UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JEFFREY W. BADER,

Plaintiff,

- against -

THE GOLDMAN SACHS GROUP, INC., LLOYD C. BLANKFEIN, ALAN M. COHEN, GARY D. COHN, JON WINKELRIED, JOHN H. BRYAN, CLAES DAHLBÄCK, STEPHEN FRIEDMAN, WILLIAM W. GEORGE, RAJAT K. GUPTA, JAMES A. JOHNSON, LOIS D. JULIBER, EDWARD M. LIDDY, RUTH J. SIMMONS, JOHN S. WEINBERG, KEVIN W. KENNEDY, DAVID A. VINIAR, GREGORY K. PALM, ESTA E. STECHER, and SARAH G. SMITH,

Defendants.

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Civil Action No.: 08-cv-255 (SLT)(JMA)

VERIFIED SECOND AMENDED COMPLAINT

Jury Trial Demanded

Plaintiff alleges, upon information and belief based upon, *inter alia*, the investigation made by and through his attorneys and experts, except as to those allegations that pertain to the plaintiff himself, which are alleged upon knowledge, as follows:

1. The jurisdiction of this Court is founded upon 15 U.S.C. § 78aa and 28 U.S.C. § 1367.

2. The claims herein arise under § 14(a) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. §78n(a), Securities and Exchange Commission (SEC) Rule 14a-9, 17 C.F.R. § 240.14a-9, Schedule 14A, 17 C.F.R. § 240.14a-101, Item 402 of Reg. S-K, 17 C.F.R. § 229.402, SEC Staff Accounting Bulletin 107 (2005)(SAB 107), §16(a) of the Act, 15 U.S.C. § 78p(a), 17 C.F.R. § 240.16a-3, 17 C.F.R § 249.104, and under the laws of the several states including, particularly, the State of Delaware and the State of New York.

3. Plaintiff brings this action as a stockholder's derivative action in the right of and for the benefit of The Goldman Sachs Group, Inc. (the "Company" or "Goldman Sachs"). This action is not a collusive one to confer jurisdiction that the court would otherwise lack.

4. Plaintiff also brings this action as a direct action to vindicate his right to fair and accurate statements and disclosures, where he is solicited to vote upon fundamental corporate matters, so that he will be fully informed, as required by law, and his right that the defendants fulfill duties to comply with statutes of the United States and of the several states, including, especially, the laws of Delaware and New York. In this connection the Delaware Supreme Court has held that the "machinery of corporate democracy… [is one of the] potent tools to redress the conduct of a torpid and unfaithful management." *Rales v. Blasband*, 634 A.2d 927, 933 (Del. 1993), *quoting Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984).

5. This action does not allege securities fraud or any other fraud. It does not seek to recover damages, but rather specific, equitable relief. This is an action for declaratory and injunctive relief concerning the distribution of a materially false or misleading proxy statement for the 2008 annual meeting of the Company's stockholders (the "2008 Proxy Statement") and for breaches of fiduciary and statutory duties.

6. On February 5, 2010, the Goldman Sachs board of directors took significant ameliorative action in response to the plaintiff's allegations that resulted in substantial benefit to the Company and its stockholders, as explained *infra*, ¶¶ 113 and 114.

7. That board action and the substantial benefit that followed support an interim award to the plaintiff of attorneys' fees and expenses.

8. The original complaint at bar was filed on January 17, 2008. It sought, *inter alia*, to enjoin the distribution of the 2008 Proxy Statement because of multiple indications that it would

contain false or misleading representations and omissions and also that it would contain representations that would fail to comply with SEC regulations. The original complaint was not limited to the 2008 Proxy Statement, but also prayed for an injunction against all candidates from sitting on the Company's board of directors unless and until they shall be elected thereto pursuant to a proper and lawful stockholder vote, i.e., a vote not tainted by a false or misleading proxy statement and not tainted by a proxy statement that fails to comply with SEC rules and regulations. The 2008 Proxy Statement was distributed on or about March 7, 2008. The first amended complaint and this second amended complaint treat the 2008 Proxy Statement as already issued, even though, pursuant to FED. R. CIV. P. 15(c)(1)(B), the amended complaint relates back to the date of the original complaint.

9. This action is related to an earlier action commenced in this court by this plaintiff against all the instant defendants (except Sarah G. Smith) and others not named herein, entitled *Bader v. Blankfein*, Civil Action No. 07-1130(SLT)(JMA) ("*Bader I*"). The claims in *Bader I* address materially false or misleading representations and omissions in the proxy statement (the "2007 Proxy Statement"), distributed for the Company's 2007 annual meeting of stockholders. The instant action ("*Bader II*") is brought for relief against the materially false or misleading 2008 Proxy Statement. The individual defendants' misconduct concerning the 2007 Proxy Statement continues in respect of the 2008 Proxy Statement.

10. The *Bader I* complaint alleged that the 2007 Proxy Statement's representation of the grant date present value of stock options granted to officers was materially less than the true value. The defendants argued that the discount taken to arrive at the reported value was proper. In footnote 5 on page 6 of the Defendants' Reply Memorandum of Law, dated October 3, 2007, in *Bader* I, they noted that the applicable SEC regulations had been amended to change the way stock options would

be reported in their next proxy statement for 2008, and that they were not engaged in "systematic wrongdoing." But the new SEC regulations forbid proxy statements' use of discounted grant date values for stock options. Yet, less than three months after filing that reply memorandum, on December 21, 2007, ten of the individual defendants filed SEC Form 4s reporting a discounted grant date value for stock options that the Goldman Sachs board of directors granted to them on December 19, 2007. When the 2008 Proxy Statement was distributed on March 7, 2008, it represented the same values of stock options that had been improperly discounted. Moreover, the board improperly used those discounted values to determine the number of stock options to grant in December 2007, just as it had in December 2006. When the Goldman Sachs 2008 Form 10-K was filed, on January 27, 2009, it also represented values of stock options that had been improperly discounted and reported in the Form 4s. The defendants' systematic wrongdoing continued.

11. And, finally, in *Bader I*, defendants argued that their 2006 compensation was not excessive, stating, "2006 was an extraordinary year for Goldman Sachs and its shareholders in which Goldman Sachs'[s] stock price rose 55%." Defendants' Memorandum of Law in Support of Their Motion to Dismiss the Complaint at 32. Defendants are quick to refer to the Company's stock price when it suits their purposes, and quick to ignore it when it does not. In 2006, the board granted executive stock options exercisable at $199.84. A year later, in 2007, it granted stock options exercisable at $204.16, because the price of the stock rose only $4.32 per share, or two percent. But the board increased the CEO's pay by 26 percent that year.

12. Plaintiff is a stockholder of the Company and was a stockholder at the time of the wrongs alleged herein, and has been such continuously since then.

13. The Company is incorporated in the State of Delaware. The Company's stock is listed on the New York Stock Exchange. Its fiscal year ended on November 30, 2007. As of September 28,

2007, Goldman Sachs had 397,674,804 shares of common stock outstanding. As of January 15, 2008, the last reported sales price by the close of market of the common stock was $193.29 per share. On October 31, 2007, the price of Goldman Sachs stock reached its all-time high, $250.70 per share. Goldman Sachs keeps its accounts on a fiscal year that ends the last Friday of November. Goldman Sachs is the successor to a commercial paper business founded in 1869. It is a global leader in investment banking, trading and principal investment, and asset management and securities services.

14. The Goldman Sachs Foundation (the "Foundation") is a New York not-for-profit corporation that was organized by the Company in 1999, and since then has been funded only by the Company. The Foundation is an exempt organization under 26 U.S.C. § 501(c)(3), but it is not a public charity. Instead, it is a private foundation. A public charity depends upon donations from the public for its support. If it misbehaves, misuses its capital, or engages in questionable practices, the public will presumably learn about it, and by the simple expedient of cutting off contributions, correct that which has become offensive. On the other hand, the Foundation is privately financed and is subject to no such corrective influence.

15. The Foundation is controlled by the Company's management. The Foundation maintains its offices in the Company's principal place of business at 85 Broad Street, New York, New York. The Foundation is on the 22nd floor. The Foundation's president, Stephanie Bell-Rose, is a managing director of the Company. The Foundation's board of trustees has eight members. According to its filing with the New York Attorney General's Charities Bureau on October 20, 2008, the members of that board are John C. Whitehead, Thomas W. Payzant, Frank H. T. Rhodes, Neil Rudenstine, Josef Joffe, Stuart Rothenberg, John F. W. Rogers, and Glenn Earle. Four of these trustees have close ties to the Company. Mr. Whitehead, the chairman of the Foundation board

worked for the Company's predecessor for 38 years. The Foundation's report to the attorney general on October 20, 2008 states that he still has an office of the 30th floor of the Company's principal office at 85 Broad Street, New York, New York.

16. Three other Foundation trustees are listed as Company managing directors in the Company's 2007 glossy annual report. They are Messrs. Rothenberg, Rogers, and Earle. Mr. Rogers is listed also as a member of the Company's management committee and the secretary to the Company's board of directors. Mr. Rothenberg is listed as a member of the Company's partnership committee.

17. The four other trustees are men with their own work to do. Mr. Joffe is the editor and publisher of the German weekly, *Die Zeit* ("*The Times*") from Hamburg. Mr. Payzant was the superintendant of the public schools in Boston, Massachussetts until 2006. He continues his involvement in the field of education and writes on the subject. Mr. Rhodes was the president of Cornell University and has written on geology and evolution. Mr. Rudenstine was the president of Harvard University and is involved with education.

