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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
-against-	:	**No. CV ( )**
GOLDMAN, SACHS & CO.,	:	
Defendant.	:	

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges the following against Goldman, Sachs & Co. ("Goldman"):

SUMMARY

1. Goldman unlawfully attempted to induce, or induced, certain customers to purchase stock in the aftermarket of certain Initial Public Offerings ("IPOs") underwritten by Goldman, in violation of Rule 101 of Regulation M [17 C.F.R.§ 242.101] under the Securities Exchange Act of 1934 ("Exchange Act").

2. Rule 101 of Regulation M, among other things, prohibits underwriters, during a restricted period prior to the completion of their participation in the distribution of shares, from directly or indirectly bidding for, purchasing, or attempting to induce any person to bid for or purchase any offered security in the aftermarket. As a prophylactic rule, Regulation

M's prohibition is designed to prevent activities that could artificially influence the market for the offered security, including, for example, supporting the IPO price by creating a perception of scarcity of IPO stock or creating the perception of aftermarket demand for the stock.

3. Goldman attempted to induce, or induced, certain customers to make aftermarket purchases of IPO stock in violation of Rule 101 of Regulation M by engaging in the following activities. Specifically, at times during the five-day period preceding the determinations of offering prices for certain IPOs underwritten by Goldman and prior to the completion of distributions of IPO shares ("restricted periods"), Goldman (a) communicated to certain customers that Goldman considered purchases in the immediate aftermarket to be significant in the determination of IPO allocations; (b) informed certain customers that Goldman verified whether customers placed orders for stock in the immediate aftermarket; and (c) during conversations or courses of dealing that included (a) and/or (b), asked certain customers whether, and at what prices and in what quantities, they intended to place orders to purchase IPO stock in the immediate aftermarket.

4. More specifically, Goldman sometimes engaged in the following activities during restricted periods for certain offerings. Sometimes during conversations where Goldman sales representatives asked certain customers about their aftermarket intentions (including what prices and quantities of shares the customers would expect to purchase), and sometimes separately, those Goldman employees communicated that Goldman considered aftermarket intentions and follow-through during the first few days after an offering to be significant factors in Goldman's IPO allocation decisions, and that such information could increase the chances for certain customers to receive favorable IPO allocations. Goldman further

encouraged certain customers that had provided "aftermarket interest" (expressions of interest in buying shares in the aftermarket) to increase the prices they said that they would pay in the aftermarket, sometimes by providing the customers with information about higher prices stated by other customers competing for allocations. Goldman sought, and/or accepted as part of a course of dealing under circumstances where the customer inferred it was sought, aftermarket interest from certain customers who based the amount of their stated intended aftermarket purchases solely on the sizes of their prospective IPO allocations (e.g., the customer would express an intention to buy in the aftermarket stock in the amount of two times, or five times, the amount of the initial allocation). Moreover, Goldman sales representatives notified certain customers that Goldman verified whether they "followed through" and placed the orders in the aftermarket as the customer had said they would, in one case showing a customer an "Underwriting Aftermarket Report" prepared by Goldman that reflected (among other things) the customer's previous aftermarket purchases on IPOs underwritten by Goldman. Similarly, once when telling another customer that Goldman compared aftermarket indications to actual purchases in the aftermarket, a Goldman sales representative communicated that Goldman would reward verified aftermarket orders with larger allocations of shares in subsequent IPOs.

5. Through such questions and statements about aftermarket orders during restricted periods, Goldman communicated to certain customers hopeful of obtaining IPO allocations (including customers that did not have a genuine interest in long-term ownership of the stock being offered) that indications of intentions to place orders in the immediate aftermarket, and/or the aftermarket orders themselves, would increase their likelihood of receiving favorable allocations of IPO stock. Many customers desired IPO allocations during the

relevant period because they often could sell the shares on the first day of trading at prices far in excess of what they had paid for the shares. As a result of Goldman's communications concerning aftermarket orders, and because they wanted to obtain IPO allocations that they reasonably believed they could "flip" for large profits, certain customers indicated intentions to place orders and/or placed orders to purchase IPO stock in the immediate aftermarket of certain offerings.

6. Goldman engaged in a combination of some or all of the foregoing types of communications to certain customers in connection with the IPOs of CoSine Communications, Marvell Technology Group Ltd., and WebEx, Inc.

7. Goldman's attempts to induce aftermarket purchases or its inducements of aftermarket purchases, during restricted periods of IPOs, violated Rule 101 of Regulation M.

NATURE OF THE PROCEEDINGS AND THE RELIEF SOUGHT

8. The Commission brings this action pursuant to authority conferred upon it by Sections 21(d) and 21(e) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d) and 78u(e), to enjoin Goldman from violating provisions of the federal securities laws. In addition, the Commission seeks civil penalties pursuant to Section 21(d) of the Exchange Act.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(e) and 78aa.

