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Supreme Court of the State of New York
Appellate Division—First Department

EBC I, INC., F/K/A/ ETOYS, INC., BY THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF EBC I, INC.,

Plaintiff–Appellant–
Cross-Respondent,

— against —

GOLDMAN, SACHS & CO.,

Defendant–Respondent–
Cross-Appellant.

BRIEF *AMICUS CURIAE* OF THE SECURITIES INDUSTRY ASSOCIATION IN SUPPORT OF DEFENDANT-RESPONDENT-CROSS-APPELLANT GOLDMAN, SACHS & CO.

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PRELIMINARY STATEMENT

The Panel's unprecedented conclusion that underwriters may owe fiduciary duties to an issuer with respect to the price of an initial public offering ("IPO") dramatically disturbs settled understanding and practice in capital formation under New York law, and accordingly compels the Securities Industry Association ("SIA") to speak on behalf of its membership. Indeed, imposing such a duty is contrary to the parties' negotiated contractual relationship, the business realities of the underwriter-issuer relationship, and the federal regulatory framework for initial public offerings:

- Issuers and underwriters are sophisticated, well-advised parties who can and do negotiate a contract that defines the duties they have -- and do not have -- to each other;
- The underwriter and issuer, like any other buyer and seller, have inherently contradictory interests with respect to the price the underwriter will pay the issuer for its shares -- and indeed the lead underwriter is the representative of other firms in the underwriting syndicate and acts for *their* benefit, not that of the issuer; and

- The federal securities laws assign a safeguarding role to underwriters in public offerings, including IPOs, to help protect the interests of the investing public; consequently, imposing a fiduciary duty on the underwriter to act for the benefit of the issuer would warp the regulatory framework and subject underwriters to simultaneous and sometimes contradictory duties.

For all of these reasons, SIA respectfully requests that the Court grant the motion of Goldman, Sachs & Co. ("Goldman Sachs") for reargument or, in the alternative, leave to appeal to the Court of Appeals.

SIA'S INTEREST IN THIS CASE

SIA, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance -- including acting as underwriters in IPOs. According to the Bureau of Labor Statistics, the U.S. securities industry employs 780,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the

industry generated an estimated $209 billion in domestic revenue and $278 billion in global revenues. (More information about SIA is available at www.sia.com.)

It is no accident that SIA maintains offices in New York City.[1] New York is the world's leading center of capital formation. Virtually all of SIA's members have offices here, and New York law is, accordingly, overwhelmingly chosen to govern the contracts that enable securities to be offered to the public. In short, just as New York is critical to the capital formation process, the participants in that marketplace have long relied upon New York law as the basis upon which the risks and rewards of that enterprise are expressed and protected.

The novel and surprising notion that an underwriter owes a fiduciary duty to an issuer is of great concern to SIA due to the harm it could cause by distorting accepted and time-honored understandings of lead underwriters' relationships to issuers, to other underwriters in the syndicate, and to the investing public, and by creating irreconcilable contradictions for underwriters with respect to those relationships.

[1] SIA's only other office is in Washington, D.C.

AN OVERVIEW OF THE IPO UNDERWRITING PROCESS

The process of taking a company public is a complicated one, with numerous players, considerations and risks. After a company decides to go public, it generally selects one or more investment banks to underwrite -- sell -- its shares to the public. There is vigorous competition among investment banking firms to get selected as the lead underwriter on an IPO and, as in any other commercial context, the firms differentiate themselves by promoting their experience and expertise. With the advice of counsel, issuers and investment banks negotiate the key terms of their contract (the "Underwriting Agreement"), which governs their relationship. The issuer sells securities to the underwriters, and like all sophisticated, well-advised commercial counterparties, the core terms of the Underwriting Agreement between them are intensively negotiated. The Underwriting Agreement embodies both the rewards each side expects to receive from the contemplated transaction, as well as the risks each agrees to assume.

The lead underwriter generally forms a syndicate of underwriters to assist in the purchase and distribution of the securities that are the subject of the offering. A variety of factors lead to syndicate formation, not the least of which is the need to spread the capital risk associated with the offering and the general desire by issuers for wide distribution of their securities. The relationship between the lead underwriters (who are generally the most heavily involved in the

underwriting process) and the other members of the underwriting syndicate is governed by an "agreement among underwriters." The lead underwriter thus acts as the representative of the members of the syndicate, each of which has an interest in being able to sell its allocation of shares to the public while incurring minimal capital and reputational risk. Accordingly, most Underwriting Agreements acknowledge that the lead underwriter acts on behalf of each of the members of the syndicate.

