

*United States Senate*

***PERMANENT SUBCOMMITTEE ON INVESTIGATIONS***

*Committee on Homeland Security and Governmental Affairs*

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*Carl Levin, Chairman*

*John McCain, Ranking Minority Member*

# **E X H I B I T S**

**EXHIBITS 25-44 (Part 2 of 4)**

Hearing On

***Wall Street Bank Involvement With  
Physical Commodities***

**November 20 and 21, 2014**

**EXHIBIT LIST**

**Hearing On**

***WALL STREET BANK INVOLVEMENT WITH  
PHYSICAL COMMODITIES***

**November 20 and 21, 2014**

1. a. *LME Aluminum Stocks*, chart prepared by the Permanent Subcommittee on Investigations.
- b. *Metro Freight Incentives*, chart prepared by Goldman Sachs. [Source: Goldman Sachs Counsel letter to the Permanent Subcommittee on Investigations, GSPSICOMMODS00046232, included in Exhibit 39.]
- c. *Aluminum Tonnage Shipped (Metro Warehouse (Detroit) to Metro Warehouse (Detroit))*, chart prepared by Goldman Sachs. [Source: Goldman Sachs Counsel letter to the Permanent Subcommittee on Investigations, PSI-GoldmanSachs-20-000002.]
- d. *Goldman Employees Who Served As Metro Board Members, 2009 to 2014*, chart prepared by the Permanent Subcommittee on Investigations.
- e. *Aluminum Merry Go Round Transactions*, chart prepared by the Permanent Subcommittee on Investigations.
- f. *Detroit Queue and Platts MW Aluminum Premium*, chart prepared by the Permanent Subcommittee on Investigations.
- g. *Wentworth Ownership Structure*, chart prepared by the Permanent Subcommittee on Investigations.
- h. *Overview of North America Gas, Power and PI Assets, as of 03/31/2011*, chart prepared by J.P. Morgan. [FRB-PSI-623097, included in Exhibit 58]
- i. JPMorgan internal email, dated October 2010, re: *Please sir! mor BCR!!!!*
- j. *Excerpts from 2013 CNR Financial Statement*, prepared by CNR. [GSPSICOMMODS00046374, included in Exhibit 17]
- k. *Queue Length*, chart prepared by the Permanent Subcommittee on Investigations.

**Documents Related to Goldman Sachs/General:**

2. Excerpts of Goldman Sachs *responses to questions from the Federal Reserve on 4(o) Commodities Activities*, dated May 26, 2011, re: 1997 v. 2010 physical commodity activities. [FRB-PSI-200600-6021, 608-610]
3. Excerpt from Goldman Sachs Presentation, *Federal Reserve Bank of New York Discovery Review: Global Commodities - US Natural Gas & Power*, dated March 2010, (*Financial vs. Physical Trades FY 2009*). [FRB-PSI-400006, 008]

4. Goldman Sachs Presentation, *Global Commodities, Presentation to the Board of Directors of The Goldman Sachs Group, Inc.*, dated October 2011, including Metro, CNR and Cogentrix highlights. [FRB-PSI-700011-030]
5. Excerpts from Goldman Sachs Memorandum, dated July 2012, re: *Firmwide Client and Business Standards Committee Meeting, (...Merchant Banking include CNR, Metro and Vale.... \*\*\* ...Nufcor - treated as part of firm's own activities)*. [FRB-PSI-200984, 995-996, 1000-001]
6. Goldman Sachs Memorandum to the Federal Reserve, dated July 2013, re: commodity-related activities, including environmental/catastrophic risk. [FRB-PSI-201245-268]
7. Goldman Sachs Presentation, *Global Commodities & Global Special Situations Group, Presentation to the Board of Directors of The Goldman Sachs Group, Inc.*, dated September 2013, including Metro and CNR (short coal hedge) highlights. [FRB-PSI-400077-098]
8. *Consolidated Holding Company Report of Equity Investments in Nonfinancial Companies - FR Y-12*, dated June 30, 2014, prepared by The Goldman Sachs Group, regarding its merchant banking investments. [FRB-PSI-800013-016]

**Documents Related to Goldman Sachs Involvement with Uranium:**

9. Goldman Sachs *New Product Memorandum*, dated December 2008, re: *Uranium Trading*. [FRB-PSI-400039-052]
10. Goldman Sachs *Physical Commodity Review Committee: Meeting Minutes*, dated May 2013, re: enriched uranium (UF6). [FRB-PSI-400053-055]
11. Nufcor Organization Chart, prepared by Goldman Sachs. [GSPSICOMMODS00046240]
12. Excerpts from Goldman Sachs' counsel letter to the Subcommittee, dated October 2014, re: Nufcor, attached chart, *Nufcor Uranium Utility Supply Contracts at the time of the Nufcor Acquisition (June 30, 2009)*. [PSI-GoldmanSachs-21-000001, 004 and GSPSICOMMODS00046532-533]

**Documents Related to Goldman Sachs Involvement with Coal:**

13. CNR Organization Chart, prepared by Goldman Sachs. [GSPSICOMMODS00046318]

14. Excerpt from *Coalcorp Mining Inc., Notice of Special Meeting of Shareholders to be Held on February 11, 2010 and Management Information Circular*. [PSI-CI-01-000001-003]
15. Goldman Sachs submission to the Federal Reserve, *Report of Changes in Organizational Structure - FR Y-10*, dated April 2010, re: CNR. [GSPSICOMMODS00046301-303]
16. Excerpt from *C.I. Colombian Natural Resources I SAS and J. Aron & Company Marketing Agreement*, dated September 2011. [GSPSICOMMODS00046496-501, 509]
17. Excerpt from *C.I. Colombian Natural Resources I S.A.S, Financial Statements for the years ended on the 31<sup>st</sup> of December of 2013 and 2012 and Statutory Auditor's Report*, dated March 2014. [GSPSICOMMODS00046366-367, 373-376]
18. Excerpts from Goldman Sachs counsel letter to the Subcommittee, dated October 2014, re: CNR. [PSI-GoldmanSachs-19-000001, 004-005]
19. Goldman Sachs counsel letter to the Subcommittee, dated November 2014 (*...J. Aron acted as the exclusive marketing and sales agent for CNR....*). [PSI-GoldmanSachs-25-000001-003]
20. Goldman Sachs *Metals & Mining, Background to Environmental and Social Due Diligence*, updated 2012. [FRB-PSI-300221-230]

**Documents Related to Goldman Sachs Involvement with Aluminum:**

21. Excerpt from Goldman Sachs counsel letter to the Subcommittee, dated October 2014, including chart, *Aluminum Tonnage Shipped*. [PSI-GoldmanSachs-20-000001-002]
22.
  - a. Invoice List of Glencore Ltd. and Red Kite Master Fund Limited. [GSPSICOMMODS00046871-872]
  - b. Glencore Ltd. invoice to Metro International Trade, dated June 21, 2013, in the amount of \$9,909,280.66. [GSPSICOMMODS46873]
  - c. Glencore Ltd. invoice to Metro International Trade, dated June 21, 2013, in the amount of \$402,190.77. [GSPSICOMMODS46874]
  - d. Glencore Ltd. invoice to Metro International Trade, dated September 24, 2013, in the amount of \$321,105.33. [GSPSICOMMODS46875]
  - e. Red Kite Master Fund Limited invoice to Metro International Trade, dated November 13, 2012, in the amount of \$5,735,700. [GSPSICOMMODS46876]
  - f. Red Kite Master Fund Limited invoice to Metro International Trade, dated December 20, 2012, in the amount of \$632,720. [GSPSICOMMODS46877]

- g. Red Kite Master Fund Limited invoice to Metro International Trade, dated January 28, 2014, in the amount of \$2,932,731.43. [GSPSICOMMODS46878]
  - h. Red Kite Master Fund Limited invoice to Metro International Trade, dated November 13, 2013, in the amount of \$14,084,401.27. [GSPSICOMMODS46879]
23. *Warrant Finance Agreement, DB Energy Trading LLC and Metro International Trading Services, LLC*, dated September 2010. [GSPSICOMMODS00047434-447]
  24. Excerpt from Goldman Sachs Presentation, *MITSI Holdings LLC, Board of Directors Meeting*, dated December 2012, slide entitled *Overview Off-warrant Deals* re: Red Kite deals. [GSPSICOMMODS00009348]
  25. Metro internal email, dated November 2012, re: Detroit Ali - off warrant storage deal. [GSPSICOMMODS00046684-686]
  26. Glencore/Metro email exchange, dated April 2013, re: *New Deal - Glencore Detroit (,,all 91,000 mt for Glencore scheduled to ship outbound in May/June will do so as scheduled but will go to other Metro locations in Detroit (we of course decide) and remain off warrant until June/July 2013 at which point the material will be rewarranted.)*. [GSPSICOMMODS00046687-691]
  27. Charts related to last Red Kite deal and Glencore deal, prepared by Metro for LME in 2014. [GSPSICOMMODS00046666-683]
  28. Metro internal email, dated December 2010, re: *Montreal (...blocking others. \*\*\* ...Q management...)*. [GSPSICOMMODS00047422]
  29. Metro internal email, dated February 2012, re: *Stemcor 12 Kt to Detroit (...queue management...)*. [GSPSICOMMODS00047423-429]
  30. Metro internal email, Michael Whelan, Metro, email, dated June 2013, re: *Resignation (I have some questions and concerns regarding the Chinese Wall Policy that is in place which regulates the interaction between Metro International, its customers, and J. Aron. This morning's confrontation was extremely questionable.)* [GSPSICOMMODS00047430]
  31. *Metro International Trade Services (2011-2013)*, chart regarding agreements of sharing physical premiums. [GSPSICOMMODS00046531, 46630]
  32. *Goldman Sachs/Metro International Trade Services, Management Brief, June 2011 (Extraordinary income from counterparties sharing physical premium with Metro...)*. [GSPSICOMMODS00009668]

33. LME counsel letter to the Subcommittee, dated November 2014 (*...while the LME would view such behavior as a contravention of the “spirit” of the relevant requirements, it may be difficult to argue that it constituted a contravention of the “letter” of those requirements.*). [LME\_PSI0002459-462]
34. Aluminum Users Group Memorandum, dated October 2012 (*The LME’s terminal market model ... is broken.*). [PSI-AlumUsersGroup-01-000010-012]
35. Goldman Sachs *Presentation to Firmwide Client and Business Standards Committee, Metro International Trade Services*, dated August 2011, including slide entitled, *Metro Financial Summary*. [FRB-PSI-707486-500]
36.
  - a. Excerpt from Goldman Sachs Presentation, *MITSI Holdings LLC, Board of Directors Meeting*, dated December 2011, including slide entitled *Current Deal Pipeline*. [GSPSICOMMODS00009287, 296]
  - b. Excerpts from Goldman Sachs Presentation, *MITSI Holdings LLC, Board of Directors Meeting*, dated March 2012, including slides entitled *Current Deal Pipeline* and *Overview Off-warrant Deals*. [GSPSICOMMODS00009423, 433, 437]
  - c. Excerpts from Goldman Sachs Presentation, *MITSI Holdings LLC, Board of Directors Meeting*, dated December 2012, including slides entitled *Current Deal Pipeline* and *Overview Off-warrant Deals*. [GSPSICOMMODS00009332, 343, 348]
  - d. Excerpts from Goldman Sachs Presentation, *MITSI Holdings LLC, Board of Directors Meeting*, dated March 2013, including slides entitled *Current Deal Pipeline* and *Metro’s Annual Financial Performance*. [GSPSICOMMODS00009355, 364, 370]
37. London Metal Exchange (LME) document listing *terms and conditions applicable to all LME listed warehouse companies*, dated April 2014. [LME\_PSI0001406-427]
38.
  - a. *Conflict Management Procedures Between Metro and Other GS Businesses and Personnel, Policy Issued To: Global Commodities Sales and Trading, Global Commodities Principal Investment, Metro Board Members, Metro Management and Staff*, dated February 2010. [FRB-PSI-602457]
  - b. *Information Barrier Policy: Metro and other GS Businesses and Personnel; For: Global Commodities Sales and Trading, Global Commodities Principal Investment, Metro Board Members, Metro Management and Staff*, dated March 2014. [GSPSICOMMODS00004059-076]
39. Excerpt from Goldman Sachs counsel letter to the Subcommittee, dated September 2014, including table listing *Total Annual Freight Allowance Paid by Metro and Annual Freight Allowance Paid by Metro to J. Aron*. [PSI-GoldmanSachs-15-000001 and GSPSICOMMODS00046232]

40. Excerpts from Goldman Sachs counsel letter to the Subcommittee, dated August 2014, including list of authorized Goldman Sachs employees given access to confidential information. [PSI-GoldmanSachs-17-000001 and GSPSICOMMODS00046225-226]

**Documents Related to Morgan Stanley/General:**

41. Morgan Stanley Presentation, *Global Commodities Overview*, dated May 2009. [FRB-PSI-618889-908]
42. Morgan Stanley Presentation, *Morgan Stanley Commodities, Business Overview*, dated February 2013, prepared for the Permanent Subcommittee on Investigations. [PSI-MorganStanley-01-000001-027]
43. *Consolidated Holding Company Report of Equity Investments in Nonfinancial Companies - FR Y-12*, dated June 30, 2014, prepared by Morgan Stanley, regarding its merchant banking investments. [FRB-PSI-800009-012]

**Documents Related to Morgan Stanley Involvement with Natural Gas:**

44. Excerpt from Morgan Stanley Presentation, *Federal Reserve Bank of New York, Morgan Stanley Infrastructure Platform Review*, prepared by Morgan Stanley, dated September 2013. [FRB-PSI-400321-329, 331-333, 341, 351-352, 365-366]
45. a. *Application of Wentworth Gas Marketing LLC for Long-Term Authorization to Export Compressed Natural Gas*, submitted to the Department of Energy, Office of Fossil Energy, dated May 2014.  
b. *Department of Energy, Office of Fossil Energy, In re Wentworth Gas Marketing LLC, Order Granting Long-term Authorization To Export Compressed Natural Gas*, dated October 2014. [PSI-DOE-01-000004-016]
46. Excerpt from Morgan Stanley Presentation, *Morgan Stanley Infrastructure Partners, Overview of Southern Star*, dated August 2014. [MS-PSI-00000001-016, 019-020, 023-027, 035, 037]
47. Morgan Stanley counsel letter to the Subcommittee, dated September 2014, re: *Morgan Stanley's purchase of the Deutsche Bank natural portfolio and involvement with Wentworth Holdings LLC*. [PSI-MorganStanley-13-000001-009]
48. Excerpt from Morgan Stanley Presentation, *Morgan Stanley Infrastructure Partners, Southern Star Followup Questions*, dated October 2014. [MS-PSI-00000455-460, 465-469, 472-475]

**Documents Related to Morgan Stanley Involvement with Crude Oil:**

49. Excerpts from Morgan Stanley counsel letter to the Subcommittee, dated October 2014, re: early New York oil storage. [PSI-MorganStanley-17-000001-002]
50. Excerpts from Morgan Stanley counsel letter to the Subcommittee, dated June 2013, re: TransMontaigne. [PSI-MorganStanley-06-000001-004]
51. Excerpts from Morgan Stanley counsel letter to the Subcommittee, dated October 2014, re: oil storage data, revenue, and Olco Petroleum Group. [PSI-MorganStanley-19-000001-003]

**Documents Related to Morgan Stanley Involvement with Jet Fuel:**

52. Excerpts from *Jet Fuel Supply Agreement between Morgan Stanley Capital Group Inc. and United Airlines, Inc. and United Aviation Fuels Corporation*, dated September 2003. [PSI-UnitedAirlines-01-000003, 013, 016, 020-022]
53. Morgan Stanley counsel letter to the Subcommittee, dated September 2014, re: Emirates. [PSI-MorganStanley-15-000001-004]
54. Emirates counsel letter to the Subcommittee, dated October 2014, re: jet fuel purchases and hedges. [PSI-Emirates-01-000001-004]
55. Emirates counsel letter to the Subcommittee, dated October 2014, re: jet fuel purchases and hedges. [PSI-Emirates-02-000001-007]

**Documents Related to JPMorgan Chase/General:**

56.
  - a. *Notice to the Board of Governors of the Federal Reserve System by JPMorgan Chase & Co.*, submitted July 21, 2005, requesting complementary authority for physical commodity activities. [PSI-FederalReserve-01-000004-028]
  - b. *Notice to the Board of Governors of the Federal Reserve System by JPMorgan Chase & Co.*, submitted November 25, 2008, requesting complementary authority for refining activities. [PSI-Federal Reserve-01-000553-558]
57. Federal Reserve letter to JPMorgan Chase, dated April 9, 2009, granting complementary authority re: refining activities. [PSI-FRB-11-000001-002]
58. JPMorgan Presentation, *Global Commodities – Operating Risk*, dated April 2011. [FRB-PSI-623086-127]
59. JPMorgan Chase physical inventory positions, 2008-2012. [JPM-COMM-PSI-000015-016]