10. Venue lies in this Court pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED

11. Goldman has engaged in, and unless enjoined, will continue to engage, directly or indirectly, in acts or practices that constitute violations of Rule 101 of Regulation M under the Exchange Act, 17 C.F.R. § 242.101.

DEFENDANT

12. **Goldman, Sachs & Co.**, a subsidiary of The Goldman Sachs Group, Inc., is a broker-dealer registered with the Commission pursuant to Section 15 of the Exchange Act, 15 U.S.C. § 78o. Goldman's principal offices are located at 85 Broad Street, New York, New York 10004. Goldman is an investment banking and securities firm that, among other things, provides underwriting services to companies seeking to offer their securities to the public.

FACTS

Goldman's IPO Allocation Process

13. An IPO is the first public issuance of stock from a company that has not previously been publicly traded. A "hot" IPO is one in which the stock trades at a premium on the first day of aftermarket trading. Certain investors sought to obtain IPO shares during 1999 and 2000 because they often could realize quick and substantial profits by "flipping" or selling "hot" IPO shares in the immediate aftermarket (the first day or days of trading) at prices far in excess of the IPO prices they had paid.

14. During the relevant time, Goldman's Investment Banking Division ("IBD"), Equities Division, and Private Wealth Management Department ("PWM") had primary responsibility for the underwriting and distribution of IPOs. The IBD typically assumed responsibility for structuring an IPO from the initial engagement through the registration.

The Equities Division included various sales and trading desks that provided brokerage services to Goldman's institutional customers, including access to Goldman-led offerings. PWM provided coverage to, and conveyed orders for, private client accounts. Equity Capital Markets ("ECM"), a joint venture between the IBD and the Equities Division, worked in conjunction with the IBD, Equity Sales, PWM and the issuer to market, price, and distribute the securities offered.

15. Goldman accounts that received IPO allocations fell into two categories: institutional and private client accounts. Institutional accounts primarily consisted of entities ranging from large mutual funds to small hedge funds and private equity funds, but also included some accounts associated with very substantial individual investors. These institutional accounts received most of the IPO shares allocated from Goldman. Private client accounts, which were allocated comparatively fewer IPO shares from Goldman, were comprised primarily of small institutions, private equity funds and high net worth individuals. Goldman does not have smaller "retail" customers.

16. During the relevant time, ECM was responsible for working with issuers to allocate stock to institutional accounts. ECM also allocated a percentage of each IPO to PWM sales teams, which then allocated their stock among their clients. Some PWM sales teams had a small number of substantial clients who were treated as institutional accounts in offerings and received allocations directly from ECM as part of the overall process used for institutional accounts. These allocations came from the "institutional pot"-- the portion of stock distributed to all institutional accounts -- and typically were much larger than the allocations distributed to private client accounts.

17. ECM often relied upon a variety of factors during its process of determining "institutional pot" allocations in IPOs, including the preferences of the issuer and the importance of the customer to it, the level of business the customer had done with Goldman, the customer's track record of investments in comparable securities, and the customer's apparent short-term or long-term interest in the issuer as evidenced by activities such as attendance at meetings with management, discussions with research analysts, and independent valuation analysis. Some of this information also was useful to Goldman and the issuer in determining IPO offering prices.

18. ECM also considered certain customers' expressed intentions to purchase additional stock in the aftermarket. For very "hot" IPOs, ECM considered, among other things, certain customers' stated aftermarket prices relative to other customers' stated aftermarket prices. ECM learned the aftermarket information by obtaining "feedback" from sales representatives. In some cases, during restricted periods and after ECM gathered feedback from sales representatives, ECM commented to sales representatives that certain customers' feedback regarding the price they were willing to pay in the immediate aftermarket was too low compared to other customers' aftermarket price feedback. ECM also sometimes shared customers' expressed aftermarket price intentions with sales personnel for customers the sales personnel were not covering. As a result, certain sales personnel understood that one of the factors ECM considered when determining allocations was price feedback for the immediate aftermarket.

Goldman Attempted to Induce, or Induced, Purchases in the Immediate Aftermarket By Communicating to Certain Customers During Restricted Periods That Goldman Considered Purchases in the Immediate Aftermarket to be Significant in the Determination of IPO Allocations

19. Goldman sales representatives informed certain customers that Goldman considered purchases in the immediate aftermarket as an important factor in the determination of which customers would get IPO allocations and in what amounts. The communications recounted below occurred during restricted periods.

