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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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April 20, 2010

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street Northeast
Washington, D.C. 20549

Dear Chairman Schapiro:

The timing of the Securities and Exchange Commission's (the "Commission") filing of a civil securities fraud action against Goldman Sachs & Co. ("Goldman")¹ has created serious questions about the Commission's independence and impartiality. The Goldman litigation – filed by the Commission on Friday, April 16, 2010 – has been widely cited by Democrats in support of the financial regulatory legislation currently before the United States Senate. We are writing to request that you provide documents and information to this Committee regarding any sort of prearrangement, coordination, direction from, or advance notice provided by the Commission to the Administration or Congressional Democrats regarding last Friday's filing against Goldman. The American people have a right to know whether the Commission, or any of its officers or employees, may have violated federal law by using the resources of an independent regulatory agency to promote a partisan political agenda.

The Commission's canons of ethics require its members to "reject any effort by representatives of the executive or legislative branches of the government to affect their independent determination of any matter being considered by the Commission."² Moreover, the Commission is prohibited from using its resources to influence the passage of legislation.³

Nevertheless, the events of the past five days have fueled legitimate suspicion on the part of the American people that the Commission has attempted to assist the White House, the Democratic Party, and Congressional Democrats by timing the suit to coincide

¹ Complaint, *Securities and Exchange Commission v. Goldman Sachs & Co. and Fabrice Tourre*, (S.D.N.Y. April 16, 2010), available at <http://www.sec.gov/litigation/complaints/2010/comp-pr2010-59.pdf>.

² 17 C.F.R. 200.58.

³ See 18 U.S.C. 1913.

with the Senate's consideration of financial regulatory legislation, or by providing Democrats with advance notice. In fact, the aggressive campaign by Democrats in support of the legislation neatly coincided with the Commission's announcement of the suit. For example:

- The Commission approved the Goldman suit in a vote that spit along party lines – a rare occurrence for approvals of enforcement litigation.⁴
- Before the Commission had released its announcement, the *New York Times* published on its website a story describing the suit.⁵
- Less than half an hour after the *Times* story's publication, Organizing for America, the successor organization to Obama for America and now a project of the Democratic National Committee ("DNC"), sent millions of supporters an e-mail message from President Obama urging support for "Wall Street Reform."⁶
- Within hours, the Democratic National Committee had purchased AdWords advertising from Google, Inc. The DNC's Google campaign fundraising advertisement, headed "Fight Wall Street Greed," appeared whenever a user ran a Google search for the phrase "Goldman Sachs SEC." It read, "Help Pres. Obama Reform Wall Street and Create Jobs. Families First!" and included a link to www.BarackObama.com, the website of Organizing for America.⁷
- Democrats in Congress and the Administration have heralded the Commission's suit against Goldman as a welcome boost to their case for the legislation.⁸

⁴ See Kara Scannell, "SEC Split on Party Lines Over Goldman Case," *The Wall Street Journal*, April 20, 2010, page A1, also available at http://online.wsj.com/article/SB10001424052748704671904575194501021250386.html?mod=WSJ_hpp_MIDDLETopStories.

⁵ Louise Story and Gretchen Morgenson, "S.E.C. Accuses Goldman of Fraud in Housing Deal," *The New York Times*, April 17, 2010, available at <http://www.nytimes.com/2010/04/17/business/17goldman.html>. A version of the story was published at 10:39 am on Friday, April 16.

⁶ E-mail from President Barack Obama to undisclosed recipients, April 16, 2010, 11:07 am, reproduced in FamousDC.com, "The Timing of Political Points," April 18, 2010, <http://famousdc.com/2010/04/18/dnc-vs-goldman-sachs/>.

⁷ See Mike Allen, "Goldman Sachs is Democrats' new target," Politico.com, April 17, 2010, at <http://www.politico.com/news/stories/0410/35947.html>.

⁸ See, e.g., Michael O'Brien, "Rep. Frank: Goldman charges improve chances for reg reform," TheHill.com, April 19, 2010, at <http://thehill.com/blogs/blog-briefing-room/news/92963-barnev-frank-says-goldman-charges-improve-chances-for-reg-reform> (quoting House Financial Services Committee Chairman Barney Frank: "[the Commission's suit against Goldman] reinforces the need for much of what we were doing"); Mike Dornig, "Summers Says Financial Overhaul Likely to Be Passed by June," Bloomberg.com, April 17, 2010, at <http://www.bloomberg.com/apps/news?pid=20601087&sid=akntqUof0G24&pos=3> ("Someone suggested the news [of the suit] would make it more difficult for banks to lobby against financial-regulatory legislation. [White House economic advisor Lawrence] Summers simply smiled"). Democrats' quickness to herald the Goldman suit as evidence in favor of their financial reform legislation is at best disingenuous, given that the resolution authority conferred by the legislation would permanently protect large financial

- Members of the media have already begun to question the timing of the Commission's suit and the actions of the Democratic National Committee.⁹