There are a variety of ways in which the IPO can be structured. In a "best efforts" underwriting, for example, the underwriters sell securities for the issuer but do not guarantee the amount of capital that will be raised and are not liable for the unsold portion. In contrast, in a "firm commitment" underwriting (such as the eToys IPO), the underwriters guarantee the issuer that a certain amount of capital will be raised by committing to purchase the entire offering from the issuer at a negotiated price, and then attempting to resell those securities to the public. If there is insufficient public interest in the offering, the syndicate nevertheless remains the owner of the unsold portion, and therefore bears the risk of any decline in price.

Considerable activity occurs before the issuer and the lead underwriter determine the price of the shares. On behalf of the syndicate, the lead underwriter (and, often, other syndicate members) investigates, among other things, the issuer's

management team and operations, the sector in which the company operates, and general market conditions. The issuer and its counsel, with input from the underwriters and their counsel, then put together a registration statement, which includes the preliminary prospectus, to be filed with the Securities and Exchange Commission (the "SEC"), containing information required by federal law about the issuer and the offering, except the price and the date the securities will be offered for sale (which are not yet established). Using the preliminary prospectus, the issuer and the lead underwriter (and the other syndicate members) then attempt to build, as well as gauge, market interest in the offering, which will influence their subsequent negotiations on price. Once the SEC declares the registration statement effective, which entitles the underwriters to sell the securities to investors, the issuer and the lead underwriter will negotiate the price of those securities.

The price depends on a variety of factors and considerations, including market conditions, the company, and the success of marketing efforts. The issuer and the lead underwriter, each of which is represented by counsel, have differing interests in setting the price, particularly in a firm commitment underwriting. It is in the syndicate's interest to set a price that minimizes exposure for unsold shares; the issuer, on the other hand, has completely different (and often opposing) interests. For example, the eToys prospectus represented that eToys had four "principal purposes" in offering its securities in the IPO, none of which were

minimizing risk to the underwriters. To the contrary, eToys wanted to raise capital, gain access to the capital markets and to increase its visibility in the marketplace. (Prospectus at 22, Record ("R.") 172.) If the lead underwriter believes the price the issuer wants is too high, the underwriter can, and sometimes does, choose not to proceed with the offering. Conversely, if the price that the lead underwriter proposes is too low, the issuer is free to withdraw the offering or to select another lead underwriter. This is because the contractual commitment between the issuer and the underwriting syndicate -- the Underwriting Agreement -- is not executed unless and until negotiations on the IPO price are successful.

Adding to their varied roles, underwriters serve an important prophylactic function. The regulatory framework of the federal securities laws contemplates that underwriters will act independently of issuers. Thus, underwriters screen information concerning issuers contained in offering materials, and act as buffers between the issuers and the market.[2]

[2] *See* Section III, *infra*, at pages 16-17.

ARGUMENT

I. IMPOSING AN EXTRA-CONTRACTUAL FIDUCIARY DUTY DRAMATICALLY RE-WRITES THE ACTUAL AGREEMENT STRUCK BY THE PARTIES IN THE UNDERWRITING AGREEMENT

A basic tenet of New York commercial law is that "the terms of a written agreement define the rights and obligations of the parties to the agreement." *Abiele Contracting, Inc. v. N.Y. City Sch. Constr. Auth.*, 91 N.Y.2d 1, 9 (1997). "[S]uch a presumption should apply with even greater force when the instrument is between sophisticated, well-advised counseled businessmen." *Quantum Chem. Corp. v. Reliance Group, Inc.*, 180 A.D.2d 548, 548-49 (1st Dep't 1992). Like all sophisticated, well-advised commercial parties, underwriters and issuers use their contract -- the Underwriting Agreement -- to define their obligations. They assume the risks (and expect the rewards) of their actions based on those established duties. This important ordering principle is protected by the equally well-established rule that "[g]enerally, an arm's length business transaction, even those where one party has superior bargaining power is not enough to give rise to [a] fiduciary relationship." *Savage Records Group, N.V. v. Jones*, No. 600814/95, at 6-7 (Sup. Ct. N.Y. County July 8, 1997), *aff'd*, 247 A.D.2d 274 (1st Dep't 1998); *SNS Bank, N.V. v. Citibank, N.A.*, 777 N.Y.S.2d 62, 65 (1st Dep't 2004); *Nat'l Union Fire Ins. Co. of Pittsburgh v. Red Apple Group, Inc.*, 281 A.D.2d 296 (1st Dep't 2001); *Carnegie v. H & R Block, Inc.*, 269 A.D.2d