20. A Goldman sales representative told Customer A, the Syndicate Coordinator for an investment company that received allocations in IPOs underwritten by Goldman, that Goldman considered purchases in the immediate aftermarket when determining allocations of IPO shares.

21. A Goldman sales representative told Customer B, the sole employee of a private equity fund that received allocations in IPOs underwritten by Goldman, that Goldman viewed buying in the immediate aftermarket positively in determining IPO allocations.

22. A Goldman sales representative communicated to Customer C, an employee of a private equity fund that received allocations in IPOs underwritten by Goldman, that if he indicated interest in the aftermarket and followed through on his indications of interest, Goldman would be likely to give him IPO allocations that he desired. The sales representative understood that were it not for the fact that Customer C understood that ECM viewed aftermarket buying positively, Customer C would not have bought stock in the aftermarket. This sales representative told Customer C that ECM was pleased with his aftermarket purchases.

Goldman Attempted to Induce, or Induced, Aftermarket Purchases By Informing Certain Customers During Restricted Periods that Goldman Verified Whether Customers Placed Orders for Stock in the Immediate Aftermarket

23. Among the account information available to be generated at Goldman was information concerning whether certain customers purchased (or sold) aftermarket IPO shares (as well as other information about account activity) through Goldman. For example, after certain IPOs, the sales representative for Customer B sent email to ECM reflecting the number of shares Customer B had purchased in the immediate aftermarket. Goldman sometimes compiled information about immediate aftermarket purchases by certain customers, and other information, into reports.

24. On occasion, Goldman sales representatives told certain customers that Goldman verified, or tracked, whether or not the customers followed up and actually placed orders for stock in the immediate aftermarket. The communications recounted below occurred during restricted periods.

25. A Goldman sales representative and his manager informed Customer D, the sole employee of a small private equity firm that received allocations in IPOs underwritten by Goldman, that Goldman verified whether customers placed orders to purchase stock in the aftermarket following an IPO. Indeed, this Goldman sales representative and manager showed Customer D an "Underwriting Aftermarket Report" that reflected, among other information, Customer D's aftermarket purchases on Goldman underwritten offerings.

26. Similarly, a Goldman sales representative told Customer A, that Goldman observed whether an account followed through on a stated intention to purchase stock in the aftermarket. In April 2000, Customer A sent an email to portfolio managers at her company relaying the information she had received from Goldman:

> Goldman Sachs . . . has told me that for now, all their small techy deals will be subject to close scrutiny with regard to flippers. AMO's [aftermarket orders] will be watched for follow-thru on indicated intentions. . . .
>
> . . . I have noticed an increase in 'non-top-tier' allocations to our firm, due to lack of strong aftermarket interest. I realize we may not want to pay those premiums, but our research vote and commission dollars alone are not going to carry us to the top allocation category in this environment. Will you be happy with 2nd or 3rd tier or 0?

(Emphasis added.)

27. A Goldman sales representative also communicated to employees of Customer E, a private equity fund that received allocations in IPOs underwritten by Goldman, that Goldman verified whether Customer E followed through on a stated intention to place an order in the immediate aftermarket.

28. A Goldman sales representative also told Customer F, the sole employee of a private equity fund that received allocations in IPOs underwritten by Goldman, that Goldman verified whether customers followed through by comparing the customers' aftermarket indications to actual purchases and stated that, if Customer F followed through on his indications, his account would be deemed credible and would therefore receive larger allocations on future IPOs.

Goldman Attempted to Induce, or Induced, Aftermarket Purchases, By Asking Certain Customers During Restricted Periods Whether, and at What Prices and in What Quantities, They Intended to Place Orders to Purchase IPO Stock in the Immediate Aftermarket

29. During conversations or courses of dealing that included the subjects discussed above, Goldman asked certain customers whether, and at what prices and in what quantities, they intended to place orders to purchase IPO stock in the immediate aftermarket. Based on the context of their communications and relationships with Goldman, certain customers

believed that Goldman was asking them such questions because Goldman wanted to obtain aftermarket orders for IPO stock. Those customers further believed that Goldman was likely to look favorably upon them in making IPO allocation decisions if the customers responded positively to Goldman's questions. The communications recounted below occurred during restricted periods unless specifically noted.

30. In the course of discussing offerings, sales representatives for Customers A and F routinely asked Customers A and F whether, and at what price and in what quantity, they intended to purchase shares in the immediate aftermarket of certain IPOs.

31. A Goldman sales trader asked Customer D whether, and at what prices and in what quantities, he intended to purchase stock in the immediate aftermarket. The sales trader also told Customer D that he would receive a favorable allocation if he indicated that he would purchase the stock in the aftermarket. At times, the sales trader communicated to the customer that "you know we want you to buy in the aftermarket." The sales trader sometimes followed up after the restricted periods were over by asking for Customer D's aftermarket orders.

