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ENDORSED
FILED
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CLERK OF THE COURT
BY: DEBORAH STEPPE
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

WEILI DAI and SEHAT SUTARDJA, Plaintiffs, v. **GOLDMAN SACHS & CO.; BRADLEY DEFOOR; GRAHAM BRANDT; and DOES 1 through 20, inclusive,** Defendants.	Case No. CGC-11-510102 **COMPLAINT FOR:** (1) COMMON LAW FRAUD; (2) BREACH OF FIDUCIARY DUTY; (3) VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT (Civ. Code § 1750 et seq.); and, (4) UNFAIR COMPETITION (Bus. & Prof. Code § 17200 et seq.) **DEMAND FOR JURY TRIAL**

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I. INTRODUCTION

"Goldman repeatedly put its own interests and profits ahead of the interests of its clients."

Senator Carl Levin
Chair of the Permanent Subcommittee on
Investigations of the Senate Homeland Security and Governmental Affairs Committee

"[Q]uestions have been raised that go to the heart of this institution's most fundamental value: how we treat our clients."

Lloyd C. Blankfein
Goldman Sachs's Chief Executive Officer,
at the Firm's annual meeting in May, 2010

1. In 2008, Goldman made a firm-wide decision to put the Firm's interests ahead of its clients. Seeking to avoid the severe economic environment and realizing its business model was failing, Goldman manipulated the financial crisis of 2008 to take advantage of its corporate and individual clients. Goldman's "business model has completely blurred the difference between executing trades on behalf of customers versus executing trades for themselves. It's a huge problem."[1] Through a series of extraordinary and deceitful acts, geared to save Goldman at all costs, the Firm used its clients' accounts to leverage its success, making unreasonable collateral calls on its private wealth management clients. Despite receiving an investment of $10 billion as a participant in the United States Treasury's TARP Capital Purchase Program, Goldman forced its clients to unnecessarily liquidate their holdings through forced margin calls, only to repurchase these same shareholdings for accounts owned by Goldman and its related hedge funds, some currently under investigation by the federal government. Goldman's focus was to strengthen its balance sheet, no matter how many relationships were destroyed in the process. The consequences to Goldman clients, such as Plaintiffs, were disastrous. They became the victims of one of the largest acts of corporate greed and avarice in the history of our financial markets.

[1] New York Times, "Clients Worried About Goldman's Dueling Goals," May 18, 2010.

2. Goldman is the world's most prominent investment bank. It is a Wall Street giant with reported 2010 revenue in excess of $39 billion—paying its Chief Executive Officer, Lloyd Blankfein ("Blankfein") 19 million. . Among other things, Goldman provides "wealth management services," managing the investments of wealthy individuals. Publicly, the Firm has adamantly represented its core goal is an "unwavering commitment to client service."[2] Goldman, however, makes most of its money by trading securities for its own benefit. In the matters described herein, when these two parts of Goldman's business conflicted, Goldman put its own interests in maximizing profits above its fiduciary obligations to its clients.

3. The culture of corruption at Goldman has recently been revealed through the major insider trading schemes of Galleon founder Raj Rajaratnam and his connections with Goldman through former Goldman director Rajat Gupta. According to the allegations made by the Securities and Exchange Commission, while serving as a Goldman director, Gupta repeatedly passed insider information from Goldman director meetings to Rajaratnam.

4. The government's cases against Rajaratnam and Gupta are the tip of the iceberg. Federal prosecutors have also brought charges against individuals associated with an expert networking firm, Primary Global Research. Among the actions filed by the Department of Justice is the criminal case against Samir Barai and Winifred Jiau. The government claims Barai and Jiau committed securities fraud when they discussed material, inside information about, among other companies, Marvell Technology Group, Ltd. ("Marvell"), a public company that trades over the NASDAQ. The government asserts Barai caused a hedge fund, which Plaintiffs are informed and believe is associated with Goldman Sachs, to purchase over 200,000 shares of Marvell stock. The relevant time period of Barai and Jiau's cases coincide with the timeframe of the instant action.

5. Insider trading is not a victimless crime. Shareholders in the companies subject to the insider trades suffered due to improper disclosures. Stock prices were manipulated to tip off selected investors and hedge funds at the expense of others. The improper trades caused significant movement in stock prices. Specific public companies were targeted by these insider

[2] Goldman Fourth Quarter 2009 Earnings Call. January 21, 2010.

trading artists and the investment banks that enabled them: companies whose stock price could be easily manipulated. One of those companies is Marvell.

6. Plaintiffs WEILI DAI ("Dai") and SEHAT SUTARDJA ("Sutardja") are two of the three co-founders of Marvell, one of the world's most successful semiconductor companies. Dai and Sutardja built the company from the ground up. Goldman was the lead underwriter of Marvell's initial public offering ("IPO"). After the IPO, Dai and Sutardja entrusted their entire personal fortune to Goldman's care. DeFoor, the Managing Director of Goldman's Private Wealth Management Group, and his team personally met and spoke with Dai and Sutardja and assured them Goldman would protect Dai and Sutardja's interests above its own and Goldman would not seek to profit at their expense.

7. Goldman and DeFoor knew Dai and Sutardja placed their trust in Goldman to advise them appropriately. Goldman also knew Dai and Sutardja wanted to follow a conservative investment strategy, maximizing asset preservation and long-term growth over short-term profit or income. In keeping with their conservative philosophy, when they purchased stock, Dai generally held the shares until the stock's price increased, even if that increase took years. Dai and Sutardja had the financial resources to wait for a stock's price to recover even if the price had declined substantially after they purchased the stock.

8. By 2006, after following DeFoor's advice to diversify their assets, Dai and Sutardja told DeFoor in no uncertain terms they did not want to sell any of their Marvell stock. As Chief Executive Officer of Marvell, Sutardja believed selling shares of Marvell stock could send a negative message to investors about his confidence in Marvell's future prospects, especially if he sold when the stock price was low. Prior to the events set forth in this Complaint, Dai and Sutardja had not sold a single share of Marvell stock since 2006 and, since the events set forth in this Complaint, they have not sold a single share of Marvell stock.

9. Consistent with their trading practices, in 2008, Dai purchased shares in a technology company called NVIDIA. When the shares increased in value, she sold the shares in May 2008, and then bought more. DeFoor and Brandt encouraged Dai to buy even more shares in NVIDIA. Other Goldman personnel emailed Dai about what a great buy NVIDIA stock supposedly was.

10. Thereafter, the market value of NVIDIA's stock plummeted, and Goldman forced Dai and Sutardja to pledge millions of shares of their Marvell stock as additional collateral for the margin loan used to purchase the NVIDIA shares. Plaintiffs complied with Goldman's demand.

11. In October 2008, despite the increased collateral from the Marvell shares, which with plaintiffs' other assets held by Goldman amply protected Plaintiffs' margin loan, Goldman forced a sale of Plaintiffs' NVIDIA shares when the NVIDIA shares were trading at a multi-year low—the very thing Goldman knew Dai and Sutardja wanted to avoid. Dai and Sutardja ended up losing $166 million on their Goldman-induced trades in NVIDIA. Had Dai and Sutardja held the NVIDIA shares as they had intended, those shares eventually would have been sold for a profit.

12. At the time of the NVIDIA forced sale, Goldman was itself under massive financial pressure. Wall Street had gone into what the Securities and Exchange Commission has called "an unprecedented tailspin" in September 2008 as a result of the Lehman Brothers bankruptcy. Goldman's share price dropped by more than half between the end of July and October 10, 2008, to its lowest price in four years. Goldman became a "Bank Holding Company" to enable it to qualify for relief from the federal government.

13. After the forced sale of their NVIDIA shares, Goldman claimed Dai and Sutardja still owed about $50 million on a loan used to purchase those shares.

14. In November 2008, Goldman contrived grounds to make a "margin call" on Plaintiffs' account. Goldman insisted the pledged Marvell shares be sold immediately. Acting on behalf of Goldman, DeFoor justified the margin call with a lie, telling Dai and Sutardja there was an SEC rule that DeFoor called the "SEC Five Dollar Rule." According to DeFoor, the "SEC Five Dollar Rule" required Plaintiffs to sell the Marvell shares in the margin account because the value of Marvell's stock had dropped below $5 per share.

15. There is no "SEC Five Dollar Rule." No such SEC rule exists, a fact DeFoor and others at Goldman knew at the time they issued the margin call on behalf of Goldman, forcing Plaintiffs to sell their Marvell shares.

16. Goldman maintained this lie for years. As recently as November, 2010, senior Goldman officials, John Weinberger and Tucker York, told Dai and Sutardja the "Five Dollar Rule" might be a "New York Stock Exchange" rule, not an SEC rule. No such New York Stock Exchange "Five Dollar Rule" exists.

17. Marvell's stock closed below $5 per share on only a single day during the depths of the 2008 global financial crisis, and rebounded immediately thereafter. Goldman nonetheless continued to insist the Marvell shares had to be sold. When DeFoor was questioned about the need to sell the Marvell shares, DeFoor stated instructions were from Goldman's most senior executives.

18. Goldman knew Dai and Sutardja did not want to sell their Marvell shares at all, and particularly did not want to sell them at the lowest price at which they had traded in five years. Dai and Sutardja proposed to Goldman several alternatives to secure the debt without selling their Marvell shares:

- Dai and Sutardja's family members offered to pledge their own funds as collateral. Goldman frustrated these efforts by placing unreasonable and onerous conditions on the proposed pledges.
- Dai and Sutardja had other assets in their Goldman accounts that exceeded the value of the margin loan many times over—including investments in private equity funds and hedge funds run by Goldman itself. Dai and Sutardja also offered to use these other assets as additional collateral or to pay off the debt itself.

19. For reasons that became apparent later, Goldman declined to accept these reasonable alternatives that would have completely protected Goldman, putting its own interests before the interests of its clients.

20. In the fourth quarter of 2008, Goldman's own stock price plummeted and reached its lowest price in a decade at the time of Plaintiffs' margin call. In an effort to increase its profits, Goldman falsely and repeatedly emphasized the urgency to sell Plaintiffs' Marvell shares. Goldman bullied Plaintiffs into accepting one of two choices:

a. sell their Marvell shares on the open market (at a time when Marvell stock was trading near a five year low), or

b. enter into a complex transaction known as a "forwards contract." The forwards contract would have allowed Goldman to purchase a large number of Marvell shares—larger than the number that would be needed to pay off the loan—directly from Dai and Sutardja at a substantial discount, while Goldman reaped the bulk of any future appreciation in the stock price. With Marvell's stock at a multi-year low, Goldman stood to profit handsomely from this forwards contract transaction at Dai and Sutardja's expense. Dai and Sutardja refused to enter into the forwards contract.

21. Plaintiffs are informed and believe Goldman had reason to know how valuable Marvell shares would become. According to the SEC and the Department of Justice, one Goldman Director, Rajat Gupta, was engaged in an insider trading conspiracy with a hedge fund manager, Raj Rajaratnam. Gupta allegedly provided Rajaratnam with inside information about Goldman, which made him millions of dollars. Although the SEC and the DOJ do not specify what Gupta received in return, they allege that Rajaratnam had access to and traded on material, non-public inside information about Marvell.

22. Having been falsely told that they had no choice, Dai and Sutardja reluctantly permitted Goldman to sell millions of their Marvell shares at the market price—approximately $6.40 per share. The sale proceeds were immediately turned over to Goldman. Marvell shares are currently trading at $16.39 (April 7, 2011). But for the lies about the need for a margin call and but for Goldman's desire to profit at their expense, Dai and Sutardja never would have sold their Marvell shares. The value of the Marvell shares they were forced to sell now exceeds $141.5 million.

II. PARTIES

A. Plaintiffs

23. Plaintiffs Weili Dai and Sehat Sutardja are husband and wife and citizens of the State of California and residents of the County of Santa Clara.