145 (1st Dep't 2000); *Prestige Foods, Inc. v. Whale Sec. Co.*, 243 A.D.2d 281 (1st Dep't 1997); *V. Ponte and Sons v. Am. Fibers Int'l*, 222 A.D.2d 271 (1st Dep't 1995); *Oursler v. Women's Interart Ctr., Inc.*, 170 A.D.2d 407, 408 (1st Dep't 1991).

Supplanting a contractually bargained-for relationship between two sophisticated, well-advised commercial parties with non-negotiated obligations would undermine the fundamental legal principles on which all parties rely in establishing their commercial relationships. If the Panel's Order is permitted to stand, it will severely undermine New York's long and settled policy, critical to its role as a center of commerce, of upholding the bargains struck by buyers and sellers and, in particular, issuers and underwriters. Indeed, it is likely no accident that the plaintiff here is not eToys itself, but a creditors committee (the "Committee") -- none of whose members participated in the negotiation of the Underwriting Agreement.

As masters of their own contract, if a party "wanted fiduciary-like relationships or responsibilities, it could have bargained for and specified for them in the contract." *Northeast Gen. Corp. v. Wellington Adver., Inc.*, 82 N.Y.2d 158, 164 (1993) (plaintiff owed no fiduciary duty to disclose adverse information about potential purchaser to defendant seller); *Trump v. Corcoran Group, Inc.*, 240 A.D.2d 159, 159 (1st Dep't 1997) (if "these sophisticated parties wanted a

fiduciary-like relationship, they could have bargained for and spelled it out"). Issuers are particularly well situated to bargain for inclusion of terms they wish to include in an Underwriting Agreement; they enjoy considerable leverage because of the vigorous competition among underwriters vying to lead IPOs. Hence, where (as here) sophisticated commercial parties "do not create their own relationship of higher trust, courts should not ordinarily transport them to the higher realm of relationship and fashion the stricter duty for them." *Northeast Gen. Corp.*, 82 N.Y.2d at 162; *cf. Blue Grass Partners v. Bruns, Nordeman, Rea & Co.*, 75 A.D.2d 791, 792 (1st Dep't 1980) (noting Special Term holding that even best efforts "underwriting contract does not create a fiduciary duty between the underwriter and the issuer," and affirming on other grounds); Robert A. Prentice, *Locating that "Indistinct" and "Virtually Nonexistent" Line Between Primary and Secondary Liability under Section 10(b)*, 75 N.C. L. Rev. 691, 768 n.354 (1997) ("Unlike attorneys, [underwriters] do not owe a fiduciary duty to their clients.").[3]

[3] Apart from the Panel's Order, SIA is aware of no other decision holding that a firm commitment underwriter may owe a fiduciary duty to an issuer in connection with the pricing of securities in an IPO. Nor are *MDCM Holdings, Inc. v. Credit Suisse First Boston Corp.*, 216 F. Supp. 2d 251 (S.D.N.Y 2002) and *Xpedior Creditor Trust v. Credit Suisse First Boston (USA) Inc.*, No. 02 Civ. 9149 (SAS), 2004 WL 435058 (S.D.N.Y. Mar. 9, 2004), cases cited by eToys, controlling or persuasive here. Neither decision (written by the same federal judge) addressed or provided any analysis of the substantive question of whether a fiduciary duty could be alleged; instead, the court disposed of the motions to dismiss solely on the basis that adequate notice had been given as to the nature of the claims. *MDCM*, 216 F. Supp. 2d at 260; *Xpedior*, 2004 WL 435058, at *9 n.90 (simply referring to *MDCM*, 216 F. Supp. 2d at 260).