18. Seven of the nine non-employee directors on the Company's board are members of boards of exempt organization to which the Foundation has made substantial donations, as alleged below in ¶¶ 19, 21, 23, 24, 25. 26, and 27. The connection between these directors, defendants Bryan, Friedman, Gupta, Johnson, Juliber, Liddy, and Simmons, and the Foundation's donations has not been disclosed to the Charities Bureau, and there is no indication that the Foundation's trustees Joffe, Payzant, Rhodes, and Rudensteine are aware of them.

19. Defendant John H. Bryan has been a member of the Company's board of directors since November 1999. He is the retired chairman and CEO of Sara Lee Corporation. On December 19, 2007, he received a grant of options to purchase Goldman Sachs stock at $204.16. The number

of shares covered by the option was based on the option having a grant date fair value of $51.04. In 1994, 1997, and 2000 he was co-chairman of the annual meetings of the World Economic Forum. He chaired a successful campaign to raise $100 million to renovate the Chicago Lyric Opera House and Orchestra Hall, to which the Company has made substantial contributions. He is a life trustee of the University of Chicago, to which the Foundation donated $200,000 in 2006 and allocated another $200,000 in 2007. As a trustee of the University, it is part of his job to raise money for it. In an SEC Form 4 that he filed on December 21, 2007, he reported for himself a New York address.

20. Defendant Claes Dahlbäck has been a member of the Company's board of directors since June 2003. On December 19, 2007, he received a grant of options to purchase Goldman Sachs stock at $204.16. The number of shares covered by the option was based on the option having a grant date fair value of $51.04. Mr. Dahlbäck has a degree in economics and is a senior adviser to Investor AB, based in Sweden, and was an executive director of Thisbe AB, an investment company owned by the Wallenberg Foundations. The Company has invested more than $600 million in funds to which Mr. Dahlbäck is an adviser. In an SEC Form 4 that he filed on December 21, 2007, he reported for himself a New York address.

21. Defendant Stephen Friedman has been a member of the Company's board of directors since April 2005. He worked at the Company's predecessor, The Goldman Sachs Group, L.P., from 1966 to 1994 and rose to become a senior partner and chairman of its management committee. Mr. Friedman probably knew Fischer Black (of the Black-Scholes option pricing model), who joined the predecessor firm in 1984 and also became a partner there. From 1998-2002, Stephen Friedman worked at the predecessor to Stone Point Capital, a private equity firm to which he returned in May 2005 and where he became chairman in June 2006. In between, from December 2002 to December 2004, he was an assistant to the President for Economic Policy and director of the National

Economic Council. The Company has invested not less than $670 million in funds managed by Mr. Friedman. In addition, Mr. Friedman is an emeritus trustee of Columbia University. As such, it is part of his job to raise money for the university. Since 2002, the Foundation has donated not less than $640,000 to support an MBA business plan competition and education program at Columbia University. In 2007, the Foundation allocated another $125,000 to Columbia University. In an SEC Form 4 that he filed on December 21, 2007, he reported for himself a New York address.

22. Defendant William W. George has been a member of the Company's board of directors since December 2002. He was the chairman and CEO of Medtronic, Inc. and is currently a professor at the Harvard Business School. He is a board member of the World Economic Forum USA. In an SEC Form 4 that he filed on December 21, 2007, he reported for himself a New York address.

23. Defendant Rajat K. Gupta has been a member of the Company's board of directors since November 2006. He is a senior partner at McKinsey and Company, where he has worked since 1973. He is the chairman of the board of the Indian School of Business in Hyderabad, India. Since 2002 the Foundation has donated not less than $1,600,000 to the Friends of the Indian School of Business. Mr. Gupta is also a member of the dean's advisory board of Tsinghua University School of Economics and Management in Beijing, China. Since 2002 the Foundation has donated not less than $3,500,000 to the Friends of Tsinghua School of Economics and Management. Mr. Gupta is a member of the United Nations Commission on the Private Sector and Development, and he is a special adviser to the UN Secretary General on UN Reform. Since 2002 the Foundation has donated not less than $1,665,000 to the Model UN program. As a member of these boards and this commission, it is part of his job to raise money for these institutions. In an SEC Form 4 that he filed on December 21, 2007, he reported for himself a New York address.

24. Defendant James A. Johnson has been a member of the Company's board of directors since May 1999. On December 19, 2007, he received a grant of options to purchase Goldman Sachs stock at $204.16. The number of shares covered by the option was based on the option having a grant date fair value of $51.04. From 1990 to December 1999 he was a senior executive at Fannie Mae. From January 2000 he has worked in private investment firms. He is also on the boards of directors of United Health Group, Inc. and KB Home, two public companies notoriously burdened by stock option back-dating problems. In issues dated August 21, 2006 and July 7, 2008, Barron's Financial Weekly reported that Mr. Johnson's membership on a corporate board was a signal that the board overpaid the executives. He is and was in 2006 an honorary trustee of the Brookings Institution, to which the Foundation donated $100,000 in 2006. As an honorary trustee, it is part of his job to raise money for it. In an SEC Form 4 that he filed on December 21, 2007, he reported for himself a New York address.

25. Defendant Lois D. Juliber has been a member of the Company's board of directors since March 2004. She was a senior officer at Colgate-Palmolive Company from 1994 to April 2005. She is a member of the board of Girls Incorporated, to which the Foundation allocated $400,000 in donations and paid $200,000 in 2006 and 2007. As a member of its board, it is part of her job to raise money for it. In an SEC Form 4 that he filed on December 21, 2007, she reported for herself a New York address.

26. Defendant Edward M. Liddy has been a member of the Company's board of directors since July 2003. He is chairman of the Allstate Corporation, the parent of Allstate Insurance Company, where he was a senior officer since 1995. He is the chairman of the Boys and Girls Clubs of America. Since 2003 the Foundation has donated not less than $190,000 to those clubs and to

programs that they support. As chairman, it is part of Mr. Liddy's job to raise money for those clubs. In an SEC Form 4 that he filed on December 21, 2007, he reported for himself a New York address.

27. Defendant Ruth J. Simmons has been a member of the Company's board of directors since January 2000. She has been president of Brown University since July 2001. As president of Brown University it is part of her job to raise money for the university. The Foundation has pledged funding in an undisclosed amount to share in the support of a position of Program Director at The Swearer Center for Public Service at Brown University. The Foundation allocated $100,000 in 2006 and paid $100,000 in 2007 to this project. In an SEC Form 4 that she filed on December 21, 2007, she reported for herself a New York address.

28. Defendants Bryan, Dahlbäck, Friedman, George, Gupta, Johnson, Juliber, Liddy, and Simmons are all the members of the compensation committee of the Company's board of directors.

29. Defendant Lloyd C. Blankfein has been a member of the Company's board of directors since April 2005 and its chairman since June 2006. He has worked for Goldman Sachs and its predecessor since 1994. He became its CEO in June 2006. In an SEC Form 4 that he filed on December 21, 2007, he reported for himself a New York address.

30. Defendant Gary D. Cohn has been a member of the Company's board of directors since June 2006, when he also became president and co-chief operating officer. Before that, and since 1996, he worked for Goldman Sachs and its predecessor. In an SEC Form 4 that he filed on December 21, 2007, he reported for himself a New York address.

31. Defendant Jon Winkelried has been a member of the Company's board of directors since June 2006, when he also became president and co-chief operating officer. Before that, and since 1995, he worked for Goldman Sachs and its predecessor. In an SEC Form 4 that he filed on December 21, 2007, he reported for himself a New York address.

32. The nine members of the compensation committee and defendants Blankfein, Cohn, and Winkelried are all the members of the Company's board of directors.

33. Defendant John S. Weinberg has been a vice chairman of Goldman Sachs since June 2006 and has been a senior officer of Goldman Sachs and its predecessor since 1997. In an SEC Form 4 that he filed on December 21, 2007, he reported for himself a New York address.

34. Defendants Alan M. Cohen, Kevin M. Kennedy, Gregory K. Palm, Esta E. Stecher, and David A. Viniar are all executive vice presidents of Goldman Sachs. Defendant Viniar is also the Company's chief financial officer, or CFO. Defendant Sarah G. Smith is the Company's principal accounting officer. On December 21, 2007, they each filed an SEC Form 4 in which each reported for himself or herself a New York address. They and defendants Lloyd C. Blankfein, Gary D. Cohn, John S. Weinberg, and Jon Winkelreid are all members of the management committee and participants in the compensation program consisting of cash and equity grants, including stock options grants measured according to the grant date fair value of stock options as further alleged in this complaint.

35. Defendants Blankfein, Viniar, Cohn, Winkelried, and Weinberg were the Company's Named Executive Officers for the fiscal year 2006. The Named Executive Officers are those personnel whose annual income is reported in the Summary Compensation Table of the proxy statement.

36. The individual defendants who constitute the Company's board of directors authorized the distribution of the 2008 Proxy Statement to solicit the proxies of Goldman Sachs's stockholders for, *inter alia*, the re-election to the board of directors of the current members of that board; i.e., they solicited proxies for their own re-election.

37. The Company and the defendants who are members of the Company's board of directors and defendants Viniar and Weinberg permitted the use of their names in the 2008 Proxy Statement to solicit proxies. Defendants Cohen, Kennedy, Palm, Smith, and Stecher are members of the management committee, which is described in the 2008 Proxy Statement. These individuals were identified as members of the management committee in the glossy annual report that was distributed with the 2008 Proxy Statement.