1. Dr. Sehat Sutardja

24. Dr. Sehat Sutardja is widely regarded as one of the pioneers of the modern semiconductor age. His breakthrough designs and guiding vision have revolutionized numerous industry segments, from data storage to the high performance, low power chips now driving the growing global markets for mobile computing and telephony. His lifetime passion for electronics began early; he became a certified radio repair technician at age 13 and has been designing semiconductors ever since. For his relentless innovation, he has been awarded more than 271 patents and has been named a Fellow of IEEE. Dr. Sutardja is a 2011 nominee for the National Medal of Technology awarded by the President of the United States.

25. As co-founder of Marvell, Sutardja has served as President, Chief Executive Officer, and Co-Chairman of its Board of Directors since its inception and as Chairman of the Board since 2003. In addition, Sutardja serves as President, CEO, and Director of Marvell's U.S. operating subsidiary, Marvell Semiconductor, Inc. Sutardja also participates heavily in Marvell's engineering and marketing efforts across analog, video processor, and microprocessor design while offering input across all the Company's other product lines.

26. Sutardja holds Master of Science and PhD degrees in Electrical Engineering and Computer Science from the University of California at Berkeley. He received a Bachelor of Science degree in Electrical Engineering from Iowa State University.

2. Weili Dai

27. Widely considered a technology visionary, Ms. Weili Dai is one of the co-founders of Marvell Technology Group. Since it began in 1995, she has helped lead Marvell to become one of the top three fabless semiconductor companies in the world.

28. Dai serves a pivotal role in expanding access to technology in the developing world and the United States and China, particularly in the areas of education and green technology.

29. Dai has served as Chief Operating Officer, Executive Vice President, and General Manager of the Communications Business Group with Marvell. She has also been a Director and Corporate Secretary of the Board of Marvell Technology Group Ltd. Prior to co-founding

Marvell, Dai was involved in software development and project management at Canon Research Center America, Inc. Dai holds a Bachelor of Science degree in Computer Science from the University of California at Berkeley.

30. Dai has been the driving force behind many of Marvell's philanthropic and civic engagements, including major partnership with the One Laptop Per Child program. She sits on the board of the disaster relief organization, Give2Asia, and was named to the prestigious Committee of 100, an organization representing the most-influential Chinese Americans.

B. Defendants

1. Goldman Sachs & Co.

31. Defendant Goldman Sachs & Co. ("Goldman") is a New York limited partnership with a principal place of business in New York, NY. Goldman is a global investment banking, securities and investment management firm that provides a range of financial services to a diversified client base, including corporations, financial institutions, governments, and high net-worth individuals. Goldman's activities are divided into four business segments: (a) Investment Banking; (b) Institutional Client Services; (c) Investing and Lending; and (d) Investment Management. At all times relevant to the allegations in this Complaint, Goldman maintained a significant office in San Francisco, CA.

2. Bradley Defoor

32. At all times relevant hereto, Defendant Bradley DeFoor ("DeFoor") served as the San Francisco-based Managing Director of Goldman's Private Wealth Management Group. Plaintiffs are informed and believe, and on that basis allege, that DeFoor is a citizen of the State of California and a resident of the County of San Francisco.

3. Graham Brandt

33. At all times relevant hereto, Defendant **Graham Brandt** ("Brandt") served as the San Francisco-based Vice President of Goldman's Private Wealth Management Group. Plaintiffs are informed and believe, and on the basis allege, that Brandt is a citizen of the State of California and a resident of the County of Marin.

4. Doe Defendants

34. The true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants sued herein as Does 1 through 20, inclusive, are unknown to Plaintiffs. Plaintiffs will amend this Complaint to allege the true names and capacities of Does 1 through 20 when ascertained. Plaintiffs are informed and believe, and on that basis allege, that each fictitiously named Defendant is a parent, subsidiary, employee, agent, or other affiliate of Defendant Goldman, and is responsible in some manner for Plaintiffs' damages.

C. Un-Named Co-Conspirators

35. At all times relevant to this Complaint, other corporations, banks, brokers, investment companies, hedge funds, insurance companies, and other individuals and entities willingly conspired with Defendants in their unlawful and illegal conduct against Plaintiffs. All averments herein against named Defendants are also averred against these unnamed co-conspirators as though set forth at length.

D. Agents And Co-Conspirators

36. At all times relevant to this Complaint, Defendants, and each of them, were acting as the agents, employees, and/or representatives of each other, and were acting within the course and scope of their agency and employment with the full knowledge, consent, permission, authorization, and ratification, either express or implied, of each of the other Defendants in performing the acts alleged in this Complaint.

37. Each Defendant participated, as members of the conspiracy, and acted with or in furtherance of said conspiracy, or aided or assisted in carrying out the purposes of the conspiracy, and performed acts and made statements in furtherance of the conspiracy and other violations of California law. Each Defendant acted both individually and in alignment with other Defendants with full knowledge of their respective wrongful conduct. As such, Defendants conspired together, building upon each other's wrongdoing, in order to accomplish the acts outlined in this Complaint. Defendants are individually sued as principals, participants, and aiders and abettors in the wrongful conduct complained of, the liability of each arises from the

fact that each has engaged in all or part of the improper acts, plans, schemes, conspiracies, or transactions complained of herein

III. JURISDICTION AND VENUE

38. This Court has subject matter jurisdiction over this matter because the amount in controversy exceeds the sum of $25,000, excluding costs and interest thereon.

39. This Court has personal jurisdiction over Defendants because Defendants maintain a business presence in California and regularly transact business in California. All claims asserted herein arise out of and relate to Defendants' business operations in California.

40. Suit against these Defendants is proper in this jurisdiction pursuant to California Code of Civil Procedure Section 395 in that Defendants or some of them reside in this jurisdiction.

41. Plaintiffs are pursuing claims for injunctive relief under the Consumers Legal Remedies Act (the "CLRA"), Civil Code §1750 et seq., to vindicate the public interest. On behalf of the general public, Plaintiffs seek to act as private attorney generals, enjoining Defendants, and each of them, from committing future deceptive practices. Because the allegedly unlawful provisions in Goldman's agreements apply to their other clients in California, as alleged below, Plaintiffs seek injunctive relief, requesting that these provisions be stricken from the client agreements.

42. As alleged herein, Plaintiffs had more than simply a brokerage relationship with Defendants. Defendants were investment professionals who voluntarily induced Plaintiffs to repose trust and confidence in them. Despite their fiduciary relationship with Plaintiffs, Defendants induced Plaintiffs to sign various account documents without ever explaining the rights Plaintiffs were being asked to renounce or the effects of these agreements on Plaintiffs' accounts. As fiduciaries, Defendants owed an obligation to vulnerable clients, such as Plaintiffs, to explain agreements whereby the client is giving up important rights. In entrusting all their assets to Defendants, Plaintiffs relied on their long-term relationship with Defendants to provide a range of financial services. All of the agreements Plaintiffs signed with Goldman were executed on the advice of their trusted relationship managers at Goldman. Plaintiffs were not

advised to (and did not) read the pre-printed Goldman forms and, at Defendants' request, signed the documents as they were presented for execution. Defendants did not explain the purpose of the documents to be signed and said nothing about Plaintiffs ever waiving any rights.

43. Claims in this Complaint are not based on agreements involving Plaintiffs and Defendants that contain an arbitration clause.

44. Claims one and two arise out of various loan agreements signed by Plaintiffs in October, 2008. These loan agreements dealt with the collateral arrangements between Goldman and Plaintiffs. Under these loan agreements, Plaintiffs were obligated to maintain sufficient collateral to support loans and other advances made by Goldman. The loan agreements include:

- The **Pledge and Security Agreement**, giving Goldman various rights to "collateral," including all of Plaintiffs' assets in various accounts maintained by Goldman. These agreements do not contain an arbitration provision.
- Three **Consent Agreements** involving various business units of Goldman, all managed by Goldman Sachs Asset Management. These Consent Agreements do not contain arbitration clauses.

45. These loan agreements controlled the arrangements concerning the Marvell stock during the **October - December, 2008** time frame. During that time frame, Goldman forced Plaintiffs to sell their Marvell shares.

IV. FACTUAL BACKGROUND

46. At the time of the events described in this Complaint, Goldman was in the worst crisis of its storied 139-year history. Founded in 1869, it survived the Crash of 1929, the Great Depression, the Dot Com IPO Bubble, and the wave of lawsuits that followed. Then it profited from its huge role in the housing debacle of the mid-2000s, hiding the low-grade investments its salesmen were promoting by bundling hundreds of different mortgages into collateralized debt obligations (CDOs), telling investors good mortgages would offset the bad; in fact, those CDO's were nicely packaged junk, junk that mathematical gymnastics had transformed into AAA-rated investments.

47. At the peak of the housing boom in 2006, Goldman was underwriting $76.5 billion worth of mortgage-backed securities – a third of which were subprime. By 2007, major financial institutions', including Goldman, functioned on paper-thin capital. By one measure, financial institutions "leverage ratios were as high as 40 to 1, meaning for every $40 in assets, there was only $1 in capital to cover losses. Less than 3% drop in asset values would wipe out a firm."[3]

48. Despite nail biting leverage ratios, Goldman's assets grew from $250 billion in 1999 to $1.1 trillion in 2007, a 21% annual growth rate.[4] Part of the growth came from Goldman betting against the U.S. housing market, the same market it touted through sales of CDOs. In late 2007, a presentation to the Goldman Board of Directors stated: "Although broader weaknesses in the mortgage markets resulted in significant losses in cash positions, we were overall net short the mortgage market and thus had very strong results."[5]

49. When the financial institutions' house of cards came crashing down in late 2008, Goldman was swept up in the ensuing chaos and panic. Goldman Sachs' Executive Director, Susan McCabe, provides the most succinct sense of the Goldman mindset in a September 11, 2008, email: "It is not pretty. This is getting pretty scary and ugly again . . . They [Lehman] have much bigger counter-party risk than Bear did, especially in Derivatives market, so [t]he market is getting very spooked, nervous. Also have Aig, Wamu concerns. This is just spinning out of control again." [6] Goldman knew that it and other investment banks shared the same weaknesses as Bear Stearns and Lehman Brothers: leverage, reliance on overnight funding, dependence on securitization markets and concentrations of illiquid mortgage securities and other troubled assets.[7]

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[3] Financial Crisis Inquiry Commission Report ("FCIC"), p. XIX.

[4] FCIC, p. 6.

[5] CNN Money.com "Senate Panel: Goldman Hurt Customers," April 26, 2010.

[6] FCIC, p. 332.

[7] FCIC, p. 292.

50. In desperation, Goldman did what it had long resisted. During late 2008, at the very time of the events described herein, it became a Bank Holding Company, in order to access U.S. government loans at low rates, and receive at least $10 billion from the United States Treasury's TARP Capital Purchase Program.

51. This background is important to understand fully Goldman's reckless and unlawful behavior in taking advantage of the Plaintiffs here, who had long trusted Goldman fully and completely, believing naively that Goldman had their interests at heart.

A. Dai and Sutardja's Relationship with Goldman

1. Goldman Underwrites Marvell's IPO and Gains Plaintiffs' Trust

52. Dai, Sutardja, and Pantas Sutardja co-founded Marvell in 1995. Sutardja served as Marvell's President, Chief Executive Officer, and Chairman of the Board. Dai was Marvell's Vice President and General Manager of Communications and Consumer Business.

53. In 2000, Goldman served as lead underwriter for Marvell's Initial Public Offering ("IPO") of stock to the public.

2. Plaintiffs Place Their Personal Assets with Goldman, Based on Goldman's Representation that "Clients Come First"

54. On the heels of Marvell's IPO, Goldman approached Dai and Sutardja and Plaintiffs transferred much of their personal savings to Goldman's Private Wealth Management Group. Bradley DeFoor was the San Francisco-based Managing Director of Goldman's Private Wealth Management Group.