60. *Merchant Banking Investment in Henry Bath*, undated, prepared by JPMorgan. [FRB-PSI-000580-582]
61. Excerpt from JPMorgan Presentation, *Commodities Physical Operating Risk, Update to CIBRC*, dated January 2013, with slide entitled *Physical Operating Risk Review of Project Liberty*. [FRB-PSI-301379, 381]
62. *Consolidated Holding Company Report of Equity Investments in Nonfinancial Companies - FR Y-12*, dated June 30, 2014, prepared by JPMorgan, regarding its merchant banking investments. [FRB-PSI-800005-008]
63. Excerpts from *Global & Regional Investment Bank League Tables – 1H2014*, dated September 2014, prepared by Coalition Analytics Intelligence. [PSI-Coalition-01-000019-021]
64. JPMorgan Chase counsel letter to the Subcommittee, dated June 2014, re: J.P.Morgan Ventures Energy Corporation (JPMVEC). [PSI-JPMC-11-000001-002]
65. JPMorgan Chase counsel letter to the Subcommittee, dated October 2014, re: JPMVEC and Project Liberty. [PSI-JPMorganChase-14-000001-009]
66. JPMorgan Chase counsel letter to the Subcommittee, dated October 2014, re: various commodity issues. [PSI-JPMorgan-15-000001-008]

**Documents Related to JPMorgan Chase Involvement with Electricity:**

67. *Power Plans Owned or Controlled via Tolling Agreements, 2008 to present*, chart prepared by JPMorgan. [JPM-COMM-PSI-000022-025]
68. Federal Reserve Bank of New York letter to JPMorgan, dated March 2008, granting 2-year grace period for power plants and other assets acquired from The Bear Stearns Companies Inc. [FRB-PSI-900001-003]
69. Excerpts from JPMorgan Presentation, *Global Commodities Deep Dive Risk Review*, dated October 2009. [FRB-PSI-200634-638, 640-642, 644-645, 649-655]
70. a. *Notice to the Board of Governors of the Federal Reserve System by JPMorgan Chase & Co.*, submitted December 30, 2009, requesting complementary authority for energy management activities. [PSI-FederalReserve-01-000561-567]  
b. *Notice to the Board of Governors of the Federal Reserve System by JPMorgan Chase & Co.*, submitted December 30, 2009, requesting complementary authority for tolling activities. [PSI-FederalReserve-02-000012-059]

71. JPMorgan letter to the Federal Reserve, dated February 2010, requesting extension and additional complementary authority. [FRB-PSI-300286-290]
72. Federal Reserve letter to JPMorgan, dated June 2010, granting complementary authority regarding power plants. [FRB-PSI-302571-580]
73. JPMorgan *Transaction Overview*, dated August, 2010, regarding purchase of Kinder Morgan Power Plant. [FRB-PSI-300066]
74. Undated document prepared by JPMorgan regarding power plant restructuring. [FRB-PSI-300352-353]
75. JPMorgan Presentation, *Commodities Operational Risk Capital*, dated May 2011. [FRB-PSI-300727-736]
76. JPMorgan internal email, dated April 2010, re: *Resume for Power*, attaching resume of John Howard Bartholomew (*Identified a flaw in the market mechanism Bid Cost Recovery that is causing the CAISO to misallocate millions of dollars.*). [PSI-FERC-02-000009-010]
77. JPMorgan internal email, dated October 2010, re: *Please sir! mor BCR!!!!* [PSI-FERC-02-000042]
78. JPMorgan internal email from Francis Dunleavy to Blythe Masters, dated March 2011, re: *CAISO update (I will handle it but it may not be pretty.)*. [PSI-FERC-02-000067]

**Documents Related to JPMorgan Chase Involvement with Copper:**

79. JPMorgan Presentation, *JPM Commodity Capabilities*, dated January 2012. [FRB-PSI-200832-865]
80. Excerpt from JPMorgan Presentation, *FED/OCC Quarterly Meeting*, dated February 2013, including slide entitled, *Physical Inventory Limits from FED & OCC*. [FRB-PSI-301443, 447]
81. Federal Reserve email to the Subcommittee, dated October 2014, re: treating copper as “bullion.” [PSI-FRB-16-000001]
82. JPMorgan counsel email to the Subcommittee, dated October 2014, re: metals trading desk. [PSI-JPMorgan-16-000001]
83. JPMorgan counsel letter to the Subcommittee, dated October 2014, re: JPMorgan copper activities. [PSI-JPMorgan-18-000001-008 and JPM-COMM-PSI-000064-066]

84. OCC Interpretive Letter No. 553, dated May 1991, re: treating platinum as bullion. [PSI-OCC-01-000112-113]
85. OCC Interpretive Letter No. 693, dated November 1995, re: treating copper bullion. [PSI-OCC-01-000135-141]
86.
  - a. Comment Letter of Senator Carl Levin to the Securities and Exchange Commission, dated, July 2012, re: *JPM XF Physical Copper Trust Pursuant to NYSE Area Equities Rule 8.201*.
  - b. Comment Letter of Senator Carl Levin to the Securities and Exchange Commission, dated, March 2013, re: *JPM XF Physical Copper Trust, Form S-1 Registration Statement*.
87. Comment Letter of law firm representing cooper fabricating companies to the Securities and Exchange Commission, dated July 2012, re: rule change allowing copper ETF. [PSI-VandenbergFeliu\_to\_SEC(July2012)-000001-005]
88. LME email to the Subcommittee, dated November 2014: re: LME's public Warrant Banding Report dated December 15, 2010. [PSI-LME-06-000001]

**Documents Related to JPMorgan Chase Involvement with Size Limits:**

89. *Methodology for Calculating Capacity Payments for Purposes of 5% Limit*, undated, prepared by JPMorgan. [FRB-PSI-300345-347]
90. Excerpt from JPMorgan Presentation, *FED/OCC/FDIC Quarterly Meeting*, dated September 2013, *Physical Inventory Limits from FED & OCC*. [FRB-PSI-301383, 387]
91. Excerpt from JPMorgan Chase counsel letter to the Subcommittee, dated October 2014, including chart with inventory levels for copper, platinum, and paladium as of September 28, 2012 held by JPMorgan Chase Bank. [PSI-JPMorgan-15-000001 and JPM-COMM-PSI-000049]
92. JPMorgan internal email, dated January 2012, re: *Consolidated OCC Summary 10 Jan 2012*, providing inventory levels for metals held by JPMorgan Chase Bank. [OCC-PSI-00000336]
93. JPMorgan internal email, dated January 2012, re: *Consolidated OCC Summary 19 Jan 2012 (...took further action yesterday to lend 100k tonnes of materials to the market as well as sell 400k tonnes of material to JPMVEC)*. [OCC-PSI-00000344]

94. JPMorgan internal email, dated January 2012, re: *Consolidated OCC Summary 19 Jan 2012 (It will not happen again that you learn about it after the fact when it is an issue within our control.)*. [OCC-PSI-00000340]
95. JPMorgan internal email, dated February 2012, re: *5% Limit Calculation (Following are our current and proposed methodologies for calculating the [OCC] 5% limit.)*. [OCC-PSI-00000324]
96. JPMorgan Chase counsel email to the Subcommittee, dated November 2014: re: *JPMCB's daily aluminum inventory values and the corresponding LME cash price for aluminum*. [PSI-JPMorgan-23-000001]
97. Excerpt from JPMorgan Chase counsel letter to the Subcommittee, dated October 2014, re: aluminum trades and 5% limit. [PSI-JPMorgan-17-000001-002]
98. Excerpt from JPMorgan Chase counsel letter to the Subcommittee, dated November 2014: re: JPMCB aluminum holdings. [PSI-JPMorgan-19-000001-003]
99.
  - a. Metro legal counsel letter to LME, dated January 27, 2014. [GSPSICOMMODS00046661-665]
  - b. Metro legal counsel letter to LME, date April 15, 2014. [GSPSICOMMODS00046834-848]

✧ ✧ ✧

# FW: Detroit Ali - off warrant storage deal \*NEW DEAL # DET-1500.

**From:**

Gabriella Vagnini <gvagnini@metroftz.com>

**To:**

"Barry Feldman (bfeldman@redkitemgmt.com)" <bfeldman@redkitemgmt.com>

**Cc:**

Michael Whelan <mwhelan@metroftz.com>

**Date:**

Mon, 05 Nov 2012 20:16:44 +0000

Dear Barry,

I hope this email finds you well.

Please note, Metro's issued deal number (for the agreement indicated below) is- DET-1500. Apply this number to all documents pertaining to this confirmation.

Thank you for your continued support.

**Deal #- DET-1500**

**Customer-** Red Kite

**Location-**DETROIT

**Metal Type-** Aluminum

**Brand-** n/a

**Quantity\*-** 150,000mt

**Warranting Date(s):**

1. Metal is to be placed on warrant December 18, 2013 prompt date.
  - a. Early warranting date needs to be requested to Metro and agreed upon in writing.
  - b. Metal warranted after Dec'13 prompt date is based on queue availability (indicated by Metro's Operation team).
  - c. Cost for placing on warrant is for Metro's account.

**Rent, Off-Warrant Rent & FOT indications\*\*:**

1. Red Kite Pays LME rent & FOT upon cancelation.
2. Red Kite pays full published LME rent from cancelation date, while in the queue and off warrant once the material ships out through December 2013.
  - a. Note LME rent rates change April 1st yearly. The monthly billing will adjust to reflect accordingly.
  - b. Note that shipping should not extend through the December 2013 month end date, unless indicated by Metro when shipping instructions are set in place.
3. If the material is not placed onto warrant by the DEC 2013 prompt date, full LME rent and FOT would apply while the material remains off warrant.

**Freight Allowance Amount:**

1. \$36/mt paid within 2 weeks of cancellation date.
2. \$160/mt paid to Red Kite after metal is placed on warrant Dec 18, 2013.
  - a. Also paying to Red Kite (after warranting on the Dec prompt date) is the difference in the rent rate cost from April 1<sup>st</sup>, 2013 through December 18, 2013.
    - i. The difference would be from the current published LME of \$0.45/mt and the new LME rent rate as of April 1, 2013.

**Shipping Terms:**

1. Metro will truck the material to an off warrant Metro storage facility in Detroit.

Permanent Subcommittee on Investigations

**EXHIBIT #25**

Confidential

GSPSICOMMODS00046684

2. Metro to incur shipping costs.

**Additional Terms That Apply:**

1. Red Kite cancels 150,000mt of aluminum in Detroit immediately.
2. Red Kite fulfills the requirements to get into the queue with shipping instructions for maximum appointments asap.
3. If RK ships the material out of Metro's warehouse, or sells in warehouse without the material being warrant by DEC 2013, full LME FOT plus an additional \$30 would be payable to Metro.

**Shipping & Receiving contact-** Tanya Rich [trich@metroftz.com](mailto:trich@metroftz.com) (734) 721-3334 Ext.236

**All invoicing email only to-** Gabriella Vagnini (group email) [acctg@metroftz.com](mailto:acctg@metroftz.com) (734) 721-3334 Ext. 233

**All invoicing address to (but not mail)\*\*\*\*:**

Metro International Trade Services, LLC

6850 Middlebelt Rd.

Romulus, MI 48174

(\*LME warrantable metal)

(\*\*If there are no terms indicated for dates not specified above, then that current date of that months published LME rate is to apply.)

(\*\*\*Off-Warrant rates commence from date metal received in warehouse and expires once placed on warrant.)

(\*\*\*In order for Metro to process payment request from Red Kite, the above address is required on the invoice, as well as the deal number and the warrants billing against (if applicable).

On 11/4/12 7:09 AM, "Barry Feldman" <[bfeldman@redkitegmt.com](mailto:bfeldman@redkitegmt.com)> wrote:

>Michael,

>

>Sorry for delay in sending this, finally got our electric back

>yesterday afternoon. Yippie!

>

>We are in agreement with this. I think our ultimate goal was 200,000

>mt, which you suggested. RK will endeavor to reach 150 to 200k,

>however, this will be done in smaller tranches as the spreads and

>market allow. Steve Upot is working on this and we will keep you informed of our progress.

>

>Regards,

>

>Barry

>

>-----Original Message-----

>From: Michael Whelan [<mailto:mwhelan@metroftz.com>]

>Sent: Thursday, November 01, 2012 3:42 PM

>To: Barry Feldman; Steve Upot

>Subject: Detroit Ali - off warrant storage deal

>

>Barry/Steve -

>

>It was nice to chat with you both this morning. Thanks for approaching

>me with an opportunity to store approximately 150,000 mt of aluminum

>which you are holding LME warrants for currently.

>

>As discussed, here is what Metro could provide:

>

>

> \* RK cancels 150,000 mt of aluminum in Detroit immediately;

> \* RK pays LME rent and FOT upon cancelation and fulfills the  
>requirement to get into the queue with shipping instructions for  
>maximum appointments;  
> \* RK pays full LME rent from cancelation date, while in the queue,  
>and off warrant once the material ships out, through DEC 2013;  
> \* Metro would pay RK an initial freight allowance of \$36 (LME FOT)  
>within 2 weeks of cancelation;  
> \* Metro would truck the material to an off warrant storage facility  
>in Detroit, costs for Metro's account;  
> \* Metro would provide RK with \$160 per mt (plus whatever the  
>difference is in additional LME rent from April 1 2013 if there is a  
>rent increase from \$.45) if there is a mutual agreement to place the  
>material onto warrant by the DEC 2013 prompt date, costs for placing  
>onto warrant for Metro's account;  
> \* If the material is not placed onto warrant by the DEC 2013 prompt  
>date, full LME rent and FOT would apply while the material remains off  
>warrant;  
> \* If RK ships the material out, or sells in warehouse without the  
>material being warrant by DEC 2013, full LME FOT plus an additional \$30  
>would be payable to Metro;  
>  
>Please let me know if you have any additional questions or concerns.  
>Once you respond with your agreement to the terms, I will have a Metro  
>deal number issued and sent to you for reference for this deal moving  
>forward.  
>  
>Thanks and regards,  
>  
>Michael

## Re: New Deal - Glencore Detroit

---

**From:**

Michael Whelan <mwhelan@metroftz.com>

**To:**

matthew.lucke@glencore.com, Gabriella Vagnini <gvagnini@metroftz.com>, sylvia.malone@glencore-us.com

**Date:**

Fri, 05 Apr 2013 03:25:02 +0100

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Matt – Rob and I are working on the rent in Baltimore. I will make sure it is user friendly.

---

**From:** "Matthew Lucke@glencore.com" <Matthew.Lucke@glencore.com>

**Date:** Thursday, April 4, 2013 9:21 PM

**To:** Gabriella Vagnini <gvagnini@metroftz.com>, "Sylvia.Malone@glencore-us.com" <Sylvia.Malone@glencore-us.com>

**Cc:** Michael Whelan <mwhelan@metroftz.com>

**Subject:** Re: New Deal - Glencore Detroit

Thanks Gabriella

Can you confirm that rent rate is 7 cents/day in Baltimore and that we have until the end of the year to move the metal out?

Matt

---

**From:** Gabriella Vagnini [gvagnini@metroftz.com]

**Sent:** 04/04/2013 06:25 PM GMT

**To:** Matthew Lucke; Sylvia Malone

**Cc:** Michael Whelan <mwhelan@metroftz.com>

**Subject:** FW: New Deal - Glencore Detroit

Dear Matt,

Please note to apply Metro's deal/reference # **DET-1524S** to all documents pertaining to the below agreement.

**Deal #:**DET-1524S

**Date Accepted:** 2 April 2013

**Customer:** Glencore

**Location:** DETROIT

**MetalType:** Aluminum

**Brand:** n/a

**Quantity\*:** 41,000mt

**ETA:** May/June 2013 from Metro warehouse to another Metro warehouse.

**WarrantingDate(s):** any material not available for warranting by June 19 2013 will be placed onto warranting by July 17 2013.

**Rent Free Days\*\*:** From the shipment date through the warranting dates in June/July 2013.

**Rent amount after free period\*\*\* :** \_\_\_\_

**Freight Allowance Amount:**

- Metro provides Glencore: 21,000 mt of units FOT Baltimore (no Alcan sows or any ingots) on June 19 2013 plus **\$15 per mt** – pending approval from the bank who owns the material.
- Metro provides Glencore: 20,000 mt of units FOT Mobile on June 19 2013 plus **\$20 per mt** – pending approval

**Permanent Subcommittee on Investigations**

**EXHIBIT #26**

Confidential

GSPSICOMMODS00046687

from the bank who owns the material.

**Shipping Terms (Incoterms):** Trucking for Metro's account.

**Additional Terms That Apply:**

- Glencore provides FOT Detroit.
- Any metal not placed onto LME warrant by the June/July 2013 warranting dates will be subject to full LME rent and FOT, as well as be subject to Metro's Detroit queue while it remains off warrant, until the material is placed onto LME warrant.

