ANNEX 1

STATEMENT OF FACTS

Between December 2005 and 2007, Goldman, Sachs & Co., through certain of its affiliates ("Goldman"), securitized thousands of prime, Alt-A, and subprime mortgage loans and sold the resulting residential mortgage-backed securities ("RMBS") for tens of billions of dollars to investors nationwide, including in the Eastern District of California. Investors purchasing Goldman RMBS during this time period included a number of federally-insured financial institutions. In securitizing and issuing the RMBS, Goldman, which at relevant times was headquartered in New York, made representations to investors in offering documents about the characteristics of the underlying loans and Goldman's process for reviewing and approving loan originators. In certain marketing materials, Goldman also described its securitization processes and controls, including its processes for conducting due diligence on loans prior to acquisition and/or securitization, and its process for reviewing and approving loan originators. As described below, in the due diligence process, Goldman received information indicating that, for certain loan pools, significant percentages of the loans reviewed did not conform to the representations made to investors about the pools of loans to be securitized, and Goldman also received certain negative information regarding the originators' business practices.

Goldman's RMBS Securitization Process and Representations to Investors

Between December 2005 and 2007, Goldman securitized and sold RMBS through both "third-party" and "principal" transactions.

For "third-party" transactions, Goldman served as an underwriter. In certain of those transactions, Goldman served as the lead underwriter. In that role, Goldman, among other things, structured the transaction and sold RMBS certificates to investors.

For "principal" transactions, Goldman purchased groups or "pools" of loans from third parties prior to securitization. Goldman bought pools of mortgage loans from numerous lending institutions, or "originators." These originators included Fremont Investment & Loan, Countrywide Home Loans, Inc., New Century Mortgage Corporation, IndyMac Bank, American Home Mortgage, and others. Goldman acquired the loans through two primary channels: (1) "bulk purchases" of large portfolios of loans, and (2) acquisitions of smaller volumes of loans through Goldman's "conduit" program.

For principal transactions, Goldman securitized the loans under its own shelf registration, including its shelves known as "Goldman Sachs Alternative Mortgage Products," or "GSAMP," for subprime loans, "GSAA" for Alt-A loans, and "GSR" for prime loans. Goldman also acted as underwriter for the principal transactions.

In various RMBS offerings, Goldman provided representations, or otherwise disclosed information, in certain offering documents, about the loans it securitized, telling investors that:

- Certain loan originators applied underwriting guidelines that were intended primarily to assess the borrower's ability and, in some cases, willingness to repay the debt and the adequacy of the mortgage property as collateral for the loans;
- Loans in the securitized pools were originated generally in accordance with the loan originator's underwriting guidelines;
- Exceptions to those underwriting guidelines had been made when the originator identified "compensating factors" at the time of origination; and
- The securitization sponsor or originator (which, in many instances, was Goldman) represented that the loans had been originated in compliance with federal, state, and local laws and regulations.

Goldman told investors that it had a process for reviewing and approving originators. Beginning in January 2006, the offering documents for certain of Goldman's principal transactions included the following or substantially similar statements:

> Prior to acquiring any mortgage loans, [Goldman] will conduct a review of the related mortgage loan seller. [Goldman's] review process consists of reviewing select financial information for credit and risk assessment and underwriting guideline review, senior level management discussion and background checks. The scope of the loan due diligence review will depend on the credit quality of the mortgage loans.
>
> The underwriting guideline review considers mortgage loan origination processes and systems. In addition, such review considers corporate policy and procedures relating to HOEPA [Home Ownership and Equity Protection Act] and state and federal predatory lending, origination practices by jurisdiction, historical loan level loss experience, quality control practices, significant litigation and material investors.