55. At the time Dai and Sutardja transferred their assets to Goldman, Goldman promised to place Plaintiffs' interests above Goldman's own interests. Goldman maintained that position throughout the time period relevant to the allegations in this Complaint, including up to present day. Indeed, Goldman's January, 2011 Business Standards Committee Report states "[o]ur clients' interests always come first." Goldman's "Client-Focused Approach" was critical to Dai and Sutardja. They were interested in preserving personal savings, and fully placed their trust and confidence in Goldman to assist them in this endeavor.

56. DeFoor and his Goldman team met with Dai and Sutardja to discuss their personal financial needs and priorities and to offer investment advice consistent with those needs and priorities. Dai and Sutardja set forth their conservative investment strategy in Goldman's account-opening documents. In the "Multi-Party Account Agreement," Goldman asked Dai and Sutardja to rank their investment objectives in order of preference. Dai and Sutardja selected "Growth" as their first choice and "Safety of Principal" as their second choice. The agreement defined "Growth" as: "Client is more interested in having the market value of the portfolio grow over the long term than in current income from the portfolio." The agreement defined "Safety of Principal" as: "Client is interested primarily in preserving the value of the account assets, and is willing to forego more growth or higher income." Dai and Sutardja ranked "Trading Profits," "Speculation," and "Income" as their least important investment objectives.

57. Goldman, DeFoor, Brandt, and their team were also aware that Dai, not Sutardja, made the investment decisions and she believed in a buy-and-hold approach to securities trading. When the price of shares she purchased declined, Dai held the shares until she could sell them at a profit, even if doing so required a long wait. For example, in 2006, Dai purchased stock in a prominent high tech company. The value of the stock declined after her purchase. Dai held the high tech company's shares until the value of the stock recovered—more than one year after she purchased the shares.

B. Plaintiffs Were Never Told the Goldman Agreements Deviated From Their Conservative Investment Strategies

58. In a margin trade, a broker loans an investor money to purchase securities. The purchased securities (and other assets in the margin account) serve as collateral for the loan. The investor also pays interest on the loan to the broker. Trading stock on margin allows an investor to achieve greater returns on an investment <u>if</u> the value of the purchased stock appreciates, but also subjects the investor to substantial risk of loss if the value of the purchased stock declines.

59. Margin trading is fundamentally incompatible with a conservative buy-and-hold trading strategy. The investor may be forced to sell stock before he or she has held it long enough to realize a return on the initial investment. The investor may also lose not only the

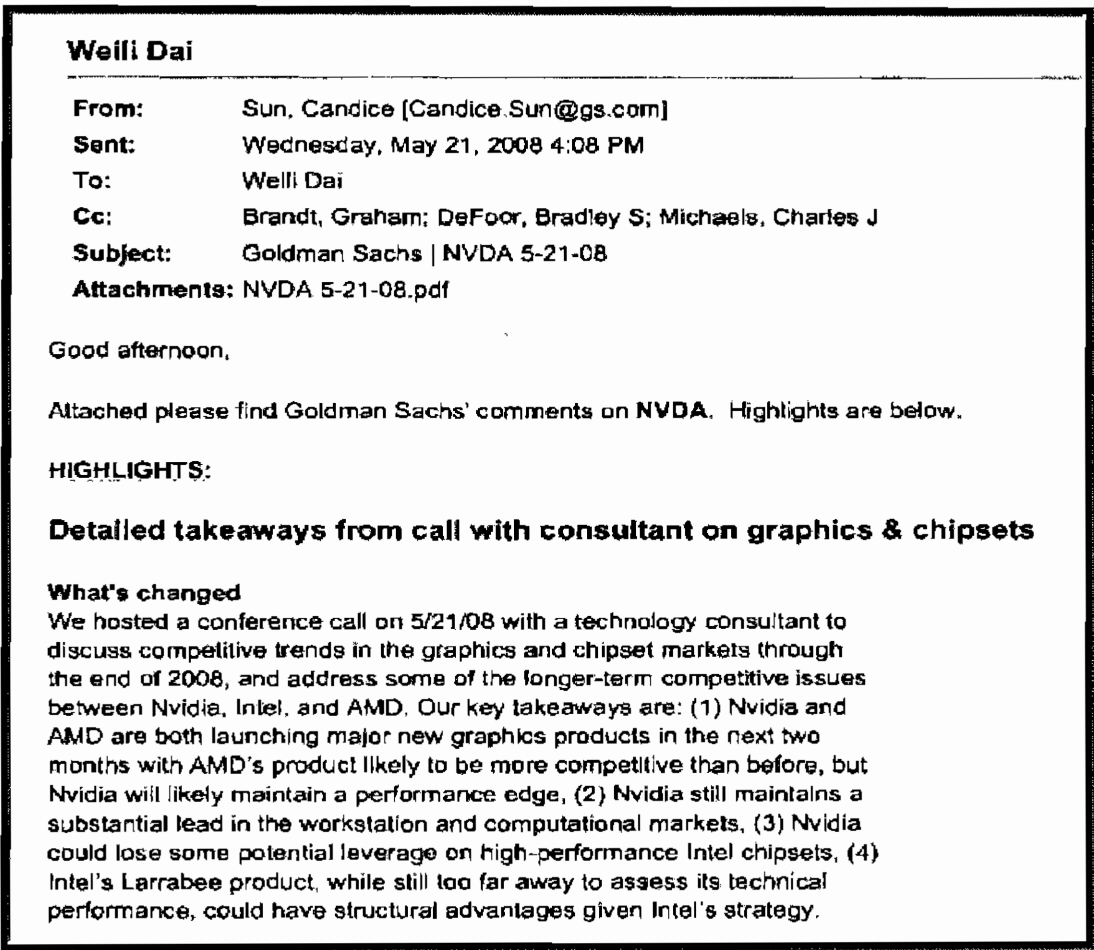
investment in the purchased shares, but also the value of any collateral pledged to secure the loan.

60. During the course of Plaintiff's relationship with Goldman, DeFoor and his Goldman team placed massive form documents in front of Dai and Sutardja and asked for signatures without ever explaining the significance of the documents. For example, when a Goldman client trades on margin, Goldman's standard form account agreements purport to grant Goldman the right to "sell your Securities and Other Property to pay down or pay off the [margin] loan without prior notice to you and at a loss or at a lower price than under other circumstances." The agreements also purport to allow Goldman to sell "securities or other assets in any of your accounts" if the equity in the margin account falls below the "house" requirements. The agreements do not specify what the "house" requirements are. Additionally, according to the agreements, Goldman alone gets to "decide which security or other assets to sell in order to protect its interests," but the agreements do not indicate when or under what circumstances an asset sale could or would occur. None of these clauses were explained to, pointed out, or known to Dai or Sutardja.

C. Plaintiffs Purchase NVIDIA Shares

61. In March 2008, Dai discussed the purchase of NVIDIA shares with DeFoor, Brandt, and other Goldman account representatives. NVIDIA is a local semiconductor manufacturer. Dai purchased shares and sold those shares by May 15, 2008. After Dai's sale of the NVIDIA shares, Goldman continued to bombard her with information on NVIDIA. On May 23, 2008, Dai again began purchasing NVIDIA shares on the advice and supervision of DeFoor and his Goldman team

62. In May and June, 2008, Goldman encouraged Dai to buy more NVIDIA stock. Brandt and others noted Goldman was "upgrading NVIDIA to Buy from Neutral as we think trends in its near-term business are likely to be better than we had expected." Goldman projected NVIDIA's stock price would rise 25% in the coming six months.



Weili Dai

From: Sun, Candice [Candice.Sun@gs.com]
Sent: Wednesday, May 21, 2008 4:08 PM
To: Weili Dai
Cc: Brandt, Graham; DeFoor, Bradley S; Michaels, Charles J
Subject: Goldman Sachs | NVDA 5-21-08
Attachments: NVDA 5-21-08.pdf

Good afternoon,

Attached please find Goldman Sachs' comments on **NVDA**. Highlights are below.

HIGHLIGHTS:

Detailed takeaways from call with consultant on graphics & chipsets

What's changed
We hosted a conference call on 5/21/08 with a technology consultant to discuss competitive trends in the graphics and chipset markets through the end of 2008, and address some of the longer-term competitive issues between Nvidia, Intel, and AMD. Our key takeaways are: (1) Nvidia and AMD are both launching major new graphics products in the next two months with AMD's product likely to be more competitive than before, but Nvidia will likely maintain a performance edge, (2) Nvidia still maintains a substantial lead in the workstation and computational markets, (3) Nvidia could lose some potential leverage on high-performance Intel chipsets, (4) Intel's Larrabee product, while still too far away to assess its technical performance, could have structural advantages given Intel's strategy.

Image 1: May 21, 2008 Email from Candice Sun to Weili Dai cc'ing Graham Brandt, Bradley DeFoor and Charles J. Michaels re: Goldman's position on NVIDIA

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From: Brandt, Graham [mailto:graham.brandt@gs.com]
Sent: Thursday, June 05, 2008 7:10 AM
To: Weili Dai
Cc: DeFoor, Bradley S; Michaels, Charles J
Subject: NVDA - Upgrade to BUY

Weili:

Good morning. As discussed, please find our research comments on NVDA attach

Source of opportunity
We are upgrading Nvidia to Buy from Neutral as we think trends in its near-term business are likely to be better than we had expected. Based on recent checks we are now more constructive on Nvidia's competitive position in desktop GPUs, and think that it could see some upside in its chipset business as the result of stronger sales for Intel platforms. While we have some long-term concerns regarding the competitive threat posed by Intel, these are unlikely to surface until at least 2H2009. We expect AMD's competitive position to deteriorate after its latest product release, and that Nvidia will benefit from a structurally improved GPU market.

* * *

Valuation
We are increasing our 6-month price target to $30 from $23, based on a P/E multiple of 20X (from 18X) applied to our normalized EPS estimate of $1.50 (from $1.25, inc. ESOs) given an improved competitive outlook.

20 **Image 2: June 5, 2008 Email from Graham Brandt to Weili Dai cc'ing Bradley DeFoor and**

21 **Charles J. Michaels re: Goldman's position on NVIDIA**

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From: Sun, Candice [mailto:Candice.Sun@gs.com]
Sent: Wednesday, June 25, 2008 4:56 PM
To: Weili Dai
Cc: Brandt, Graham; DeFoor, Bradley S; Michaels, Charles J
Subject: Goldman Sachs | NVDA 6-25-08

Good afternoon,

Attached please find Goldman Sachs' comments on NVDA. Highlights are below.