**Shipping & Receiving contact-** Tanya Rich [trich@metroftz.com](mailto:trich@metroftz.com) (734) 721-3334 Ext.236

**All invoicing email only to-** Gabriella Vagnini (group email) [acctg@metroftz.com](mailto:acctg@metroftz.com) (734) 721-3334 Ext. 233

**All invoicing address to (but not mail)\*\*\*\*:**

Metro International Trade Services, LLC

6850 Middlebelt Rd.

Romulus, MI 48174

*\*LME warrantable metal*

*\*\*Rent Free Days commencing from date metal is received in warehouse and expires as per the specified warranting date indicated above. Should the metal not be*

*placed on warrant, then full prevailing LME rent rate will apply (to commence from date received).*

*\*\*\*If there is no amount indicated, then full published LME rate will apply. Any excess metal (NON-LME) will be subject to rates commencing from received date*

*thru release date (\$0.15/mt/day Rent & \$7.50/mt inbound handling, \$7.50/mt outbound handling).*

*\*\*\*\*The address listed above, along with the deal number and list of warrants, are required on the invoice in order to process a payment.*

---

**From:** Michael Whelan

**Sent:** Tuesday, April 02, 2013 10:20 PM

**To:** Gabriella Vagnini

**Cc:** Chris Wibbelman; David Grupenhoff; David Warren; Doris Bravo; Leo Prichard; Tanya Rich; Brigid Callaghan; Marla Scott; Mark Askew; Curt Felch

**Subject:** New Deal - Glencore Detroit

Hi Gab -

Please issue a new, confirmed deal number for Glencore in Detroit. The first 50,000 mt is already covered under DET-1524. This new deal number is for the 41,000 mt we are swapping units in Baltimore and Mobile for Detroit.

We have had some discussion over the past few days on the structure so there should not be any surprises, but for good order, here are the terms:

- Glencore provides FOT Detroit: 50,000 mt of units scheduled to ship outbound from Metro Detroit in May/June 2013 and ships (trucking for Metro's account) to another Metro Detroit facility and remains off warrant until June 18 2013 at which time the material will be placed back onto LME warrant as per the terms of DET-1524 (\$198 per mt).
- Glencore provides FOT Detroit: 41,000 mt of units scheduled to ship outbound from Metro Detroit in May/June 2013 and ships (trucking for Metro's account) to another Metro Detroit facility and remains off warrant until June 18 2013 at which time the material will be placed back onto LME warrant – any material not available for warranting by June 19 2013 will be placed onto warranting by July 17 2013.
- Metro provides off warrant storage for all of the material above from the shipment date through the warranting dates in June/July 2013 free of charge. Any metal not placed onto LME warrant by the June/July warranting dates will be subject to full LME rent and FOT, as well as be subject to Metro's Detroit queue while it remains off warrant, until the material is placed onto LME warrant.
- Metro provides Glencore: 21,000 mt of units FOT Baltimore (no Alcan sows or any ingots) on June 19 2013 plus \$15 per mt – pending approval from the bank who owns the material.
- Metro provides Glencore: 20,000 mt of units FOT Mobile on June 19 2013 plus \$20 per mt – pending approval from the bank who owns the material.

Dave Warren – please remember that we need to hold back 21,000 mt of units in Baltimore that is not Alcan sows or any

ingots since Glencore cannot take that material. Once you have had a chance to look at the list of material you are going to hold back maybe you could share that with me and I will send Glencore the list so they know what they are getting.

Doris/Tanya – all 91,000 mt for Glencore scheduled to ship outbound in May/June will do so as scheduled but will go to other Metro locations in Detroit (we of course decide) and remain off warrant until June/July 2013 at which point the material will be rewarranted. We will need to provide Glencore with the locations so they can issue shipping instructions as such. Metro will provide the trucking and the cost if for our account. Please work with Sylvia at Glencore on getting whatever you need.

Gab/Doris – all material available for warranting in June will go on for that date; the balance will go on for July. Glencore will issue warranting instructions as such. Obviously we want to push to have as much available for June as possible.

Gab – the first 50,000 mt is to be warranted at \$198 per mt as per DET-1524. The last 41,000 mt can go under this new deal number. Glencore will invoice Metro in June when the material is conveyed to them.

Thanks all. Please let me know if there are any questions or comments.

I appreciate everyone's hard work on this.

Michael

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## FW: New Deal # DET-1524 & DET-1525

---

**From:**

Gabriella Vagnini <"first administrative group/cn=recipients/cn=gvagnini">

**To:**

matthew.lucke@glencore.com, "Sylvia Malone (sylvia.malone@glencore-us.com)" <sylvia.malone@glencore-us.com>

**Cc:**

Michael Whelan <mwhelan@metroftz.com>, Tanya Rich <trich@metroftz.com>, "Katie Kuhlman (Kkuhlman@metroftz.com)" <kkuhlman@metroftz.com>, Doris Bravo <dbravo@metroftz.com>

**Bcc:**

Gabriella Vagnini <gvagnini@metroftz.com>

**Date:**

Mon, 25 Feb 2013 21:04:45 +0000

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Dear All,

Please note, there has be a new agreement with Glencore to warrant metal. Once the warranting dates come near, we will advise the transfer of the off-warrant metal (in the NON-LME deals or any others that may apply, we will advise accordingly) to be moved to deal number(s) listed below. There will also be an adjustment to the NON-LME deal terms (\$6/mt credit from Metro to issue when that metal is transferred to warrant), I will place this information in a separate email to alleviate any confusion.

**(A)**

**Deal/Reference #**-DET-1524

**Customer**- Glencore

**Location**-DETROIT

**MetalType\***- Aluminum

**Brand**- n/a

**Quantity\***- 50,000mt

**WarrantingDate**- June 19, 2013 (prime date)

**Freight Allowance Amount**- \$198/mt

**All invoicing email only to**- Gabriella Vagnini (group email) [acctg@metroftz.com](mailto:acctg@metroftz.com) (734) 721-3334 Ext. 233

**All invoicing address to\*\***-

Metro International Trade Services, LLC

6850 Middlebelt Rd.

Romulus, MI 48174

*\*LME warrantable metal. The responsibility for provision of correct documentation for LME warranting (certificates of analysis etc)resides with the customer (not Metro).*

*\*\*The invoicing address listed above, along with the deal number and list of warrants, are required (along with the basic billing information) on the invoice in order to process a payment.*

**(B)**

**Deal/Reference #**-DET-1525

**Customer**- Glencore

**Location**-DETROIT

**MetalType\***- Aluminum

**Brand**- n/a

**Quantity\***- 25,000mt – 75,000mt (at Glencore's option)

**WarrantingDate**- November 20, 2013 (prime date)

Freight Allowance Amount- \$198/mt

All invoicing email only to- Gabriella Vagnini (group email) [acctg@metroftz.com](mailto:acctg@metroftz.com) (734) 721-3334 Ext. 233

All invoicing address to\*\*.

Metro International Trade Services, LLC

6850 Middlebelt Rd.

Romulus, MI 48174

*\*LME warrantable metal. The responsibility for provision of correct documentation for LME warranting (certificates of analysis etc) resides with the customer (not Metro).*

*\*\*The invoicing address listed above, along with the deal number and list of warrants, are required (along with the basic billing information) on the invoice in order to process a payment.*

	A	B	C	D	E	F
1						
2						
3	Re-issuance: Warrant is re-issued prior to shipment at the request of the customer. Metal is no longer part of cancelled warrants. Delivery slot is allocated to customer(s) next in queue.					
4	91,400	13-Jun-2012	Glencore Ltd	<p>6490 Lynch Rd 13542 Helen St 6307 W. Fort St 308 S. Antoine St 17423 W. Jefferson 50750 Russel Schmidt Blvd 3801 W. Jefferson Ave. 9450 Buffalo St 4815 Cabot St 21100 Trolley 1200 E. McNichols Ave 1725 Cicotte Ave 151 Lafayette St 12850 E. Nine Mile Rd 160 Visger Rd 26090 23 Mile Rd (Whse A) 21140 Trolley 8650 Mt. Elliott Superior Pkwy A Superior Pkwy B 20495 Pennsylvania Rd 36253 Michigan Ave 7900 Haggerty Rd</p>	2nd May - 20th June 2013	Glencore Ltd

**Permanent Subcommittee on Investigations**  
**EXHIBIT #27**

	G	H	I	J	K	L
1	<b>APPENDIX A</b>					
2						
3						
4	of which re-issued prior to shipment	of which shipped to Non Metro facility	of which shipped off-warrant to Metro facility	Address arrived	Date arrived	Company/ entity delivering in
5	n/a	n/a	91,400	21100 Trolley 21150 Trolley 2599 22nd St 26090 23 Mile Rd (Whse A) 20495 Pennsylvania Rd 9450 Buffalo St 4815 Cabot St 1725 Cicotte Ave 1200 E. McNichols Ave 7900 Haggerty Rd 151 Lafayette St 6490 Lynch Rd 17423 W. Jefferson 8650 Mt. Elliot 308 S. Antoine St 308 N. Antoine St 12850 E. Nine Mile Rd 50750 Russel Schmidt Blvd	2nd May - 20th June 2013	Glencore Ltd

	M	N
1		
2		
3		
4	Date New LME Warrant Created (if applicable)  50,000 MT 17-Jun-2013; 21,400 MT 15-Jul-2013; 20,000 MT 15-Nov-2013	Company/ entity instructing metal to be warranted (if applicable)  Glencore Ltd
5		

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	A	B	C	D	E	F
1						
2						
3	Re-issuance: Warrant is re-issued prior to shipment at the request of the customer. Metal is no longer part of cancelled warrants. Delivery slot is allocated to customer(s) next in queue.					
4	Cancellation weight (tonnes)	Date warrant cancelled	Company/ entity cancelling warrant	Address departed	Date Shipped Outbound from Premises	Company/ entity delivering out
6	25,000	7-Nov-2012	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd	6490 Lynch Rd 13542 Helen St 308 S. Antoine St 308 N. Antoine St 17423 W. Jefferson 50750 Russel Schmidt Blvd 3801 W. Jefferson Ave 9450 Buffalo St 4815 Cabot St 1200 E. McNichols Ave 1725 Cicotte Ave 151 Lafayette St 12850 E. Nine Mile Rd 160 Visger Rd 2599 22nd St 21150 Trolley 26090 23 Mile Rd (Whse A) 8650 Mt. Elliott Superior Pkwy A 20495 Pennsylvania Rd 7900 Haggerty Rd	30-Sep-2013 thru 15-Oct-2013	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd
7	18,850	8-Nov-2012	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd	6490 Lynch Rd 308 S. Antoine St 308 N. Antoine St 17423 W. Jefferson 21100 Trolley 1200 E. McNichols Ave 1725 Cicotte Ave 151 Lafayette St 12850 E. Nine Mile Rd 160 Visger Rd 2599 22nd St 21150 Trolley 26090 23 Mile Rd (Whse A) 21140 Trolley 8650 Mt. Elliott Superior Pkwy A Superior Pkwy B 7900 Haggerty Rd	15 thru 22-Oct-2013; 6,875 MT Reissued 18-Dec-2012 <sup>1</sup>	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd

	G	H	I	J	K	L
1	<b>APPENDIX A</b>					
2						
3						
4	of which re-issued prior to shipment	of which shipped to Non Metro facility	of which shipped off-warrant to Metro facility	Address arrived	Date arrived	Company/ entity delivering in
	n/a	n/a	25,000	3801 W. Jefferson 21150 Trolley 26090 23 Mile Rd (Whse A) 20495 Pennsylvania Ave 4815 Cabot St 1200 E. McNichols Ave 7900 Haggerty Rd 151 Lafayette St 6490 Lynch Rd 8650 Mt. Elliott 308 N. Antoine St 308 S. Antoine St 12850 Nine Mile Rd 1550 Superior Pkwy A	30-Sep-2013 thru 15-Oct-2013	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd
6						
	6,875	n/a	11,975	21140 Trolley 21150 Trolley 26090 23 Mile Rd (Whse A) 4815 Cabot St 36555 Ecourse Rd 151 Lafayette St 6490 Lynch Rd 8650 Mt. Elliott 308 N. Antoine St 308 S. Antoine St 160 Visger Rd	15 thru 22-Oct-2013	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd
7						

	M	N
1		
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3		
4	<p>Date New LIME Warrant Created (if applicable)</p> <p>25,000 MT 28-Nov-2013</p>	<p>Company/ entity instructing metal to be warranted (if applicable)</p> <p>Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd</p>
6	<p>11,975 MT 28-Nov-2013</p>	<p>Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd</p>
7		

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	A	B	C	D	E	F
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2						
3	Re-issuance: Warrant is re-issued prior to shipment at the request of the customer. Metal is no longer part of cancelled warrants. Delivery slot is allocated to customer(s) next in queue.					
4	Cancellation weight (tonnes)	Date warrant cancelled	Company/ entity cancelling warrant	Address departed	Date Shipped Outbound from Premises	Company/ entity delivering out
8	26,550	9-Nov-2012	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd	13542 Helen St 6307 W. Fort St 308 S. Antoine St 308 N. Antoine St 17423 W. Jefferson 50750 Russel Schmidt Blvd 3801 W. Jefferson 9450 Buffalo St 4815 Cabot St 1200 E. McNichols Ave 151 Lafayette St 12850 E. Nine Mile Rd 2599 22nd St 21150 Trolley 26090 23 Mile Rd (Whse A) 21140 Trolley 8650 Mt. Elliott 20495 Pennsylvania Rd 7900 Haggerty Rd	22-Oct-2013 thru 5-Nov-2013	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd
9	20,800	9-Nov-2012	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd	6490 Lynch Rd 13542 Helen St 6307 W. Fort St 308 N. Antoine St 17423 W. Jefferson 3801 W. Jefferson 4815 Cabot St 21100 Trolley 1200 E. McNichols Ave 1725 Cicotte Ave 151 Lafayette St 12850 E. Nine Mile Rd 160 Visger Rd 21150 Trolley 26090 23 Mile Rd (Whse A) 8650 Mt. Elliott 20495 Pennsylvania Rd 7900 Haggerty Rd	5 thru 18-Nov-2013	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd

	G	H	I	J	K	L
1	<b>APPENDIX A</b>					
2						
3						
4	of which re-issued prior to shipment	of which shipped to Non Metro facility	of which shipped off-warrant to Metro facility	Address arrived	Date arrived	Company/ entity delivering in
	n/a	n/a	26,550	21140 Trolley 21150 Trolley 2599 22nd St 26090 23 Mile Rd (Whse A) 4815 Cabot St 36555 Ecourse Rd 1200 E. McNichols Ave 151 Lafayette St 6490 Lynch Rd 8650 Mt. Elliott 308 N. Antoine St 308 S. Antoine St	22-Oct-2013 thru 5-Nov-2013	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd
8						
9	n/a	n/a	20,800	3801 W. Jefferson 26090 23 Mile Rd (Whse A) 4815 Cabot St 1725 Cicotte Ave 36555 Ecourse Rd 1200 E. McNichols Ave 13542 Helen St 151 Lafayette St 6490 Lynch Rd 8650 Mt. Elliott 12850 Nine Mile Rd 160 Visger Rd	5 thru 18-Nov-2013	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd

	M	N
1		
2		
3		
4	<b>Date New LME Warrant Created (if applicable)</b>	<b>Company/ entity instructing metal to be warranted (if applicable)</b>
8	26,550 MT 28-Nov-2013	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd
9	20,800 MT 28-Nov-2013	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd

	A	B	C	D	E	F
1						
2						
3	Re-issuance: Warrant is re-issued prior to shipment at the request of the customer. Metal is no longer part of cancelled warrants. Delivery slot is allocated to customer(s) next in queue.					
4	Cancellation weight (tonnes) 17,600	Date warrant cancelled 19-Dec-2012	Company/ entity cancelling warrant Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd	Address departed 13542 Helen St 6307 W. Fort St 308 S. Antoine St 308 N. Antoine St 50750 Russel Schmidt Blvd 4815 Cabot St 21100 Trolley 1200 E. McNichols Ave 1725 Cicotte Ave 151 Lafayette St 12850 E. Nine Mile Rd 160 Visger Rd 26090 23 Mile Rd (Whse A) 8650 Mt. Elliott 20495 Pennsylvania Rd 7900 Haggerty Rd 6490 Lynch Rd 13542 Helen St 6307 W. Fort St 17423 W. Jefferson 3801 W. Jefferson 9450 Buffalo St 4815 Cabot St 21100 Trolley 1200 E. McNichols Ave 1725 Cicotte Ave 151 Lafayette St 12850 E. Nine Mile Rd 160 Visger Rd 2599 22nd St 21150 Trolley 26090 23 Mile Rd (Whse A) 21140 Trolley 26090 23 Mile Rd (Whse B) 8650 Mt. Elliott 20495 Pennsylvania Rd 7900 Haggerty Rd	Date Shipped Outbound from Premises 3 Dec 2013 thru 12 Dec 2013	Company/ entity delivering out Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd
10	80,075	21-Dec-2012	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd		12-Dec-2013 & currently scheduled to ship outbound FOT thru 3-Feb-2014 <sup>2</sup>	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd and release transferred to Macquarie Bank Ltd with agent Red Kite Master Fund Ltd
11						
12						
13						