32. A Goldman sales representative asked Customer E's employees whether, and at what price and in what quantity, Customer E intended to purchase stock in the aftermarket. The Goldman sales representative reminded Customer E's employees, in the context of discussing whether Customer E was likely to get IPO allocations, to place orders to purchase shares in the aftermarket in order to "support" Goldman's IPOs in the aftermarket.

33. A sales representative asked Customer C whether, and at what price and in what quantity, he intended to purchase stock in the aftermarket. The sales representative reminded Customer C to follow through with his stated intention by placing an order in the immediate

aftermarket. In fact, on mornings that IPOs opened for trading after the relevant restricted periods were over, Customer C's sales representative sometimes called him to ask for his opening order.

Goldman Encouraged Certain Customers to Increase the Price Limits of Their Aftermarket Interest

34. On occasion, sales representatives communicated to certain customers ECM's opinion that the customers' stated aftermarket prices were low. In conversations in which a Goldman sales representative asked Customer E about pricing and aftermarket intentions, the representative suggested that Customer E raise the price it stated it was willing to pay for the stock in the immediate aftermarket.

35. Sales representatives also sometimes communicated information concerning higher aftermarket prices that other customers (also competing for coveted IPO allocations) had told Goldman. At times, some customers responded by expressing higher prices they were willing to pay in the immediate aftermarket than those they previously had expressed. Some customers attempted to appear to ECM as willing to buy stock in the immediate aftermarket regardless of price. In some cases, customers expressed higher aftermarket prices not because their opinion of the stock had changed, but because they believed from their communications with Goldman sales representatives that this would improve their chances of receiving favorable allocations of IPO stock.

Goldman Sought and/or Accepted Stated Aftermarket Interest From Customers Based Solely or in Relevant Part on the Amount of Their Prospective IPO Allocations

36. During restricted periods, a Goldman sales representative often suggested to Customer B that he indicate that he would buy two to three times his allocation in the immediate aftermarket. The sales representative sent email to ECM stating that Customer B

would buy two or three times his allocation in the aftermarket. Customer B agreed to the sales representative's suggestion because the sales representative had communicated that buying in the aftermarket would improve Customer B's chances of receiving a favorable allocation in an IPO. Eventually, this developed into a practice in which, during a restricted period, the sales representative indicated an aftermarket interest to ECM for Customer B and then told Customer B how much had been indicated for him.

37. Goldman maintained records, including an institutional book of demand for each IPO, showing that Goldman sought**,** and/or accepted as part of a course of dealing under circumstances where the customer inferred it was sought, stated aftermarket interest from many customers that the customers based on their prospective allocations, even though Goldman had not determined the final allocations at the time they received or solicited the aftermarket interest. Goldman's records set forth comments such as "1:1 aftermkt buyer, no price sensitivity," "2 for 1 in the aftermarket," and "mkt buyer in the aftermarket 5 for 1." Goldman sought and/or accepted some portion of this information during restricted periods.

Certain Customers Placed Orders in the Immediate Aftermarket as a Result of Goldman's Attempts to Induce, or Inducements of Such Orders

38. Goldman's communications concerning aftermarket orders suggested to certain investors that stated aftermarket interest and follow-through would increase their likelihood of receiving favorable allocations of IPO stock. Because the customers desired to maximize their chances to get IPO allocations, Goldman's communications induced them to place orders in the immediate aftermarket to purchase IPO shares in certain offerings. As a result of the attempts to induce, or inducements, of aftermarket orders as described above, Customers B, C, D, E and F placed orders to purchase shares of stock in the aftermarket of certain IPOs underwritten by Goldman.

Goldman Attempted to Induce, or Induced, Certain Customers
<u>To Purchase Stock in the Immediate Aftermarket of Certain IPOs</u>

<u>The CoSine Communications IPO</u>

39. Goldman served as the lead underwriter in the CoSine Communications ("CoSine") IPO. CoSine, a 10 million share offering, opened for trading on September 26, 2000. CoSine was priced at $23 but opened for trading at 11:30 a.m. at $67 and closed that day at $63.

40. As part of the process of gathering feedback for the CoSine IPO, ECM asked certain salespeople to inquire whether customers intended to purchase stock in the aftermarket. Certain sales personnel, in turn, asked certain customers whether they intended to purchase stock in the aftermarket. Certain sales personnel also asked certain customers the upper limit on the price they would be willing to pay for the new issue in the immediate aftermarket and the quantity of stock those customers intended to buy in the aftermarket. The discussions occurred during the applicable restricted period. Discussions of this type sometimes occurred as part of a wider-ranging conversation regarding customers' views of the offering, the issuer, the offering range price, and related matters.