HIGHLIGHTS:

Chipset gains and high-end dominance should offset price pressure

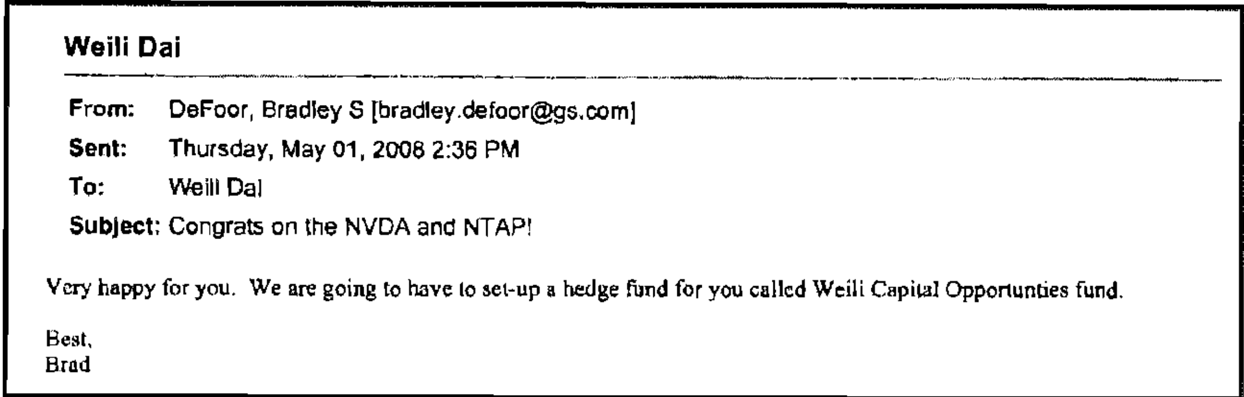
What's changed
We met today at Nvidia's offices with VP of Investor Relations Mike Hara. Our key takeaways are: (1) Nvidia is setting investor expectations low on mainstream desktop GPU pricing in anticipation of aggressive pricing by AMD, despite the fact that AMD's product is shipping in low volumes and no pricing actions have yet been taken, (2) Nvidia's share gains in chipsets could be greater than our estimate of 150-200 bp in CY2H2008, (3) each of Nvidia's business segments, with the exception of notebook GPUs, should grow in CY3Q, (4) OEM inventories remain elevated, but older 8000-series product was already written down in CY1Q and thus should no longer impact gross margin, (5) gross margins are unlikely to expand again until CY4Q, when Nvidia should benefit from the transition to 55nm process technology, (6) Nvidia's continued performance edge in high-end GPUs should allow it to maintain its dominant market share position, and (7) the workstation business continues to see steady growth.

* * *

Valuation
Our 6-month price target of $30 is based on a P/E multiple of 20X applied to our normalized EPS estimate of ~$1.50 (including ESOs).

Image 3: June 25, 2008 Email from Candice Sun to Weili Dai cc'ing Graham Brandt, Bradley S. DeFoor, and Charles J. Michaels re: Goldman's position on NVIDIA

63. DeFoor and Brandt consistently told Dai what good investment decisions she had made and encouraged her to buy more NVIDIA stock. DeFoor and Brandt actively built up Dai's confidence in the various investments they helped her with—making it seem as if she was completing these trades on her own and providing her with a false sense of investment savvy.


Weili Dai

From: DeFoor, Bradley S [bradley.defoor@gs.com]
Sent: Thursday, May 01, 2008 2:36 PM
To: Weili Dai
Subject: Congrats on the NVDA and NTAP!

Very happy for you. We are going to have to set-up a hedge fund for you called Weili Capital Opportunties fund.

Best,
Brad

Image 4: May 1, 2008 Email from Bradley DeFoor to Weili Dai

64. Ultimately, Dai purchased a large amount of NVIDIA stock from May 23, 2008 to July 2, 2008. The purchases were made based on the advice, recommendations, and encouragement of DeFoor and his Goldman team.

65. The account statements Goldman sent to Dai and Sutardja failed to disclose the existence or amount of any margin loan. The word "margin" does not appear anywhere on the Goldman account statements nor were loan terms made clear.

D. Goldman's Forced Liquidation of Plaintiffs' NVIDIA Shares

66. After Goldman encouraged Dai to buy more NVIDIA stock, on July 2, 2008, NVIDIA announced it "would take a $150 million to $200 million charge against cost of revenue to cover anticipated customer warranty, repair, return, replacement and other consequential costs and expenses arising from a weak die/packaging material set in" certain chip sets for notebook computers.

67. The market value of NVIDIA's stock plummeted in the wake of the July 2, 2008 announcement.

68. With the drop in value of NVIDIA's stock, Dai ceased buying NVIDIA shares but, consistent with her past practices, she had no intention of selling NVIDIA shares until the price recovered above the price at which the NVIDIA shares had been purchased.

69. DeFoor, Brandt, and others at Goldman called Dai and Sutardja requesting Plaintiffs' Marvell shares be put up as collateral for the NVIDIA margin loan knowing the stock

price of NVIDIA dropped. Plaintiffs were very apprehensive about following this path. DeFoor, Brandt, and others at Goldman, however, pressured Plaintiffs and insisted this course of action was best and necessary. DeFoor, Brandt, and their Goldman team assured Plaintiffs the Marvell stock was perfectly safe as collateral and Plaintiffs would never have to sell it due to the margin loan. Ultimately, Dai and Sutardja complied. Based on these assurances, Plaintiffs, on July 15, 2008, re-registered another 3,100,000 shares of Marvell stock in Goldman's name.

70. In October 2008, despite the increase in collateral, Goldman, through DeFoor, Brandt and their Goldman team, informed Dai she would be forced to sell the NVIDIA shares. Goldman had no legitimate need to force Dai to sell the NVIDIA shares because Plaintiffs had posted ample collateral to secure the debt.

71. In October 2008, the NVIDIA shares were sold at an average price of $6.41 per share. Dai and Sutardja lost in excess of $166 million on their trading in NVIDIA. Had Dai and Sutardja held onto their NVIDIA shares, they eventually would have sold them for a profit.

E. Goldman's Undisclosed Ownership of NVIDIA

72. A clear example of Goldman's conflicting interests is while Goldman was managing Plaintiffs' assets, including Plaintiffs' positions in NVIDIA, Goldman was managing its own stakes in NVIDIA.

73. On March 31, 2008, Goldman's position in NVIDIA consisted of 9,168,023 shares (including both shares held outright and "call" options). Over the next quarter, at the very time Goldman was urging Plaintiffs to purchase more NVIDIA shares, Goldman actually decreased its own holdings of NVIDIA. On June 30, 2008, Goldman held 3,785,424 shares and call options – a nearly 60% decrease in a single quarter.

74. On September 30, 2008, Goldman's position in NVIDIA consisted of 3,162,225 shares (including both shares held outright and "call" options). Over the next quarter, at the very time that Goldman was forcing Plaintiffs to sell their NVIDIA shares at a massive loss, Goldman actually increased its own holdings of NVIDIA. On December 31, 2008, Goldman held 4,894,166 shares and call options – a nearly 55% increase in a single quarter.

75. Plaintiffs were not informed by DeFoor, Brandt, or anyone from Goldman that Goldman was increasing its holdings in NVIDIA shares while simultaneously forcing Plaintiffs to sell their NVIDIA shares at a loss. Indeed, no one from Goldman ever disclosed to Plaintiffs it was trading in NVIDIA at all.

F. In June 2008, Goldman Faced Serious Financial Troubles

76. At the same time, Goldman's own financial performance began to suffer. On September 15, 2008, Lehman Brothers collapsed, sending U.S. financial markets into what the SEC has called "an unprecedented tailspin." During a telephonic board meeting on Sunday, September 21, 2008, Goldman's Board of Directors voted to become a "Bank Holding Company," providing access to government bailout funds and low interest loans. Two days later, at another telephonic meeting, the Board approved the sale of $5 billion worth of the company's preferred stock to Warren Buffet's Berkshire Hathaway.

77. According to the SEC, immediately after both meetings, Goldman Director Rajat Gupta called hedge fund manager Raj Rajaratnam, and provided him with information about Goldman's plans. The DOJ also alleges Rajaratnam possessed and traded on material, non-public inside information about NVIDIA and Marvell during 2008.

78. By October 10, 2008, Goldman's own share price had plummeted to a (split adjusted) $86 per share, down from $181 per share on July 30, 2008, just over two months prior. $86 per share was the lowest price for Goldman's shares in four years.

Image 5: Goldman's Share price (July 1, 2008 – October 7, 2008)

1. Raj Rajaratnam Insider Trading Scandal During 2008

79. In March, 2011, the SEC announced insider trading charges against Rajat Gupta, a former Goldman Board member. He was accused of providing Raj Rajaratnam, founder of Galleon Group, with insider information obtained during Goldman board calls and in other aspects of his duties with Goldman. Rajaratnam allegedly used the inside information to trade on behalf of some of Galleon's hedge funds or passed the information along to associates who then traded ahead of the public announcements by the Firm. At this time, Gupta was purportedly a direct or indirect investor in at least some of the Galleon hedge funds.

80. The ties between Goldman and Galleon were extensive. According to press reports, Goldman was a leading prime broker and provider of hedge fund services for Galleon.

1 As a result, Goldman received tens of millions of dollars annually to execute Galleon's stock
2 trades -- and knew exactly what trades Galleon was making before anyone else did. Goldman
3 also held Galleon's assets. Moreover, the ties between Goldman and Galleon were not just
4 financial. At least nine former Goldman analysts and traders worked at Galleon, including two
5 highly regarded technology industry analysts.

6 81. During 2008, the SEC asserts Gupta and Rajaratnam had a variety of business
7 dealings and benefited from these dealings by more than $18 million. The Galleon Group paid
8 $250 million to its Wall Street investment banks in 2008, in return for market information other
9 investors did not receive.[8] The SEC further asserts Gupta invested in and was a director for
10 Galleon's GB Voyager Multi-Strategy Fund SPC, Ltd., a master fund with assets invested in
11 numerous Galleon hedge funds, including ones traded based upon Gupta's tips.

12 82. After Lehman Brothers filed for bankruptcy on September 15, 2008, senior
13 management at Goldman started thinking of ways to survive the financial crisis, including
14 selling a portion of itself to an institutional investor like Berkshire Hathaway. This potential sale
15 was discussed at various Board meetings and posting calls.

16 83. On September 21, 2008, a Special Meeting was held by the Goldman Board
17 where Gupta was present via teleconference, and the Board approved Goldman Sachs becoming
18 a Bank Holding Company. Goldman's CEO, Lloyd Blankfein, informed the Goldman Board
19 during posting calls, meetings, and phone calls about the then-current financial status of the
20 Firm. Even though the fact that the Goldman Board chose to convert Goldman Sachs into a
21 Bank Holding Company was publicly disclosed, information concerning Goldman's strategic
22 alternatives and strong revenue remained confidential.

23 84. The SEC found telephone records and calendar entries that indicated on the
24 morning of September 22, 2008, Gupta and Rajaratnam had a telephone conversation. The SEC
25 also alleged that, shortly after the conversation, Rajaratnam caused the Galleon Tech funds to
26 purchase over 80,000 Goldman Sachs shares.
27

28 [8] Business Insider, "Goldman Sachs and Morgan Stanley Cannot Afford to Remain Silent on Galleon Charges," October 29, 2009.

1 85. According to the SEC, on the morning of September 23, 2008, Rajaratnam placed
2 a call to Gupta that lasted over 14 minutes. The SEC contends that less than a minute into the
3 call, Rajaratnam caused the Galleon Tech funds to purchase more than 40,000 additional
4 Goldman Sachs shares. Later that same day, a Special Telephonic Meeting of the Goldman
5 Board took place and the Board approved a $5 billion preferred stock investment by Berkshire in
6 Goldman and a public equity offering. According to the SEC, Gupta was on this call
7 telephonically. Gupta took this news as a positive one for Goldman because he knew Berkshire
8 was held in high regard by Wall Street and Goldman's share price would likely rise due to the
9 positive and strong news. The SEC also contends that immediately following the call, Gupta
10 phoned Rajaratnam and Rajaratnam again caused the Galleon Tech funds to purchase more than
11 175,000 additional Goldman Sachs shares.
12 86. After the market had closed on September 23, 2008, Goldman publicly announced
13 the Berkshire investment, along with a $2.5 billion public stock offering. Goldman's stock price,
14 which closed at $125.05 per share on September 23, 2008, opened at $128.44 per share on
15 September 24, 2008, and rose to a closing price of $133.00 per share. There was a total gain of
16 6.36% from the previous day.
17 87. The SEC alleges that on September 24, 2008, Rajaratnam caused the Galleon
18 Tech funds to liquidate the position they built on Goldman and generated profits of over
19 $900,000 in one day.
20 88. The SEC's complaint states Gupta disclosed Goldman's financial results for the
21 fourth quarter of 2008 to Rajaratnam. According to the SEC, Blankfein knew early on that
22 Goldman's fourth quarter results were going to be poor. On October 23, 2008, Blankfein,
23 Goldman's CFO David Viniar, and other senior executives conducted a Board posting call in
24 which they informed the Board of the financial situation. The weekly and daily loss statements
25 showed Goldman was operating at a quarter to date loss of $1.96 per share at the time.
26 89. Gupta was present via telephone at the October 23, 2008 meeting. The SEC
27 contends after the meeting, Gupta again phoned Rajaratnam and Rajaratnam caused the Galleon
28 Tech funds to begin selling their holdings of Goldman the next morning. The funds sold over

120,000 shares with prices ranging from $97.74 to $102.17 per share. On December 16, 2008, Goldman announced negative results for the fourth quarter of 2008, reporting a $2.1 billion loss. As a result of this insider information, Galleon Tech Funds avoided losing over $3 million.