	G	H	I	J	K	L
	<b>APPENDIX A</b>					
1						
2						
3						
4	of which re-issued prior to shipment	of which shipped to Non Metro facility	of which shipped off-warrant to Metro facility	Address arrived	Date arrived	Company/ entity delivering in
	n/a	n/a	17,600	50750 Russel Schmidt Blvd 26090 23 Mile Rd (Whse A) 13542 Helen St 1200 E. McNichols Ave 6490 Lynch Rd 3801 W. Jefferson 21150 Trolley 160 Visger Rd 308 N. Antoine St 20495 Pennsylvania Rd 4815 Cabot St 36555 Ecourse Rd	3 Dec 2013 thru 12 Dec 2013	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd
10						
	n/a	3,225 of 10,000	53,125 of 70,075	26090 23 Mile Rd (Whse A) 50750 Russel Schmidt Blvd 1200 E. McNichols Ave 4815 Cabot St 1550 Superior Pkwy A 3801 W. Jefferson 20495 Pennsylvania Rd 36555 Ecourse Rd	12-Dec-2013 to date (24 Jan 2014)	Barclays Bank PLC with agent as Red Kite Master Fund Limited c/o RKY Services Ltd and release transferred to Macquarie Bank Ltd with agent Red Kite Master Fund Ltd
11						
12						
13						

	M	N
1		
2		
3		
4	<p><b>Date New LME Warrant Created (if applicable)</b></p> <p>17,600 MT 23-Dec-2013</p>	<p><b>Company/ entity instructing metal to be warranted (if applicable)</b></p> <p>Macquarie Bank with agent as Red Kite Master Fund Limited</p>
10		
11		
12		
13		

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	A	B	C	D	E	F
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2						
3	Re-issuance: Warrant is re-issued prior to shipment at the request of the customer. Metal is no longer part of cancelled warrants. Delivery slot is allocated to customer(s) next in queue.					
4	Cancellation weight (tonnes)	Date warrant cancelled	Company/ entity cancelling warrant	Address departed	Date Shipped Outbound from Premises	Company/ entity delivering out
14						
15						
16						
17	1 Customer decided to re-issue 6.875 MT prior to shipment (free delivery slots allocated to customer next in queue).					
18	18 Please be advised that the information and spreadsheets provided herein did not previously exist in the form requested, and their compilation required					

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	G	H	I	J	K	L
1	<b>APPENDIX A</b>					
2						
3						
4	of which re-issued prior to shipment	of which shipped to Non Metro facility	of which shipped off-warrant to Metro facility	Address arrived	Date arrived	Company/ entity delivering in
14						
15						
16						
17						
18						

	M	N
1		
2		
3		
	Date New LME Warrant Created (if applicable)	Company/ entity instructing metal to be warranted (if applicable)
4		
14		
15		
16		
17		
18		

	A	B	C	D	E	F
1						
2						
3						
4						
5	Metal Type	Customer	Tonnage (mt)	Date Deal Confirmed	Date Warrant Cancelled	Scheduled
6	AH	Glencore	91,400	23 Feb 13 & 4 Apr 13	13-Jun-12	5-Jul-12
7	AH		25,000	4-Nov-12	7-Nov-12	20-Nov-12
8	AH		18,850	4-Nov-12	8-Nov-12	20-Nov-12
9	AH		26,550	4-Nov-12	9-Nov-12	20-Nov-12
10	AH	Red Kite	20,800	4-Nov-12	9-Nov-12	20-Nov-12
11	AH		17,600 <sup>1</sup>	4-Nov-12	19-Dec-12	28-Dec-12
12	AH		80,075 <sup>1</sup>	4-Nov-12	21-Dec-12	28-Dec-12
13						
14						
15	<sup>1</sup> Initial tonnage and related dates were amended in December 2012 at customer request.					
16						
17	Please be advised that the information and spreadsheets provided herein did not previously exist in the form requested, and their compilation is					

	G	H	I
1	<b>APPENDIX B</b>		
2			
3			Commercial Terms
4			At the
5	<b>Shipping Period</b>	<b>Prepaid Incentive</b>	<b>if re-warranted</b>
6	2nd May - 20th June 2013	N/A	Metro pays incentive \$198/t and \$15/t (on 21,400mt)
7	30-Sep-2013 thru 15-Oct-2013		
8	15 thru 22-Oct-2013; 6,875 MT not shipped and reissued 18-Dec-2012		
9	22-Oct-2013 thru 5-Nov-2013	36	Metro pays incentive \$160/t
10	5 thru 18-Nov-2013		
11	3 Dec 2013 thru 12 Dec 2013		
12	12-Dec-2013 & currently scheduled to ship outbound FOT thru 3-Feb-2014 <sup>2</sup>		
13			
14			
15			
16			
17	quidred		

	J	K	L	M	N
1					
2					
3					
4	option of customer				
5	if arrangement cancelled and shipped to non Metro facility				
6	N/A				
7					
8					
9					
10	Client pays break fee of \$66/t (reflects \$30 + Prepaid Incentive)				
11					
12					
13					
14					
15					
16					
17					

## RE: Alcan

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**From:**

Mark Askew </o=metro international trade services/ou=first administrative group/cn=recipients/cn=maskew">

**To:**

Chris Wibbelman <cwibbelman@metroftz.com>

**Date:**

Fri, 17 Dec 2010 15:29:54 +0000

---

Hi, Chris

We still need to go back to Alcan regarding their query (in long-term) if we could do biz direct without any trader (they don't like margin they're taking) and arrange payment against B/Ls direct to them via bank which likes their(excellent) credit-rating. I said we'd discuss(with you) and revert.

All best

Mark a

-----Original Message-----

From: Mark Askew

Sent: Saturday, December 04, 2010 2:04 PM

To: Chris Wibbelman

Subject: Montreal

Hi Chris

I left a message for you to call me but guess I need to cover with e-mail instead.

Alcan should have another 5 kt in Dec and then min 10 kt per month in 2011 which they plan to sell a quarter at a time. Supplementary amounts of 5 k should also be available occasionally.

They asked if we could do biz direct without any trader (they don't like margin they're taking) and arrange payment against B/Ls direct to them via bank which likes their(excellent) credit-rating. I said we'd discuss and revert.

They also asked about rumours they'd heard on 100 k cancellation in Sep that we were blocking others. I said there had been many rumours (incl Noble, Trafi, G'core etc) and it would not be appropriate for me to comment on such private matters as who is cancelling metals etc

I remain concerned, as I have expressed from start, regarding " Q management" etc (esp in light of conversation Michael said he had with Paco on same a few weeks back).

Also,it was mentioned by a reliable source confidentially last night that Quebec govt is selling half its share- holding in Alouette to Marubeni(who will hold about a sixth of total going forward, I believe). I sensed Marubeni were holding back on info when I saw them. Also, severe staffing implications at SGF/Albecourt likely....

All best

Mark a

-----  
Sent from my BlackBerry Wireless Handheld

Permanent Subcommittee on Investigations

**EXHIBIT #28**

CONFIDENTIAL

GSPSICOMMODS00047422

## Re: Stemcor 12 kt to Detroit

---

**From:**

Mark Askew <maskew@metroftz.com>

**To:**

Michael Whelan <mwhelan@metroftz.com>

**Cc:**

Leo Prichard <lprichard@metroftz.com>, Chris Wibbelman <cwibbelman@metroftz.com>

**Date:**

Sat, 25 Feb 2012 19:47:47 +0000

---

Thanks. Michael

I referred to my reservations regarding what was called "queue management" in previous times as an aside-I certainly did not expect it to become the primary topic....

All best

---

Mark A

---

**From:** Michael Whelan

**Sent:** Saturday, February 25, 2012 02:29 PM

**To:** Mark Askew

**Cc:** Leo Prichard; Chris Wibbelman

**Subject:** Re: Stemcor 12 kt to Detroit

Let's be clear, we are not participating in queue management. We have done an off warrant storage deal with a customer who was going to remove metal and place in an off warrant warehouse. We were able to provide an off warrant storage option and make a commercial deal that doesn't in any way violate the rules of the LME.

Sent from my iPhone

On Feb 25, 2012, at 11:56 AM, "Mark Askew" <[maskew@metroftz.com](mailto:maskew@metroftz.com)> wrote:

Hi Chris

On reflection, until I spoke to Leo, I was, perhaps mistakenly, operating in the belief that CWT had recently taken metal for rewarranting from Metro (eg in Asia-Pacific).

In the same way that I have expressed concerns regarding aspects of queue management, I am loath to start a war with CWT (even tho' I have questioned ethics of certain of their people on separate issues in past).

However, if instructed, I would of course proceed.

May I await your guidance Monday before proceeding further on this with Stemcor?

Sincere apologies and all best

Permanent Subcommittee on Investigations

EXHIBIT #29

CONFIDENTIAL

GSPSICOMMODS00047423

---

Mark A

---

**From:** Leo Prichard  
**Sent:** Friday, February 24, 2012 12:24 PM  
**To:** Chris Wibbelman; Mark Askew  
**Cc:** Michael Whelan  
**Subject:** RE: Stemcor 12 kt to Detroit

I don't believe we have had any recent releases of metal from our warehouses by CWT. It would be a good deal for us, we should just be aware that this may cause retaliation.

Leo S. Prichard  
Metro International Trade Services  
Office: 1-310-233-2800 Extension 19  
Facsimile: 1-310-233-2811  
Email: [lprichard@metroftz.com](mailto:lprichard@metroftz.com)

---

**From:** Chris Wibbelman  
**Sent:** Friday, February 24, 2012 9:04 AM  
**To:** Mark Askew  
**Cc:** Michael Whelan; Leo Prichard  
**Subject:** Re: Stemcor 12 kt to Detroit

Not for me. We are helping Jaron who already contracted with cwt. Leo, Michael, any other thoughts?

---

**From:** Mark Askew <[maskew@metroftz.com](mailto:maskew@metroftz.com)>  
**Date:** Fri, 24 Feb 2012 08:58:24 -0800  
**To:** Christopher Wibbelman <[cwibbelman@metroftz.com](mailto:cwibbelman@metroftz.com)>  
**Subject:** Stemcor 12 kt to Detroit

Hi, Chris

Sorry to disturb with call earlier about conversation with Jean-Luc.. I also spoke to Michael (to keep in loop), Curt (for suggested consignment address- to be "blind" he likes Stemcor c/o Wayne Steel) and Tanya (she will provide address specifics). When I next chatted to Leo he said he'd want to see certs or brand plus grade, if possible, before cancellation which I can request of Stemcor .... However, he was also concerned about moving steel out of CWT because apparently we are co-operating with them and J Aron on some metal ex Pacorini in Asia? Is that a deal-stopper?

Thanks and all best

Mark a

---

**From:** Chris Wibbelman  
**Sent:** Tuesday, February 21, 2012 5:19 AM  
**To:** Mark Askew  
**Subject:** Re: Incentive to keep 25kt in Nola...

I hoped to speak with you about that before pulling the trigger, but I am likely ok with it. Would be great to have a blind shipment.

---

**From:** Mark Askew

**Sent:** Tuesday, February 21, 2012 01:48 AM  
**To:** Chris Wibbelman  
**Subject:** Re: Incentive to keep 25kt in Nola...

Hi Chris

Only just out of Penoles do.

By the way, any thoughts on metal ex CWT-Chicago to Detroit?

Cheers/best

-----  
Mark A

-----  
**From:** Mark Askew  
**Sent:** Monday, February 20, 2012 04:26 PM  
**To:** Chris Wibbelman  
**Subject:** Re: Incentive to keep 25kt in Nola...

Thanks, Chris

Be well

-----  
Mark A

-----  
**From:** Chris Wibbelman  
**Sent:** Monday, February 20, 2012 04:14 PM  
**To:** Mark Askew  
**Subject:** Re: Incentive to keep 25kt in Nola...

Sleep Mark. Will catch up later

-----  
**From:** Mark Askew  
**Sent:** Monday, February 20, 2012 04:11 PM  
**To:** Chris Wibbelman  
**Subject:** Re: Incentive to keep 25kt in Nola...

Hi, Chris

Just arrived-want to meet at say 1.30 pm?

Otherwise, hoping to put my head down for an hour or two before meetings start as I am pretty tired after being on go for 53 hours door-to-door....

All best, as ever

-----  
Mark A

-----  
**From:** Mark Askew  
**Sent:** Monday, February 20, 2012 12:53 PM  
**To:** Chris Wibbelman

**Subject:** Re: Incentive to keep 25kt in Nola...

Are you going to Penoles dinner tonight?  
atb

---

Mark A

---

**From:** Chris Wibbelman  
**Sent:** Monday, February 20, 2012 12:49 PM  
**To:** Mark Askew  
**Subject:** Re: Incentive to keep 25kt in Nola...

Tuesday morning. Still on my call

---

**From:** Mark Askew  
**Sent:** Monday, February 20, 2012 12:38 PM  
**To:** Chris Wibbelman  
**Subject:** Re: Incentive to keep 25kt in Nola...

Hi Chris  
When do you leave?  
All best

---

Mark A

---

**From:** Mark Askew  
**Sent:** Monday, February 20, 2012 12:10 PM  
**To:** Chris Wibbelman  
**Subject:** Re: Incentive to keep 25kt in Nola...

As mentioned when we spoke Sat, flight was delayed cos of mechanical difficulties.

Therafter passenger had stroke so we diverted

In line for security but please call  
Thanks and best

---

Mark A

---

**From:** Mark Askew  
**Sent:** Monday, February 20, 2012 12:01 PM  
**To:** Chris Wibbelman  
**Subject:** Re: Incentive to keep 25kt in Nola...

About 1-1,30 pm agw albeit severely jet-lagged...

---

Mark A

---

**From:** Chris Wibbelman  
**Sent:** Monday, February 20, 2012 11:57 AM

**To:** Mark Askew  
**Subject:** Re: Incentive to keep 25kt in Nola...

ETA?

---

**From:** Mark Askew  
**Sent:** Monday, February 20, 2012 11:57 AM  
**To:** Chris Wibbelman  
**Subject:** Re: Incentive to keep 25kt in Nola...

Salt Lake City...

---

Mark A

---

**From:** Chris Wibbelman  
**Sent:** Monday, February 20, 2012 11:49 AM  
**To:** Mark Askew  
**Subject:** Re: Incentive to keep 25kt in Nola...

Where are you?

---

**From:** Mark Askew  
**Sent:** Monday, February 20, 2012 10:45 AM  
**To:** Chris Wibbelman  
**Cc:** Michael Whelan; Leo Prichard  
**Subject:** Fw: Incentive to keep 25kt in Nola...

Hi Chris

See below-not good news.

However, I also spoke to him again and re-explained potential damage this could do to us and LME contract. He said he would recheck with physical desk.....

He also asked, to my surprise, if we could potentially look at metal previously warranted in CWT for Detroit ? What do you think?

All best

---

Mark A

---

**From:** Shahnawaz Islam [<mailto:shahnawaz.islam@stemcor.com>]  
**Sent:** Monday, February 20, 2012 09:31 AM  
**To:** Mark Askew  
**Cc:** JeanLuc Fiorenzoni <[jeanluc.fiorenzoni@stemcor.com](mailto:jeanluc.fiorenzoni@stemcor.com)>  
**Subject:** RE: Incentive to keep 25kt in Nola...

Hi Mark,

Unfortunately we have not been advised by our physical desk of an incentive required to keep billets under warrant in Nola.

They are now looking to cancel 50 warrants of the inventory based on where physical and LME prices are today. You will see our request shortly.

Best regards,  
Shahnawaz

---

**From:** Mark Askew [<mailto:maskew@metroftz.com>]  
**Sent:** 20 February 2012 14:26  
**To:** JeanLuc Fiorenzoni  
**Cc:** Shahnawaz Islam  
**Subject:** Re: Incentive to keep 25kt in Nola...

Hi JL

Any thoughts/feedback on this?

Thanks and best

---

Mark A

---

**From:** Mark Askew  
**Sent:** Friday, February 10, 2012 09:55 AM  
**To:** '[jeanluc.fiorenzoni@stemcor.com](mailto:jeanluc.fiorenzoni@stemcor.com)' <[jeanluc.fiorenzoni@stemcor.com](mailto:jeanluc.fiorenzoni@stemcor.com)>  
**Cc:** '[shahnawaz.islam@stemcor.com](mailto:shahnawaz.islam@stemcor.com)' <[shahnawaz.islam@stemcor.com](mailto:shahnawaz.islam@stemcor.com)>  
**Subject:** Re: Incentive to keep 25kt in Nola...

Thanks JL(and Shanawaz)-trying hard- just arrived at a place called Crystal Springs overlooking "Robbers Pass" near old Pilgrim's Rest Gold Fields.....

Enjoy week-end!

---

Mark A

---

**From:** JeanLuc Fiorenzoni [<mailto:jeanluc.fiorenzoni@stemcor.com>]  
**Sent:** Friday, February 10, 2012 09:28 AM  
**To:** Mark Askew  
**Cc:** Shahnawaz Islam <[shahnawaz.islam@stemcor.com](mailto:shahnawaz.islam@stemcor.com)>; JeanLuc Fiorenzoni <[jeanluc.fiorenzoni@stemcor.com](mailto:jeanluc.fiorenzoni@stemcor.com)>  
**Subject:** RE: Incentive to keep 25kt in Nola...