Investment banks *can* assume fiduciary responsibilities to companies in settings quite different than when, as underwriters, they purchase securities from the issuer. For example, an investment

The Committee asserts that *prior* to entering into the Underwriting Agreement, Goldman Sachs supplied eToys with various marketing materials touting Goldman Sachs' skills. These communications cannot create fiduciary duties when sophisticated, counseled parties thereafter negotiate and then execute a written agreement that pointedly does not impose such fiduciary duties. *See, e.g.*, *Northeast Gen. Corp.*, 82 N.Y.2d at 163 ("The dissent's reliance on communications between the parties before they made their agreement is misplaced. None of the duties the dissent would derive from those precontract discussions was incorporated into the formal contract.").[4]

(.... continued)
bank may be retained to act as a financial advisor to a company. An "advisor" obviously has different duties to its client than does a buyer from a seller. As one court explained, a financial advisor "provide[s] advice and assistance in all aspects of the . . . process," and is not "merely [acting] as a underwriter for [the securities] offering." *SEC v. Rauscher Pierce Refsnes, Inc.*, 17 F. Supp. 2d 985, 993, 995 (D. Ariz. 1998). Similarly, an investment bank can assume fiduciary responsibilities *with respect to its use of information* when it obtains material non-public information from a company. Courts have long recognized that investment banks (and others) may not trade on inside information. *See, e.g., Frigitemp Corp. v. Fin. Dynamics Fund, Inc.*, 524 F.2d 275, 279 (2d Cir. 1975); *ICN Pharm., Inc. v. Khan*, 2 F.3d 484, 491 (2d Cir. 1993). In the underwriting context, however, investment banks are supposed to buy the securities from the issuer, and sell them to the public.

[4] *See also Savage Records Group, N.V.*, No. 600814/95, at 4, 8 (Dismissing claim for breach of fiduciary duty; alleged representations -- including that plaintiff "would become a member of the '[defendant company's] Family' and [defendant company] would use its superior marketing positions and contacts to enhance [plaintiff's] record sales" -- made to music record company during negotiations of distribution and licensing/recording agreements "were mere puffery -- expressions of good will, and statements concerning the value and utility of the services being provided under the terms of the agreements. Even assuming . . . that there was a reposing of trust in [defendant] to perform in good faith, this is not enough to convert a conventional arm's length business relationship and give rise to a fiduciary relationship.").

Marketing is a normal preface to contract negotiations precisely because no duties bind the negotiating parties to one another until a contract is formed. Investment banks -- like other service providers -- customarily and ordinarily market their expertise to prospective issuers because that is what issuers want to know. If fiduciary duties arose between prospective counterparties prior to contract formation as a consequence of business promotion efforts, underwriters and issuers would not be able to negotiate vigorously over pricing, as they often do until the moment they execute the Underwriting Agreement. Nor could they ultimately opt *not* to enter into an Underwriting Agreement, which underwriters in fact do, consistent with (among other things) the function they must play under federal law. *See* Gregory M. Priest, *Practical Aspects of the Initial Public Offering, in* Understanding the Securities Laws 1996 93, 104 (Practicing Law Institute 1996) ("Because the underwriting agreement is generally not signed until after the marketing efforts are completed, the contractual commitment is not finally made until just prior to selling the shares."). Thus, the Panel's Order would have the effect of fundamentally reordering the long-established relationship between issuers and underwriters, based primarily on promotional efforts that take place prior to contract negotiations as part of the underwriter selection process, and despite the existence of a subsequent agreement negotiated at arm's length, with advice of counsel, that clearly defines the duties of the parties.

These hornbook contract principles apply squarely to a commercially sophisticated and counseled issuer (such as eToys), and its Underwriting Agreement to sell shares to an underwriting syndicate led by Goldman Sachs. It is disingenuous for any company that is prepared to conduct a registered public offering under the federal securities laws to argue that it lacks sufficient sophistication to protect itself in negotiating a contractual relationship.[5]