2. Winifred Jiau Insider Trading Scandal From 2006 to 2008

90. In November, 2010, the Department of Justice began charging individuals related to Primary Global Research ("PGR"), an "expert networking firm," with allegations of insider trading. Individuals charged include Samir Barai, founder of Barai Capital; hedge fund manager Donald Longueuil; and PGR employee Winifred Jiau ("Jiau"). The DOJ alleges Jiau provided various hedge funds with detailed information about, among other companies, NVIDIA and Marvell.

91. The DOJ asserts Jiau began getting paid for insider information in September, 2006. She was an "expert consultant" with PGR between September, 2006 and December, 2008. Jiau was a contractor for NVIDIA, one of the companies she gave tips on, and she left the company in 2010.

92. According to the DOJ's complaint, on May 23 and May 28, 2008, Jiau had telephone conversations with two portfolio managers at separate hedge funds, during which she advised the portfolio managers of Marvell's quarterly revenues, gross margins, and earnings per share ("EPS") for the Marvell quarter ending on May 3, 2008.

93. The DOJ's complaint also alleges that in August, 2008, Jiau provided the same hedge fund managers with Marvell's quarterly revenues, gross margins and EPS for the following quarter, ending on August 2, 2008. Both times, according to the DOJ, the information Jiau provided proved perfectly accurate and preceded Marvell's public announcement of quarterly financial results. Also according to the DOJ, in her conversations with the hedge fund managers, several of which were recorded, Jiau made clear she received the inside information from an employee at Marvell.

94. The DOJ contends that when a cooperating witness asked Jiau if she had data on the next quarter, she replied: "As soon as I get it, I give you guys a buzz." By trading on inside

information provided by Jiau regarding Marvell's earnings for the second quarter of 2008, the DOJ contends a hedge fund netted profits of over $820,000 from trades in Marvell securities.

3. Goldman's Financial Reality During the Second Half of 2008

95. In the midst of the economic crisis, while its counterparts tumbled one by one, Goldman prepared to weather the storm. As "the entire investment banking business model came under siege"[9] in mid-September 2008, Goldman's liquidity pool dried up considerably, falling from approximately $120 billion to $57 billion in less than a week.[10]

96. Despite the story told by these startling decreases, Lloyd Blankfein, Goldman's CEO, provided the following testimony to the Financial Crisis Inquiry Commission ("FCIC"): "[Goldman] had tremendous liquidity through the period. But there were systemic events going on, and we were very nervous. If you are asking me what would have happened but for the considerable government intervention, I would say we were in—it was a more nervous position than we would have wanted [to be] in. We never anticipated the government help. We weren't relying on those mechanisms… I felt good about it, but we were going to bed every night with more risk than any responsible manager should want to have, either for our business or for the system as a whole—risk, not certainty."[11]

4. Goldman Had to Be Liquid to Get Banking Status

97. Blankfein's testimony belies just how dire Goldman's situation was. The reality of Goldman's position is made clear by the following:

98. First, had the government declined to bail out AIG, Goldman would not have received tens of billions of dollars in collateral for the default swaps. Ultimately, "the Goldman collateral calls [on AIG] continued until the bitter end, by which time it had been paid $12.9 billion and the government had poured some $40 billion into the financial products subsidiary as part of the overall rescue of A.I.G."[12]

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[9] FCIC, p. 353

[10] FCIC, p. 362

[11] FCIC, p. 362

[12] New York Times, "How Goldman Killed AIG," February 16, 2011.

99. Second, Goldman took full advantage of government funds because it had to, including a high of $24 billion in Primary Dealer Credit Facility ("PDCF") borrowing in October, 2008, and a high of $43.5 billion in Term Securities Lending Facility ("TSLF") borrowing in December, 2008.[13] Without Government funding, Goldman would have had to raise approximately $67.5 billion in new funding.

100. The Federal Reserve recently disclosed 2008-2010 borrowings from the Federal Reserve discount window – the mechanism that allows banks to receive emergency funding. In 2010, Goldman's Chief Operating Officer, Gary D. Cohn, testified before the Financial Crisis Inquiry Commission, under oath, claiming Goldman had tapped the Federal Reserve's discount window "one night at the request of the Fed" for a "de minimus amount of money." However, the Federal Reserve's recent disclosure shows Goldman used the discount window five times from September, 2008 to January, 2010. On September 23, 2008, when Goldman's crisis was in full swing, Goldman made its biggest drawdown of $50 million.[14]

101. Third, Goldman's conversion from an investment bank to a Bank Holding Company was an indication of the Firm's desperate situation. Goldman could not overcome the financial hurricane without government support and to get that support they had to become a Bank Holding Company – Goldman needed good friends. The inaccuracy of Blankfein's account of events is exemplified further by the testimony of the Counsel for the New York Fed, Tom Baxter: "In my 30-year history, [Goldman] had consistently opposed the Federal Reserve supervision—[but after Lehman, Goldman was]… next unless they did something drastic. That drastic thing was to become bank holding companies."[15] This new company structure required Goldman to come under direct regulation of the Federal Reserve and also required Goldman to follow stricter regulations that all commercial banks are required to meet.

102. The conversion to a Bank Holding Company did not provide Goldman complete and total security, rather it provided "some breathing room in the immediate term [and]… [laid]

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[13] FCIC, p. 362

[14] Bloomberg, "Goldman Sachs Borrowed From Fed Window Five Times," March 31, 2011.

[15] FCIC, p. 363

the groundwork for additional deal making."[16] To be clear, the conversion was made to preserve and protect Goldman, not Goldman's clients. Only once, as an aside, does Goldman even mention its clients in the press release announcing its conversion from an investment bank to a Bank Holding Company. The press release does, however, mention that "for the past several quarters, in light of the difficult market environment, [Goldman reduced its] risk exposures and increas[ed its] capitalization."[17]

103. Goldman's new status as a Bank Holding Company was not a concern for insiders because after two quarters as a Bank Holding Company, Goldman was still "not reporting like a bank and not acting like one either," said David Hendler, Baylor Lancaster, Pri de Silva, and Kristine Lanspa, analysts at CreditSights, an independent fixed-income research firm.

104. "Our model really never changed," Goldman's Chief Financial Officer David Viniar said in an interview. Because Goldman was a Bank Holding Company, it obtained the same access as other commercial banks to the Federal Emergency Loan Program. In addition, Goldman was also able to create commercial bank subsidiaries to take deposits, giving it a new cash base. Goldman became less reliant on raising capital in the bond market and had access to the Fed's discount window. All these factors made Goldman seem like a safer investment. Goldman increased its capitalization and reduced its exposure at its clients' expense by issuing margin calls on its clients and descending upon the housing market with vicious efficiency.

105. In the third quarter of 2008, as tens of billions of dollars in assets were yanked from the investment banks still standing, Goldman being one of them, the Firm went into survival mode, seeking immediate profit, however and wherever possible.

106. By late fall of 2008, despite massive government aid, Goldman was under extreme financial pressure. On October 21, 2008, Goldman's CEO, Lloyd Blankfein informed Goldman's Board that Goldman was headed for a massive loss in the 4th quarter. Goldman had

[16] New York Times, "As Goldman and Morgan Shift, a Wall St. Era Ends," September 21, 2008.

[17] Goldman Sachs Press Release: "Goldman Sachs to Become the Fourth Largest Bank Holding Company," September 21, 2008.

never had a quarter in which it lost money in its entire history as a public company. Goldman eventually announced a $2.1 billion loss.

107. On November 20, 2008, Goldman's share price declined to a split-adjusted $50.77, the lowest price it had traded at in nearly a decade. Goldman's shares had lost more than two-thirds of their value since July 30.

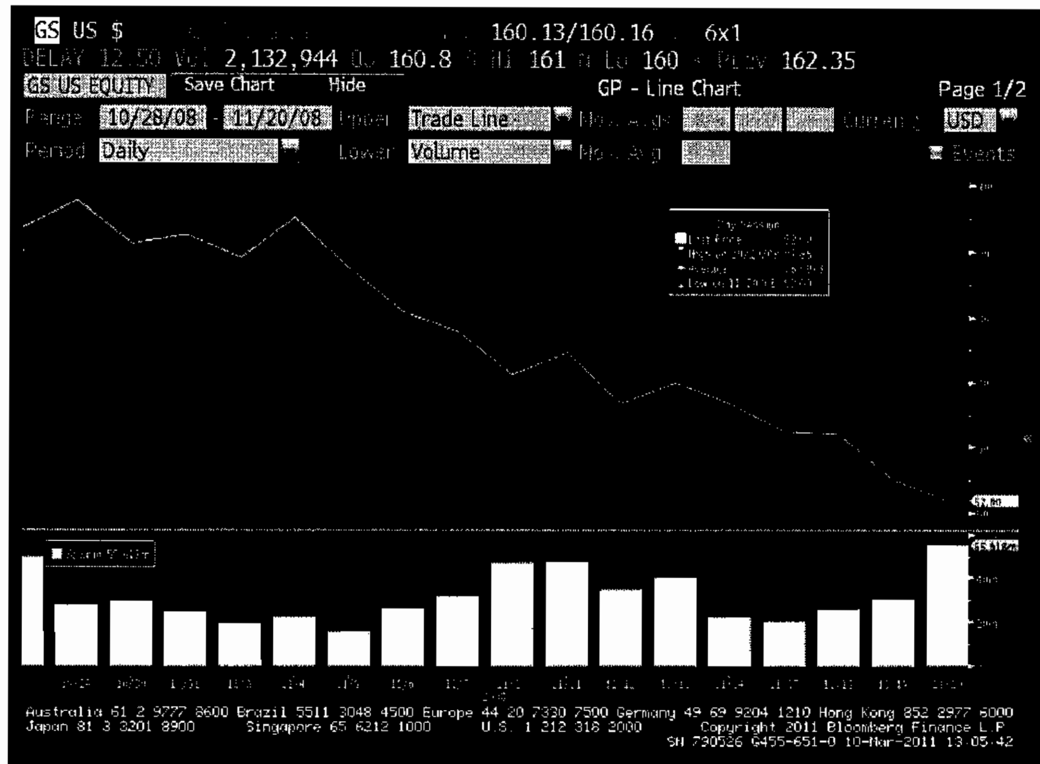


Image 6: Goldman's Share price (October 28, 2008 – November 20, 2008)

G. Plaintiffs Are Forced to Sell Shares Due to Goldman's Financial Panic When Goldman Issues An Improper Margin Call Based on Its Fabricated SEC Five Dollar Rule

108. With Goldman's shares falling to their lowest price in a decade, and within weeks of a Goldman Director providing Goldman inside information to Rajaratnam, a notorious hedge fund manager who possessed Marvell inside information, Goldman manufactured an excuse to obtain millions of Marvell shares from Dai and Sutardja.