Hi Mark,

I will not have a reply until next week.

Enjoy South Africa  
JL

---

**From:** Mark Askew [<mailto:maskew@metroftz.com>]  
**Sent:** 10 February 2012 12:10  
**To:** JeanLuc Fiorenzoni  
**Cc:** Shahnawaz Islam

**Subject:** Re: Incentive to keep 25kt in Nola...

Hi JL

Just wondered if you had any more thoughts/ideas on this?

Be well

.....  
Mark A

---

**From:** JeanLuc Fiorenzoni [<mailto:jeanluc.fiorenzoni@stemcor.com>]  
**Sent:** Wednesday, February 08, 2012 10:29 AM  
**To:** Mark Askew  
**Cc:** Shah Nawaz Islam <[shahnawaz.islam@stemcor.com](mailto:shahnawaz.islam@stemcor.com)>; JeanLuc Fiorenzoni <[jeanluc.fiorenzoni@stemcor.com](mailto:jeanluc.fiorenzoni@stemcor.com)>  
**Subject:** Incentive to keep 25kt in Nola...

Whilst the warrants have already been cancelled, we are considering your suggestion with the view, if positive, to come back to you with a number... bear with us

JL

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## Resignation

---

**From:**

Michael Whelan <mwhelan@metroftz.com>

**To:**

Chris Wibbelman <cwibbelman@metroftz.com>

**Bcc:**

Michael Whelan <whelan12@me.com>

**Date:**

Fri, 14 Jun 2013 00:58:53 +0100

---

Dear Chris -

Following our discussion today, please allow this email to serve as formal notice that I am officially resigning from my position at Metro International effective immediately.

I am willing to discuss an exit strategy with you that makes sense for Metro and is acceptable to me – I remain available to discuss at your convenience.

I have some questions and concerns regarding the Chinese Wall Policy that is in place which regulates the interaction between Metro International, its customers, and J Aron. This morning's confrontation was extremely questionable.

I appreciate the relationship that you and I have built over the last 20 years. We built Metro. I wish you the best.

Very truly yours,

Michael

Permanent Subcommittee on Investigations

**EXHIBIT #30**

CONFIDENTIAL

GSPSICOMMODS00047430

PSI Submission, Goldman Sachs - 10.2.14  
Exhibit A

Metro International Trade Services  
(2011 - 2013)

Invoice Date	Location	Customer	Amount (\$)
2/4/2010	Long Beach	Mitsubishi	112,000
5/16/2011	New Orleans	Glencore	600,000
6/23/2011	Chicago	Triland	25,000
6/23/2011	Mobile	Triland	50,000
6/23/2011	Mobile	Triland	55,000
11/21/2012	Incheon	Standard Bank	67,802
11/29/2012	Trieste	Glencore	1,900,000
11/30/2012	Trieste	Standard Bank	37,592
11/30/2012	Trieste	Standard Bank	97,805
11/30/2012	Trieste	Standard Bank	783,791
11/30/2012	Trieste	Standard Bank	300,632
12/18/2012	Detroit	Red Kite	103,125
12/18/2012	Detroit	Red Kite	1,021,875
1/18/2013	Trieste	Glencore	2,000,000
1/18/2013	Trieste	Glencore	375,000
1/23/2013	Busan	Glencore	160,000
3/11/2013	Trieste	Standard Bank	37,688
3/11/2013	Trieste	Standard Bank	120,060
3/11/2013	Trieste	Standard Bank	149,291
3/11/2013	Trieste	Standard Bank	21,711
3/11/2013	Trieste	Standard Bank	148,854
12/11/2013	Trieste	Standard Bank	74,309

PSI Submission, Goldman Sachs - 10.3.14

Exhibit A

Metro International Trade Services

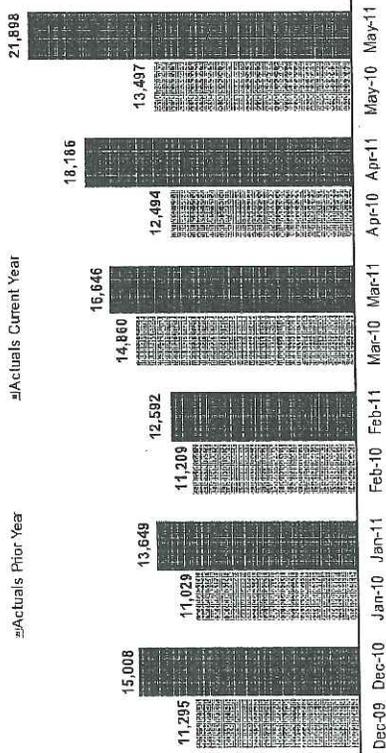
2014

Invoice Date	Location	Customer	Amount (\$)
6/19/2014	Mobile	BNP Paribas	1,301,488
7/9/2014	Vollers Rotterdam	Noble	1,701,384
7/17/2014	Mobile	BNP Paribas	1,308,169
8/1/2014	Toledo	Triland	130,050
8/21/2014	Mobile	BNP Paribas	1,308,393
8/22/2014	Toledo	Triland	66,300
9/17/2014	Mobile	BNP Paribas	1,308,354

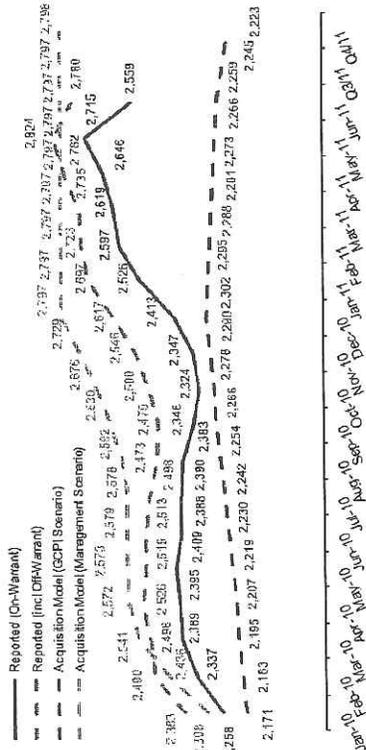
# Metro International Trade Services

## Management Brief – June 2011

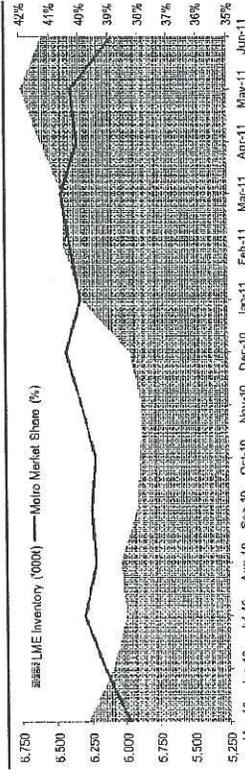
YoY Gross Profit Evolution (US\$ '000)



Long Term Metal Inventory Trend ('000t)



Evolution of Market Share (%)



Monthly Business Highlights

- Metro showed another month of record financial performance with \$21.9m Gross Profit in May 2011
- As indicated in the last Brief the aluminum market has seen another tightness in May 2011, which forced Metro to drop most of its aluminum financing deals. This has an impact on Metro's financials at several levels:
  - High level of FOT revenue from aluminum being cancelled that was previously under financing deals.
  - Positive impact on rent discounts from dropping the majority of aluminum financing deals; negative impact from the fact that a small amount was rolled at a loss to capture future premium income
  - Extraordinary income from counter parties sharing physical premium with Metro after deliverring metal previously under financing deals into the physical market
  - Inventory balances are expected to decrease further over the coming months, which will reduce rent revenues in the long term
- The proposal to change the outflow regime from 1,500t/d to a sliding scale up to 3,000t/d above 900kt inventory per location has been accepted in principal. However the outboard rate above 900kt will be discussed again at the LME board on July 14, 2011. Proposed implementation date is April 2012.

Investment Summary (US\$ m)

	Equity		Tranche A Loan (Working Capital)		Tranche B Loan (Mortgages)		Net LME Rent		Commod. P&L (1)	Net LME Rent Receiv. (2)
	Dividend	Balance	Advanced	Repaid	Balance	Advanced	Repaid	Balance		
At Acqui.	-	451.1	44.2	-	44.2	-	-	16.3	-	-
FY 2010	(32.0)	419.1	67.2	(67.2)	-	(1.1)	15.2	114.0	128.0	-
Jan-11	-	419.1	11.0	-	11.0	(0.4)	14.8	10.3	130.1	-
Feb-11	-	419.1	-	-	11.0	(0.5)	14.3	9.5	130.8	-
Mar-11	-	419.1	-	(11.0)	-	-	14.3	4.4	19.7	-
Apr-11	(150.0)	269.1	14.0	-	14.0	(0.3)	13.9	0.5	38.5	-
May-11	-	269.1	20.0	-	34.0	-	13.9	10.2	n/a	-
Jun-11	-	269.1	-	(7.0)	27.0	-	13.9	13.9	n/a	-
Current	-	269.1	-	(7.0)	27.0	-	13.9	13.9	166.7	-

Notes: (1) Metro P&L is reported on a one month lag and displays post interest carry charges. (2) Net LME Rent Receivables represents the rent receivables net of any rent discounts that would be subtracted at the end of the rent cycle.

Higher intangible amortisation (\$53m p.a. in 2010 vs. \$87m p.a. in 2011) as per amortisation schedule set in the purchase price allocation at acquisition

Sean M. Berkowitz  
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www.lw.com

## LATHAM & WATKINS<sup>LLP</sup>

November 10, 2014

### Via Electronic Mail

Tyler Gellasch, Senior Counsel  
U.S. Senate Permanent Subcommittee on Investigations  
340 Dirksen Senate Office Building  
Washington, DC, 20510

#### FIRM / AFFILIATE OFFICES

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Dear Mr. Gellasch:

We are writing in response to your request for The London Metal Exchange (LME) voluntarily to provide answers to three questions. In the spirit of our ongoing cooperation, we provide the following responses.

**Question 1: Does the LME consider it a violation of its load out rule for an owner of multiple warehouses to “load out” metal from one warehouse only to load it back in to another warehouse owned by the same company in the same geographic region?**

Without addressing any specific actual conduct, we can answer this question on a hypothetical basis. In short, while the LME would view such behavior as a contravention of the “spirit” of the relevant requirements, it may be difficult to argue that it constituted a contravention of the “letter” of those requirements. We explain this answer further below, and we also note that the LME has recently released two separate consultations, which propose rule changes specifically designed to address the behavior which you describe.

By way of background to our answer, clause 4.2 of the current version of the Warehouse Agreement states that a “Warehouse is required to expedite delivery from warehouses at the minimum rates published from time to time by the Exchange.” The minimum rates are published by the LME in its Policy on Approval of Warehouses. Neither the Warehouse Agreement nor the Policy on Approval of Warehouses currently define the term “delivery from warehouses” or “delivery out.” When the Warehouse Agreement and the Policy on Approval of Warehouses were originally drafted, conduct such as that which you describe was not anticipated. Accordingly, the draftsman did not consider it necessary to further define what was meant by “delivery from warehouses.” In the LME’s view the words should arguably be given their ordinary meaning, implying that the metal should leave the premises of the warehouse company.

However, in the scenario you describe, the material would be placed on a truck or other form of transport and would leave the premises (*i.e.*, shed) of the warehouse company, albeit to

LATHAM & WATKINS<sup>LLP</sup>

return to another shed owned by the same warehouse company at a later date. The LME would not have visibility as to what happens to metal once it is cancelled and delivered out of the warehouse. While on warrant, it has an identifier number and is tracked within LMEsword. The LME also has visibility of cancelled stock, as warehouse companies are required to report cancelled stock to the LME. Once it is delivered out of the warehouse, however, the LME has no further visibility over that metal. The metal has arguably left the premises of the warehouse company, albeit to return to other premises owned by the same warehouse company at a later date. Therefore, while the LME would view such behavior as inconsistent with the "spirit" of the relevant requirements, it may not violate the "letter" of those requirements because the relevant terms may be susceptible to more than one interpretation.

It is important to note that the LME has now released two separate consultations on (a) proposed amendments to the LME's rules surrounding its physical network (including the Policy on Approval of Warehouses), and (b) to the Warehouse Agreement. The two consultation notices and accompanying documents are attached to this letter as Exhibit A (bates stamped LME\_PSI0002280 – LME\_PSI0002394) and Exhibit B (bates stamped LME\_PSI0002395 – LME\_PSI0002458). Among other things, these two consultations propose rule changes specifically designed to address the behavior which you describe, in particular:

The term "Load-out" is now defined as "a delivery of metal out of the premises of an Authorised Warehouse which meets the requirements of this policy (including for the avoidance of doubt paragraph C9)." *See* section H of the Policy (Ex. A at Appendix B).

"To qualify as a load-out:

(a) The load-out must be accompanied by a bill of lading or other document issued by a carrier to the Warehouse, no matter the form of transportation, listing and acknowledging receipt of goods for transport; and

(b) The recipient on the document at (a) above cannot be an entity which is an Authorised Warehouse or an off-Warrant warehouse located in the same Delivery Point where the metal is loaded out, if such Authorised Warehouse or off-Warrant warehouse is owned or operated by the Warehouse loading out the metal, or is a company in the Warehouse's Group.

Any movement of metal which is not accompanied by a bill of lading or equivalent meeting the requirements of paragraphs (a) and (b) above shall not be counted towards a Warehouse's load out requirements."

*See* section C paragraph 9 of the Policy (Ex. A at Appendix B).

The LME intends to check bills of lading and other transport receipts to ensure that they comply with these requirements on routine audits, once the proposed rules are in place.

The LME views these changes as important to ensure that behavior such as that which you describe will be encompassed by the letter of the LME requirements going forward. The timeline and process for implementing the changes proposed by the consultation notices are set

**LATHAM & WATKINS LLP**

out in the consultation notices themselves. Broadly, it is anticipated that the changes would be in place by June next year. *See* paragraph 16 of the Notice (Ex. A).

**Questions 2 & 3: Does the LME consider what Metro did with the deals identified in response to the LME investigation to be consistent with the LME's load out rule? We understand that the LME conducted or is conducting an investigation into certain Metro practices, but the LME has heretofore declined to confirm it to the Subcommittee. Nevertheless, can you please provide the Subcommittee with an update on the status of any such investigation, including whether the LME has taken, or intends to take, action against Metro.**

As we advised you previously, as an instrumentality of the government of the United Kingdom and a market regulator, the LME maintains strict confidentiality of ongoing investigations into approved warehouses and therefore we are unable to provide further information in response to questions 2 and 3. The LME's confidentiality obligations stem from multiple sources.

---

**Redacted By**  
**Permanent Subcommittee on Investigations**

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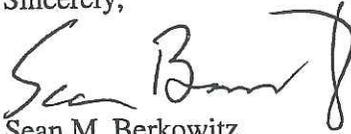
LATHAM & WATKINS LLP

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**Redacted By**  
**Permanent Subcommittee on Investigations**

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Sincerely,



Sean M. Berkowitz  
of LATHAM & WATKINS LLP

# Aluminum Users Group

To: Martin Abbott (LME)

Charles Li (HKE)

Oct. 29, 2012

Gentlemen,

On behalf of the AUG, I want to thank you for taking a few minutes on October 17th to discuss our continued concerns with the LME warehouse rules. As promised at our meeting, below is a recap of the key issues that the Aluminum User Group presented together with our response to Mr. Li's question.

1. Major flaws have become evident in the current LME settlement system.

The LME's terminal market model, which provided convergence between the derivative and physical aluminum markets through physical delivery, is broken. A warrant system is working when a buyer can access the product backing up the warrant. This, however, is not the case today under the LME's warehousing model. Whilst warehouses can accept deliveries at a seemingly infinite rate, the minimum rate set for load out has become the maximum rate the warehouses apply for load out of metal. The warehouses also apply the minimum rate as a combined maximum rate for all warehouses at a single warehouse location. These restrictions lead to long queues for load out of metal that adversely affect business efficiency and lead times.

We recognize that other factors such as macroeconomic conditions beyond the LME's control affect the situation; however, these should not detract from the fact that the issue needs resolution in order to have a properly functioning exchange.

The consequences of the LME's warehousing problem are painful for the consumer community. Aluminum buyers can no longer rely upon LME warehouses as a supply source. Warehouses offer incentives that lure metal away from the physical market and underpin the recent increase in premia. Load-out restrictions enable the warehouses to project the minimum period that they will be able to retain the metal, and thus the rent they will earn. As a result physical market premia are at least double their normal levels despite the fact that overall aluminum stocks have never been higher. We estimate that because of this dynamic between warehouses and producers, total metal costs have increased by approximately \$3B annually on the 27 million tonnes of annual primary aluminum production outside China. These issues also affect scrap, compounding the cost.