In certain marketing materials for its principal transactions, Goldman similarly represented to investors that originators were subject to Goldman's "counterparty qualification" process. According to those marketing materials, this process included an "on-site visit" to the originator (i) to "ensure that [the originator's] goals and strategy are consistent with that of [Goldman]," (ii) to "review [the originator's] underwriting, appraisal and QC [quality control] process," and (iii) to "review [the originator's] compliance monitoring and fraud checks." Goldman also represented that it would review the originators' underwriting guidelines to "identify areas of incremental risk that need to be due diligenced at an asset level." Goldman further represented that it would conduct a credit review that would include a "review [of the originator's] financial and corporate structure."

Certain of Goldman's marketing materials stated that loan sellers were "[s]ubject to counterparty authorization process and monitoring." Goldman stated in a presentation distributed to one rating agency that it monitored counterparties over time to determine whether there had been any material changes at the counterparty or in its business practices. Goldman also made statements in certain of its marketing materials concerning the process by which it monitored conduit loan sellers.

<u>Goldman's Due Diligence Process and Representations to Investors</u>

Goldman reviewed due diligence results on loans prior to securitization.

In principal transactions, before purchasing loans from a third-party originator, Goldman, assisted by due diligence vendors, conducted due diligence on certain of those loans.

Part of this review focused on "credit," including whether the loan met the originator's underwriting guidelines, or whether the loan had sufficient "compensating factors" to warrant a deviation from the guidelines. Another part of this review was focused on "compliance," *i.e.*, whether the loan had been originated in compliance with federal, state, and local laws and regulations.

For large loan pools, Goldman typically conducted this credit and compliance due diligence by reviewing samples of the loan pool, rather than the entire pool. This sample was principally composed of loans selected from the pool using "adverse sampling" techniques designed to identify certain loans that had particular characteristics that Goldman transaction managers believed warranted further review. Goldman contracted with due diligence vendors to review the sampled loans.

Goldman salespeople described its due diligence process to certain investors through oral communications and presentations given at industry conferences and road shows.

In certain marketing materials for its principal transactions, Goldman represented that bulk loans were "purchased to originator guidelines pre-approved by GS," and that a loan file review would be conducted by an outside vendor, who would "re-underwrite" samples of loans from each pool to "ensure general compliance with underwriting guidelines," "ensure they meet regulatory compliance standards," and to "eliminate unacceptable credit/compliance file issues." In certain of those marketing materials, Goldman also represented that the credit/compliance samples would be "selected randomly and adversely."

The third-party vendors with which Goldman contracted to conduct credit and compliance due diligence generally assigned one of three grades to each of the loans they re-underwrote: "Event 1," "Event 2," or "Event 3" (also referred to as "EV1," "EV2," and "EV3"). In general, the vendors graded a loan as EV1 when the vendor concluded the loan was underwritten according to the applicable guidelines and originated in compliance with applicable laws. The vendors generally graded a loan as EV2 when the vendor concluded the loan did not comply with applicable underwriting guidelines, but nevertheless had sufficient compensating factors that the originator had found to justify the extension of credit. Goldman's due diligence vendors graded a loan as EV3 in one of three circumstances: (i) the vendor concluded the loan was not originated in compliance with applicable laws and regulations or the loan did not comply with applicable underwriting guidelines and lacked sufficient offsetting compensating factors; (ii) the loan complied with underwriting guidelines but had a characteristic that Goldman had asked the due diligence vendor to flag for further review by Goldman (these characteristics were called "overlays"); or (iii) the loan had an issue that the due diligence vendor, on its own initiative, determined should be flagged for further review by Goldman. Certain Goldman marketing materials included a high-level overview of Goldman's credit and compliance due diligence process, stating that loans could be categorized as "1. Meets guidelines; 2. Does not meet guidelines, has compensating factors; 3. Unacceptable risk."

Goldman obtained the results of the credit and compliance reviews from the due diligence vendors and was provided information about the number or percentage of loans in the sample that the vendor had graded as EV3s. Goldman also was provided with the reasons that the vendor had assigned the EV3 grades, including whether the borrower had unreasonable stated income, the borrower's credit score was below guidelines, the ratios of loan-to-property value and debt-to-income exceeded the underwriting guidelines, the loan file reviewed was missing documents or had inadequate documentation, or the loan had a characteristic that Goldman had asked the vendor to flag for further review by Goldman (*i.e.*, an "overlay"). Goldman at times referred to EV3 loans that it declined to purchase as "drops."