41. Some customers responded to their sales representatives' questions about the aftermarket with aftermarket feedback directed to whether the customer intended to purchase stock in the aftermarket. Sales representatives communicated the aftermarket feedback to ECM through email and/or entered the information in Goldman's internal iDeal system. ECM utilized the iDeal system to produce an institutional book of demand that reflected the name of each customer that received an allocation in the CoSine IPO, the customer's

indication of interest for an allocation in the IPO, the amount of shares actually allocated to the customer, and the customer's aftermarket feedback, among other things.

42. Many of the aftermarket comments collected in the institutional book of demand reflected customers' indications of interest in the aftermarket for CoSine. For example, customers (or their sales representatives) provided the following comments: "buyer in am 2x allocation up to $25," "will buy in aftermarket up to $28 on 1:1 basis," "1 for 1 in the aftermarket," "strong aftermarket interest – with average price target around $60," "2 for 1 in the aftermarket," "1:1 aftermkt buyer, no price sensitivity," "will be buyers in the aftermarket up to $35," "5 to 1 up to $35," "buy up to 4x allocation," and "mkt buyer in aftermarket 5 for 1."

43. ECM also had access to, and used, various other documents reflecting certain customers' aftermarket interest before they priced and allocated the CoSine IPO. For example, during the distribution period of the CoSine IPO, sales representatives forwarded to the deal captain, an ECM Managing Director, information reflecting the amounts of CoSine that customers intended to purchase, and the prices up to which customers intended to purchase CoSine, in the aftermarket. Using this data, this deal captain created a list, titled "Aftermarket Intentions," of the accounts that had stated an intention to buy stock in the aftermarket, the upper price limit that the account intended to pay, and the amount, if indicated, that the account intended to buy. The deal captain shared this information with the Chief Executive Officer of CoSine before they priced the deal. ECM also had access to an "Investor Feedback Report" and an "International Aftermarket Intentions List." Further, the deal captain for CoSine created a list titled "Go To Buyers" in his notes for the CoSine IPO.

44. Some members of Goldman's sales force communicated with ECM concerning certain customers' aftermarket indications on CoSine. ECM commented to sales representatives that certain customers' aftermarket price feedback was too low compared to other customers' aftermarket price feedback. For example, on September 25, 2000, a Managing Director expressed a view that an account's allocation in the CoSine IPO should be lowered because the account's stated aftermarket price was too low. Earlier, on September 20, 2000, a Managing Director in ECM asked a sales representative whether a customer intended to buy CoSine in the aftermarket without price sensitivity and the sales representative responded that the customer "will do what we say."

45. During the CoSine restricted period, Goldman attempted to induce, or induced, Customer D to purchase CoSine in the immediate aftermarket. Customer D's sales representative told Customer D that he would likely receive more favorable allocations of IPO shares from Goldman if he indicated that he would place orders to purchase the stock in the aftermarket. When Customer D's Goldman sales representative spoke with him during the restricted period for the CoSine IPO, Customer D accordingly told his sales representative that he would buy shares of CoSine "1 for 1" in the aftermarket. The sales representative shared this information with ECM, along with the comment that Customer D had a "very strong aftermarket track record."

46. Goldman prepared and showed Customer D an "Aftermarket Report" listing his IPO allocations and aftermarket transactions. This Report indicates that the Goldman sales representative viewed Customer D as having "very strong aftermarket track record." Goldman knew through this Report that Customer D had purchased in the immediate

aftermarket on prior IPOs and that Customer D could be expected to make such aftermarket purchases.

47. Goldman gave Customer D a 45,000 share allocation in CoSine. After he received the allocation, Customer D purchased 50,000 shares through Goldman in the aftermarket on September 26, 2000, the opening day of trading in the immediate aftermarket. Customer D sold both his allocation and aftermarket purchase, away from Goldman, on September 26, 2000.

48. During the CoSine restricted period, Goldman attempted to induce, or induced, Customer C to purchase CoSine in the immediate aftermarket. Customer C's Goldman sales representative had routinely asked him whether Customer C would buy IPO stock in the aftermarket. When Customer C's sales representative solicited Customer C during the restricted period for the CoSine IPO, Customer C responded that he would do whatever Goldman wanted, including purchasing additional shares in the aftermarket.