38. With respect to the solicitation of proxies for the annual meeting of stockholders in 2008, the Proxy Statement contains materially false or misleading statements and omits material facts concerning the compensation of the Company's officers and of three of its non-employee directors. The SEC regulations require full and fair disclosure of compensation when directors solicit stockholders to vote upon such fundamental matters as the election of directors. The purpose of a proxy statement is to inform the stockholders, not to challenge their critical wits. As a result of these misrepresentations and omissions, the 2008 Proxy Statement renders the stockholders unwitting agents of self-inflicted damage.

39. On November 7, and December 29, 2006 the SEC's amendments to Schedule 14A and Reg. S-K took effect for proxy statements to be distributed to the stockholders of companies for which the next fiscal year was to begin after December 15, 2006. Because the Company's 2008 fiscal year began December 1, 2007, the 2008 Proxy Statement at bar is governed by the new SEC Schedule 14A and Reg. S-K. By contrast, the 2007 Proxy Statement in *Bader I* is governed by the previous versions of SEC Schedule 14A and Reg. S-K.

40. The 2008 Proxy Statement violates Schedule 14A and Regulation S-K. Item 8 of Schedule 14A, 17 C.F.R. § 240.14a-101, pertains to Compensation of Directors and Executive Officers. It expressly requires that a Proxy Statement must furnish the information required by Item

402 of Reg. S-K when the stockholders' proxies are solicited for the election of directors. 17 C.F.R. § 229.402.

41. Reg. S-K (Item 402(c)) requires that the proxy statement report the compensation of each of the Named Executive Officers in a Summary Compensation Table broken into categories of compensation, *e.g*., salary, bonus, etc. 17 C.F.R. § 229.402(c)(2)(vi) expressly requires the proxy statement to include in the Summary Compensation Table the dollar amount recognized for financial statement reporting purposes in accordance with generally accepted accounting principles (GAAP) as stated in FAS 123R for stock option grants to each of the Named Executive Officers in the last fiscal year.

42. Item 402(d) of Reg. S-K requires that the proxy statement report the grants of cash, stock, and stock option awards, pursuant to all the company's compensation plans, to each of the Named Executive Officers in a table of Grants of Plan-Based Awards. 17 C.F.R. § 229.402(d)(2)(viii) expressly requires the table of Grants of Plan-Based Awards to include the grant date fair value of each award of stock options to each of the Company's Named Executive Officers in the last fiscal year "computed in accordance with FAS 123R," as described below.

43. Reg. S-K (Item 402(k)) requires that the proxy statement report the compensation of each of the directors in a table broken into categories of compensation, *e.g*., fees, stock options, etc. 17 C.F.R. § 229.402 (k)(2)(iv) expressly requires the Proxy Statement to include in the table the dollar amount recognized for financial statement reporting purposes in accordance with FAS 123R for stock option grants to each of the directors in the last fiscal year.

44. The Instruction to Reg. S-K Item 402(k)(2)(iv) requires that the proxy statement disclose, by footnote, the grant date fair value of each equity award, including stock options granted to each of the company's directors, "computed in accordance with FAS 123R," as described below.

45. FAS 123R is a Statement of Financial Accounting Standards issued in December 2004 by the Financial Accounting Standards Board of the Financial Accounting Foundation. FAS 123R establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods or services. FAS 123R focuses primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions. FAS 123R was published in December 2004, and it became effective June 15, 2005. It is the successor to FAS 123, which was published in 1995.

46. For stock options, FAS 123R requires the use of a reliable, sound valuation technique that (a) is applied in a manner consistent with the fair value measurement objective and the other requirements of FAS 123R, (b) is based on established principles of financial economic theory that represent fundamental propositions that form the basis of modern corporate finance (for example, the time value of money and risk-neutral valuation) and generally applied in that field, and (c) reflects all substantive characteristics of the instrument (except for those explicitly excluded by FAS 123R, such as vesting conditions and reload features). But it does not require a particular technique or model. It does, however, refer to the Black-Scholes-Merton option pricing model, lattice or binominal models, and the Monte Carlo simulation technique.

47. In November 1997, the Nobel Prize in Economic Science was awarded to Myron Scholes and Robert Merton, the surviving members of the team that discovered the Black-Scholes Option Pricing Model. The mathematical formula of the model, as modified for a dividend paying stock, is attached as Exhibit 1 to this Second Amended Complaint, taken from paragraph 9 of a joint declaration in this case by Dr. Daniel W. Collins, the professor and researcher in accounting at the University of Iowa, and Dr. Anand Mohan Vijh, the professor of finance at the University of Iowa, dated January 17, 2008, Doc. #11.

48. The earlier version of 17 C.F.R. § 229.402(c)(2)(vi)(B) in effect in *Bader I*, required that the grant date present value of stock options be reported "under any option pricing model," but it did not require that the report conform to FAS 123 or FAS 123R or that the option pricing model be based on established principles of financial economic theory, as expressly required by FAS 123R.

49. There were court decisions holding that the predecessor of FAS 123R, *i.e.*, FAS 123 (1995), did not apply to proxy statements. But since then the SEC has specifically made FAS 123R applicable to proxy statements, in addition to Form 10-Ks and Form 10-Qs. The SEC has taken the position that proxy statements must apply generally accepted accounting principles (GAAP) when reporting stock option information to stockholders. The rule in the Second Circuit for the proxy statement involved in *Bader I* was that FAS 123 applied to financial statements, not proxy statements. *Resnik v. Swartz*, 303 F.3d 147, 153 (2d Cir. 2002). Now that the SEC's regulation requires that proxy statements report in conformity with FAS 123R, however, the Second Circuit also requires it.[1] So, for the proxy statement at issue in *Bader I* there was no SEC requirement that an option pricing model conform to FAS 123 or 123R. But at bar, the option pricing model used in the 2008 proxy statement must conform to FAS 123R.

50. The SEC stated, in Release 33-8765, 34-55009, 2006 WL 3782720, at *4 (December 22, 2006):

> Under FAS 123R, while the compensation cost is initially measured based on the grant date fair value of an award, it is generally recognized for financial reporting purposes over the period in which the employee is required to provide service in exchange for the award (generally the vesting period). …

[1] In *Resnik v. Swartz*, 303 F.3d at 151, the Second Circuit held that a proxy statement must report information "specifically require[d]" by SEC regulations. The SEC regulations applicable in *Bader I* did not specifically require proxy statements to conform to FAS or FAS 123R. The new SEC regulation applies to proxy statements for companies that began their fiscal year after December 15, 2006. Goldman Sachs's fiscal year began November 25, 2006, so the old regulation applied to *Bader I*.

> [W]e have concluded that a combination of disclosure of the compensation cost associated with equity awards as that cost is recognized in the financial statement in the Summary Compensation Table, combined with disclosure of the grant date fair value of those awards on a grant-by-grant basis in the Grants of Plan-Based Awards Table, would prove a fuller and more useful picture of executive compensation than our recently adopted rules.

51. On December 21, 2007, each of the ten officer-defendants, including the Named Executive Officers, filed an SEC Form 4 that reported the grant of stock options on December 19, 2007.

52. Section 16(a) of the Act, 15 U.S.C. § 78p(a), and SEC Regulations 17 C.F.R. §§ 240.16a-3 and 249.104 require a publicly held company's officers and directors to file SEC Form 4 to report changes in stock and stock option ownership. Each Form 4 stated, "The value of each Stock Option for financial reporting purposes was $51.04."

53. The Named Executive Officers used the stock option value of $51.04 to represent in the 2008 Proxy Statement in the Summary Compensation Table to the Company's stockholders the cost to the Company of those stock options. The stated stock option value of $51.04 was false, in contravention of 17 C.F.R. § 229.402(c)(2)(vi) (requiring a statement of the option value in accordance with FAS 123R),and 17 C.F.R. § 240.14a-9 (prohibiting misrepresentations in a proxy statement), all as explained below.

54. The statement in the Form 4s, repeated in the 2008 Proxy Statement, that the grant date fair value of the stock options "for financial reporting purposes was $51.04" is materially false or misleading. Defendants sent the 2008 Proxy Statement to the Goldman Sachs stockholders on or about March 7, 2008. As the plaintiff in the original complaint had alleged it would happen, the 2008 Proxy Statement represents that the stock options granted on December 19, 2007 had a grant date fair value of $51.04. The correct grant date fair value is $86.69, as described below. The 2008 Proxy

Statement further represents that the $51.04 was based on a Black-Scholes option pricing model, "which [the 2008 Proxy Statement says] incorporates a liquidity discount on the value of the common stock underlying the award."

55. Defendants Bryan, Dahlbäck, and Johnson filed SEC Form 4s reporting their receipt of Goldman Sachs stock options on December 19, 2007. But they, unlike the ten officer defendants, did not report the grant date fair value of those stock options. The 2008 Proxy Statement, however, does report that they each received Goldman Sachs stock options as part of their directors' compensation. The 2008 Proxy Statement represents that the stock options granted on December 19, 2007 had a grant date fair value of $51.04, in contravention of 17 C.F.R. § 229.402(k)(2)(iv) and 17 C.F.R. § 240.14a-9. As noted, and explained below, the correct grant date fair value is $86.69. The 2008 Proxy Statement further represents that the $51.04 was based on a Black-Scholes option pricing model, "which [the 2008 Proxy Statement says] incorporates a liquidity discount on the value of the common stock underlying the award."