As supported by the Commission's canons of ethics, and as frequently reiterated by you and other Commissioners, the unqualified independence of financial regulators is crucial to the health of the financial system and the U.S. economy.¹⁰ For this reason, doubts about whether the Commission has scrupulously guarded its independence from the Administration's partisan political agenda and concerted efforts to manipulate Congressional action are very serious, and should be addressed with full transparency.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. In light of the circumstances described above, and the need for the Commission to avoid even the appearance of bias,¹¹ please provide the following records and information as soon as possible, but in no case later than 5 pm EST on Tuesday, April 27, 2010:

1. State whether any Commissioner or Commission employee communicated regarding the Commission's suit against Goldman, prior to the public announcement of the suit on April 16, 2010, with any of the following:
 - a. Any employee of the Executive Office of the President;
 - b. Any employee of the Democratic National Committee or Organizing for America;

institutions from the full consequences of failure, thus encouraging risky dealmaking of the same sort that triggered the 2008 financial crisis and gave rise to the Commission's suit. It is not hard to understand why Goldman itself – which, as a systemically-important institution under the legislation, would be protected from competition – has voiced support for the proposals contained in the Democrats' bill. See Timothy Carney, "Goldman rallies for Obama in Wall Street 'reform,'" *Washington Examiner*, April 16, 2010, available at <http://www.washingtonexaminer.com/opinion/columns/Goldman-rallies-for-Obama-in-Wall-Street-reform-90957879.html>.

⁹ See, e.g., Briefing by White House Press Secretary Robert Gibbs, April 19, 2010 (transcript), available at <http://www.whitehouse.gov/the-press-office/briefing-white-house-press-secretary-robert-gibbs-41910> (repeated questions from journalists regarding whether the Commission had provided advance notice to the White House of the Goldman suit).

¹⁰ See, e.g., Speech by Commissioner Luis A. Aguilar, "Regulatory Reform That Optimizes the Regulation of Systemic Risk," April 16, 2010, available at <http://www.sec.gov/news/speech/2010/spch041610laa.htm> ("[t]he independence of most financial regulators has benefited the financial system and the American public, and it should be maintained"); Speech by Chairman Mary Schapiro, "Statement Concerning Agency Self-Funding," April 15, 2010, available at <http://www.sec.gov/news/speech/2010/spch041510mls.htm> (stating that the Commission needs the "independence, planning ability and resources that self funding provides") (emphasis added).

¹¹ See 17 C.F.R. 200.58 ("[Commissioners] should exhibit a spirit of firm independence and reject any effort by representatives of the executive or legislative branches of the government to affect their independent determination of any matter being considered by this Commission") (emphasis added).

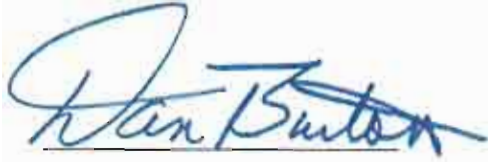
- c. Any employee of the Democratic Senate Campaign Committee;
 - d. Any employee of the Democratic Congressional Campaign Committee; or
 - e. Any Member of the Senate or the House of Representatives, or any employee of the Senate or the House of Representatives.
2. Identify every person who sent or received any communication described in request no. 1.
 3. Identify all known communications by any Commission employee or employees with *The New York Times* or other news outlets prior to the Commission's public announcement of the suit. If you are unaware of any such communications, please certify as such and explain what steps the Commission has taken to identify any individual(s) who may have engaged in unauthorized disclosure of information.
 4. State whether Commission Chief of Staff Didem Nisanci or Senior Adviser Kayla Gillan engaged in any communication with any individual in the subcategories listed in request no. 1 between March 1, 2010, and the present, and identify any other member of the Chairman's staff who engaged in any such communication.
 5. Provide all records and communications referring or relating to the communications described in requests nos. 1, 3, and 4.

For purposes of responding to this request, the terms "records," "communications," and "referring or relating" should be interpreted consistently with the attached Definitions of Terms.

In requesting records and information relating to the Commission's suit against Goldman, We make no judgment regarding the suit's legal merit. However, we are concerned that politics have unduly influenced the decision and timing of the Commission's controversial enforcement action against Goldman.

The American people have a right to know whether the Commission, or any of its officers or employees, have attempted to use their positions to help President Obama and Congressional Democrats pursue their legislative agenda and seek victory in the 2010 Congressional elections. If, however, the appearance of coordination between the Commission's Goldman suit and Democrats' partisan activities is merely the result of coincidence and extraordinarily fast political reflexes, disclosure should offer the Commission the best opportunity to address outstanding concerns. In either case, we look forward to your timely production of records and information in response to this letter. If you have any questions regarding this request, please contact Christopher Hixon with the Committee staff at (202) 225-5074.

Sincerely,



Ken Burton



Donald Asch



Peter T. McHenry



Adam Schiff



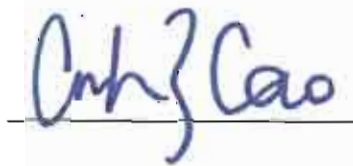
J. Jordan



Steve Chaffetz



Eric Gimpff



Anthony Cao

cc: The Honorable Edolphus Towns, Chairman

Attachment

Definitions of Terms

1. The term "record" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
3. The terms "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.