The LME leadership talked a lot during our meeting about financing deals. The AUG does not question the right of individuals, funds or companies to own metal, however, we strongly protest rules that prevent us from taking timely delivery of metal ourselves from LME warehouses and the inordinately long queues that hurt the supply chain. In our view, the long queues also undermine the LME's position as a Recognized Investment Exchange since the owners of metal may only get access to the warrant but

not the underlying asset.

## 2. Mr. Li's questions.

We identify below the issues Mr. Li outlined according to three criteria during our meeting. He made similar comments in public earlier in the week. We also summarize our views as to how he should look at this issue:

- a. "Are you really not able to get metal?"  
Yes, considering the long queues and increasing delays in getting metal from LME warehouses. For example, Novelis sourced warrants from Detroit in September 2011 and had to wait until late February 2012 for the metal to arrive at the plant. Delays like this have a direct adverse impact on aluminum user business planning, efficiency and cost.
- b. "Is 90% of the price wrong?" (referring to the LME price)  
The absolute LME price is not in the scope of this discussion. As discussed at the meeting, the LME price is a hedgeable commodity and all consumers have policies and methodologies in place to manage this.
- c. "Is 10% of the price wrong?" (referring to global premia)  
As a result of the warehouse incentives, global premia are at least twice their normal levels despite historically high stocks. These incentives provide an additional "customer" for the metal, who does not pay based on conventional market sources of supply and demand for metal but instead, pays based on the length of time they expect that metal to earn rent for the warehouse.

## 3. Our proposals.

The AUG presented the following ideas in our letter of October 3, 2012. These were broadly discussed along with other potential remedies during the meeting.

- a. Adjust daily minimum load out rates to match LME warehouse load-out demand "without limits" to mirror the LME warehouses' ability to receive metal "without limits".
- b. Apply load out requirements to individual warehouses, not simply warehouse locations.
- c. Require warehouses to have the proper equipment in order to meet load out requirements. Preclude warehouses from receiving additional metal until they reach the proper standards.
- d. Eliminate or reduce rent charges if a warehouse cannot deliver material in a timely manner; for example, there should be some penalty if a warehouse cannot load out on a warrant within 60 or 90 days of presentation.
- e. If possible, eliminate potential conflicts of interest by prohibiting LME members from ownership of, or relationships with LME-registered warehouses.

While we focused on warehouse behaviour, we also encouraged the LME to look at other areas including possible amendments to the warrant system.

4. Timing.

The AUG is concerned that the situation is continuing to worsen. Metal supply lines are becoming more tenuous and premiums continue to increase. Therefore we seek a speedy resolution to this issue. We expect a response within two weeks of this addressing our concerns and include serious steps to alleviate this issue.

In the meantime, we have begun contacting relevant UK, US and EU regulatory and government bodies. In parallel, other significant metal consuming companies may join our group.

Thank you for taking time to meet us on October 17th. We would appreciate your help to eliminate these issues quickly.

Sincerely,

A handwritten signature in black ink that reads "Mary Jane Saunders". The signature is written in a cursive, flowing style.

Mary Jane Saunders  
AUG

cc: FSA

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## **Presentation to Firmwide Client and Business Standards Committee**

### **Metro International Trade Services**

**August 03, 2011**

In accordance with LME rules and Goldman Sachs' Conflict Management Procedures Between Metro and Other GS Businesses and Personnel, the information in this presentation is confidential and shall not be shared with anyone outside of this committee without prior approval from Legal and Compliance

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Permanent Subcommittee on Investigations

**EXHIBIT #35**

**FRB-PSI-707486**



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- I. Metro Business Overview
- II. Outbound Rule Overview & Discussion Points
- Appendix A: Media Debate: Key Discussion Areas



## I. Metro Business Overview

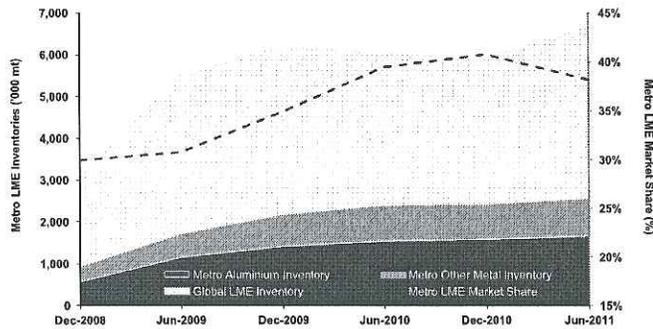


## Metro Business Snapshot

### “Leading LME Warehouse Operator”

- Metro is a global warehouse operator primarily engaged in the storage of non-ferrous metals for customers of the London Metal Exchange (LME).
- Founded in 1991, the company is currently headquartered in Michigan, USA, and has 31 FTE and up to 500 contingent and third party employees.
- Since 2001, the company has grown from eight warehouses in three US cities to 108 warehouses in 21 cities.
- In February 2010, Goldman Sachs acquired 100% of Metro under the Merchant Banking Exemption.
- As of end June 2011, Metro had inventories of about 2.5 m tons of metal in its warehouses. This represents a market share of 39% of global LME inventory.

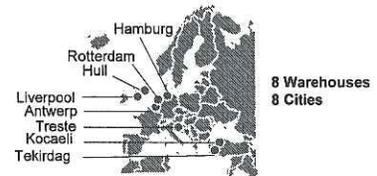
### Evolution of Inventories ('000t)



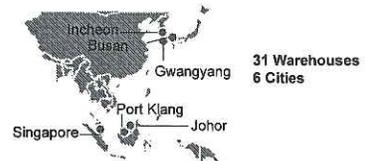
### Operations in United States



### Operations in Europe



### Operations in Asia





# LME Warehousing Players

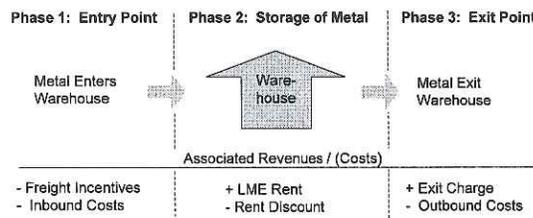
Key Warehouse Operators								Commentary
								<ul style="list-style-type: none"> <li>There is a total of 30 registered LME warehouse operators, most of which are concentrated on a specific region or location</li> <li>Only a limited number of players are present in multiple locations and on a global scale</li> <li>Contrary to Metro the majority of global players have large-scale diversified operations outside of their LME business                             <ul style="list-style-type: none"> <li>Steinweg's activities include port infrastructure investments and soft commodity storage</li> <li>Henry Bath and Pacorini both operate logistic businesses</li> </ul> </li> <li>LME warehouse sector has seen a wave of acquisitions by metal traders and/or investment banks over the last 18 months</li> <li>In addition a number of new entrants such as Barclays / Metalloyd have announced intentions to build a warehousing business</li> </ul>
<b>Company</b>								
HQ								
Founding Date								
Ownership								
<b>Geographic Presence</b>								
Northern Europe								
Southern Europe								
UK								
USA								
Asia								
<b>Business Model</b>								
Pure Play?								
Number of Warehouses <sup>1</sup>								
Number of Employees								
<b>M&amp;A Activity</b>	acquired by GS	acquired by Trafigura	acquired by JPM	acquired by Glencore	acquired metals trader	remains independent	acquired by Noble Group	

<sup>1</sup> Represents the number of warehouses approved for storage of non-ferrous metals per the LME Website. Metro number includes as-used arrangements with third party operators.



# Metro Warehouse Operations

## Metro Business Model



### Phase 1:

- Metro often pays "Freight Incentives" to capture inbound flows. This is a standard competitive practice.
- Unlike competition Metro does not own or operate a logistics network.

### Phase 2:

- Metro manages the storage of metal according to specific rules and regulations.
- Daily "LME Rent" charges become payable. In some instances Metro offers a "Rent Discount" to the published rack rates.

### Phase 3:

- Metro prepares metal for outbound shipment, but is generally not involved in outbound logistics.
- Prior to metal leaving the warehouse, the LME "Exit Charge" becomes payable.

## Metro's Customer Franchise

Top Ten Inbound (2010)			Top Ten Outbound (2010)*		
#		Type	#		Type
1	Mitsubishi	Trader	1	Koch Metals	Trader
2	Red Kite	Trader	2	Deutsche Bank	Trader / FI
3	Glencore	Trader	3	Marex	Trader
4	Trafigura	Trader	4	Natixis	Trader
5	JB Commodities	Trader	5	JP Morgan	Trader / FI
6	Traxys	Trader	6	Barclays Capital	Trader / FI
7	J Aron & Co	Trader / FI	7	RBS	Trader / FI
8	Sumitomo	Trader	8	Triland	Trader
9	JP Morgan / Sempra	Trader / FI	9	Standard Bank	Trader / FI
10	Codelco	Producer	10	Mitsubishi	Trader

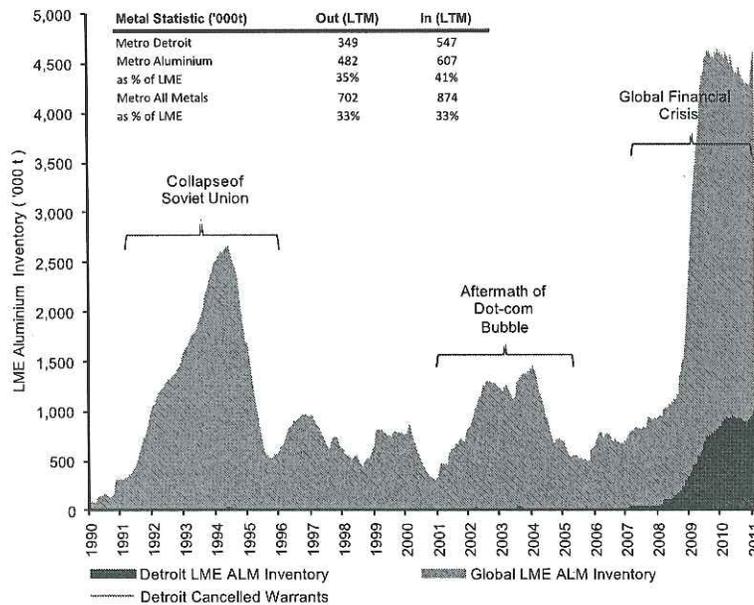
\* on the basis of warrant cancellations

- Warehousing is vital to the operations and functionality of the LME as metal is traded in form of a "Bearer Documents" or "Warrants".
- Each Warrant lodged in the system represents designated parcels of metal stored within an approved LME warehouse.
- Warrants are frequently traded and Metro becomes aware of the identity of warrants holder only at cancellation or in case of rent discount deals.
- Metro's key customers are (i) Producers that place metal into the LME and (ii) Traders, Brokers, and Financial Institutions that place metal into the LME, hold trading positions or cancel warrants.
- As a general rule, very few metal consumers take metal directly from the LME as the exchange itself represents a market of last resort.



## Background On Detroit Inventories

Evolution of LME Aluminium Stocks – Global vs Detroit



### Commentary

- As a result of the economic downturn LME aluminium inventories have increased from around 900kt at the beginning of 2008 to over 4,500kt in 2011.
- Warehouse operators invested considerably to extend storage capacity to accommodate the inflow.
- Metro for instance increased capacity by over 1,200kt in Detroit between 2008 and 2010.
- Detroit represents the cheapest delivery point for Canadian aluminium producers.
- As a result it has become the single largest storage location for aluminium and other metals (25% of LME aluminium stock and 19% of total LME stock).
- In opposite to other US warehouse locations Detroit has been flowing out steadily over the past 12 months.
- It can be assumed that aluminium at other locations remains tied-up in financing deals, respectively cash & carry trades.
- Detroit's high level of inventories and long outbound queues were a key driver behind the review of the LME load out rates.
- The number of cancelled warrants in Detroit currently amounts to 190kt, leading to an outbound queue of around 127 business days.

## Metro Financial Summary

Financial Summary						Investment Overview
(US\$, million)		2009	2010	2011 Proj.	2012 Proj.	
Inventory Balance	Start	885kt	2,169kt	2,413kt	2,333kt	Acquisition Details
	End	2,169kt	2,413kt	2,333kt	2,023kt	
Revenue Items						<ul style="list-style-type: none"> <li>GS through GCPI acquired Metro in Feb-2010 for an equity consideration of US\$450m.</li> </ul>
Rent Revenues		\$220m	\$329m	\$334m	\$314m	
Rent Discounts	—	\$31m	\$64m	\$62m	\$49m	
FOT & Other Revenues	+	\$22m	\$25m	\$34m	\$21m	
Total Revenues		\$211m	\$290m	\$336m	\$286m	Equity Dividends
Cost Items						<ul style="list-style-type: none"> <li>Since acquisition Metro has paid two cash dividends - US\$32m in Apr-2010 and US\$150m in Apr-2011.</li> <li>Cash dividends up to Apr 2011 imply an annualised return on investment of 36%.</li> <li>Next two dividends in Apr 2012 and Apr 2013 are expected at or above the \$150m level each.</li> <li>By April-2013 the investment is expected to have returned more than the full invested capital and continue to pay out substantial annual dividends.</li> </ul>
Freight Incentives	—	\$71m	\$65m	\$65m	\$40m	
OPEX / G&A	—	\$72m	\$69m	\$75m	\$69m	
Total Cost		\$143m	\$134m	\$140m	\$109m	Commodities' P&L
EBITDA		\$67m	\$156m	\$196m	\$177m	<ul style="list-style-type: none"> <li>By end 2011 the investment is expected to have generated above \$200m in commodities' P&amp;L (as of June 2011 it had generated \$167m).</li> </ul>
Cumulative Dividend			\$32m (a)	\$182m (a)	-\$330m (e)	
Annual Commod'P&L	Acquisition Feb 2010		\$114m (a)	-\$100m (e)	-\$90m (e)	

(a) actuals

(e) expected



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## Metro Governance Structure

Metro is owned under the Merchant Banking exemption (10 year holding period and no involvement in day-to-day management). Metro's board consists of 7 GS employees as well as Metro's CEO, and meets on a quarterly basis. The two sub-committees meet more frequently on an ad-hoc basis.

<u>Metro Board</u>	<u>Division</u>	<u>Role</u>
Greg Agran	FICC / GCPI	Board Director
Victoria Attwood-Scott	Compliance	Board Director
Maxwell Bulk	Operations	Board Director
Jacques Gabillon	FICC / GCPI	Chairman of the Board
Philip Holzer	Securities / PIPG	Board Director
Robert Mancini	FICC / GCPI	Board Director
Dermot McDonogh	Finance	Board Director
Chris Wibbelman	CEO Metro	Board Director

<u>Commercial Decision Board Sub-Committee</u>	<u>Compliance Board Sub-Committee</u>
Greg Agran	Victoria Attwood-Scott
Jacques Gabillon	Maxwell Bulk
Robert Mancini	Jacques Gabillon



## II. Outbound Rule Overview & Discussion Points



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## Change Of Load Out Rates

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### Background

- Following a number of private complaints about long warehouse queues and load out rates in 2010 the LME commissioned an independent study of the warehousing system
- Focus of the study was the minimum outbound delivery rate for warehouse operators. The rate represents the minimum amount of metal any given warehouse operator must deliver on any given day (currently set at 1,500 t/d)
- On July 14<sup>th</sup>, 2011 the LME board has accepted the proposal by the LME executives to implement a sliding scale from 1,500t/d up to 3,000t/d according to the amount of metal held by a warehouse operator at any specific location. Changes are proposed to become effective in April 2012.
- LME has started an official consultation period for the policy amendments. Warehouse companies and their London agents are invited to comment before September 30<sup>th</sup>, 2011

### Key Issues

- Ongoing media debate around adequate level of outflows with a few very vocal market participants and a number of misperceptions about key market factors (please see **Annex A** for an overview of the debate)
- A particular focus of the debate has been the aluminium inventory and Metro's Detroit warehouse operations following criticism (mainly from certain particular traders) that long delays in accessing metal would impact consumers
- Practical issues with the implementation of a sliding scale that have not been addressed by the LME in their current proposal
- Loss of gross profit over time through metal leaving warehouse at a faster rate is currently estimated at around \$40-60m under a conservative scenario
- Metro is looking into additional operating costs and capex related to the change in load out rates. However these appear to be marginal and could potentially be offset by higher revenues (through increase in rent tariffs)

### Response

- Metro Board together with Media Relations has actively engaged with media to educate journalists on the market and transmit Metro arguments
- Metro is preparing a submission for the LME consultation process addressing practical issues with the implementation of the new outbound regime
- In 2010, at the request of Metro's Board, GS Compliance supported by Internal Audit reviewed Metro's procedures with respect to outbound deliveries

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## Other Discussion Points I/II

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### Goldman Sachs' Roles in the Base Metals Market

- Owner of Warehouse Operator (Metro)
- LME Trading Member (GSI)
- LME Shareholder
- LME Board Member

### Customer Complaint – Koch Industries

- Koch Industries has filed a complaint with the LME claiming that Metro's re-warranting charge on one specific occasion was too high
- Metro met with the LME executive team. Following the meeting Metro is in the process of settling the complaint in exchange for decreasing the charges retro-actively

### Customer Complaint – JP Morgan

- JP Morgan has filed a complaint that scheduling and outbound delivery of a large amount of cancelled metal in Asia were delayed and that Metro is not fulfilling the minimum outbound requirements. The LME is seeking additional information from JPM before investigating.
- At the request of Metro's Board GS Compliance supported by Internal Audit have investigated the issue and it appears that Metro reasonably complied with scheduling and outbound protocols relating to the metal under dispute.
- The review also highlighted a few operational areas for further study that will be addressed in due course. In addition Metro's Board will request GS Internal Audit to review Metro's compliance with outbound procedures globally in light of the issue above and the forthcoming change in the outbound regime



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## Other Discussion Points II/II

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### Review of "Chinese Wall" Procedures by Third Party

- The LME requires information barriers between a warehouse company and a trading member. Goldman Sachs and Metro have developed policies and procedures to address the conflict and "Chinese Wall" requirements.
- The LME now proposes a new requirement that warehouse companies under trader ownership engage a third party to verify the effectiveness of the information barriers in place.
- Metro's Board is planning that in advance of the third party review GS Internal Audit would review the implementation of the procedures within GS

### New Health & Safety Regulations

- In order to ensure global safety standards for the LME and PWC staff visiting warehouses as well as warehouse staff in general, the LME has introduced a Warehousing Operations Health and Safety Policy
- Metro has always been cognizant of HSE standards and is following the majority of standards under the new proposal already. The company is in the process of reviewing its procedures and Metro's Board is planning for GS Internal Audit to audit the implementation of the new policy.