56. For the Named Executive Officers, the 2008 Proxy Statement, in footnote (d) to the Summary Compensation Table, reports that the exercise price of the stock options was $204.16 per share and that the exercise price was equal to the closing price of the underlying stock on December 19, 2007, the date of grant. For the Named Executive Officers, footnote (d) then represents:

> The primary inputs to the option valuation model were: 35% expected volatility; 4.0% risk-free interest rate; 0.7% dividend yield; 7.5 year expected life; and the discounted value of Common Stock underlying the award. The Options become exercisable in January 2011; however, the underlying Common Stock cannot be transferred before January 2013. For purposes of computing the Option value under Black-Scholes, the value of the underlying Common Stock reflects a 24% liquidity discount as a result of this transfer restriction. The liquidity discount was based on the pre-determined written liquidity discount policies used in the preparation of our financial statements. The values of Options given in this table are hypothetical and have been provided solely to comply with the SEC's disclosure rules. The

> actual value, if any, that will be realized upon the exercise of an Option will depend upon the difference between the exercise price of the Option and the market price of Common Stock on the date that the Option is exercised.

The 2008 Proxy Statement also reports the number of stock options granted to each of the Named Executive Officers on December 15, 2006, along with the exercise price. As required by the Instruction to 17 C.F.R. § 229.402(c)(2)(vi), the 2008 Proxy Statement refers the stockholders to Note 12 of the Company's financial statements included in its 2007 Form 10-K for a discussion of the calculation of the fair value of the 2006 and 2007 stock options. *See* ¶ 68, *infra*. But the 2008 Proxy Statement omits reference to Note 12 of the Company's 2006 consolidated financial statements in the 2006 Form 10-K and to the 2007 annual proxy statement. As explained below, the reports in the 2006 Form 10-K and the 2007 proxy statement do not agree with the statements in the 2007 Form 10-K and the 2008 proxy statement.

57. For defendants Bryan, Dahlbäck, and Johnson, the 2008 Proxy Statement, in footnote (b) to the non-employee director compensation table, reports that the exercise price of the stock options was $204.16 per share and that the exercise price was equal to the closing price of the underlying stock on December 19, 2007. Footnote (b) then represents:

> The primary inputs to the option valuation model were: 35% expected volatility; 4.0% risk-free interest rate; 0.7% dividend yield; 7.5 year expected life; and the discounted value of Common Stock underlying the award. Options become exercisable on the earlier of (i) the date the Non-Employee Director ceases to be a member of our Board and (ii) January 2011, although for so long as the Non-Employee Director remains a member of Board, the underlying Common Stock cannot be transferred before January 2013. For purposes of computing the Option value under Black-Scholes, the value of the underlying Common Stock reflects a 24% liquidity discount as a result of this transfer restriction. The liquidity discount was based on the pre-determined written liquidity discount policies used in the preparation of our financial statements. The value of Options given in this table are hypothetical and have been provided solely to comply with the SEC's disclosure rules. The actual value, if any, that will be realized

> upon the exercise of an Option will depend upon the difference between the exercise price of the Option and the market price of Common Stock on the date that the Option is exercised.

Except for the statements concerning when the options become exercisable, the representations are identical with respect to the Named Executive Officers and the directors. As required by the Instruction to 17 C.F.R. § 229.402(k), the 2008 Proxy Statement again refers the stockholders to Note 12 of the Company's financial statements included in its 2007 Form 10-K for a discussion of the calculation of the fair value of the 2006 and 2007 stock options. *See* ¶ 68, *infra*. But the 2008 Proxy Statement again omits reference to Note 12 of the Company's 2006 consolidated financial statements in the 2006 Form 10-K and to the 2007 annual proxy statement.

58. The 2008 Proxy Statement contains multiple false or misleading representations concerning the value of the December 19, 2007 and December 15, 2006 stock options. ***First***, the 2008 Proxy Statement represented that the December 19, 2007 stock options granted to the Named Executive Officers and to the non-employee directors Bryan, Dahlbäck, and Johnson were evaluated under a Black-Scholes option pricing model. That representation was false. Instead, the reported value was based by taking the grant date market price of the underlying stock, $204.16, which equaled the exercise price, and Dividing-by-Four to get the reported "value" of $51.04.

59. The 2008 Proxy Statement also represented, in the table entitled "2007 Grants of Plan-Based Awards," that the December 15, 2006 stock options granted to the Named Executive Officers were evaluated in accordance with FAS 123R, and, for a discussion of the calculation of those values, it referred the stockholders to Note 12 of the audited financial statements in the Company's 2007 Form 10-K. It further represented that the exercise price was $199.84. Although the 2008 Proxy Statement did not so state, that was the market price of the underlying stock on December 15, 2006. Note 12 in the Form 10-K, to which the 2008 proxy statement referred,

represents that the grant date fair value was $49.96, and that this value was estimated based on a Black-Scholes option pricing model. Those representations were all false, except for the exercise price. The "evaluations" were not done in accordance with FAS 123R, and they were not done with Black-Scholes. Instead, they were done by taking the $199.84 market and exercise price and Dividing-by-Four to get $49.96. These representations contravened 17 C.F.R. § 229.402(d)(2)(viii) and 17 C.F.R. § 240.14a-9.

60. It is highly improbable, if not impossible, that this perfect 4-to-1 ratio can be derived by application of a Black-Scholes option pricing model, any variation or modification of a Black-Scholes option pricing model, a binomial option pricing model, or any model compliant with FAS 123R. For example, in 2002, Goldman Sachs granted stock options exercisable at $79.16, the market price on the date granted. It represented in the proxy statement for that year, that it valued the options using a binomial model, at $27.38, which was approximately 34.588% of the market price on the grant date. In 2003, Goldman Sachs granted stock options exercisable at $95.81, the market price on the date granted. In the proxy statement for that year, it said that they had valued the options with a binomial model at $31.31, which was approximately 32.679% of the market price. In 2004, Goldman Sachs granted stock options exercisable at $96.08, the market price on the date granted. Again, it said that they valued the options with a binomial model at $32.22, which was approximately 33.535% of the market price. These facts are reported in Note 12 to the financial statements in the Goldman Sachs Form 10-K, filed with the SEC on February 8, 2005.

61. But Dividing-by-Four is not an option pricing model in accordance with FAS 123R, 17 C.F.R. § 229.402(c)(2)(vi), 17 C.F.R. § 229.402(d)(2)(viii), or 17 C.F.R. § 229.402(k)(2)(iv). Dividing-by-Four does not depend on the time value of money, and it does not depend on the

substantive characteristics of the option such as the time to expiration and the volatility of and dividends on the underlying stock.

62. An exchange of letters between counsel for the parties at bar supports the allegations that stock options were evaluated by Dividing-by-Four instead of with a proper option pricing model. In the defendants' counsel's letter to this court, dated December 28, 2009, Doc. #73, Exhibit B thereto was a letter from Arnold Gershon to David Braff, dated March 12, 2009, in which Gershon expressed professional and personal concern that iterated assertions to the courts by his learned friend were patently and demonstrably wrong. A copy of that letter is attached hereto as Exhibit 2. That letter stated that no option pricing model could duplicate the result of Dividing-by-Four, and that Dividing-by-Four "is not a proper application of any option pricing model" and not what was represented in SEC filings and to the courts. The letter asked for an explanation and suggested a telephone call.

63. Braff responded to Gershon, not with a phone call, but with a letter, dated March 16, 2009, copy attached hereto as Exhibit 3, which was not attached to the defendants' December 28, 2009 letter. The March 16th letter did not provide an explanation. Instead, it stated, in substance if not in *haec verba*, that the difference between a proper option pricing model and Dividing-by-Four was an "ethereal" question and that the defendants do not agree with "theories" that Dividing-by-Four is not a proper option pricing model. The words and tone of the March 16th letter suggest that Dividing-by-Four is precisely the method that the defendants used to report stock option "values" in the 2008 Proxy Statement and the 2007 Form 10-K.

64. ***Second***, although the 2008 Proxy Statement represents that the \$51.04 Black-Scholes value was derived by use of a liquidity discount, the Black-Scholes option pricing model itself does not incorporate a discount of any kind. FAS 123R and the SEC's staff accounting bulletin SAB 107,

fn. 66, and the accompanying text, forbid a discount. Paragraph 17 of FAS 123R states that the effect of the inability to sell vested shares affects the value of the option that is reflected in the "option's *expected term.*" (Italics in original.) SAB 107 states:

> *Fact:* Company D utilizes the Black-Scholes-Merton closed-form model to value its share options for the purpose of determining the fair value of the options under Statement 123R. Company D recently granted share options to its employees. Based on its review of various factors, Company D determines that the expected term of the options is six years, which is less than the contractual term of ten years.
>
> *Question 1:* When determining the fair value of the share options in accordance with Statement 123R, *should Company D consider an additional discount for non-hedgability and nontransferability*?
>
> *Interpretive Response: No*. Statement 123R, paragraphs A26 and B82, indicates that nonhedgability and nontransferability have the effect of increasing the likelihood that an employee share option will be exercised before the end of its contractual term. Nonhedgability and nontransferability therefore factor into the expected term assumption (in this case reducing the term assumption from ten years to six years), and the expected term reasonably adjusts for the effect of these factors. Accordingly, the staff believes that *no additional reduction in the term assumption or other discount to the estimated fair value is appropriate for these particular factors.* [Footnote 66 omitted.]

Accordingly, the $51.04 value and the $49.96 value represented in the 2008 Proxy Statement also violate 17 C.F.R. § 240.14a-9.

65. It is impermissible under FAS 123R to obtain the grant date fair value of a stock option by applying a discount to the price of the underlying share, regardless of which model is used, Black-Scholes or any other. FAS 123R, at ¶ A18, requires the use of a valuation technique that "takes into account, at a minimum …. [t]he current price of the underlying share." The Public Company Accounting Oversight Board (the "PCAOB"), 15 U.S.C. § 7211, agrees and further states that the "current price of the underlying shares ha[s] a significant effect on the fair value measurement and ha[s] a high degree of verifiability." PCAOB Staff Questions and Answers,

Auditing the Fair Value of Share Options Granted to Employees, pp. 10-11 (October 17, 2006) ("*Auditing Stock Options*").