II. IMPOSING A FIDUCIARY DUTY IS CONTRARY TO THE BUSINESS REALITIES OF THE UNDERWRITER-ISSUER RELATIONSHIP

An Underwriting Agreement is a contract for the sale of securities. *See* John S. D'Alimonte, *Underwriting Documents -- Their Purpose and Content, in* Securities Underwriting: A Practitioner's Guide 211, 213 (Kenneth J. Bialkin & William J. Grant, Jr. eds., 1985). In a firm commitment underwriting, the underwriters agree to purchase the shares from the issuer at a mutually agreeable price, and then attempt to re-sell those shares to the market at a slightly higher price. The issuer receives the purchase price when it delivers the shares to the underwriters; however, the underwriters do not receive anything unless they re-sell those shares to the public. Thus, in setting the offering price, the issuer and

[5] An IPO is a major undertaking, requiring significant preparation and commitment of time, personnel and money. *See* William J. Grant, Jr., *Overview of the Underwriting Process, in* Securities Underwriting: A Practitioner's Guide 25 (Kenneth J. Bialkin & William J. Grant, Jr. eds., 1985); *see also* James N. Edgar, *The SEC Registration Process, in* Securities Underwriting, *supra*, 99. Indeed, eToy's prospectus estimated that the costs of the IPO, excluding underwriting compensation, would be approximately $1.7 million. (R. 266.)

underwriters, as seller and buyer, represent diametrically opposing interests. *See* William J. Grant, Jr., *Overview of the Underwriting Process, in* Securities Underwriting, *supra,* 25 ("The underwriter wants a deal that can be sold in the marketplace and will create as little legal exposure as possible, while the issuer seeks to maximize the price it receives for its securities."); *In re WICAT Sec. Litig.*, 600 F. Supp. 1236, 1240 (D. Utah 1984) ("Most modern underwriting of securities is done on an arm's-length basis, with the issuer and underwriters each acting in their own interest rather than in concert.").

Manufacturing a fiduciary duty between the issuer and the underwriters would thus lead to absurdities. What fiduciary will knowingly refuse to carry out faithfully its beneficiary's instructions? But if underwriters simply accepted the share price dictated by issuers, they would be forced to assume economic and legal obligations and risks that (as the marketplace demonstrates) they are simply not willing to take. And if (as eToys itself acknowledged here) the pricing is in fact the product of an arm's length *negotiation*, what room is there for fiduciary obligations? Indeed, it is unprecedented in commercial law, and the marketplace, for the buyer to owe a sophisticated counterparty a fiduciary duty to pay the seller a price that, after arm's length negotiations, the buyer is not otherwise willing to pay.

In short, imposing a fiduciary duty on underwriters with respect to the pricing of an IPO creates unrealistic and irreconcilable contradictions that run completely counter to the marketplace in which underwriters operate. *See, e.g.*, *Birnbaum v. Birnbaum*, 73 N.Y.2d 461, 466 (1989) (a "fiduciary owes a duty of undivided and undiluted loyalty" and is "bound to single-mindedly pursue the interests of those to whom a duty of loyalty is owed"); *Drucker v. Mige Assocs. II*, 225 A.D.2d 427, 428 (1st Dep't 1996) ("This is a sensitive and 'inflexible' rule of fidelity. . . requiring avoidance of situations in which a fiduciary's personal interest possibly conflicts with the interest of those owed a fiduciary duty.") (quoting *Birnbaum*, 73 N.Y.2d at 466). Foisting a fiduciary duty onto the issuer-underwriter relationship would therefore transform the underwriter into an unwitting benefactor, eviscerating its own interests (as well as those of its customers and the investing public, to whom the underwriter is expecting to sell those securities). No underwriter would ever freely agree to such an untenable and inequitable relationship.

Moreover, in addition to its own economic interests, the lead underwriter is also representing the interests of the underwriting syndicate in negotiating and executing the Underwriting Agreement.[6] As such, it has an

[6] See Underwriting Agreement, section 12, at 16, R. 143; Underwriting Agreement, final paragraph, R. 145.

obligation to the individual syndicate members, each of which has an interest in being able to sell its allocation of shares successfully in the market with minimal capital and reputational risk. Imposing upon the lead underwriter a fiduciary duty running to the issuer cannot be reconciled with the lead underwriter's *pre-existing* contractual obligation to act for fellow syndicate members. *Cf. Hasbrouck v. Rymkevitch*, 25 A.D.2d 187, 188 (3d Dep't 1966) ("It is fundamental that an agent cannot take unto himself incompatible duties, or act in a transaction where he represents a person having an adverse interest."); 2A N.Y. Jur. 2d *Agency and Independent Contractors* § 227 (2004) ("[A]n agent for a purchaser or a seller cannot, at the same time, act as the agent for the other party to the transaction.").