## Appendix A: Media Debate: Key Discussion Areas



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## Media Debate: Key Discussion Areas

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- **"Cancellations Driven by Traders"**: One of the big misperceptions in the debate has been created by the press stating that it is consumers, who are trying to withdraw aluminium from the warehouses.
  - With the aluminium market continuing to be in a large surplus and the LME constituting a market of last resort cancellations are unlikely based on genuine consumer demand.
  - Current cancellations (and also the media debate) are driven by traders seeking to extract metal for off-warrant cash & carry trades
  
- **"Physical Premium Driven by Cash & Carry"**: Another key criticism in the media debate has been the fact that long warehouse queues allegedly pushed up the physical premium in the US aluminium market.
  - Metro Detroit has been shipping out aluminium constantly at the required outbound rate since 2010
  - An analysis of aluminium inventories in the US shows that aside from Metro Detroit only very few locations are shipping out aluminium at all
  - We strongly believe that high physical premia in Europe (which does not have an equivalent situation to that occurring in Detroit) and the US are driven by market participants doing aluminium cash & carry transactions, both on-exchange and off-exchange.
  - In addition some market participants have an interest in maintaining elevated physical premia. This is not the case for warehouses.
  
- **"Outbound Rate Is Physically Constrained"**: Ultimately physical constraints limit the implementation of significantly higher outbound rates
  - Considerable investments were made to expand warehouse capacity during the economic crisis between 2008 and 2009. At the time market participants were worried about insufficient warehouse capacity. These investments were key to the functioning of the LME.
  - Warehouses have either been bought or rented on long term basis with a view to meet LME requirement at time of approval.
  - Outbound deliveries are fundamentally different to inbound deliveries. Inbound metal can be stored at the next best location. Since every warrant represents a designated parcel, outbound deliveries are much more complex. Metal has to be located and other metal displaced in order to prepare warrant for shipment

**EXCERPT**

**MITSI Holdings LLC**

**Board of Directors Meeting  
Monday, 5<sup>th</sup> December 2011**

**Goldman  
Sachs**

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Permanent Subcommittee on Investigations

**EXHIBIT #36a**

GSPSICOMMODS00009287



# Current Deal Pipeline

## Deal Pipeline As Of End Nov 2011

### Commentary

- Metro currently has another 227kt booked in its deal pipeline with aluminium representing the largest metal followed by copper
- With an expected deal flow of 171kt out of 227kt, Detroit continues to be the key location for Metro

mt	Contract	Balance	Delivered
Aluminium	471,600	143,837	327,763
Aluminium Alloy	425	268	157
Copper	149,190	26,139	123,051
Nickel	0	0	0
Steel	60,500	16,397	44,103
Lead	32,085	21,313	10,772
NASAAC	41,319	12,416	28,903
Zinc	61,957	6,900	55,058
<b>Total</b>	<b>817,076</b>	<b>227,270</b>	<b>589,806</b>

**EXCERPT**

**MITSI Holdings LLC**  
**Board of Directors Meeting**  
**Wednesday, 21<sup>st</sup> March 2012**

**Goldman  
Sachs**

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Permanent Subcommittee on Investigations

**EXHIBIT #36b**

GSPSICOMMODS00009423



# Current Deal Pipeline

## Deal Pipeline As Of End February 2012

### Commentary

- Metro currently has another 316kt booked in its deal pipeline with aluminium representing the largest metal followed by copper
- Detroit continues to be the key inbound location for Metro

mt	Contract	Balance	Delivered
Aluminium	615,384	263,735	351,649
Aluminium Alloy	425	10	415
Copper	154,521	20,263	134,258
Nickel	0	0	0
Steel	60,580	11,126	49,454
Lead	18,200	6,280	11,920
NASAAC	13,589	2,167	11,422
Zinc	29,435	12,671	16,764
<b>Total</b>	<b>892,134</b>	<b>316,252</b>	<b>575,892</b>

Potential Add Tonnage 250,000

0



# Overview Off-warrant Deals

Metro has been approached by a client planning to cancel metal for the purpose of off-warrant financing deals. In order to keep the business in-house Metro has decided to offer off-warrant storage space to the client in form of a structured off-warrant deal.

	Jan 2012 Deal	Feb 2012 Deal	Feb/Mar 2012 Deal
<b>Tonnage (kt)</b>	<ul style="list-style-type: none"> <li>■ 100 kt</li> <li>■ 100 kt</li> <li>■ 50 kt</li> </ul>	<ul style="list-style-type: none"> <li>■ 100 kt</li> <li>■ 100 kt</li> <li>■ 50 kt</li> </ul>	<ul style="list-style-type: none"> <li>■ 100 kt</li> <li>■ 100 kt</li> <li>■ 50 kt</li> </ul>
<b>Rent &amp; FOT Rate Structure</b>	<ul style="list-style-type: none"> <li>■ FOT and full rent in queue</li> <li>■ 8 cents/t/d for off-warrant storage after initial 90 days of free rent</li> <li>■ After 12 months from shipment date metal reverts back to full rent</li> </ul>	<ul style="list-style-type: none"> <li>■ FOT and full rent in queue</li> <li>■ 8 cents/t/d for off-warrant storage after initial 90 days of free rent</li> <li>■ After 12 months from shipment date metal reverts back to full rent</li> </ul>	<ul style="list-style-type: none"> <li>■ FOT and full rent in queue</li> <li>■ 8 cents/t/d for off-warrant storage after initial 90 days of free rent</li> <li>■ After 12 months from shipment date metal reverts back to full rent</li> </ul>
<b>Day-One Incentive</b>	<ul style="list-style-type: none"> <li>■ Metro pays \$33/t</li> </ul>	<ul style="list-style-type: none"> <li>■ Metro pays \$58/t</li> </ul>	<ul style="list-style-type: none"> <li>■ Metro pays \$58/t</li> </ul>
<b>Client Optionality</b>	<ul style="list-style-type: none"> <li>■ Cancel deal and sell metal/remove from Metro off-warrant storage or re-warrant with Metro</li> </ul>	<ul style="list-style-type: none"> <li>■ Cancel deal and sell metal/remove from Metro off-warrant storage or re-warrant with Metro</li> </ul>	<ul style="list-style-type: none"> <li>■ Cancel deal and sell metal/remove from Metro off-warrant storage or re-warrant with Metro</li> </ul>
<b>Cancellation Terms</b>	<ul style="list-style-type: none"> <li>■ Client pays \$60/t</li> </ul>	<ul style="list-style-type: none"> <li>■ Client pays \$85/t</li> </ul>	<ul style="list-style-type: none"> <li>■ Client pays \$85/t</li> </ul>
<b>Re-warranting Terms</b>	<ul style="list-style-type: none"> <li>■ Metro pays \$69, if re-warranted within 6 months from cancellation date (sliding scale down thereafter)</li> </ul>	<ul style="list-style-type: none"> <li>■ Metro pays \$44, if re-warranted within 9 months from cancellation date (sliding scale down thereafter)</li> </ul>	<ul style="list-style-type: none"> <li>■ Metro pays \$47/t, if re-warranted within 9 months from cancellation date (sliding scale down thereafter)</li> </ul>

**MITSI Holdings LLC**  
**Board of Directors Meeting**  
**December 19<sup>th</sup>, 2012**

**Goldman  
Sachs**

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Permanent Subcommittee on Investigations  
**EXHIBIT #36c**

GSPSICOMMODS00009332



# Current Deal Pipeline

## Deal Pipeline As Of End November 2012

- Metro currently has another 405kt booked in its deal pipeline with aluminium representing the largest metal
- Detroit continues to be the key inbound location for Metro

mt	Contract	Balance	Delivered
Aluminium	483,126	267,118	216,008
Aluminium Alloy	425	10	415
Copper	257,500	27,915	229,584
Nickel	0	0	0
Steel	0	0	0
Lead	14,500	3,440	11,060
NASAAC	1,800	1,121	679
Zinc	113,728	105,197	8,530
Ferro Titanium	193	6	187
<b>Total</b>	<b>871,272</b>	<b>404,808</b>	<b>456,464</b>

## Commentary



# Overview Off-warrant Deals

Metro has been approached again by a client planning to cancel metal for the purpose of off-warrant financing deals. Similar to previous deals Metro has decided to offer off-warrant storage space to the client in order to keep the business in-house.

	Jan 2012 Deal	Feb/Mar 2012 Deal	Sept 2012 Deal
<b>Tonnage (kt)</b>	■ 100 kt	■ 50 kt	■ 160 kt
<b>Rent &amp; FOT Rate Structure</b>	<ul style="list-style-type: none"> <li>■ FOT and full rent in queue</li> <li>■ 8 cents/t/d for off-warrant storage after initial 90 days of free rent</li> <li>■ After 12 months from shipment date metal reverts back to full rent</li> </ul>	<ul style="list-style-type: none"> <li>■ FOT and full rent in queue</li> <li>■ Full LME rent for off-warrant material until Dec 2013</li> </ul>	
<b>Day-One Incentive</b>	■ Metro pays \$33/t	■ Metro pays \$58/t	■ Metro pays \$36/t
<b>Client Optionality</b>	■ Cancel deal and sell metal/remove from Metro off-warrant storage or re-warrant with Metro		
<b>Cancellation Terms</b>	■ Client pays \$60/t	■ Client pays \$85/t	■ Client pays \$65/t
<b>Re-warranting Terms</b>	<ul style="list-style-type: none"> <li>■ Metro pays \$69/t, if re-warranted within 6 months from cancellation date (sliding scale down thereafter)</li> </ul>	<ul style="list-style-type: none"> <li>■ Metro pays \$44/t, if re-warranted within 9 months from cancellation date (sliding scale down thereafter)</li> </ul>	<ul style="list-style-type: none"> <li>■ Metro pays \$160/t, if re-warranted by Dec 2013</li> <li>■ Metro reimburses the difference between current published rent and 2013/2014 published rent, if material is re-warranted</li> </ul>
<b>Status</b>	<ul style="list-style-type: none"> <li>■ Re-warranted</li> <li>■ Of the three deals 100kt were re-negotiated to \$95/t and 100kt to \$120/t at re-warranting</li> </ul>		<ul style="list-style-type: none"> <li>■ Metal has not shipped out yet</li> </ul>

**MITSI Holdings LLC**  
**Board of Directors Meeting**  
**March 26<sup>th</sup>, 2013**

**Goldman  
Sachs**

Confidential

Permanent Subcommittee on Investigations

**EXHIBIT #36d**

GSPSICOMMODS00009355



# Current Deal Pipeline

## Deal Pipeline As Of End February 2013

- Metro currently has another 529kt booked in its deal pipeline with aluminium representing the largest metal
- Detroit continues to be the key inbound location for Metro

mt	Contract	Balance	Delivered
Aluminium	596,056	400,414	195,642
Aluminium Alloy	425	10	415
Copper	229,546	19,765	209,781
Nickel	1,000	1,000	0
Steel	0	0	0
Lead	11,780	1,034	10,746
NASAAC	1,000	721	279
Zinc	114,728	105,598	9,130
Ferro Titanium	193	6	187
<b>Total</b>	<b>954,727</b>	<b>528,548</b>	<b>426,179</b>

## Commentary



# Metro's Annual Financial Performance

Based on Management Financials / Forecast

	2009 A		2010 A		2011 A		2012 A		2013 - Mgmt Proj.	
<b>Inventory Balance</b>	Start	885kt	2,169kt	2,413kt	2,413kt	2,385kt	2,385kt	2,009kt	2,009kt	
	End	2,169kt	2,413kt	2,385kt	2,029kt	2,029kt	1,889kt	1,889kt		
<b>Rent Revenues</b>		\$ 220m	\$ 329m	\$ 356m	\$ 349m	\$ 349m	\$ 317m			
<b>Rent Discounts</b>		\$ 31m	\$ 64m	\$ 59m	\$ 43m	\$ 19m				
<b>FOT &amp; Other Revenues</b>		\$ 22m	\$ 25m	\$ 52m	\$ 82m	\$ 45m				
<b>Total Revenues</b>		\$ 211m	\$ 290m	\$ 349m	\$ 388m	\$ 343m				
<b>Freight Incentives</b>		\$ 71m	\$ 65m	\$ 78m	\$ 112 m	\$ 136m				
<b>OPEX / G&amp;A</b>		\$ 72m	\$ 69m	\$ 73m	\$ 66m	\$ 62m				
<b>Total Cost</b>		\$ 143m	\$ 134m	\$ 151m	\$ 178	\$ 198m				
<b>EBITDA</b>		\$ 67m	\$ 156m	\$ 198m	\$ 211	\$ 145m				

Revenue Items

Cost Items

4/1/2014

## Terms and conditions applicable to all LME listed warehouse companies

### 1 Conditions for and entitlements of listing

#### 1.1 Application

To become a Warehouse, a warehouse company shall:

- 1.1.1 execute the Agreement of which these terms and conditions form a part;
- 1.1.2 duly complete the forms prescribed by the Exchange attached as Schedule A and B hereto and pay any initial listing fees prescribed by the Exchange; and
- 1.1.3 comply with regulation 2.2 of the LMEsword Regulations.

#### 1.2 Capital

- 1.2.1 Each Warehouse must be adequately capitalised at all times at levels determined from time to time by the Exchange and notified to all Warehouses by way of periodical circulars.
- 1.2.2 The Exchange shall assess whether a Warehouse's available capital is adequate by using the most recent audited accounts of the Warehouse and applying generally accepted accounting principles to determine the extent to which net assets exceed net liabilities. The Exchange shall, from time to time, publish the basis on which it determines capital adequacy for Warehouses. In assessing whether a Warehouse's available capital is adequate, the Exchange shall, at its discretion, disregard what are, in its view, immaterial or temporary failures to meet the capital adequacy requirements.
- 1.2.3 In the event that the Exchange is not satisfied with the financial status or the insurance arrangements of any Warehouse, it may require a performance bond issued by a bank or insurance company as it considers suitable for such sums and on such terms and conditions as it may determine. However, where the deficiencies in the financial status or the insurance arrangements of any Warehouse are, in the view of the Exchange, not likely materially to prejudice the Warehouse's ability to perform its obligations as an LME listed warehouse company and are capable of remedy, the Exchange may allow 7 Business Days for the Warehouse to rectify its financial status and/or insurance arrangements before requiring such a performance bond.

#### 1.3 London Agent

- 1.3.1 Each Warehouse must appoint and maintain at all times an agent in or, in the opinion of the Exchange, sufficiently proximate to the City of London (a "London Agent") to act on its behalf, to carry out certain of its obligations under this Agreement and the LMEsword Regulations, and, if the Warehouse is not incorporated in England and Wales, also to act as its agent for service of process.
- 1.3.2 A London Agent may be a person independent from the Warehouse or be a branch or affiliated company of the Warehouse.
- 1.3.3 The Warehouse must obtain the prior approval of the Exchange to the appointment, or any change in the appointment, of its London Agent from time to time.

1.3.4 Each Warehouse shall be responsible for all of the acts and omissions of its London Agent undertaken in its capacity as such. The Exchange and other persons shall be entitled to assume a Warehouse's London Agent acts with the full authority of the Warehouse until such time as the Exchange has received written notice from the Warehouse that the London Agent has ceased to act as such. This term shall not affect the rights and obligations of the Warehouse and its London Agent inter se.

**1.4 LMEsword**

Each Warehouse must comply, and procure that its London Agent complies, with the LMEsword Regulations and Operating Procedures, which shall insofar as they relate to the Warehouse or its London Agent be deemed to be incorporated into this Agreement.