49. A member of ECM suggested that Customer C's sales representative send an email to the deal captain for the CoSine IPO that would inform the deal captain whether Customer C intended to purchase additional shares in the aftermarket and whether he would be willing to flip his allocation back to Goldman if Goldman wanted it. Consequently, on September 22, 2000, Customer C's sales representative sent to the CoSine deal captain an email that the sales representative designed to help Customer C obtain an allocation of CoSine shares. The sales representative included information in the email to make Customer C appear (falsely) to have long-term interest and included other information based generally on Customer C's aftermarket feedback. The email states:

> [Customer C] has done their homework big time on Cosine. He went to the roadshow lunch on Wednesday here in Boston and was very impressed. He is

> looking to build a substantial position in the company (800,000 shares) over the next six months.
>
> If we can get them significant shares on they deal, they are on board to either:
> a) buy 2-3 times what we give the on the deal in the aftermarket
> b) as deal captain if you need shares back, they will cooperate
>
> They will do exactly what we want them to on this deal. I know this is a tough deal, but please see what you can do for these guys.

50. ECM possessed information that would have indicated the falsity of statements in the above email about Customer C's purported long-term interest in CoSine stock.

51. Goldman gave Customer C an allocation of 39,700 shares in CoSine. Customer C profitably sold the shares back to Goldman at Goldman's request.

52. During the CoSine restricted period, Goldman attempted to induce, or induced, Customer B to purchase CoSine in the immediate aftermarket. Customer B's sales representative suggested to Customer B that he indicate that he would buy two to three times his allocation in the aftermarket. During the restricted period for the CoSine IPO, Customer B's Goldman sales representative communicated with Customer B about the CoSine IPO and Customer B told him that he would buy shares in the aftermarket.

53. On September 25, 2000, the day before CoSine opened for trading, Customer B's sales representative sent an email to his ECM liaison informing him that Customer B "will buy between 2-3x their allocation in the after market."

54. Goldman gave Customer B a 15,000 share allocation. After he received the allocation, Customer B followed through on his stated intention to buy two times his allocation in the aftermarket, purchasing 15,000 shares through Goldman in the aftermarket on September 26 and 15,000 shares in the aftermarket on September 27.

55. On September 26, 2000, after CoSine started trading, the sales representative sent his ECM liaison an email informing him that Customer B had followed through on his stated intention by purchasing "15,000 shares in the aftermarket. They are going to watch the stock for the balance of the day and buy a minimum of 15,000 shares tomorrow."

56. Customer B sold both his initial allocation and aftermarket purchases, away from Goldman, within a few days of the IPO.

57. As demonstrated by the foregoing, during the applicable restricted period, certain Goldman personnel attempted to induce, or induced, certain customers to purchase CoSine stock in the immediate aftermarket.

Marvell Technology Group Ltd.

58. Goldman was the lead underwriter for the Marvell Technology Group Ltd. ("Marvell") IPO that opened for trading on June 27, 2000. Marvell was sold to investors pursuant to its IPO at $15. On Marvell's first day of trading, it opened for trading at 11:30 a.m. and closed that day at $56.62.

59. ECM and other Goldman employees asked certain salespeople to inquire whether customers intended to purchase stock in the Marvell aftermarket. For example, on June 26, 2000, a senior desk manager informed certain sales representatives before the pricing of the Marvell IPO that their accounts could get "brownie points" for, among other things, indicating an intention to purchase shares in the aftermarket of that IPO.

60. In the manner described more fully in paragraphs 40 and 41 above concerning Goldman's conduct during the CoSine IPO process, certain Goldman sales personnel asked certain customers during the restricted period for Marvell whether, among other types of information, they intended to purchase stock in the aftermarket and at what prices and

quantities. Certain sales personnel communicated to certain customers that expressing interest in purchasing stock in the immediate aftermarket would improve the customer's chance of receiving an allocation, or a larger allocation, in the Marvell IPO. Sales representatives forwarded the aftermarket feedback from customers to ECM in email and/or entered the information in Goldman's internal iDeal system. ECM then produced an institutional book of demand for Marvell.

61. Many of the aftermarket comments collected in the institutional book of demand reflected customers' indications of interest in the Marvell aftermarket. For example, customers (or their sales representatives) provided the following comments: "aftermarket commitment if allocated," "will buy amount equal to allocation in after market," "aftermarket order up to $20/share," "no price limit, aftermarket buyer," "aftermkt 1:1 to $31," and "great aftermarket history will be buying into the low 30s."

62. Goldman attempted to induce, or induced, certain customers who attended one-on-one meetings and group functions with Marvell to place aftermarket orders. Goldman collected information during these meetings in documents entitled Marvell Hit Rate and Marvell One-on-One and Group Function Hit Rate (the "hit rate reports"). The hit rate reports contain, among other things, customers' demand for shares in the offering and the number of shares and the price up to which customers indicated that they would buy Marvell in the aftermarket. This information was shared by Goldman with Marvell management.