66. ***Third***, even if it were proper to take a discount – which it is not – from the "current price of the underlying share" in cases where there were restrictions on its sale after exercise of the option, there are no restrictions on the shares covered by the December 19, 2007 options. As the 2008 Proxy Statement reports, those restrictions will lapse in 2013. But the expected exercise will not occur until 7.5 years after the grant, on June 19, 2015. The liquidity issue is illusory.

67. ***Fourth***,[2] there is a substantial reason to disbelieve the representation in the 2008 Proxy Statement that the December 19, 2007 stock options were valued using Black-Scholes and that a discount was applied to the current price of the underlying shares. The reason is, as explained below, that the various filings with the SEC since 2005 are so profoundly contradictory that there is no reason to confide in the version of the story in Note 12 to the consolidated financial statements in the 2007 Form 10-K. Nor is there any way for a reasonable stockholder to know from the Company's reports how the stock options were valued.

68. Note 12 to the Goldman Sachs 2007 consolidated financial statements, on page 164 of the 2007 Form 10-K, describes the stock options that were granted in 2005, 2006, and 2007, as follows:

> The weighted average fair value of options granted for 2007, 2006 and 2005 was $51.04, 49.96 and $32.91 per option, respectively. Fair value was estimated as of the grant date based on a Black-Scholes option-pricing model principally using the following weighted average assumptions:

	Year Ended November		
	2007	2006	2005
Risk-free interest rate	4.0%	4.6%	4.5%
Expected volatility	35.0	27.5	30.0
Dividend Yield	0.7	0.7	0.9
Expected Life	7.5 years	7.5 years	7.5 years

> The common stock underlying the options granted in 2007, 2006 and 2005 is subject to transfer restrictions for a period of 2 years, 1 year and 1 year, respectively, from the date the options become exercisable. The value of the

[2] *Fifth* starts at ¶ 78, *infra*.

common stock underlying the options granted in 2007, 2006 and 2005 reflects a liquidity discount of 24.0%, 17.5% and 17.5%, respectively, as a result of these transfer restrictions. The liquidity discount was based on the firm's pre-determined written liquidity discount policies. The 7.5 years expected life of the options reflects the estimated impact of these sales restrictions on the life of the awards.

The 2008 Proxy Statement addresses only the 2007 and 2006 stock options, not those granted in 2005.

69. Note 12 to the Goldman Sachs 2006 consolidated financial statements, on page 157 of the 2006 Form 10-K, reports the same values for the 2005 and 2006 stock options as the 2007 Form 10-K and with the same assumptions for the risk-free interest rate, expected volatility, dividend yield, and expected life. It further represents that the values were obtained with the Black-Scholes option pricing model. But the 2006 Form 10-K does not quantify the 17.5% discount that was reported in the 2007 Form 10-K for the stock options granted in 2005 and 2006. It states, "The fair value of options granted in 2006 and 2005 reflects an additional discount for sales restrictions on the shares of common stock underlying such options that apply until January 2011 and January 2010, respectively."

70. The 2007 annual proxy statement that was distributed to the Goldman Sachs stockholders and filed with the SEC made no mention at all of any discount concerning the 2006 stock options that was reported in the 2006 Form 10-K. Instead, it represented that the 7.5 year expected life "reflects the sales restrictions on the underlying shares," thus conclusively implying that no discount was taken and that the fair value of the 2006 stock options were correctly compliant with FAS 123R. The reason why the foregoing quoted representation would imply that no discount was taken is that paragraphs 16, 17 and A26 of FAS 123R provide that restrictions on the sale of the underlying stock *are taken into account by adjusting the expected life of the option rather than by taking a discount*. The contractual life of these stock options is ten years.

71. Adding further doubt as to which valuation technique was used in the 2008 Proxy Statement and 2007 Form 10-K are the representations in the Form 4s that many of the individual defendants filed with the SEC after the 2006 stock options grants. The defendants stated in those Form 4s that the 2006 stock option value was "based on a binomial option valuation method," not Black-Scholes as reported in the 2006 Form 10-K and the 2007 annual proxy statement. Because of the severe consequences of a false statement – the Form 4, itself, contains the warning, "Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. § 1001 and 15 U.S.C. § 78ff(a)" – the representation in the Form 4s must be credible.

72. The PCAOB, *see* ¶ 65, *supra*, has addressed some of the differences between Black-Scholes and binomial option pricing models, and it has cautioned companies to select the more appropriate valuation technique in order to obtain more accurate results. *Auditing Stock Options*, 8-9. *See also* FAS 123R, ¶¶ A13-A17. Accordingly, it is surprising that no matter which valuation technique the Company used, it arrived at the same value, and then to four significant figures.

73. Note 12 to the Goldman Sachs 2005 consolidated financial statements, on pages 142-43 of the 2005 Form 10-K, reports the same $32.91 fair value for the stock options granted in 2005 as was reported in the 2007 Form 10-K. In the 2005 Form 10-K, however, the defendants represented that the $32.91 value was calculated under a binomial option pricing model, using the identical assumption for the risk-free interest rate, expected volatility, dividend yield, and expected life. It further represented that the value of the 2005 stock options "reflects an additional discount for sales restrictions on the shares of common stock underlying such options that apply until January 2010."

74. The 2006 annual proxy statement represented the value of the 2005 options at $32.91, stating that it was:

> Valued based on a binomial option pricing model, adjusted by approximately 40% to reflect discounts for non-marketability over the

> contractual life of the Options as well as sales restrictions on the underlying shares of Common Stock that apply until January 2010.

The 40% amount, however, was omitted from the 2005, 2006, and 2007 Form 10-Ks, as was the representation in footnote (b) to the stock option grants table in the 2006 proxy statement that the reported value also "reflected discounts for non-marketability over the contractual life of the Options." The tension between the representation in the 2006 annual proxy statement and the 2005, 2006, and 2007 Form 10-Ks is that the reported value of the stock option is $32.91 regardless of whether there is a discount for "non-marketability over the contractual life of the Options."

75. The Form 4s that were filed to report the 2005 stock option grants stated that the value of each stock option was $32.91, based on a binomial option valuation method.

76. Among the annual proxy statements, the Form 10-Ks, and the Form 4s, there is total inconsistency as to how the Goldman Sachs stock options were purportedly valued. And the fact that the same three numbers were always reported – $32.91 for the 2005 grants, $49.96 for the 2006 grants, and $51.04 for the 2007 grants – regardless of the valuation technique supposedly used, demonstrates that the values were picked first by Dividing-by-Four and the justification was done for them later.

77. With respect to the stock options granted in 2005, 2006, and 2007, the following table shows the grant date values (a) as reported by the defendants, (b) as determined with no discounts of any kind, and (c) as determined with the discounts reported in the 2008 Form 10-K. Columns (b) and (c) are according to Black-Scholes with the defendants' assumptions for expected volatility, risk-free interest rate, dividend yield, and expected life for each year. Column (c) assumes that the price of the underlying stock on the grant date is the discounted value used by the defendants.

	(a)	(b)	(c)
2005	$32.91	$50.88	$35.07

2006	49.96	76.06	51.55
2007	51.04	86.69	52.97

The grant date value of these stock options reported in the 2007 Form 10-K (column (a)), to which the 2008 Proxy Statement makes reference, are false.

78. ***Fifth***, both the 2008 proxy statement and Note 12 to the consolidated financial statements in the 2007 Form 10-K state that the *value* [emphasis added] of the stock underlying the options "reflects a liquidity discount." FAS 123R requires the valuation model to use the current price of the stock. There is a difference between the historical price of a stock and its value, however determined. The PCAOB has commented upon the "high degree of verifiability" of the price. *Auditing Stock Options*, 11. By contrast, the use of secret "liquidity discount policies" of Goldman Sachs, mentioned but not explained in the 2008 proxy statement and Note 12 in the 2007 Form 10-K, have no verifiability at all.

79. ***Sixth***, the 2008 Proxy Statement contains a summary compensation table reporting the compensation of the Named Executive Officers and another table reporting the directors' compensation, as required by SEC regulations. Copies of those tables are attached hereto as Exhibit 4. In those tables, there are columns entitled "Option Awards," which represent the dollar amounts of that category of compensation for, respectively, each Named Executive Officer and each director. The dollar amounts in the Option Awards columns were included as an expense on the Company's financial statements. Footnotes to each column represented in identical language how the options were valued. Each footnote in part represented, "The values of Options given in this table are hypothetical and have been provided solely to comply with the SEC's disclosure rules." That representation was false because an amount that is expensed on an income statement, as the proxy statement reports the options were, is most definitely not "hypothetical."

80. ***Seventh***, the foregoing misrepresentation concerning "hypothetical" values is also false or misleading because the grant date fair value of stock options granted do not serve merely as an SEC disclosure requirement. Those values also were to be used by the compensation committee of the board of directors to determine the number of stock options to grant to the most highly paid officers of Goldman Sachs who are the members of its management committee and to defendants Bryan, Dahlbäck and Johnson.

81. ***Eighth***, following the misrepresentation concerning hypothetical values, the 2008 Proxy Statement then represented:

> The actual value, if any, that will be realized upon the exercise of an Option will depend upon the difference between the exercise price of the Option and the market price of Common Stock on the date that the Option is exercised.

