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November 1, 2010

*Via Email and Overnight Courier*

Christopher Seefer, Esq.  
Assistant Director and Deputy General Counsel  
Financial Crisis Inquiry Commission  
1717 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-4614

Re: FCIC Requests for Documents and Information

Dear Mr. Seefer:

On behalf of The Goldman Sachs Group, Inc. (“Goldman Sachs”), I write to address certain issues that were discussed during our meeting on September 10, 2010. Specifically, we would like to address the Staff’s assertions, based on the book “House of Cards” by William Cohan, that certain April 2007 month-end marks sent by Goldman Sachs to Bear Stearns Asset Management (“BSAM”) for mortgage-related securities caused one of BSAM’s hedge funds, in early June 2007, to revise its April 2007 month-end net asset value (“NAV”) from -6.5% to -19% and were in some way responsible for the ultimate failure of the BSAM funds.<sup>1</sup>

These assertions are contradicted by the facts, which establish that the marks Goldman Sachs sent to BSAM simply could not have caused a nearly \$1 billion fund to reduce its April 2007 month-end NAV by 12.5%. Rather, the revision in the Fund’s NAV, and the ultimate failure of the BSAM funds, was attributable to the market-wide decline in prices of mortgage-backed securities during this period, and the highly-

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<sup>1</sup> The Staff has explained that these assertions are based on Mr. Cohan’s book “House of Cards”, which claims that “late marks” from Goldman Sachs at “50 and 60 [cents on the dollar] prices” caused BSAM to revise the April 2007 month-end NAV of one of its hedge funds. While the FCIC has not told us which hedge fund it believes the assertion refers to, or provided us with any information that would support the assertion, the Cohan book suggests that the drop in NAV occurred in the BSAM High Grade Structured Credit Strategies Enhanced Master Fund Ltd. (the “Fund”).

leveraged Fund's concentrated holdings in those types of assets. We thought it important, and hopefully useful for the Staff, to provide a thorough response, including new information, to address these specific issues. We believe that, with the benefit of having these facts presented in one place, the FCIC will conclude that Goldman Sachs' April 2007 month-end marks could not have caused the revision of the Fund's NAV or the ultimate failure of the BSAM funds. We set out those facts below.

**The Majority of Goldman Sachs' CDO Marks to BSAM Remained Unchanged from March 2007 to April 2007.**

As explained in our correspondence on June 29 and July 26, 2010 (copies of which are attached at Appendices A and B), the April 2007 month-end CDO marks that Goldman Sachs sent to BSAM on May 1, 2010 were, with only a few exceptions, identical to the marks it provided to BSAM for March 2007 month-end. Clearly, marks that did not change between March and April 2007 could not have caused the significant decrease in the Fund's April 2007 month-end NAV. Moreover, the marks sent to BSAM on May 1, 2007 could not have caused BSAM to revise its April 2007 month-end NAV on June 7, 2007 because BSAM was aware of those marks before it released its initial April NAV figure to investors on or about May 15, 2007.<sup>2</sup> (*See* Chronology of Events, attached as Appendix C.)

**The Few CDO Marks that Did Change Between March and April 2007 Could Not Have Caused BSAM To Revise Its April 2007 NAV by 12.5%.**

With respect to the few marks that did change, we estimated in our July 26, 2010 email that the maximum loss possible to BSAM as a result of those changes was less than \$26.3 million, which could not have resulted in a 12.5% reduction in the Fund's NAV. Further, that maximum possible loss figure assumed a series of extremely unlikely events:

- (i) that these positions were held entirely by the Fund, rather than by a number of entities managed by BSAM;
- (ii) that BSAM marked the positions at the bid prices that Goldman Sachs sent to BSAM (despite the assertion in Mr. Cohan's book that BSAM averaged them with other marks); and

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<sup>2</sup> On May 23, 2007, Goldman Sachs did provide one new April 2007 month-end CDO mark to BSAM. This mark could not have caused BSAM to revise its April 2007 NAV because the \$12.5 million maximum possible loss on this position at this mark was small compared to the NAV of the Enhanced Fund, which appears to have approached \$1 billion.

- (iii) that BSAM still had the B tranche of ABACUS 2006-HG1 marked at 100 prior to April 2007, despite having previously received March 2007 month-end marks for more senior tranches of this CDO at below 100.

As discussed below, these events did not occur.

Moreover, new information, summarized below, shows that the change in fair market value of the Fund's assets reflected by the marks provided by Goldman Sachs was significantly less than our initial \$26.3 million estimate, which itself could not have come close to causing the Fund to reduce its NAV by 12.5%.