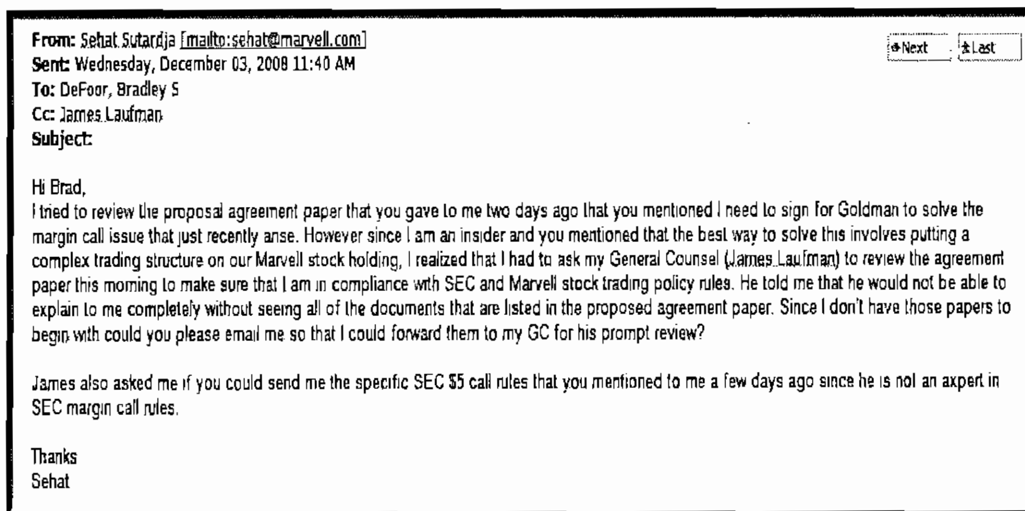
1. Defendants Intimidated Plaintiffs With a Fabricated "SEC Five Dollar Rule"

109. In late November 2008, Goldman issued a "margin call." DeFoor, Brandt, and their Goldman team demanded Dai and Sutardja either immediately <u>sell</u> the pledged Marvell shares or Goldman would sell the shares itself. DeFoor and his Goldman team told Dai and Sutardja that SEC rules prohibited a stock valued at less than $5.00 per share from being used as collateral for a margin loan. According to DeFoor, the 75 million Marvell shares Dai and Sutardja held in their Goldman accounts—worth almost $375 million on the open market—were insufficient to secure a margin loan of any size.

110. No SEC rule prohibits stock valued at less than $5.00 per share from being used as collateral for a margin loan. DeFoor and others at Goldman knew there was no such SEC rule. In fact, the so-called "SEC Five Dollar Rule" was Goldman's own internal policy.

111. Marvell's stock price closed below $5 per share on only one trading day, November 20, 2008. Goldman insisted Dai and Sutardja <u>sell</u> their Marvell shares even after Marvell's stock price rose above $5 per share.

112. On December 3, 2008, Sutardja emailed DeFoor asking DeFoor to send to him certain account-related documents and "the specific SEC $5 call rules that you mentioned to me a few days ago . . . ."



From: Sehat Sutardja [mailto:sehat@marvell.com]
Sent: Wednesday, December 03, 2008 11:40 AM
To: DeFoor, Bradley S
Cc: James Laufman
Subject:

Next Last

Hi Brad,
I tried to review the proposal agreement paper that you gave to me two days ago that you mentioned I need to sign for Goldman to solve the margin call issue that just recently arise. However since I am an insider and you mentioned that the best way to solve this involves putting a complex trading structure on our Marvell stock holding, I realized that I had to ask my General Counsel (James Laufman) to review the agreement paper this morning to make sure that I am in compliance with SEC and Marvell stock trading policy rules. He told me that he would not be able to explain to me completely without seeing all of the documents that are listed in the proposed agreement paper. Since I don't have those papers to begin with could you please email me so that I could forward them to my GC for his prompt review?

James also asked me if you could send me the specific SEC $5 call rules that you mentioned to me a few days ago since he is not an axpert in SEC margin call rules.

Thanks
Sehat

Image 7: December 3, 2008 Email from Sutardja to DeFoor

113. DeFoor responded to Sutardja's email later that same day by attaching some account-related documents, but he did not send over any so-called "SEC $5 call rules."

From: DeFoor, Bradley S [mailto:bradley.defoor@gs.com]
Sent: Wednesday, December 03, 2008 5:31 PM
To: Sehat Sutardja
Cc: Brandt, Graham; Weili Dai
Subject: RE:

Sehat:

As you requested, attached please find the following documents which are referenced in the Personal Guarantee letter:

- Customer Agreement
- Margin Supplement
- Margin Risk Disclosure Statement
- Interest Charges and Margin Requirements Supplement

Please let me know if you have any questions. As discussed, we need to receive the Personal Guarantee letter as soon as possible.

Regards,
Brad

Goldman, Sachs & Co.
555 California Street 45th Floor | San Francisco, CA 94104
Tel: 415-393-7742 | Fax: 415-393-7530 | Cell: 415-244-3844
email: bradley.defoor@gs.com
http://www.gs.com

Bradley S. DeFoor
Managing Director

Image 8: DeFoor's Response to Sutardja Email on December 3, 2008

114. DeFoor pressured Plaintiffs by accusing them of stonewalling Goldman and inquiring about the purported SEC Five Dollar Rule to buy time. DeFoor was verbally abusive on telephone calls with Plaintiffs, who were simply trying to understand what was going on, and intimidated Plaintiffs by stating Plaintiffs were failing to comply with an SEC rule. This was a departure from the friendly demeanor DeFoor had previously exhibited.

115. Goldman continued to misrepresent the source of the so-called "SEC Five Dollar Rule" after December 2008. In a November 23, 2010 phone call with Goldman vice chairman John Weinberg and Tucker York, Managing Director of Goldman's Private Wealth Management

for North America, York told Dai and Sutardja that, if the rule was not an SEC rule, then it was a New York Stock Exchange ("NYSE") rule. But no such NYSE rule exists either.

2. Goldman's Conduct Failed to Protect Clients' Interest: Goldman's Interests Primary and Clients' Interests Secondary

116. Lloyd Blankfein, Goldman's CEO and Chairman, best summed up how the Firm treated its clients. During an FCIC hearing on January 13, 2010, Blankfein was asked if selling mortgage securities to clients that Goldman believed would default was a proper, legal, or ethical practice for Goldman while simultaneously shorting them. Blankfein responded: "I do think that the behavior is improper and we regret the result—the consequence [is] that people have lost money." The following day, January 14, 2010, shifting into full back-peddling mode, Goldman released a statement denying Blankfein ever said Goldman's practices were improper.[18] Furthermore, Goldman's CFO, David Viniar echoed the sentiments of the damage control press release when he testified to the FCIC that Goldman was under no obligation whatsoever to disclose its own position in the securities that it pushed on clients, since clients "are buying an exposure…The thing we are selling to them is supposed to give them the risk they want."[19] Unfortunately for Plaintiffs and others like them—risk is the last thing they wanted. "Sylvain Raynes, a structured finance expert at R&R Consulting in New York, reportedly called Goldman's practice 'the most cynical use of credit information that I have ever seen,' and compared it to 'buying fire insurance on someone else's house and then committing arson.'"[20]

117. Goldman's conflict of interests between itself and its clients was egregious enough to spawn a 63 page internal report released in January, 2011, called "Report of the Business Standards Committee." The Business Standards Report addressed the need for transparency and disclosure, and the need to emphasize responsibility to clients. Highpoints of the Business Standards Report are summed up in the first page titled "The Goldman Sachs Business Principles," which lays out the 14 tenets all good Goldman employees should live by, including:

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[18] FCIC, p. 236

[19] Bloomberg Markets, "Lloyd Blankfein's Headache," January 24, 2011.

- "Our clients' interests always come first";
- "We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard";
- "Our goal is to provide superior returns to our shareholders"; and finally,
- "Integrity and honesty are the heart of our business. We expect our people to maintain high ethical standards in everything they do, both in their work for the firm and in their personal lives."[21]

118. These are four of the 14 principles enumerated on the first page of the Business Standards Report, compiled as an attempt to address the myriad of improper activities brought to light during the financial crisis.

H. Goldman's 15th Principle: Manipulate Conflict of Interests in Goldman's Favor

119. A May 18, 2010 New York Times article discusses a 15th principle—one omitted from the public list. Anonymous former insiders discussed the Firm's encouragement "to embrace conflicts [between Goldman and its clients], and argues that they are evidence of a healthy tension between the firm and its customers. If [Goldman employees] are not embracing conflicts, the argument holds, you are not being aggressive enough in generating business."[22] When confronted with the 15th principle, Goldman spokesman Lucas van Praag represented the Firm was "unaware" of any such thing; however, he made sure to add "any business industry has potential conflicts and we all have an obligation to manage them effectively."[23] Goldman has executed with the utmost effectiveness, unfortunately this more often than not means filling Goldman's coffers at the expense of clients. Lloyd Blankfein has worked hard to expand Goldman's trading operation and "conflict avoidance has shifted to conflict management."[24]

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[20] FCIC, p. 236

[21] Goldman Sachs; Report of the Business Standards Committee, January, 2011.

[22] Id.

[23] Id.

120. The same article dissected the troublesome implications of Goldman's 2007 mortgage department compliance training manual, which recognized "the challenges posed by the firm's clients-come-first rule. Loyalty to customers 'is not always straightforward' given the multiple financial hats Goldman wears in the market."[25]

121. This same manual also made statements about how Goldman employed client information: "We continuously make markets and take risk based on a unique window on the market which is a mosaic constructed of all the pieces of data received."[26] Conflicts arose when that "unique window" was a construct of private client information. Goldman's actual business model deviated significantly from the utopian design set forth in its marketing materials and principles. Despite such public airing of dirty laundry, purported effort to do right by its clients in the form a 63 page Business Standards Committee Report, and the 14 principles, examples of Goldman's true principles of self-dealing and greed continued.

1. Plaintiffs' Efforts to Prevent the Sale of Their Marvell Stock

122. As Goldman well knew, Dai and Sutardja did not want to sell Marvell stock. Plaintiffs particularly did not want to sell Marvell stock in late-2008, when that stock was trading at its lowest price since 2003.

123. Dai and Sutardja offered Goldman several alternatives to a sale of their Marvell shares. Dai and Sutardja offered to post additional, non-Marvell collateral to secure the margin loan. Goldman refused to accept that different collateral. Dai and Sutardja also offered to pledge additional Marvell shares to secure the margin loan. Goldman refused to accept the proposal to pledge those shares.

124. At the time of the margin call, Dai and Sutardja had assets invested with Goldman that could have satisfied the debt. DeFoor and his Goldman team had previously supervised Plaintiffs' investments in Goldman-run hedge funds. These assets could have been used to

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[24] Id.

[25] Id.

[26] Id.

satisfy the margin debt rather than the Marvell shares, but DeFoor and Brandt told Sutardja his funds were worthless and refused to liquidate these positions.

125. As Goldman, DeFoor, and Brandt knew, Dai and Sutardja's family members offered to assist Plaintiffs by pledging to Goldman additional collateral to secure the margin loan. Goldman either refused to accept this additional collateral or imposed terms so onerous that none of Plaintiffs' family members could or would agree to post the collateral. For example, Pantas Sutardja offered to pledge his own assets held in his own accounts at Goldman. Goldman refused to use those assets as collateral unless Pantas Sutardja granted to Goldman broad rights to liquidate his assets in the event of Plaintiffs' default.

2. Goldman's Forwards Contract: A Financial Web to Trap Clients and Reap Profits

126. For days, DeFoor, and his Goldman team applied considerable pressure, presenting the sale of Marvell shares as Plaintiffs' only option. As soon as Sutardja agreed to sell, magically, Goldman suddenly proposed an alternative. On December 2, 2008, Goldman proposed to Dai and Sutardja an alternative to an outright sale of their Marvell shares.