This representation violates 17 C.F.R. § 229.402(c)(2)(vi) and (k)(2)(iv) and the Instructions thereto, which require that stock option values be reported in accordance with FAS 123R. The SEC regulations and the accounting rules require that stock options be valued on the date that the option is granted, and that it is not measured by events in subsequent periods. 17 C.F.R. § 229.402(c)(2)(vi) and (k)(2)(iv); FAS 123R ¶ A2; *Auditing Stock Options*, 8 n. 2. The SEC regulations and GAAP as stated in FAS 123R require *grant date* accounting for stock options, not *exercise date* accounting. It is subversive of the SEC's requirement of full and fair disclosure to inject this non-GAAP statement. The accounting is difficult enough without the addition of irrelevant sideshows and wishful thinking.

82. The annual meeting of the Goldman Sachs stockholders was held on April 10, 2008, and the stockholders reelected the incumbent directors. The 2008 Proxy Statement repeated the same false or misleading representations concerning the 2006 stock options that were made in the 2007 Proxy Statement. The 2009 annual proxy statement repeated the same false or misleading

representation concerning the 2007 stock options that are made in the 2008 Proxy Statement and Note 14 to the 2008 consolidated financial statements in the 2008 Form 10-K.

83. The members of the Company's board of directors and defendants Viniar and Weinberg have statutory and fiduciary duties of disclosure to correctly report how executive pay is determined and to disclose all the material facts concerning how they determine that pay. It is not the burden of the Company's stockholders to research these facts, but rather the duty of the board and defendants Viniar and Weinberg to disclose these facts and the reasons for them.

84. The members of the Company's compensation committee of the board of directors owe the Company fiduciary duties of loyalty including the duty to pay only reasonable compensation to executives.

85. Under Delaware law, directors and officers have a fiduciary duty to disclose all material facts when they seek stockholder action or communicate with stockholders. The fiduciary duty to disclose often overlaps and exceeds the affirmative duties to disclose under the federal securities laws. Where the federal laws mandate disclosure, Delaware law requires that any disclosure made be full and fair. There need not be an affirmative disclosure requirement under federal law, however, for a fiduciary duty to disclose to arise under Delaware law. Moreover, under Delaware law, stockholders are entitled to rely on the truthfulness of communications to them even if they are unrelated to requests for stockholder action.

86. Unless the court enters an injunction requiring corrected disclosures in this and future proxy statements, the directors will be elected based on materially false or misleading proxy statements, in contravention of what are expressly and affirmatively required by SEC regulations.

87. The directors' and defendants Viniar's and Weinberg's acts and omissions have caused injury to the Company. Good disclosure is valuable and bad disclosure injures the Company.

The SEC, in Executive Compensation Disclosure, 2006 WL 3782720 at *15 (Dec. 22, 2006) (concerning improved disclosure of stock options values in proxy statements) said:

> Although difficult to quantify, disclosure under the amendments will benefit investors in terms of the transparency, completeness and accessability of executive compensation disclosure.

It is difficult, but not impossible. If the directors do not correct these disclosures, they should account to the Company for the injury that it sustains.

88. The compensation committee has decided that the amount of stock options to be granted to the members of the management committee and directors would be based on the grant date fair value of those options.

89. For example, the Named Executive Officers were to be granted stock options with reported grant date fair values as follows:

Named Executive Officer	Reported Grant Date Fair Value Of Options	Number of Options Taken From Form 4	Total Value
Lloyd C. Blankfein	$51.04	322,104	$16,440,188
David A. Viniar	51.04	270,380	13,899,195
Gary D. Cohn	51.04	317,400	16,200,096
Jon Winkelried	51.04	317,400	16,200,096

Each of the members of the management committee was to be assigned a dollar value of stock options to be granted.

90. The 2008 Proxy Statement reports that defendants Bryan and Dahlbäck were each granted options with a grant date fair value of $296,032, and that defendant Johnson was granted options with a grant date fair value of $592,064. But that is based on an option value of $51.04. With an option value of $86.69, the grant date fair values of those options were, respectively, $502,802 and $1,005,604.

91. In determining the number of options to award to each member of the management committee, the compensation committee divided the reported grant date fair value of the total grant by $51.04. But in performing this arithmetical exercise in division, it was wrong to use $51.04. If they had used the correct value $86.69 as the grant date fair value, the number of securities underlying options granted to the Named Executive Officers would have changed, as follows:

Named Executive Officer	Reported Number On Form 4	Correct Number
Lloyd C. Blankfein	322,104	189,643
David A. Viniar	270,380	159,190
Gary D. Cohn	317,400	186,874
Jon Winkelried	317,400	186,874

Similar changes would have been made for the other members of the management committee.

92. In granting stock options to the members of the management committee and the directors, the compensation committee failed to follow the formula that it established.

93. The members of the compensation committee have fiduciary duties of loyalty to the Company to follow the applicable formula for granting stock options. Failure to perform those duties constitutes waste for which they must account to the Company.

94. Defendants Lloyd C. Blankfein, Gary D. Cohn, and Jon Winkelried are officers and directors of the Company, and defendants Bryan, Dahlbäck, and Johnson are directors of the Company. They also have fiduciary duties of loyalty to the Company. Accepting more stock options than is correct under the applicable formula is a breach of that duty for which they must account to the Company.

95. All the other individual defendants are executive officers of the Company who have the same fiduciary duties of loyalty as defendants Lloyd C. Blankfein, Gary D. Cohn, and Jon

Winkelried. Accepting more stock options than is correct under the applicable formula is a breach of that duty for which they must account to the Company.

96. Receipt and acceptance by the members of the management committee and the directors of more stock options than is correct under the formula constitutes unjust enrichment for which they must account to the Company.

97. The payments made for fiscal year ended 2007 to defendants Blankfein, Cohn, Winkelried, and Viniar, referred to as compensation in the 2008 Proxy Statement, are grossly excessive, even as they are materially understated in the 2008 Proxy Statement.

98. For its fiscal year ended November 24, 2006, the Goldman Sachs Compensation Committee gave its CEO, defendant Blankfein, a salary, a cash bonus, restricted stock, and stock options that had a value, as reported on page 26 of the 2007 Proxy Statement, of $54,723,364. In *Bader I*, plaintiff alleged that the grant date fair value of the stock option was understated and that the actual amount of compensation was $60,186,307.

99. For its fiscal year ended November 30, 2007, the Goldman Sachs compensation committee of the board of directors gave its CEO, defendant Blankfein, a salary of $600,000, a cash bonus, restricted stock, and stock options that had a value, as reported on defendant Blankfein's SEC Form 4 filed December 21, 2007, of $68,500,000. At bar, in *Bader II*, the grant date fair value of the stock option was understated. Because the grant date fair value of the stock options was $86.69, not $51.04, the actual amount of compensation was $79,383,007. Even by defendants' numbers, i.e., from $54,723,364 to $68,500,000, this is an increase of 25 percent of the 2006 compensation.

100. The 2008 Proxy Statement reports even greater compensation for defendant Blankfein than does his SEC Form 4. The following table reflects the compensation of defendants Blankfein, Cohn, Winkelried and Viniar as reported in the Summary Compensation Table of the 2008 Proxy

Statement and what the compensation was with stock options valued at $86.69, as it should have been:

Officer	2008 Proxy Statement	Correctly Valued Options
Blankfein	$79,324,352	$81,807,359
Cohn	72,511,357	83,826,667
Winkelried	71,455,426	82,770,736
Viniar	58,467,136	68,106,182.

101. In the defendants' Memorandum of Law in Support of their Motion to Dismiss *Bader I*, at page 32, they argued that the executive compensation was fair because the Company's stock price rose 55 percent in 2006. By that standard, defendant Blankfein's compensation for 2007 was grossly excessive, because the stock price rose only two percent between the stock option grant dates, December 15, 2006 and December 19, 2007. The compensation of the other officer defendants was also grossly excessive.

102. There are other reasons that the Company's executive compensation was grossly excessive in 2007.

103. Like many financial firms in 2007, Goldman Sachs was exposed to the crisis in markets for securities that were collateralized by subprime and other risky debt obligations. It was principally through the efforts of three alert individuals in the Company's mortgage department's structured products trading group, i.e., Michael Swenson, John Birnbaum, and mortgage department head Dan Sparks, that Goldman Sachs avoided massive losses. Those three individuals were able to persuade defendants Blankfein, Cohn, and Viniar to let them make trades that avoided such losses and actually make profits with bearish trades. If such big bonuses were to have been paid in 2007, they should have been paid to Messrs. Swenson, Birnbaum, and Sparks. Defendants Blankfein,

Cohn, and Viniar have been given much too much credit for the financial results of 2007. In the 2008 Proxy Statement there should be a disclosure and explanation of these facts.

104. However good the financial results were for 2007, the near term outlook for Goldman Sachs was viewed internally with caution. The senior management at the Company have expressed the opinion that it still faced what was arguably the most challenging mortgage and credit markets in a decade. It was egregiously wrong for the compensation committee of the Company's board of directors to confer such lavish benefits upon the Named Executive Officers when the crises still had hold on the Company.

105. The crises were worse than they said. In 2008, the Company's business model collapsed. It became a bank holding company subject to regulations by the Federal Reserve Board so that it can borrow necessary funds from the Board. It issued $5 billion of preferred stock, bearing a dividend of $500 million per year. The Company's net earnings applicable to common stockholders fell from $11.4 billion in 2007 to $2.0 billion in 2008. If the Company had correctly valued its stock options, as explained above, the common stockholders' earnings for 2008 would have been approximately half of that. And still, with all that has befallen the Company, on December 17, 2008 the Company granted 20.6 million restricted stock units and 36.0 million stock options to its employees at an as yet undisclosed FAS 123R cost, but possibly for as much as, if not more than, $2 billion. Historically, the Company has accounted for December grants of restricted stock units and stock options as expenses for the prior year. If it had done that in 2008, the Company would have had no earnings at all and perhaps a loss.