In third-party transactions where Goldman served as the lead underwriter, Goldman would work with due diligence vendors to perform diligence on samples of loans and would otherwise review certain reports from due diligence vendors retained by the issuer or other underwriters to the transaction.

<u>Due Diligence Results for Goldman RMBS</u>

Between December 2005 and 2007, Goldman's credit and compliance due diligence vendors provided Goldman with reports that on a number of occasions reflected that the vendors had graded a significant number of the sampled loans as EV3s. For numerous pools, the reports showed that the vendors had graded significant percentages of the sampled loans as EV3s; in a number of cases, the vendor graded more than 20 percent of the sampled loans as EV3s. Goldman's offering materials did not disclose the due diligence results.

Goldman's internal due diligence personnel reviewed loans graded as EV3s by the vendors. Goldman declined to purchase the great majority of the loans graded as EV3s. In certain circumstances, Goldman reevaluated loan grades and directed that certain loans graded as EV3s by vendors be waived into the pools to be purchased or securitized. Goldman's contemporaneous records did not in all cases document Goldman's reasons for waiving in the loans.

According to a "trending report" prepared by one of Goldman's due diligence vendors (later described by the vendor as a "beta" or test report), of the 111,999 loans that vendor reviewed for Goldman from the first quarter 2006 through the second quarter of 2007, 25,607 of them, or 23 percent, were graded as EV3s. According to the report, Goldman directed the vendor to change 7,467 of these EV3 loans—29 percent—to EV2.

Although marketing materials for Goldman principal deals represented that the credit and compliance reviews would include samples "selected randomly and adversely," the samples were in most cases comprised principally of loans selected using "adverse sampling." Where Goldman did select a small random sample component for due diligence, Goldman often did not keep track of which loans were sampled randomly and which were sampled "adversely," and Goldman's contemporaneous records typically did not reflect that Goldman separately analyzed the results of the due diligence on the random sample. Goldman employees generally did not record any random sample results in their internal due diligence summaries, nor did they report them to Goldman's Mortgage Capital Committee, which included senior mortgage department personnel and employees from Goldman's credit and legal departments and was required to approve RMBS issued by Goldman.

Even when the percentage of loans graded as EV3s and dropped by Goldman from the due diligence samples indicated that the unsampled portions of the pools likely contained additional loans with credit exceptions, Goldman typically did not increase the size of the sample or review the unsampled portions of the pools to identify and eliminate any additional loans with credit exceptions. Goldman failed to do this even when the samples included significant numbers of loans with credit exceptions. In many cases, 80 percent or more of the loans in the loan pools Goldman purchased and securitized were not sampled for credit and compliance due diligence. In certain instances, the large number of loans dropped from the due diligence samples for non-compliance with underwriting guidelines suggested that other loans in those pools that were not subjected to due diligence may not have complied with underwriting guidelines.

Goldman's Mortgage Capital Committee typically received memoranda detailing each proposed securitization, including summaries of Goldman's due diligence results for certain of the loan pools backing the securitization. Despite the high numbers of loans that Goldman had dropped from the loan pools, the Mortgage Capital Committee approved every RMBS that was presented to it between December 2005 and 2007.

Examples

In the following RMBS transactions, Goldman securitized loans, making representations of the type described earlier that the loans generally complied with underwriting guidelines or had sufficient compensating factors and had been originated in compliance with applicable law.

1. In a GSR RMBS issued and underwritten by Goldman in August 2006, which was backed by loans originated by Countrywide, IndyMac, and SunTrust, among others, the due diligence for certain of the loans pools underlying the offering had resulted in what a Goldman employee described as "unusually high credit & compliance drops (as % of sample)." For example, the vendors

who reviewed the Countrywide pools identified a number of loans with missing key credit documents or with loan-to-value ratios or credit scores that did not comply with underwriting guidelines.

