sachs expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude the Attorney General from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Goldman Sachs, or from using in any way any statements, documents or other materials produced or provided by Goldman Sachs prior to or after the date of this Assurance, including, without limitation, such statements, documents or other materials, if any, provided for purposes of

settlement negotiations, except as may otherwise be provided in a written agreement with the Attorney General.

42. Except in an action by the Attorney General to enforce the obligations of Goldman Sachs in this Assurance or in the event of termination of this Assurance by the Attorney General, neither this Assurance nor any acts performed or documents executed in furtherance of this Assurance: (a) may be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability or lack of wrongdoing or liability; or (b) may be deemed or used as an admission of or evidence of any such alleged fault or omission of Goldman Sachs in any civil, criminal, arbitration or administrative proceeding in any court, administrative agency or other tribunal. This Assurance shall not confer any rights upon persons or entities who are not a party to this Assurance.

43. Goldman Sachs shall cooperate fully and promptly with the Attorney General and shall use its best efforts to ensure that all the current and former officers, directors, trustees, agents, members, partners and employees of Goldman Sachs (and of any of Goldman Sachs' parent company, subsidiaries or affiliates) cooperate fully and promptly with the Attorney General in any pending or subsequently initiated investigation, litigation or other proceeding relating to auction rate securities and/or the subject matter of the Assurance. Such cooperation shall include, without limitation, and on a best efforts basis:

- (a) production, voluntarily and without service of subpoena, upon the request of the Attorney General, of all documents or other tangible evidence requested by the Attorney General and any compilations or summaries of information or data that the Attorney General requests that Goldman Sachs (or the Goldman Sachs's parent companies, subsidiaries or affiliates) prepare, except to the extent

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

- (b) without the necessity of a subpoena, having the current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners and employees of Goldman Sachs (and of any of the Goldman Sachs's parent companies, subsidiaries or affiliates) attend any Proceedings (as hereinafter defined) in New York State or elsewhere at which the presence of any such persons is requested by the Attorney General and having such current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners and employees answer any and all inquiries that may be put by the Attorney General to any of them at any proceedings or otherwise, except to the extent such production would require the disclosure of information protected by the attorney-client and/or work product privileges; "Proceedings" include, but are not limited to, any meetings, interviews, depositions, hearings, trials, grand jury proceedings or other proceedings;
- (c) fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession, custody or control (or the possession, custody or control of the Goldman Sachs parent companies, subsidiaries or affiliates) relevant to all inquiries made by the Attorney General concerning the subject matter of the Assurance, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges; and
- (d) making outside counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to all matters in the Assurance and to answer questions, except to the extent such presentations or questions call for the disclosure of information protected by the attorney-client and/or work product privileges.

44. In the event Goldman Sachs fails to comply with paragraph 43 of the Assurance, the Attorney General shall be entitled to specific performance, in addition to any other available remedies.

45. The Attorney General has agreed to the terms of this Assurance based on, among other things, the representations made to the Attorney General by Goldman Sachs, its counsel, and the Attorney General's own factual Investigation. To the extent

that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in its sole discretion.

46. Goldman Sachs shall, upon request by the Attorney General, provide all documentation and information reasonably necessary for the Attorney General to verify compliance with this Assurance.

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

48. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to Goldman Sachs:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attn: Stephanie G. Wheeler

If to the Attorney General:

Office of the Attorney General of the State of New York
120 Broadway, 23rd Floor
New York, New York 10271
Attn: David A. Markowitz

49. This Assurance and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

50. Goldman Sachs consents to the jurisdiction of the Attorney General in any proceeding or action to enforce this Assurance.

51. Goldman Sachs agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects Goldman Sachs': (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party. Nothing in this assurance shall be considered an admission of fraud.

52. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

53. This Assurance constitutes the entire agreement between the Attorney General and Goldman Sachs and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance. No representation, inducement, promise, understanding, condition or warranty not set forth in this Assurance has been relied upon by any party to this Assurance.

54. In the event that one or more provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

55. This Assurance may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto.

56. Upon execution by the parties to this Assurance, the Attorney General agrees to suspend, pursuant to Executive Law § 63(15), this Investigation as and against Goldman Sachs solely with respect to its marketing and sale of auction rate securities to Eligible Investors.

57. Any payments and all correspondence related to this Assurance must reference AOD #AOD 08-177.

WHEREFORE, the following signatures are affixed hereto on the dates set forth below.

ANDREW M. CUOMO,
Attorney General of the State of New York

By: 
David A. Markowitz

Chief, Investor Protection Bureau
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-8198

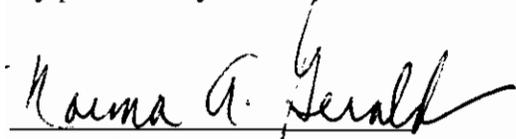
Dated: June 2, 2009

GOLDMAN, SACHS & CO.

By: 
Norman Feit, Esq.
Managing Director

ACKNOWLEDGMENT

On this 1st day of June, 2009, before me personally came Norman Feit, known to me, who, being duly sworn by me, did depose and say that he is a Managing Director of Goldman, Sachs & Co., the entity described in the foregoing Assurance, and is duly authorized by Goldman, Sachs & Co. to execute the same, and that he signed his name in my presence by like authorization.



Notary Public

My commission expires:

Assurance of Discontinuance

Reviewed By:

NORMA A. GERALD
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GE6192086
Qualified in Kings County
My Commission Expires August 15, 2012



Attorneys for Goldman, Sachs & Co.

Dated: June 1, 2009