106. On October 11, 2007, President George W. Bush, addressing corporate executive compensation, said:

> Do I think some of the salaries are excessive at the top? I do. I don't think it's the role of government to regulate salary. But I do believe

> it's a role of boards of directors to be very transparent with shareholders about these different packages, the employment packages that these executives get.

The president added that excessive executive compensation "just sends a signal of unfairness, and people in America want … fairness." The facts in *Bader II* deserve the application of the former President's views.

107. The other members of the Company's management committee are paid on a scale similar to its three most highly paid executives.

108. The members of the compensation committee of the Company's board of directors owe the Company fiduciary duties of loyalty, including the duty to pay only reasonable compensation to executives.

109. The members of the Company's management committee have the fiduciary duty to accept only reasonable amounts of pay. Their acceptance and retention of more than reasonable amounts of pay constitutes a breach of that duty and unjust enrichment.

110. Since December 1, 2005, the Company has granted stock options to its directors, officers, and members of its management committee, but none of those stock options was granted in compliance with Delaware General Corporation Law ("DGCL") § 157(b).

111. That statute requires that the terms of the stock option "shall be set forth or incorporated by reference in the instrument or instruments evidencing such … options."

112. The instrument evidencing the Goldman Sachs stock options does not set forth with respect to such options (a) the date of grant, (b) the number of options, and (c) the exercise price. Instead, the instruments refer to an "Award Statement" for such terms, but the reference is too vague and uncertain for it to be incorporated by reference. The instrument provides, "Capitalized terms used in this Award Agreement that are not defined in this Award Agreement have the meaning as

used or defined in The Plan." Neither the stock incentive plan nor the instrument define "Award Statement." Use of the term "Award Statement" is too vague and uncertain for a reasonable person to identify it. The instrument omits the information required by DGCL § 157(b)

113. On February 5, 2010, the Goldman Sachs board of directors took significant ameliorative action. It awarded bonuses to senior officers in the form of 2009 year-end restricted stock units only. The board did not grant stock options to any of the officers or employees. Not granting stock options meant that there were no options to report based on Dividing-by-Four, and compensation would not be excessive as the result of under-pricing stock options. The board did grant stock options to the non-employee directors, and it valued those options by using the Black-Scholes option pricing model. The Black-Scholes value of those options was $37.58. They applied no liquidity discount. These stock options were less valuable than previous stock options because these options had a contractual time-to-expiration of four years (and an expected time-to-expiration of 3.75 years) instead of a contractual time-to-expiration of ten years (and an expected time to expiration of 7.5 years), and the interest rate was lower.

114. The other ameliorative action that the Goldman Sachs board took on February 5, 2010 was to limit the bonus to $9 million for each of the Named Executive Officers. For 2007, total compensation of as much as $80 million each was paid. In 2007, Goldman Sachs reported net income of $11 billion. In 2009, Goldman Sachs reported net income of $12 billion. In 2009, the board paid a lot less for better results, confirming that the $80 million each in 2007 was too much.

FIRST CLAIM FOR RELIEF

115. Paragraphs 1-5 and 8-112 state a claim for relief as a stockholder's derivative action on behalf of Goldman Sachs.

116. Plaintiff has not made any demand on the Company's board of directors to institute this action against the individual defendants. To the extent that the demand requirement is governed by Delaware law, if a demand is made and rejected, the stockholder's challenge must be not to the underlying transaction, but to the board's decision not to bring the lawsuit. Delaware law thus substantially alters the nature of a derivative plaintiff's claim where demand has been made and conversely gives shareholders considering litigation good reason not to make demand.

117. Under Delaware law, pre-suit demand on the board is excused where the allegations of the complaint create a reasonable doubt that (1) a majority of the directors are disinterested and independent or (2) the challenged transaction was otherwise the product of a valid exercise of business judgment. In an "interested" director transaction, the business judgment rule is inapplicable to the board majority approving the transaction, and the inquiry ceases. In that event, futility of demand has been established by any objective standard.

118. Under Delaware law, if a corporate board has an even number of directors, demand is excused as futile if one-half of the board is interested. The Company's board has twelve members. Six of the directors, i.e., defendants Blankfein, Cohn, Winkelried, Bryan, Dahlbäck, and Johnson, are interested in the false or misleading statements concerning the grant date fair value of the stock options granted on December 19, 2007 and in the excessive grant of stock options based on that understated value. As set forth in ¶¶ 56 and 57, each of them represented in the 2008 Proxy Statement that he received stock options with a grant date fair value of $51.04. Each of them received an excessive number of stock options based on that understated value of $51.04. Each of them represented the amount of his compensation that was less than it actually was.

119. Each of defendants Blankfein, Cohn, Winkelried, Bryan, Dahlbäck, and Johnson is also interested in the grant of stock options not in compliance, with DGCL § 157(b) because each of them received a grant of those invalid stock options.

120. Each of defendants Blankfein, Cohn, Winkelried, Bryan, Dahlbäck, and Johnson is also interested in the receipt of excessive compensation for 2007, because each of them received excessive compensation.

121. Defendants Dahlbäck and Friedman are interested and lack independence because it is part of their business to attract investors. Goldman Sachs has invested more than $600 million with each of them. Defendants Bryan, Friedman, Gupta, Johnson, Juliber, Liddy, and Simmons have all been assisted in their fund raising responsibilities by contributions from the Foundation, which is funded and controlled by the Company. The Foundation's contributions to their fund raising responsibilities were material. The SEC views a contribution for each director to be material if it equals or exceeds $10,000 per year. 17 C.F.R. § 229.402 (k)(2)(vii) and Instruction 3 thereto. They, too, are interested and lack independence. A total of nine of the twelve board members are interested and lack independence.

122. Even in the absence of a traditionally interested (or non-independent) board, demand is excused under the facts at bar.

123. The demand requirement and its exceptions are to encourage intra-corporate resolution of disputes and obtain the honest business judgment of the board on whether the litigation is in the best interest of the corporation and its shareholders. The business judgment rule is inextricably bound to the demand rule. Where, however, a stockholder sues the board of directors over an act that is not a decision concerning the management of the business and affairs of the corporation, the business judgment rule does not apply. Delaware law excuses demand whenever the

challenged act of the board is not the product of a valid exercise of business judgment, regardless of whether a majority of the board is disinterested and independent. The board's conduct concerning the misrepresentations and omissions, and in violating the express terms and provisions of the program for compensating the defendants who are members of the Company's management committee are not matters of business judgment, and they are not protected by the business judgment rule for the following reasons:

(a) When, for the stockholders' annual meeting, a corporate board solicits stockholder's votes for directors, the board owes the stockholders a statutory and fiduciary duty of full and fair disclosure, meaning that all material facts must be disclosed and no material facts may be omitted. This duty of disclosure is a thing apart from the duty and authority to deal with the business and property of the corporation. Courts give deference to a corporate board of directors as to questions of management of the corporation's business, but not as to questions of the board's performance of its disclosure duties, and for three reasons. First, a board's decision, even in good faith, to misstate or to omit a material fact cannot be defended on the grounds that reasonable persons could differ on the subject. Second, although courts may not be well suited to making business decisions, courts are well suited to deciding questions concerning the quality of, and circumstances surrounding, disclosures. Third, disclosure violations could raise issues as to the honesty and good faith of directors.

(b) As with Delaware law, under federal policy, there is no need for prior demand on the board of directors with respect to the claim concerning misrepresentations and omissions in the 2008 Proxy Statement.

(c) At bar, the 2008 Proxy Statement contains materially false or misleading statements and omissions concerning the value of options granted to executive officers, the premises and assumptions used in evaluating stock options, and the methods and procedures for determining executive pay, under federal law and under Delaware law. It will also materially understate the total compensation of the CEO and the other Named Executive Officers.

(d) The entire board is neither disinterested nor independent since every member of the board is required to distribute the 2008 Proxy Statement without material misstatements and omissions.

(e) In *Bader v. Blankfein*, 2009 WL 4822818 at *2 (2d Cir. Dec. 14, 2009), the non-precedential summary order said that determining "which pricing model to apply required … an exercise of business judgment." Valuing stock options by Dividing-by-Four is not protected by the business judgment rule because Dividing-by-Four is not an option pricing model. Moreover, it contravenes the SEC rules and regulations applicable to the 2008 proxy statement to report such "values" in a proxy statement. Unlawful conduct under § 14(a) of the Act or any statute is not protected by the business judgment rule.

(f) The individual defendants who are members of the Company's board of directors are seeking to entrench themselves by soliciting proxies for their own re-election.

(g) The board of directors has committed waste in the matter of executive pay. Waste is egregious misconduct that is not protected by the business judgment rule, and it provides an excuse for not making demand. The compensation committee, which is a majority of the full board of directors, having decided to grant stock options based on the grant date fair value of those options, then violated their own resolution by using a materially lower value than would have resulted from correctly applying FAS 123R, to grant more options than allowed under that resolution. Also, the compensation committee has in the past used the price performance of the Company's stock as a substantial factor to decide the appropriate amount of executive compensation, but for the year 2007 they paid out materially, indeed shockingly, greater amounts than what the stock price performance warranted. Defendants Blankfein, Cohn, Winkelried, Bryan, Dahlbäck, and Johnson were interested in these payments.

(h) The grant of stock options that were invalid under DGCL § 157(b) is not protected by the business judgment rule and constitutes waste.

124. The aforesaid breach of duties of disclosure and loyalty and the failure to comply with DGCL § 157(b) have injured the Company.