After reviewing the memorandum for that offering, which included a high-level summary of these results, the Mortgage Capital Committee asked a number of follow-up questions regarding the details of the due diligence drops for certain pools. For example, the Mortgage Capital Committee asked whether the transaction managers had observed a falling drop rate for any "upsized" samples, which, according to the Mortgage Capital Committee, would have ensured that Goldman was "appropriately adversely selecting." The Goldman employees who oversaw the due diligence for these loan pools confirmed that the credit and compliance samples had not been increased. In some instances, these employees stated that the samples had already included all potentially affected loans or that the due diligence results did not demonstrate a need to upsize the sample. A due diligence manager also responded to the Mortgage Capital Committee's questions by stating that for certain pools "the [underwriting] drops were adversely selected so we don't tend to increase sample size."

The Mortgage Capital Committee also asked "How do we know that we caught everything?" In response to that question, the Goldman due diligence employee who oversaw the due diligence for one pool of loans purchased from SunTrust Mortgage wrote "we don't[,] it was sampled w[ith] max at 20%- the drops were a result of timing not systemic issues with SunTrust." Another Goldman due diligence employee who oversaw the review of a pool of Countrywide loans that Goldman had purchased on March 29, 2006 responded to the same question: "Depends on what you mean by everything? Because of the limited sampling on CW 10-15% we don't catch everything and the way they [Countrywide] deliver the files we have little chance to upsize. This trade had issues with aged loans and we tried to get pay histories and were told they would not provide them." In response to the Mortgage Capital Committee's question "Are these results systemic," the same employee wrote: "Every trade varies, but typically CW have a very high credit 3 drops on the first review of DD 60% and then clear the docs, so one can assume that the files we are not reviewing would have the same issues." In response to the Mortgage Capital Committee's question "What was the pull through pre-upsize?," the same employee wrote: "No upsizing was done again push back form [sic] CW via traders and sales," and also stated that there had been no need to upsize to address the compliance issues identified by the Mortgage

Capital Committee because "all high cost states . . . were picked" for the original due diligence sample.

The Mortgage Capital Committee subsequently approved the offering for securitization without requiring further due diligence to determine whether the remaining loans in the deal contained defects.

2. In April 2006, the Mortgage Capital Committee received a memorandum with a high-level summary of Goldman's due diligence results in connection with a proposed Alt-A RMBS offering. The memorandum included aggregate due diligence results for three Countrywide loan pools that Goldman had purchased on March 30, 2006 and indicated that 34.38 percent of the loans in the proposed offering had been drawn from certain of those Countrywide loan pools. The memorandum reflected that Goldman had conducted credit and compliance due diligence on a total of 15.44 percent of the loans in the three March 30 Countrywide pools. It was Goldman's policy to run an automated valuation model on 100 percent of the loans in pools it was considering for purchase. The memorandum also stated that Goldman had dropped a total of 6.07 percent of the loans in the three Countrywide pools (not the samples) for credit or compliance reasons. Across the three Countrywide pools, Goldman dropped nearly 40 percent of the loans in the credit and compliance due diligence samples for credit and compliance reasons. The memorandum referred to this as an "exceptional drop amount" and stated that "in the case of [Countrywide], an unusually high drop rate for missing or deficient documents resulted in an above average total drop percentage (approximately 33% of the credit drops were due to missing appraisals)." Contemporaneous records reflect that Goldman closed on six Countrywide loan pools on March 29 and 30, 2006, and that Countrywide was struggling with staffing and workload issues that affected its ability to deliver missing documents requested by Goldman for the loans in those six pools.

The Mortgage Capital Committee approved the issuance of this offering without requiring any further effort to determine whether the Countrywide loans proposed for inclusion in the securitization that had not been subject to credit and compliance due diligence complied with Countrywide's credit and compliance underwriting guidelines.