63. During the Marvell restricted period, Goldman attempted to induce, or induced, Customer E to purchase Marvell in the immediate aftermarket. A Goldman sales representative asked Customer E shortly before an IPO priced whether Customer E intended to buy in the aftermarket. Members of the syndicate department also informed Customer E

that stating an intention to buy in the aftermarket shortly before an IPO opened likely would result in a more favorable allocation in the IPO. During the restricted period for the Marvell IPO, Customer E's Goldman sales representative communicated with Customer E about the Marvell IPO and Customer E told him that it planned to be an "a/m buyer 1x1" for Marvell.

64. Goldman gave Customer E a 5,000 share allocation in Marvell. After it received its allocation, Customer E placed an order through Goldman to purchase an additional 5,000 shares of Marvell at 10:19 a.m., before Marvell opened for trading on June 27.

65. During the Marvell restricted period, Goldman attempted to induce, or induced, Customer C to purchase Marvell in the immediate aftermarket. Goldman gave Customer C an allocation of 20,000 shares in the Marvell IPO and, after he received his allocation, Customer C placed an order to purchase an additional 80,000 shares at 10:46 a.m., before Marvell opened for trading on June 27.

66. Customer C's sales representative sent an email on June 27 to the ECM liaison stating "please let the deal captain know that Customer C is buying 100,000 MRVL in the aftermarket." The ECM liaison forwarded the email to the Marvell deal captain. Customer C's sales representative knew that Customer C purchased in the aftermarket solely to appear to be a good customer to Goldman in order to improve his chances of receiving IPO allocations.

67. As demonstrated by the foregoing, during the applicable restricted period, Goldman personnel attempted to induce, or induced, certain customers to purchase Marvell stock in the immediate aftermarket.

WebEx, Inc.

68. Goldman was the lead underwriter for the WebEx, Inc. ("WebEx") IPO that opened for trading on July 28, 2000. WebEx was sold to investors in the IPO at $14 and closed its first day of trading at $33.06.

69. In the manner described more fully in paragraphs 40 and 41 above concerning Goldman's conduct during the CoSine IPO process, ECM and other Goldman employees asked certain salespeople to inquire whether certain customers intended to purchase stock in the WebEx aftermarket, and certain sales personnel asked certain customers during the restricted period for WebEx whether they intended to purchase stock in the aftermarket and at what prices and quantities. Certain sales personnel communicated to certain customers that expressing interest in purchasing stock in the immediate aftermarket would improve the customers' chances of receiving an allocation, or a larger allocation, in the WebEx IPO. Sales representatives forwarded the aftermarket feedback from customers to ECM in email and entered the information in Goldman's internal iDeal system. ECM then produced an institutional book of demand for WebEx.

70. Many of the aftermarket comments collected in the institutional book of demand reflected customers' indications of interest in the WebEx aftermarket. For example, customers (or their sales representatives) provided the following comments: "will be an aftermkt buyer to $20," "will buy 3 for 1 up to $22," "2:1 aftermkt buyer into mid 20s," "buy in aftermkt @ 19," "up 100% 3-1," and "client will buy triple the amount of his deal allocation in the aftermarket."

71. During the WebEx restricted period, Customer B's Goldman sales representative attempted to induce, or induced, him to buy WebEx in the immediate aftermarket. On July

27, 2000, Customer B's sales representative sent an email to his ECM liaison stating, among other things, that Customer B "will buy a minimum of 2X their allocation in the aftermarket."

72. Goldman gave Customer B a 25,000 share allocation in WebEx. On July 28, 2000, Customer B's sales representative sent another email to the ECM liaison informing him that Customer B had "purchased 18,000 shares on the day. They are going to buy 15-20,000 shares on Monday and another 10-20,000 shares on Tuesday (this is not in stone of course but is their current thinking)." On July 31, 2000, the sales representative sent another email to the ECM liaison informing him that Customer B had purchased another 15,000 shares "on top of the 18,000 shares on Friday in the aftermarket."

73. Customer B sold both his allocation and aftermarket purchases, away from Goldman, shortly after the WebEx IPO.

74. During the WebEx restricted period, Customer C's Goldman sales representative attempted to induce, or induced, him to buy WebEx in the immediate aftermarket. Goldman gave Customer C an allocation of 100,000 shares in the WebEx IPO and Customer C purchased an additional 100,000 shares through Goldman in the aftermarket. Customer C sold both his allocation and his aftermarket purchase, away from Goldman, within the first few days of trading.

75. A sales representative and the deal captain attempted to induce, or induced, another customer to purchase in the WebEx aftermarket. On July 27, 2000 the sales representative sent an email to the deal captain informing him that a customer "will buy 3 for 1 in aftermkt up to $22." The deal captain responded "How much do you want? How long will they hold it?" The sales representative replied:

> They'll take the full amount and will hold it for at least 30 days unless you say longer BUT this is a relatively new relationship with a lot of business to do and I'd like to avoid hurting them too much if this one is in serious trouble.