SECOND CLAIM FOR RELIEF

125. Paragraphs 1-5 and 8-112 state a direct claim for breach of the duties to comply with the disclosure requirements of 15 U.S.C. § 78a *et seq.* As it is a direct claim, no pre-suit demand is required.

THIRD CLAIM FOR RELIEF

126. Paragraphs 1-5 and 8-112 state a direct claim for relief against the individual defendants for breach of fiduciary duty of loyalty under Delaware law, for making false or misleading statements. As it is a direct claim, no pre-suit demand is required.

FOURTH CLAIM FOR RELIEF

127. Paragraphs 1-5 and 8-112 state a direct claim for relief for the directors' abdication of their duty to grant stock options in compliance with DGCL § 157(b). As it is a direct claim, no pre-suit demand is required.

WHEREFORE, plaintiff prays for the following relief:

A. A declaratory judgment that the grant date fair value of the stock options granted on December 19, 2007 is $86.69;

B. An injunction against the use of the amount $51.04 to report the grant date fair value of stock options in the 2008 Proxy Statement;

C. A mandatory injunction requiring to use a grant date fair value in the 2008 Proxy Statement that is correctly calculated in accordance with FAS 123R and SAB 107;

D. An injunction against all candidates from sitting on the Company's board of directors unless and until they shall be elected thereto pursuant to a proper and lawful stockholder vote;

E. Equitable relief against defendants from hereafter engaging in the practices as particularized above;

F. Voiding the elections of directors for 2008 if no injunction is entered before the meeting;

G. An equitable accounting, including disgorgement, against all the individual defendants in favor of the Company for the injuries that it has and will sustain by virtue of the conduct alleged herein;

H. An equitable order rescinding all stock options granted since December 1, 2005;

I. Awarding plaintiff the costs and disbursements of this action, including reasonable accountants', experts' and attorneys' fees; and

J. Awarding the plaintiff interim attorneys' fees and expenses based on the ameliorative action taken by the board of directors on February 5, 2010;

K. Granting such other, further relief, whether similar or different, including monetary recovery, as by this Court may be deemed just and proper.

Dated: New York, New York
March 24, 2010

BARRACK, RODOS & BACINE

/s Alexander Arnold Gershon

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VERIFICATION

I, Jeffrey W. Bader, under penalties of perjury, hereby do declare that I am the plaintiff in the foregoing complaint, that I have read the Second Amended Complaint, and that the facts therein are true to my own knowledge, except as to matters therein alleged upon information and belief, and as to those matters, I believe them to be true and correct to the best of my knowledge, information and belief.

Dated: New York, New York
March 24, 2010

Jeffrey W. Bader

We now discuss the option valuation methodology. We use the modified Black-Scholes model (also known as the Black-Scholes-Merton model) for this purpose. This model uses six input parameters: Stock price S, exercise price K, annual volatility rate σ, annual risk-free rate r (assumed to be continuously compounded), dividend rate q, and time to maturity T years. The model value, c, of a call option is given by the following expression:

$$c = S e^{-qT} N(d_1) - K e^{-rT} N(d_2)$$

where

$$d_1 = \frac{\left(\log_e\left(\frac{S}{K}\right) + \left(r - q + \frac{\sigma^2}{2}\right)T\right)}{\sigma\sqrt{T}}$$

$$d_2 = d_1 - \sigma\sqrt{T}$$

$N(d_1)$ and $N(d_2)$ in the above formula represent the cumulative probability that a number drawn at random from a standard normal distribution lies between $-\infty$ and d_1 or d_2. We have programmed this model into an Excel spreadsheet, which is well suited to computing option values for a range of input parameter values.

EXHIBIT 1

BR&B

Barrack, Rodos & Bacine
A Professional Corporation
Attorneys At Law

Philadelphia
San Diego
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New Jersey

A. Arnold Gershon
agershon@barrack.com

Via Hand Delivery

March 12, 2009

David H. Braff, Esquire
Sullivan Cromwell LLP
125 Broad Street
New York, New York 10004-2498

Re: The Goldman Sachs Group, Inc.
Bader I and Bader II

Dear David:

As we were working on the appeal in the above-referenced matter, and reviewing the reports of grant date values of stock options for 2005, 2006, and 2007, we observed, yesterday, that statements you made in the briefs in the district and appellate courts about how Goldman Sachs valued the stock options that are the subject of this action are patently and demonstrably wrong. Specifically, your brief to the district court in *Bader I*, at p. 21, states as follows:

> Goldman Sachs opted for the latter approach, and thus the [2007] Proxy Statement reflects the "Grant Date Present Value" for options granted in the previous fiscal year to each of the five Named Executive Officers, calculated using a variation of a Black-Scholes pricing model. (Ex. 1 at 17.)

Your brief to the Second Circuit in *Bader II*, at pp. 4-5, states as follows:

> [T]he 2007 Proxy Statement disclosed ... the "Grant Date Present Value" of the options, and the methodology behind the valuation. (Supp.R. 22.)

Your brief to the Second Circuit in *Bader II*, at p. 7, states as follows:

> As required by SEC regulations, the 2008 Proxy Statement ... set forth the methodology Goldman

EXHIBIT 2

BR&B
Barrack, Rodos & Bacine

David H. Braff, Esquire
Sullivan Cromwell LLP

March 12, 2009
Page -2-

> Sachs used in estimating the fair value of the options at $51.04 per share. (2008 Proxy Statement 24-25.)

But when I looked carefully at the relationship between the reported market and exercise prices and the reported value of those options, as appears in the company's Form 10-K and proxy statements, I found that in all three years examined, the exercise price was exactly 25% of the market price. For your information, here are the numbers:

Fiscal Year	Market and Exercise Price	Reported Option Value	Ratio
2007	204.16	51.04	4 /1
2006	199.84	49.96	4/1
2005	131.64	32.91	4/1

It is highly improbable, if not impossible, that this perfect 4-to-1 ratio can be derived three years in a row by application of a Black-Scholes, a binomial option pricing model, or, to our knowledge, any model. This observation, we suggest, confirms our suspicion (expressed in paragraph 66 of our amended complaint in *Bader II*) that the grant date values were selected first and the explanations were made afterward, and that no valuation technique, let alone a recognized technique, was used to derive these numbers.

We were hoping that you will provide an explanation. Because simply dividing the market and exercise price by four is not a proper application of any option pricing model we are aware of, and certainly not of the method the company represented in its SEC filings or that you represented in your submissions to the district and appellate courts.

I also hope, professionally and personally, that you will telephone me by next week to discuss this.

Yours sincerely,

Alexander Arnold Gershon

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March 16, 2009

By Facsimile and U.S. Mail

Alexander Arnold Gershon, Esq.,
Barrack, Rodos & Bacine,
1350 Broadway,
Suite 1001,
New York, New York 10018.

Re: *Bader* v. *Blankfein*, No. 07 Civ. 1130 (SLT) (JMA)
Bader v. *The Goldman Sachs Group, Inc.*, No. 08 Civ. 255 (SLT) (JMA)

Dear Arnold:

I write in response to your letter of March 12, 2009. Goldman Sachs may be forced to expend corporate resources defending against your misguided litigation. The firm will not, however, engage in ethereal letter debates with you that would simply add to the burdens on a corporate enterprise whose interests you purport to serve. Suffice it to say that Goldman Sachs does not agree with your theories concerning employee stock option valuations, and apparently neither do the many courts that have entertained them. Especially in the present economic environment, we strongly urge you to turn your attention elsewhere to spare Goldman Sachs and its shareholders even more wasteful expense.

Very truly yours,

David H. Braff

EXHIBIT 3

2007 Summary Compensation Table (a)

Name and Principal Position	Year	Salary	Bonus (b)	Stock Awards (c)	Option Awards (d)	Change in Pension Value	All Other Compensation (e)	Total (a)
Lloyd C. Blankfein Chairman and Chief Executive Officer	2007	$600,000	$26,985,474	$25,913,753	$16,440,188	$ 780	$ 384,157	$70,324,352
Gary D. Cohn President and Chief Operating Officer	2007	$600,000	$26,585,474	$28,771,546	$16,200,096	$ 45	$ 354,196	$72,511,357
Jon Winkelried President and Chief Operating Officer	2007	$600,000	$26,585,474	$27,837,144	$16,200,096	$ 342	$ 232,370	$71,455,426
David A. Viniar Chief Financial Officer	2007	$600,000	$22,585,474	$21,119,365	$13,800,195	$ 1,370	$ 360,732	$58,467,136
Edward C. Forst Chief Administrative Officer	2007	$600,000	$17,185,474	$16,662,772	$10,560,176	$ 6	$ 4,050,154	$49,058,582

The following table sets forth the fiscal 2007 compensation for our Non-Employee Directors.

Name	Fees Earned or Paid in Cash	Stock Awards (a)	Option Awards (b)	All Other Compensation (c)	Total (d)
Lord Browne of Madingley*	$346,032	—	—	—	$346,032
John H. Bryan	—	$389,537	$296,032	$10,000	$695,569
Claes Dahlbäck	—	$366,059	$296,032	—	$662,091
Stephen Friedman	—	$662,091	—	—	$662,091
William W. George	—	$662,091	—	—	$662,091
Rajat K. Gupta	—	$662,091	—	—	$662,091
James A. Johnson	—	$ 93,505	$592,064	$10,000	$695,569
Lois D. Juliber	—	$662,091	—	$ 8,000	$670,091
Edward M. Liddy**	—	$675,770	—	$10,000	$685,770
Ruth J. Simmons	$ 75,000	$592,064	—	—	$667,064

EXHIBIT 4