3. In one GSAMP transaction, a due diligence vendor retained by Goldman indicated that the due diligence sample for one of the loan pools acquired from New Century that went into the transaction contained numerous stated-income loans (*i.e.*, loans originated without written proof of the borrower's income) where the due diligence vendor concluded that the borrowers likely had overstated

their incomes. The Goldman employee overseeing the due diligence for that pool also noted that the pool included loans originated with "[e]xtremely aggressive underwriting" and "large program exceptions made without compensating factors." The EV3 rate for this pool (which closed during the holiday season) was also impacted by the fact that the originator did not have staff available to cure exceptions in time for the purchase to close. Although Goldman dropped 25 percent of the loans in the due diligence sample because they were graded as EV3s, including all the loans graded as EV3s for unreasonable stated income, which comprised at least 2.5 percent of the loans in the due diligence sample, Goldman did not review the portion of the pool not sampled for credit or compliance due diligence, which comprised approximately 70 percent of the total pool, to determine whether there were similar exceptions in the unsampled portion. Goldman subsequently securitized thousands of loans from this pool into one GSAMP transaction. The Mortgage Capital Committee approved the issuance of this offering.

Information Regarding Goldman's Review of Loan Originators

As noted above, Goldman made statements to investors in offering documents and in certain other marketing materials regarding its process for reviewing and approving originators. Goldman also received certain negative information regarding the originators' business practices.

Fremont was described internally by Goldman as a "key originator" and a "top priority client." Beginning in mid-2006, Goldman recognized that Fremont's level of early payment defaults ("EPDs"), or loans for which the borrowers had failed to make one or more of their first payments, were increasing. Goldman was aware that EPDs could be indicators of potential borrower fraud. Goldman placed certain originators on its "no bid" list—meaning that Goldman would not purchase additional loans from those originators until the originators paid their outstanding EPD claims—but Goldman did not put Fremont on its "no bid" list and continued to purchase loan pools from Fremont during the period Fremont's EPD claims remained unpaid. At the time that Goldman internally noted Fremont's rising EPDs, one Goldman mortgage department manager wrote that "EPDs are a big problem for them and they are scrambling." Fremont resolved the majority of its outstanding EPD claims by August 2006, and by September 2006 was listed as "performing" with respect to its "EPD collection status." Although Fremont publicly disclosed that it was experiencing increases in EPDs, Goldman did not disclose in certain of the offering materials for RMBS transactions backed by Fremont's loans that Fremont was experiencing increases in EPDs, nor did it raise that it had at one point described Fremont as "scrambling" to satisfy outstanding EPD claims.

In October 2006, Goldman analyzed Fremont's revised "hard" underwriting guidelines (*e.g.*, minimum credit scores and maximum LTV and DTI ratios) and "soft" underwriting guidelines (*e.g.*, cash reserve or credit history requirements for first-time homebuyers, limitations on certain sources of income or income documentation or verification requirements for stated income and "full doc" loans) and noted a number of "soft" guideline features that it considered "off market"—meaning that "very few lenders offer[ed] this feature or consider[ed] an item in the same manner," or "at the aggressive end of market standards"—meaning "some lenders offer [them] but Fremont is in [the] minority." Goldman discussed these "off market" and "aggressive" "soft" guidelines with Fremont executives in October 2006. Fremont noted that it had "already address[ed] a handful of these" comments and made additional changes to its "soft" guidelines in December 2006 and January 2007, but a number of the guidelines identified by Goldman as "off market" or "at the aggressive end of market standards" remained unchanged. In its prospectus supplements for late-2006 and early-2007 RMBS deals backed by Fremont loans, Goldman did not disclose to investors that it believed that certain of Fremont's "soft" underwriting guidelines were "off market" or "aggressive." Instead, Goldman "[u]ndertook a significant marketing effort" to tell investors about what Goldman called Fremont's "commitment to loan quality over volume" and "significant enhancements to Fremont underwriting guidelines."