127. Goldman's proposal, known as a "variable forwards contract" (the "Forwards Contract"), would have required Dai and Sutardja to pledge to Goldman an additional 13.5 million shares of their Marvell stock. In exchange, Goldman would pay to Dai and Sutardja approximately 75% of the current market value of the 13.5 million Marvell shares. Dai and Sutardja could then use that money to satisfy Goldman's margin call.

128. Under the Forwards Contract, Goldman would hold the newly pledged Marvell shares for a specified duration. At the expiration of that term, Dai and Sutardja would be forced either to transfer to Goldman outright a certain portion of the pledged shares, or to pay to Goldman cash representing the equivalent value of that number of shares.

129. Goldman advertised the Forwards Contract as a way for Dai and Sutardja to "achieve monetization while hedging a stock position's downside and retaining some upside participation." Goldman did not disclose to Dai and Sutardja that a straightforward sale of their Marvell stock would have been more beneficial to Plaintiffs than the Forwards Contract. Under

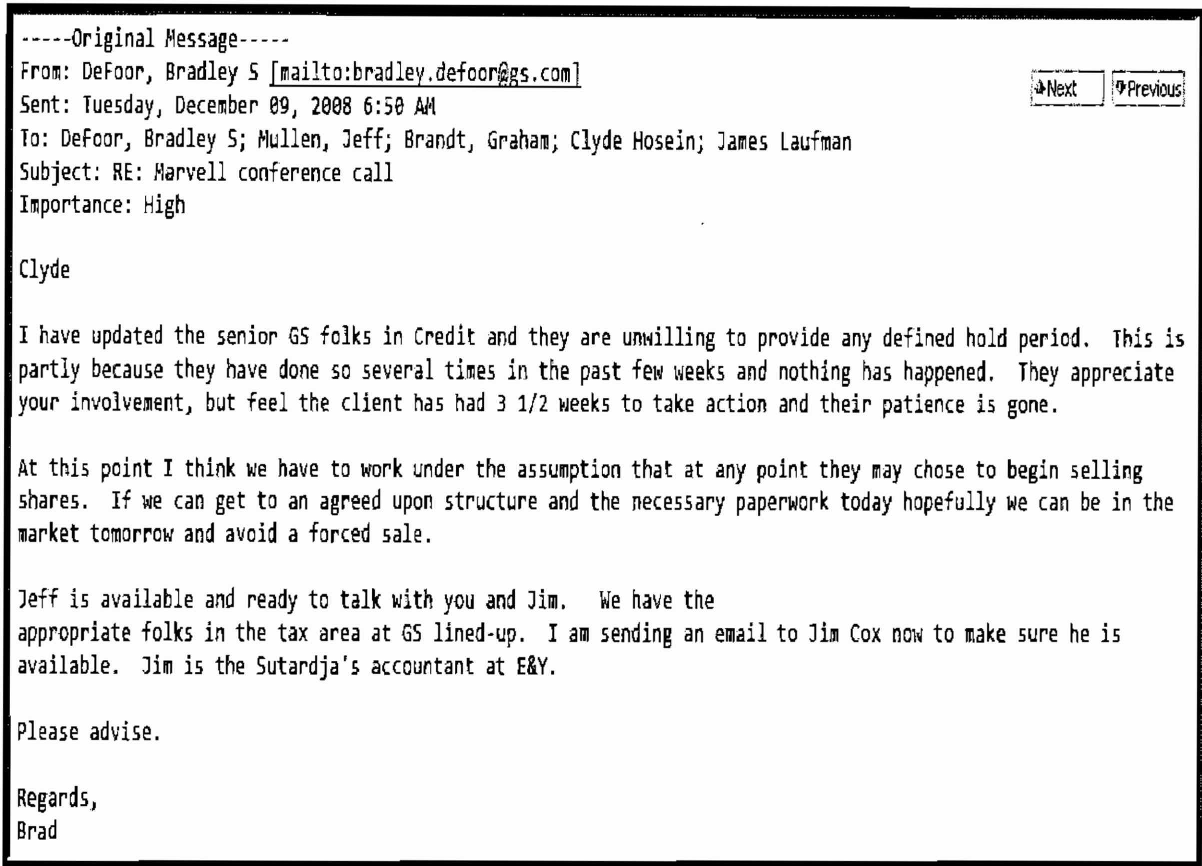
the Forwards Contract, Dai and Sutardja would receive only 75% of the value of the pledged Marvell shares. Thus, Plaintiffs would have been forced to pledge more shares to satisfy the margin loan than if they simply sold their Marvell shares and used the proceeds to pay Goldman. Additionally, under the Forwards Contract, Goldman "capped" the level of "upside" Dai and Sutardja were allowed to share in for the pledged stock so that the promise of "upside participation" was insufficient to offset the discounted sale price. Had they adopted Goldman's recommendation, Dai and Sutardja would have lost many millions of dollars on the Forwards Contract as compared to a straightforward sale.

130. Ultimately, Plaintiffs did not sign the forwards contract.

3. Goldman's Incentive to Push the Forwards Contract on Plaintiffs

131. Goldman failed to disclose to Dai and Sutardja the full extent of its own expected profit from the Forwards Contract. The Forwards Contract would have allowed Goldman to obtain Plaintiffs' Marvell shares at a fraction of their market value. If, as expected, Marvell's stock price rose, Goldman would reap 100% of any profit above the upside "cap." Goldman knew it stood to make tens of millions of dollars (or more) in profits from the Forwards Contract.

132. Goldman presented the Forwards Contract as the only alternative to a forced sale of the Marvell shares. For example, on December 9, 2008, DeFoor stated: "If we can get to an agreed upon structure and the necessary paperwork today [,] hopefully we can be in the market tomorrow and avoid a forced sale." DeFoor also threatened that, "at any point," Goldman might choose to begin selling Dai and Sutardja's Marvell shares.



-----Original Message-----
From: DeFoor, Bradley S [mailto:bradley.defoor@gs.com]
Sent: Tuesday, December 09, 2008 6:50 AM
To: DeFoor, Bradley S; Mullen, Jeff; Brandt, Graham; Clyde Hosein; James Laufman
Subject: RE: Marvell conference call
Importance: High

Clyde

I have updated the senior GS folks in Credit and they are unwilling to provide any defined hold period. This is partly because they have done so several times in the past few weeks and nothing has happened. They appreciate your involvement, but feel the client has had 3 1/2 weeks to take action and their patience is gone.

At this point I think we have to work under the assumption that at any point they may chose to begin selling shares. If we can get to an agreed upon structure and the necessary paperwork today hopefully we can be in the market tomorrow and avoid a forced sale.

Jeff is available and ready to talk with you and Jim. We have the appropriate folks in the tax area at GS lined-up. I am sending an email to Jim Cox now to make sure he is available. Jim is the Sutardja's accountant at E&Y.

Please advise.

Regards,
Brad

Image 9; December 9, 2008 Email from DeFoor to Marvell

133. Faced with the prospect of a forced sale, and given the intense pressure placed on them by DeFoor, Brandt, and their Goldman team, Dai and Sutardja felt they had no choice but to agree to the sale of their Marvell shares. On December 11, 2008, Goldman began liquidating 8.65 million shares of Dai and Sutardja's Marvell stock at prices ranging from $6.50 to $6.93 per share.

134. Dai and Sutardja would not have sold the Marvell stock but for Goldman's misrepresentations and concealments as alleged above. On March 31, 2011, Marvell's stock price was approximately $16.39 per share, roughly two and a half times greater than its price in December 2008. The shares that Goldman forced Dai and Sutardja to sell would have a market value today of approximately $141.5 million.

I. Goldman's Undisclosed Ownership of Marvell

135. Similarly, unbeknownst to Plaintiffs, Goldman held millions of shares of Marvell stock in 2008. Goldman held 3,458,429 shares and call options on June 30, 2008. It increased its holdings to 3,465,841 by September 30, 2008. At the end of the year, Goldman still held 2,931,527 shares and call options – approximately 85% of its prior holdings. In other words, in the very quarter Goldman insisted Plaintiffs sell millions of shares of their Marvell stock, Goldman was holding on to the vast majority of its own Marvell stock. Neither DeFoor, Brandt, nor anyone from Goldman ever disclosed to Plaintiffs that, while Goldman was forcing Plaintiffs to sell Marvell shares, Goldman was holding on to the vast majority of its own Marvell shares. Indeed, no one from Goldman ever disclosed to Plaintiffs that it was trading in Marvell at all.

J. Request For Injunction

136. Plaintiffs are pursuing claims for injunctive relief under the Consumers Legal Remedies Act (the "CLRA"), Civil Code §1750 et seq., to vindicate the public interest. On behalf of the general public, Plaintiffs seek to act as private attorney generals, enjoining Defendants, and each of them, from committing future deceptive practices. Because the allegedly unlawful provisions in Goldman's agreements apply to other clients in California, as alleged below, Plaintiffs seek injunctive relief, requesting these provisions be stricken from the client agreements.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Common Law Fraud)

137. Plaintiffs incorporate herein all of the above Paragraphs of this Complaint as though fully set forth herein.

138. Defendants made material misrepresentations to Plaintiffs and omitted facts that they were obligated to disclose to Plaintiffs. Such misrepresentations and omissions include:

i) Failing to disclose the nature or terms of margin trades;

ii) Misrepresenting that Goldman placed its clients' interests first;

iii) Misrepresenting that Plaintiffs had to sell their NVIDIA stock at a loss;

1 iv) Misrepresenting that SEC or NYSE rules required the margin call;
2 v) Failing to disclose the true reason for the margin call; and
3 vi) Misrepresenting Plaintiffs had to sell their Marvell stock at a loss.
4 139. Defendants knew that these misrepresentations were false at the time they made
5 them, and they knew that they were omitting and concealing from Plaintiffs material facts that
6 they were obligated to disclose. Specifically, Defendants knew that:
7 i) Margin trading was inconsistent with Plaintiffs' investment strategy;
8 ii) Goldman placed its own interests above its clients' interests;
9 iii) Plaintiffs did not have to sell their NVIDIA shares at a loss because
10 Plaintiffs had pledged to Goldman collateral sufficient to secure the margin loan;
11 iv) Neither SEC nor NYSE rules required the margin call;
12 v) Goldman issued the margin call to capitalize on the crisis it created; and
13 vi) Plaintiffs did not have to sell their Marvell shares because they had
14 available and had offered to Goldman collateral sufficient to secure or pay off the margin loan.
15 140. Defendants intended to defraud Plaintiffs.
16 141. Plaintiffs relied on Defendants' misrepresentations and omissions. Plaintiffs
17 would not have sold their NVIDIA or Marvell stock but for Defendants' misrepresentations and
18 omissions.
19 142. Plaintiffs' reliance on Defendants' misrepresentations and omissions was
20 justified.
21 143. As a direct and proximate result of Defendants' misrepresentations and omissions,
22 Plaintiffs suffered damages in an amount to be proven at trial. Plaintiffs also are entitled to an
23 award of punitive damages for Defendants' intentionally fraudulent and deceitful conduct.
24 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
25 forth below.
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SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

144. Plaintiffs incorporate herein all of the above Paragraphs of this Complaint as though fully set forth herein.

145. Plaintiffs placed their trust and confidence in Defendants to respect and protect their stated wishes to invest conservatively. Defendants knew Plaintiffs were not sophisticated in investment matters and allowed Defendants to control 100% of their personal fortune. Defendants possessed superior knowledge of and control over Plaintiffs' financial portfolio. Defendants owed to Plaintiffs fiduciary duties to honor Plaintiffs' preference for a conservative investment strategy and to place Plaintiffs' interests above Defendants' own interests.