**A. The Fund Did Not Own All Bonds that Experienced Price Declines.**

On June 6, 2007, BSAM sent Goldman Sachs a position report for the Fund as of May 31, 2007 (attached hereto as Appendix D), which demonstrates that the Fund did not hold all of the bonds that showed price declines from March 2007 to April 2007: none of the bonds purchased by BSAM from the ABACUS 2006-8 CDO and only a portion of the bonds purchased by BSAM from the ABACUS 2006-HG1 CDO appear on the Fund's position report.<sup>3</sup>

**B. BSAM Did Not Mark Its Positions Consistently With Marks Provided by Goldman Sachs.**

The position report also shows that BSAM did not mark its positions consistent with Goldman Sachs' marks. For example, the Fund marked bonds that it held in the B tranche of ABACUS 2006-HG1 more than 17 cents on the dollar higher than Goldman Sachs' marks for the same bond. It is our understanding that BSAM's marking policies permitted it to set its own marks, rather than relying solely on marks provided by third parties, including Goldman Sachs.

**C. The Changes in the Marks Provided Could Not Have Caused the Magnitude of Losses Necessary to Move the NAV of a Billion Dollar Fund by 12.5%.**

The May 31, 2007 position report shows that the Fund's NAV for month-end April 2007 was nearly \$1 billion. Any losses attributed to securities for which Goldman Sachs had provided marks could not even begin to approach the magnitude of losses necessary cause a billion dollar fund, like the Fund, to revise its NAV by -12.5%. (See Appendix E.) Indeed, an analysis of the May 31, 2007 position report shows that the

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<sup>3</sup> Although the position report shows the Enhanced Fund's positions as of May 31, 2007, there is no reason to believe that the position sizes for the few securities relevant here changed between April 30, 2007 and May 31, 2007.

overwhelming majority of the marks at a significant discount to par were provided to the Fund by firms other than Goldman Sachs.

**Goldman Sachs Was a Significant Creditor to the Fund and Had No Incentive To Cause Its Failure.**

At the end of April 2007, Goldman Sachs had extended approximately \$453 million in credit to the Fund through repo loans that were largely backed by mortgage-backed securities. If the Fund could not repay its loans, then Goldman Sachs would have been forced to purchase or sell the mortgage-backed securities pledged as collateral, and would have suffered significant losses as the securities declined in value throughout the time period. Simply put, it was against the financial interest of Goldman Sachs to cause the failure of the Fund and it did not do so.

**Contemporaneous Statements by the Fund's Manager Indicate that Other Dealers' Marks Were Responsible for the Restatement of the Fund's April 2007 NAV.**

The staff has indicated that it is relying on recent statements from either BSAM or Bear Stearns former employees to support its assertion that marks from Goldman Sachs caused BSAM to revise its NAV. That conclusion is belied by statements made by Ralph Cioffi, the manager of the Fund, on a June 7, 2007 conference call with employees of Goldman Sachs. Mr. Cioffi told the Goldman Sachs employees that on June 5, 2007, three undisclosed dealers (not including Goldman Sachs) had significantly re-marked their April 2007 month-end marks. Mr. Cioffi stated that those dealers had "marked some positions down big" and that this had caused the BSAM funds to restate their April NAV. Mr. Cioffi's contemporaneous statements are far more credible as to the cause of the restatement than statements made over three years after the fact by individuals whose knowledge, recollection and motivation are at best subject to debate.

**The Fund Was Already in Distress Prior to Receipt of the April 2007 Month-End Marks.**

It is now known that the Fund was in distress even before receipt of any April 2007 marks. For example, as early as March 14, 2007, Mr. Cioffi acknowledged to others that "We are getting loads of margin calls." (Indictment of Ralph Cioffi and Matthew Tannin, No. 08-CR-415 (E.D.N.Y. June 18, 2008) ("Indictment"), attached hereto as Appendix F, at ¶ 29.) By April 19, 2007, a CDO Report written by a member of the Fund's portfolio management team concluded that the CDOs that the funds held were worth significantly less than the Fund had previously determined. (Indictment ¶ 40.) After reading the report, Mr. Tannin concluded that "if [the CDO report] is correct then the entire subprime market is toast." (Indictment ¶ 41.) The Fund's managers reached these conclusions well before May 1, 2007, when Goldman Sachs provided month-end marks for April 2007. In fact, by May 13, 2007, weeks before BSAM revised

Mr. Christopher Seefer, Esq.

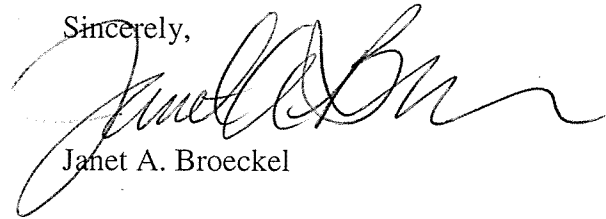
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its April 2007 NAV, Mr. Cioffi concluded that the Fund would not survive and needed to be liquidated. (SEC Complaint against Mr. Cioffi, No. 08-CV-2457 (E.D.N.Y. June 19, 2008), attached hereto as Appendix G, at ¶ 75.)

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We hope that this information advances the FCIC's work and we would be pleased to discuss with you at your convenience the issues addressed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet A. Broeckel", written in a cursive style.

Janet A. Broeckel

(Attachments)