Goldman also internally acknowledged issues with Countrywide—another large originator. In February 2006, Goldman's due diligence on a pool of Countrywide loans discovered a "glitch" in Countrywide's origination processes affecting certain payment calculations included in one of the disclosure forms Countrywide provided to borrowers with a specific type of adjustable-rate loan that converted to a fixed-rate loan. This "glitch" affected 6 loans in the due diligence sample, and Goldman identified all potentially affected loans in the unsampled portion of the pool and excluded them from the pool. Although a Goldman due diligence employee reported that Countrywide had "identified the glitch and corrected it," a Goldman salesperson responsible for Countrywide nevertheless stated that this issue was "absolutely unacceptable" and "potentially actionable," and "should be elevated to senior

[C]ountrywide personnel." Two Goldman employees, including the employee responsible for compliance due diligence issues, responded "I agree."

As noted above, Goldman performed due diligence on six Countrywide loan pools that closed on March 29 and 30, 2006, and Countrywide was struggling with staffing and workload issues that affected its ability to deliver missing documents requested by Goldman for the loans in those six pools. Many loans from the March 30 Countrywide pools were later securitized into two GSAA RMBS transactions. The day before the March 30 Countrywide pools were scheduled to close, a Goldman employee communicated the due diligence results to other employees, stating that the "drop list is very high" and that Countrywide said "they were too busy working on other trades to send cures and work this trade." After Countrywide cured certain exceptions at the last minute, one Goldman employee noted that the "pull through" rate had increased to almost 91 percent—meaning that more than 9 percent of the loans reviewed were dropped—and said to Countrywide, "[i]f we had more time I know we could have gotten the pull through closer to 94-95%." Goldman employees internally acknowledged Countrywide's pattern of failing to cure exceptions until just before the close of Goldman's purchases of Countrywide loan pools.

On April 11, 2006, while Goldman was preparing one of the GSAA offerings backed by loans from the March 30 Countrywide pools for securitization, a Goldman mortgage department manager circulated to a large group of Goldman employees a "very bullish" equity research report regarding Countrywide's common stock, which recommended the purchase of Countrywide shares and highlighted that Countrywide's March 2006 loan origination volume had exceeded expectations. Goldman's head of due diligence, who had just overseen Goldman's due diligence on six Countrywide pools that closed during a two-day period at the end of March, responded to the research report by saying: "If they only knew . . . ."

Goldman did not disclose to investors that it had identified certain issues with Countrywide's origination process.

From September 2006 through 2007, Goldman had a program for monitoring conduit originators. Among other things, Goldman monitored the conduit originators for pull-through rates (the percentage of a loan pool that passed due diligence and was purchased), EPDs, and the seller's financial health. If a conduit originator was suspended, Goldman would no longer purchase loans from that originator. Goldman also made statements in certain of its marketing materials concerning the processes by which it monitored conduit loan originators. Between September 2006 and 2007, certain Goldman-sponsored RMBS included a number of loans purchased from conduit originators that, at the time of securitization, had been "suspended" by Goldman. Goldman's offering documents for those RMBS transactions did not inform investors that loans purchased from suspended conduit originators had been included in the RMBS.

Goldman also received information about risks in the mortgage market from Senderra, a tiny regional originator in which Goldman had previously acquired a 12.5 percent stake. On December 10, 2006, the Chief Executive Officer of Senderra sent an email to, among others, a Goldman mortgage department manager, with observations regarding the "dramatic shifts and disruption in the industry." Senderra's CEO noted that credit quality had become a "major crisis" across the subprime market, and that "[i]nvestors ha[d] taken a strong stand" in response to "unprecedented defaults and fraud in the market" and were "pushing loans back to originators/lenders in record numbers." The Senderra executive noted that some originators had announced publicly that they were shutting down due to increasing EPD claims. The Senderra executive also reported seeing increasing numbers of loans in the market with "inflated appraisals, inflated income and occupancy fraud." At the same time, Goldman employees observed signs of uncertainty in the residential mortgage market. By March 2007, Goldman had largely halted new purchases of subprime loan pools and issued its last subprime RMBS in April 2007.