Because the relationship between an underwriter and issuer is one of buyer and seller, and because the lead underwriter represents its own economic interests and those of the underwriting syndicate as buyers, the objectives of underwriter and issuer inherently diverge as to pricing. Hence, the underwriter-issuer relationship cannot be subject to a fiduciary duty as to pricing.

III. IMPOSING A FIDUCIARY DUTY ON UNDERWRITERS IS AT ODDS WITH THE REGULATORY FRAMEWORK OF THE FEDERAL SECURITIES LAWS

Under the federal regulatory framework governing securities markets, underwriters serve important public functions. *See, e.g., Chris-Craft Indus., Inc. v. Piper Aircraft Corp.*, 480 F.2d 341, 370 (2d Cir. 1973), *rev'd on other grounds*,

430 U.S. 1 (1977); *Escott v. BarChris Constr. Corp.*, 283 F. Supp. 643, 696 (S.D.N.Y. 1968); *Feit v. Leasco Data Processing Equip. Corp.*, 332 F. Supp. 544, 581 (E.D.N.Y. 1971). The federal regulatory framework expects underwriters to engage in independent due diligence. Section 11 of the Securities Act of 1933 makes underwriters liable to investors for material misstatements or omissions in the issuer's offering materials, subject only to a due diligence defense. 15 U.S.C. § 77k(b)(3). The SEC has stated that "[t]he underwriter who does not make a reasonable investigation is derelict in his responsibilities to deal fairly with the investing public." Harold S. Bloomenthal & Samuel Wolff, *Securities and Federal Corporate Law* § 12:42 (2d ed. 2001) (quoting *In re Richmond Corp. Sec. Litig.*, 41 S.E.C. 398 (1963)). Thus, underwriters serve a screening function between issuers and the investing public.

To impose a fiduciary duty on the underwriter-issuer relationship would place the underwriter in a hopelessly contradictory position. Underwriters would be unfairly subjected to simultaneous liability from parties on opposite sides of the buy/sell relationship with inherently contradictory interests concerning the price at which shares should be sold. If underwriters can be found to owe a fiduciary duty to issuers, they can no longer fulfill their role under the federal securities regulatory framework because the law would be imposing upon underwriters an obligation that is adverse to the interests of investors.

IV. THE BREACH OF FIDUCIARY DUTY CLAIM SHOULD HAVE BEEN DISMISSED AS A MATTER OF LAW

For the reasons discussed above, as a matter of law an underwriter should not be subject to an extra-contractual fiduciary duty as to the pricing of an IPO. Because there was no such fiduciary obligation in the eToys Underwriting Agreement, the Committee's breach of fiduciary duty claim should have been dismissed for failure to state a claim. *See, e.g., SNS Bank, N.V. v. Citibank, N.A.*, 777 N.Y.S.2d 62, 65 (1st Dep't 2004) (affirming dismissal of complaint asserting, *inter alia*, breach of fiduciary duty claims); *Nat'l Union Fire Ins. Co. of Pittsburgh v. Red Apple Group, Inc.*, 281 A.D.2d 296 (1st Dep't 2001) (affirming dismissal of counterclaims based on breach of fiduciary duty); *Carnegie v. H & R Block, Inc.*, 269 A.D.2d 145 (1st Dep't 2000) (affirming dismissal of breach of fiduciary duty claim); *Savage Records Group, N.V. v. Jones*, 247 A.D.2d 274 (1st Dep't 1998) (same).

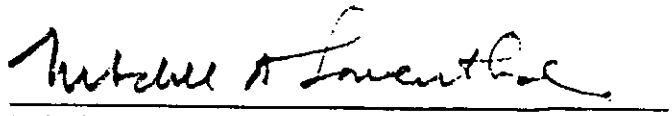
CONCLUSION

For the foregoing reasons, SIA respectfully requests that the Court grant the motion of Goldman Sachs for reconsideration or, in the alternative, leave to appeal to the Court of Appeals.

Dated: New York, New York
July 9, 2004

Respectfully submitted,

CLEARY, GOTTLIEB, STEEN & HAMILTON

By: 
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