146. Defendants breached their fiduciary duty by, among other things, forcing Plaintiffs to sell the NVIDIA shares at a loss, lying to Plaintiffs about the reason for the margin call, and liquidating Plaintiffs' Marvell shares after first proposing the one-sided Forwards Contract.

147. As a direct and proximate result of Defendants' breaches of fiduciary duty, Plaintiffs suffered damages in an amount to be proven at trial.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set forth below.

THIRD CAUSE OF ACTION
(Consumers Legal Remedies Act – Civ. Code § 1750 et seq.)

148. Plaintiffs incorporate herein all of the above Paragraphs as though fully set forth herein.

149. Defendants provided "services" within the meaning of the Consumers Legal Remedies Act ("CLRA"). Such services include, without limitation, the investment management services Defendants provided to Plaintiffs for Plaintiffs' personal use.

150. Plaintiffs are "consumers" within the meaning of the CLRA.

151. Plaintiffs' purchase of Defendants' services constitutes a "transaction" within the meaning of the CLRA.

152. Defendants violated the CLRA by representing to Plaintiffs that the transaction conferred or involved rights, remedies, or obligations which it did not have or involve or which were prohibited by law. Such representations include, without limitation, Defendants' omissions regarding the material terms of the margin loan, and their misrepresentations regarding the need to sell the NVIDIA and Marvell shares at a loss.

153. Defendants further violated the CLRA by inserting unconscionable provisions in Goldman's standard form account agreements. Such unconscionable provisions include, without limitation, the following provisions from Goldman's standard form account agreements:

i) "Client further agrees that [Goldman] may, in [Goldman's] discretion at any time and from time to time, require Client to deliver collateral to margin and secure Client's performance of obligations to [Goldman] and [Goldman's] affiliates with respect to spot, forward, option, swap and other transactions involving or relating to foreign exchange. Such collateral shall be delivered, within one business day of [Goldman's] request, in such amount and form and to such account or recipient as [Goldman] shall specify. [Goldman] may, in [Goldman's] discretion and without notices to Client, deduct any amounts from Client's account and apply or transfer any of Client's securities and other property interchangeably between any of Client's accounts, each of which unreservedly guarantees all obligations of Client."

ii) "If any required margin is not posted in a timely manner, among other remedies, your Account may be liquidated without prior notification."

iii) "[I]f for any reason [Goldman] or any of [Goldman's] affiliates deem it advisable for [Goldman's] or their protection, [Goldman] or any of [Goldman's] affiliates may, without notice or demand to Client, and at such times and places as [Goldman] may determine, cancel, terminate, accelerate, liquidate and/or close-out any or all transactions and agreements between Client and [Goldman] or any of [Goldman's] affiliates, pledge or sell any securities or other property which [Goldman] or any of [Goldman's] affiliates may hold for Client or which is due to Client (either individually or jointly with others) and apply the proceeds to the discharge of the obligation, set-off, net and recoup any obligations to Client against any obligations to [Goldman] or any of [Goldman's] affiliates, exercise all rights of a secured creditor in respect of

all collateral in which [Goldman] or [Goldman's] affiliates have a security interest or right of set-off, cover any open positions of Client (by buying in or borrowing securities or otherwise) and take such other actions as [Goldman] or any of [Goldman's] affiliates deem appropriate. . . ."

iv) "[Goldman] may, in its sole discretion, transfer securities held in your other accounts with us, including your cash account, to your margin account and you understand and acknowledge that any securities purchased or deposited with [Goldman] may be recorded in the margin account."

v) "[Goldman] may sell your Securities and Other Property to pay down or pay off the [margin] loan without prior notice to you and at a loss or at lower prices than under other circumstances."

154. Defendants also violated the CLRA by inserting unconscionable provisions in Goldman's standard form guaranty agreements. Plaintiffs were required to sign was a guaranty agreement signed by Dai on November 17, 2008. Dai and Sutardja opened an Estopia Air account in May 2003. The November 17, 2008 guaranty agreement identifies Dai and Sutardja's Estopia Air LLC account as the guarantor account for any debt owed to Goldman. The 2008 guaranty agreement states that the guaranty is "in consideration of [Goldman] opening, now or hereafter, and/or continuing, an account . . . or otherwise giving credit to [Dai and Sutardja]." The guaranty agreement contains unconscionable provisions including, without limitation, the following provisions:

> i) "The Guarantor agrees that [Goldman] may, at any time, in [Goldman's] uncontrolled discretion, use, without restriction, or transfer to any of such said guaranteed accounts, the Securities and Other Property in any account or accounts, including any safekeeping account, which the Guarantor may have with [Goldman], or which [Goldman] may at any time be carrying for the Guarantor (including the Specified Guarantor Account(s)), to secure said guaranteed accounts or any other Obligations or to pay any indebtedness due thereon."

ii) "'Securities and Other Property' includes the Specified Guarantor Account and includes all . . . Assets delivered to [Goldman] or subject to [Goldman's] directions for margin purposes currently or in the future held, carried or maintained by [Goldman], or in the possession or control of [Goldman], in or for any of the Guarantor's current or future accounts, including any account in which the Guarantor may have an interest, and regardless of the purpose for which the securities and other property are so held, carried, maintained possessed or controlled."

iii) "The Guarantor hereby grants to [Goldman] a first priority security interest in and lien on all of such Securities and Other Property to secure the Obligations. . . . The Guarantor agrees that [Goldman] may proceed at any time, in [Goldman's] uncontrolled discretion, and without prior demand or notice, to enforce said security interest and lien or said right to transfer any such Securities and Other Property of the Guarantor, by sale of such Securities and Other Property or otherwise, in any manner and upon such terms as [Goldman] may determine. . . ."

iv) "The Guarantor's obligations under this Guaranty shall be unconditional, irrespective of any lack of capacity or authority of the Client or any lack of validity, regularity or enforceability of any provision of any account agreements relating to said guaranteed accounts. . . . This Guaranty shall not be affected by any circumstance (other than complete, irrevocable payment or performance) that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. [Goldman] make[s] no representation or warranty in respect of any such

> circumstance and ha[s] no duty or responsibility whatsoever to the Guarantor in respect of the management and maintenance of the Obligations or any collateral therefor."

155. As a direct and proximate result of Defendants' violations of the CLRA, Plaintiffs suffered harm in that they were forced to sell stock they would not have otherwise sold and they did not receive the benefit of the investment management services that they paid Defendants to provide. Accordingly, Plaintiffs are entitled to an injunction enjoining Defendants from further violations of the CLRA in Defendants' provision of investment management services. Any injunction against Defendants' deceptive practices will benefit Plaintiffs and the general public.

156. Plaintiffs also are entitled to an award of attorneys' fees under the CLRA.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set forth below.

FOURTH CAUSE OF ACTION
(Unfair Competition – Cal. Bus. & Prof. Code § 17200 et seq.)

157. Plaintiffs incorporate herein all of the above Paragraphs as though fully set forth herein.

158. Defendants engaged in unlawful, unfair, and fraudulent business acts and practices as described throughout this Complaint.

159. Defendants' business acts and practices are unlawful in that they resulted in violations of state common law and the Consumers Legal Remedies Act, as herein alleged.

160. Defendants' business acts and practices are unfair in that the substantial harm suffered by Plaintiffs outweighs any justification that Defendants may assert for engaging in those acts and practices. Moreover, Plaintiffs could not have reasonably avoided the harm they suffered as a result of Defendants' acts and practices because Defendants made every effort to obscure and conceal from Plaintiffs the existence and extent of their harmful acts and practices.

161. Defendants' business acts and practices were fraudulent in that a reasonable person would likely be deceived by Defendants' material misrepresentations and omissions.

162. Plaintiffs suffered harm as herein alleged as a direct and proximate result of Defendants' unlawful, unfair, and fraudulent business acts and practices.

163. Plaintiffs are entitled to recover from Defendants restitution, including without limitation, all interest, commissions, or fees Defendants received in connection with their unlawful, unfair, and fraudulent business acts and practices.

164. Plaintiffs also are entitled to an injunction enjoining Defendants from further violations of Cal. Bus. & Prof. Code § 17200. Any injunction against Defendants' unlawful, unfair, and fraudulent business acts and practices will benefit Plaintiffs and the general public.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set forth below.

PRAYER FOR RELIEF

Plaintiffs pray for relief against Defendants as follows:

1. For compensatory damages on Plaintiffs' First and Second Causes of Action in an amount to be proven at trial;

2. For injunctive relief on Plaintiffs' Third and Fourth Causes of Action;

3. For restitution on Plaintiffs' Fourth Cause of Action in an amount to be proven at trial;

4. For interest on all sums at the legal rate;

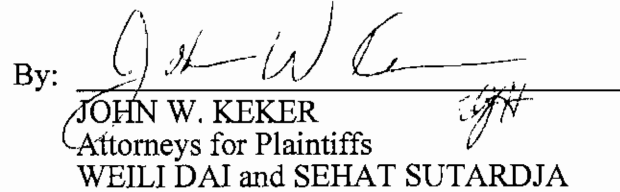
5. For punitive damages on Plaintiffs' First and Second Causes of Action in an amount to be proven at trial;

6. For such other attorneys' fees, costs of suit, and interest as allowed by law; and

7. For such other and additional relief as this Court deems just and proper.

Dated: April 11, 2011

KEKER & VAN NEST LLP

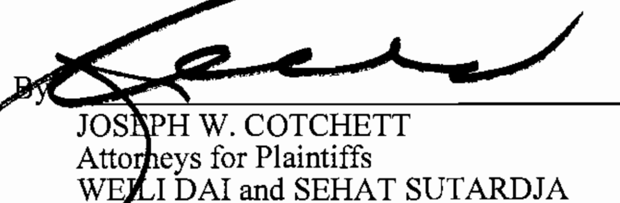


By: ______________________

JOHN W. KEKER
Attorneys for Plaintiffs
WEILI DAI and SEHAT SUTARDJA

Dated: April 11, 2011

COTCHETT, PITRE & MCCARTHY, LLP



By: ______________________

JOSEPH W. COTCHETT
Attorneys for Plaintiffs
WEILI DAI and SEHAT SUTARDJA

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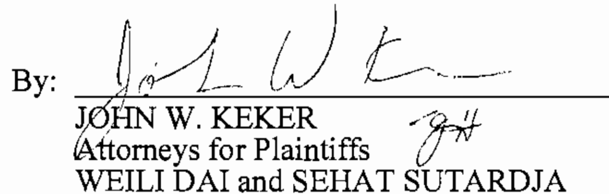
DEMAND FOR JURY TRIAL

Plaintiffs Weili Dai and Sehat Sutardja request a trial by jury on all claims so triable.

Dated: April 11, 2011

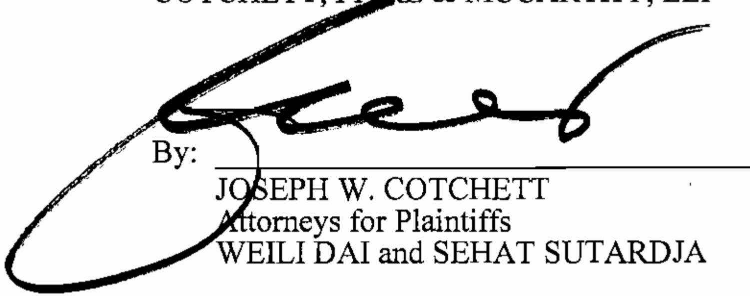
KEKER & VAN NEST LLP



By: ______________________
JOHN W. KEKER
Attorneys for Plaintiffs
WEILI DAI and SEHAT SUTARDJA

Dated: April 11, 2011

COTCHETT, PITRE & MCCARTHY, LLP



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