The deal captain responded:

> We're looking for something longer term. No lack of demand. Want to wait for the next one?

The sales representative replied:

> They'll hold it for at least 90 days and they'll buy 3 for 1 up to $17.

On the morning of July 28, 2000 (when WebEx opened for trading), the deal captain responded to the sales representative:

> first trade would be great.

The sales representative replied:

> Just sent it in – they got 10 so they're buying 30 with a 17 top. These guys ALWAYS do what they say – if they got 100 they would be buying 300.

76. As demonstrated by the foregoing, during the applicable restricted period, Goldman personnel attempted to induce, or induced, certain customers to purchase WebEx stock in the immediate aftermarket.

CLAIM FOR RELIEF

GOLDMAN VIOLATED RULE 101 OF REGULATION M UNDER THE EXCHANGE ACT, 17 C.F.R. § 242.101

77. Paragraphs 1 through 77 are realleged and incorporated herein by reference.

78. Rule 101 of Regulation M, among other things, prohibits underwriters, during a restricted period prior to the completion of their participation in the distribution of shares, from directly or indirectly bidding for, purchasing, or attempting to induce any person to bid for or purchase any offered security in the aftermarket.

79. As a prophylactic anti-manipulation rule, Regulation M's prohibition is designed to prevent activities that could artificially influence the market for the offered security, including, for example, supporting the IPO price by creating a perception of scarcity of IPO stock or creating the perception of aftermarket demand for the stock. Accordingly, it may be violated with or without, among other things, any impact on the trading price of a security, scienter, or any agreement to buy stock in the aftermarket.

80. As described above, Goldman, while acting as an underwriter for certain IPOs, attempted to induce, or induced, certain customers, during restricted periods prior to the completion of distributions of IPO shares, to purchase stock in the aftermarkets of certain IPOs by: (a) communicating to certain customers that Goldman considered purchases in the immediate aftermarket when determining IPO allocations; (b) informing certain customers that Goldman verified whether customers placed orders for stock in the immediate aftermarket; and (c) during conversations or courses of dealing that included (a) and/or (b), asking certain customers whether, and at what prices and in what quantities, they intended to place orders to purchase IPO stock in the immediate aftermarket.

81. More specifically, Goldman sometimes engaged in the following activities during restricted periods for certain offerings. Sometimes during conversations where Goldman sales representatives asked certain customers about their aftermarket intentions (including what prices and quantities of shares the customers would expect to purchase), and sometimes separately, those Goldman employees communicated that Goldman considered aftermarket intentions and follow-through during the first few days after an offering to be significant factors in Goldman's IPO allocation decisions, and that such information could increase the chances for certain customers to receive favorable IPO allocations. Goldman further

encouraged certain customers that had provided "aftermarket interest" (expressions of interest in buying shares in the immediate aftermarket) to increase the prices they said that they would pay in the immediate aftermarket, sometimes by providing the customers with information about higher prices stated by other customers competing for allocations. Goldman sought**,** and/or accepted as part of a course of dealing under circumstances where the customer inferred it was sought**,** aftermarket interest from certain customers who based the amount of their stated intended immediate aftermarket purchases solely on the sizes of their prospective IPO allocations (e.g., the customer would express an intention to buy in the aftermarket stock in the amount of two times, or five times, the amount of the initial allocation). Moreover, Goldman sales representatives notified certain customers that Goldman verified whether they "followed through" and placed the orders in the immediate aftermarket as the customer had said they would, in one case showing a customer an "Underwriting Aftermarket Report" prepared by Goldman that reflected (among other things) the customer's previous aftermarket purchases on IPOs underwritten by Goldman. Similarly, once when telling another customer that Goldman compared aftermarket indications to actual purchases in the immediate aftermarket, a Goldman sales representative communicated that Goldman would reward verified aftermarket orders with larger allocations of shares in subsequent IPOs.

82. By reason of the foregoing, Goldman violated Rule 101 of Regulation M under the Exchange Act, 17 C.F.R. § 242.101.

RELIEF SOUGHT

WHEREFORE, plaintiff Commission respectfully requests that this Court enter judgment:

1. Permanently restraining and enjoining Goldman, directly or indirectly, from violating Rule 101 of Regulation M under the Exchange Act;

2. Requiring Goldman to pay a civil penalty pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d);

3. Granting such other and further relief as the Court may deem just and proper; and

4. Retaining jurisdiction of this action in order to implement and carry out the terms of any Orders, which may be entered herein.

Dated: January 24, 2005

Respectfully submitted,

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