**1.5 Restrictions**

1.5.1 An authorised warehouse may be used by only one Warehouse and to the extent that it is used for the storage of any metals which are permitted to be the subject of a Contract, may not also be used to store such metals which are deliverable on any other exchanges.

1.5.2 A Warehouse may not deal directly or indirectly in Contracts, and shall observe such other requirements contained in any Exchange notice relating to the separation of Warehouses from Members and the maintenance of confidentiality in respect of price sensitive and customer confidential information.

**1.6 Description of Warehouse**

Each Warehouse may, following its approval by the Exchange as a listed Warehouse, describe itself as an "LME listed warehouse company" and its authorised warehouse as "LME listed warehouses", for as long as it retains its listed status as provided for herein.

**1.7 Availability of Rules**

Warehouses shall be sent a copy of the Rules and LMEsword Regulations and Operating Procedures as amended from time to time. Warehouses shall ensure that their London Agent obtains and keeps up to date their own copies of such documents direct from the Exchange and is also provided with a copy of this Agreement. Where the Warehouse operates in more than one location it shall ensure that each location is kept up to date with changes to the Rules, the LMEsword Regulations and Operating Procedures and this Agreement.

**2 Issue of Warrants**

**2.1 Metal delivery**

2.1.1 When receiving metal for placing on Warrant, a Warehouse need not undertake an assay of the metal itself but must carefully undertake a visual inspection of the metal and all supporting documentation and, if the metal or the supporting documentation is in any way patently sub-standard or anomalous the Warehouse must not issue a Warrant until any such shortcoming has been remedied. Without limitation to the foregoing, metal will be deemed to be patently sub-standard if:

- 2.1.1.1 there is broken or visibly corroded strapping which could make the bundle of metal unsafe to handle;
- 2.1.1.2 there is visible contamination of metal;
- 2.1.1.3 there is inconsistent branding of metal (for instance, where all of the metal or some of the metal is patently not an LME brand or where different LME brands have been visibly mixed within a bundle); and
- 2.1.1.4 the supporting documentation and paperwork does not accord with the Rules.

For the avoidance of doubt, a Warehouse is not required to break bundles or inspect metal ingots hidden from view within bundles, unless there are visible signs indicating or suggesting a defect in quality within a bundle or the Warehouse is in any way aware that there is a defect within a bundle not apparent from a visual inspection.

- 2.1.2 All metal delivered for placing on Warrant must be weighed by Warehouse personnel on equipment which is regularly tested for accuracy in accordance with Clause 7.4.3.
- 2.1.3 Subject to Clause 2.1.1, no Warrant may be issued if the metal or supporting documentation does not conform to the relevant Special Contract Rules for Metals.
- 2.1.4 A Warrant may only be issued by the Warehouse or its London Agent when the metal in question is stored in an authorised warehouse of the Warehouse.

## **2.2 Form of Warrant**

- 2.2.1 From the date prescribed by the Exchange, all Warrants must be issued in accordance with the LMEsword Regulations.
- 2.2.2 Each Warehouse shall ensure that the form of the Warrant is such that the requirements set out in the Special Contract Rules for Metals, this Clause 2.2 and Clause 2.3 are satisfied.
- 2.2.3 Each Warrant must have a clearly identifiable space for endorsements to allow for transfers of ownership to a named transferee and also have a clearly identifiable space for endorsement of rents paid to be marked on the Warrant.
- 2.2.4 Each Warrant must show the applicable rent rate and the date of commencement of the obligation to pay rent which must be the same as the date of issue of the Warrant.
- 2.2.5 Each Warrant must include a term stating that responsibility for insuring the metal subject to the Warrant is that of the holder of the Warrant.
- 2.2.6 Each Warrant should be numbered consecutively wherever practicable.
- 2.2.7 No Warrant may be issued by a Warehouse until the printed format which the Warehouse proposes to adopt has been delivered to and approved by the Exchange. Any proposed change to such format must similarly be approved by the Exchange prior to its use.

- 2.2.8 Each Warrant must be signed by an authorised signatory of the Warehouse or its London Agent.
- 2.2.9 Each Warrant shall state that the Warehouse's standard terms of business are available on request or are printed on the reverse side of the Warrant.

### **2.3 Legal status of Warrants**

- 2.3.1 Each Warrant must be transferable by delivery or by delivery and endorsement by the transferor and without requiring registration, attornment or notice to the Warehouse. A transferee of a Warrant shall be treated by the Warehouse as having the benefit of the contract of storage of the metal to which the Warrant relates and shall be bound by the Warehouse's standard terms of business insofar as they do not conflict with the Rules, the LMEsword Regulations or the Operating Procedures.
- 2.3.2 Each Warrant must be a document of title (or local equivalent concept) established in accordance with the law of the country in which the Warehouse is situated, or in accordance with such other law recognised as applicable to the Warrant by such law.
- 2.3.3 It must be a term of issue of each Warrant that the metal which it represents shall only be delivered up to the holder by the Warehouse on the Warrant being presented to the Warehouse or its London Agent or, in the event of a Warrant being lost, stolen, damaged or destroyed, against the provision of an indemnity substantially in the form prescribed by the Exchange from time to time and attached as the Appendix to Schedule A.
- 2.3.4 Subject only to Clause 2.3.5, a Warrant must be unlimited as to duration and remain valid until presented for cancellation to the Warehouse or its London Agent or otherwise cancelled in accordance with this Agreement and the LMEsword Regulations.
- 2.3.5 A Warehouse may have a right of retention in respect of metal under Warrant for unpaid rent in respect of the metal and other charges owed by the current holder of the Warrant but not otherwise and, in particular, without limitation, no person may have any right of retention in respect of charges owed by any other person.
- 2.3.6 Nothing in Clause 2.3.5 shall require the Warehouse to oppose any legally enforceable court order in respect of metal which is binding on the Warehouse and which prevents it from delivering stored metal to the Warrant holder, provided that the Warehouse immediately notifies the Exchange of the existence of such a court order as soon as it becomes aware of the same.

### **2.4 Warehouse's liability to Warrant holders**

The Warehouse is required to give undertakings to each Warrant holder from time to time in respect of the metal under relevant Warrant that:

- 2.4.1 the Warehouse has complied with all applicable regulations (including, without limitation, Clause 2.1 of this Agreement) in receiving that metal and placing it on Warrant;

2.4.2 the Warehouse will comply with the requirements of this Agreement concerning the storage of metal; and

2.4.3 the Warehouse is not aware of any latent defects in the metal.

It is a requirement of this Agreement that the undertakings referred to in Clauses 2.4.1 to 2.4.3 above are incorporated without delay into the Warehouse's written contract of storage with each Warrant holder. Pending such incorporation, the relevant undertakings shall be deemed to be incorporated into each such contract of storage immediately upon such contract arising.

### **3 Replacement of Warrants**

#### **3.1 Entitlement to replace**

A Warehouse shall issue a replacement Warrant in accordance with this Agreement and the LMEsword Regulations and Operating Procedures in the following circumstances:

3.1.1 where a Warrant has been lost, stolen, destroyed, or damaged, on completion of its normal procedures and against delivery to it of an indemnity in the form prescribed by the Exchange from time to time and attached as the Appendix to Schedule A;

3.1.2 where any details on a Warrant which are capable of amendment in accordance with the LMEsword Regulations and Operating Procedures ("Amendable Details") require amendment, following the amendment of the electronic details of the Warrant in LMEsword in accordance with the LMEsword Regulations and against delivery to it of the original Warrant; and

3.1.3 where the space on a Warrant for endorsement of rent paid up and/or for transfers is full and against delivery to it of the original Warrant.

#### **3.2 Entitlement to move metal**

A Warehouse may move metal under Warrant between its own authorised warehouses within the same listed location at its own risk and expense subject to complying with Clause 3.3.

#### **3.3 Notification of the Exchange**

3.3.1 On the day that a Warehouse or its London Agent is notified or becomes aware that (a) a Warrant has been lost, stolen, destroyed or damaged; or (b) the Amendable Details on a Warrant require amendment; or (c) a Warrant requires cancellation in accordance with Clause 4.3, it shall forthwith notify the Exchange by fax (or by such other means as the Exchange may prescribe from time to time) containing full details thereof, including the following:

3.3.1.1 the date and details of loss or damage to or other matter affecting the metal or Warrant;

3.3.1.2 the Warrant number(s);

3.3.1.3 date of the Warrant;

3.3.1.4 brand and shape of metal; and

3.3.1.5 the quantity of metal (if any) missing, damaged, or otherwise affected.

3.3.2 The Warehouse shall in addition take all such other steps, such as (without limitation) notifying police authorities and insurers, as is necessary to protect the holder of the Warrant in question (if applicable).

3.3.3 Where a Warrant that requires replacement or cancellation is not lodged with the Depository, the Warehouse shall take all reasonable steps to identify the holder of the Warrant and notify it of the event and require that the Warrant be delivered up for replacement.

#### **3.4 Liability for replacement Warrants**

3.4.1 Where a Warrant is being replaced due to a change to its Amendable Details, the Warehouse shall indemnify the person surrendering the Warrant in respect of any reasonable loss or damage they may suffer as a result of the Warehouse not properly cancelling and retaining the original Warrant in accordance with this Agreement.

3.4.2 The Warehouse shall be responsible for the cost of replacing Warrants other than in the case of Warrants which have been lost, stolen, destroyed or damaged where such costs shall be the responsibility of the holder.

3.4.3 The Warehouse shall take all reasonable steps to ensure that no duplicate Warrants issued by it are in circulation and, in particular, shall make a notification to the Exchange pursuant to Clause 3.3.1 above.

### **4 Cancellation of Warrants**

#### **4.1 Process on replacement**

4.1.1 Where a Warrant is delivered to a Warehouse for replacement, the original Warrant must first be made properly null and void by being stamped "cancelled and replaced".

4.1.2 If the original of the Warrant has been lost, stolen or destroyed, a copy of the original must be duly marked and retained in lieu of the original.

#### **4.2 Process on cancellation and metal take-up**

Where a Warrant is delivered to a Warehouse for cancellation and metal take-up, the original must be made properly null and void by being stamped "cancelled". The Warehouse is required to expedite delivery from warehouses at the minimum rates published from time to time by the Exchange in accordance with Clause 9.11.1. For the avoidance of doubt, any change to the minimum rates would constitute a material increase in the obligations of a Warehouse which would require consultation and notification in accordance with Clause 9.11.4. The Warehouse shall prioritise all requests for cancellation strictly in the order in which they are received unless the Warrant holders seeking cancellation agree otherwise. The Warehouse shall use all reasonable endeavours to allocate to each Warrant holder seeking cancellation the delivery time that he has requested, unless that requested delivery time has already been allocated to another Warrant holder, in which case the Warehouse shall offer one or more alternative delivery times close to the time originally requested and shall allocate the delivery time which is acceptable to the Warrant holder. The Warehouse must prepare and maintain such documentation as is sufficient to evidence compliance with the aforesaid requirement (e.g. a schedule detailing (at least) the dates and times of receipt of

cancellation requests and the allocated dates and times of delivery) and shall provide a copy of the same to the Exchange if so requested. The Warehouse will, at all times, be responsible for ensuring that deliveries of metal are effected in accordance with the above requirements except where the person taking delivery of metal provides its own transport and fails, due to no fault of the Warehouse, to keep to the agreed delivery schedule, in which case the Warehouse and that person shall agree between them an alternative time for delivery.

#### **4.3 Warrants requiring cancellation**

Where a Warehouse or its London Agent is notified or becomes aware that any details on a Warrant which are not Amendable Details are incorrect, it shall:

- 4.3.1 notify the Exchange thereof in accordance with Clause 3.3;
- 4.3.2 take all reasonable steps to identify the holder of the Warrant and notify it of the event and require the Warrant to be delivered up for cancellation; and
- 4.3.3 on its being delivered to the Warehouse or London Agent, cancel the Warrant in accordance with the LMEsword Regulations and Operating Procedures and issue a new Warrant in respect of the relevant metal.

#### **4.4 Storage**

All cancelled Warrants (and a copy of the original in the event that it has been lost, stolen or destroyed) must be securely retained and be made available for inspection by the Exchange for five years or (if later) until any replacement Warrant is surrendered for cancellation and metal take-up.

### **5 Rent and FOT charges**

#### **5.1 Calculation**

- 5.1.1 Calculations of rent due on Warrants must be on round tonnages and not actual weights.
- 5.1.2 Rent on metal under Warrant must accrue on a daily basis and rent accrued must be payable annually as at 31 March each year, or at such other times and for such other periods as the Exchange may prescribe, or upon cancellation of a Warrant whichever is the sooner.
- 5.1.3 Rent must be quoted in the Major Currency of the Contract to which the Warrant relates is traded.
- 5.1.4 Each Warehouse must fix its rent rates and FOT charges annually in respect of each 12 month period commencing 1 April by notification to the Exchange not later than 1 December in the preceding year. At any time within 10 Business Days of receiving such notification, the Exchange may, at its discretion, require the Warehouse to provide within 10 Business Days, a comprehensive, written explanation of the economic circumstances which, in the view of the Warehouse, necessitate the change in its rent rates and/or FOT charges. The Exchange shall publish the Warehouse's rent rates and FOT charges by 31 December provided that no change in rent rates or FOT charges shall become effective until the following 1 April.

## **5.2 Payment**

Rent must be paid for metal under Warrant in stock at 31 March (or such other dates as the Exchange may prescribe) in each year by direct settlement between holders of Warrants and Warehouses.

## **5.3 LMEsword**

Warehouses' other obligations in relation to rent shall be as set out in the LMEsword Regulations and the Operating Procedures.

# **6 Records**

## **6.1 Storage records for metal under Warrant**

- 6.1.1 Warehouses must have clearly organised systems for recording storage of metal under Warrant for use in their office and in each authorised warehouse.
- 6.1.2 Storage records must have a separate entry record for each lot and each such record must be numbered consecutively.
- 6.1.3 Storage records in respect of metal under Warrant must clearly identify the fact that the metal is under Warrant, include the Warrant number and note the authorised warehouse in which the metal is stored.
- 6.1.4 Metal under Warrant must be identifiable in an authorised warehouse by means of a label, or other marking method, as to lot or Warrant number.

## **6.2 Warrant records**

- 6.2.1 Each Warehouse must maintain a Warrant register which shows the dates of issue and cancellation of each Warrant, any corresponding lot numbers and the details of the metal as shown on the Warrant. Each entry on the Warrant register must be initialled by an authorised person or, in the case of a register maintained on a computer, have noted next to each entry the initials or other identity of an authorised person.
- 6.2.2 To the extent that any Warehouse has pre-printed warrants in blank, these must be kept secure. The Warehouse must ensure that it, or its London Agent, maintains a written record of the number of unused blank Warrants at any given time and will provide a copy of that record to the Exchange on request.
- 6.2.3 A copy of each Warrant issued by or for a Warehouse must be kept secure.

## **6.3 Stock records**

- 6.3.1 The stock of metal under Warrant of each Warehouse must be reported to the Exchange by the due completion of the form prescribed by the Exchange which must be faxed to the Exchange by 1200 hours London time each Business Day or delivered by such other means as the Exchange may prescribe and/or pursuant to LMEsword as the Exchange may from time to time prescribe in the LMEsword Regulations and Operating Procedures.
- 6.3.2 Until such time as stocks of metal are reported pursuant to LMEsword alone, metal taken off Warrant, but which is still on the Warehouse's premises, must be combined on the stock return with those stocks actually on Warrant rounded to the nearest complete Warrant lot and also separately identified on the return,

or shown in such other manner as prescribed by the Exchange by notice. If no stocks are held, a nil return must be submitted on each Business Day.

**6.3.3** The Exchange may publish such information concerning stocks and queues at Warehouses as is considered necessary by the Exchange, acting reasonably, for the purposes of market transparency or other regulatory purposes. Aside from this, information concerning stocks and queues at Warehouses shall be treated as confidential by the Exchange save that the Exchange may make such disclosure as is required by law or regulation or that is requested by any regulatory authority or to another regulator with whom the Exchange has entered into a memorandum of understanding relating to the sharing of information for regulatory purposes on a confidential basis. In addition, the Exchange may publish such information together with that of other Warehouses without identifying the Warehouse by name and also make reference to such information, identifying the Warehouse, in any notice of a decision given under the Disciplinary Procedures in the event of a breach of this Agreement. Warehouses are prohibited from revealing their stock of metal under Warrant to any person except that this prohibition shall not apply to:

**6.3.3.1** information supplied to a Warehouse's London Agent;

**6.3.3.2** information disclosed pursuant to any legal or regulatory requirement;

**6.3.3.3** information disclosed to a Warehouse's professional advisers and to its usual bankers;

**6.3.3.4** historical information on aggregate stocks held by a Warehouse without differentiation between stocks held under LME Warrants and other stocks which is required to be disclosed to the shareholders of the Warehouse;

**6.3.3.5** historical information on aggregate stocks held by a Warehouse without differentiation between stocks held under LME Warrants and other stocks which is required to be disclosed to a parent company of the Warehouse for the purpose of that parent company preparing its budgets and financial forecasts for the group; or

**6.3.3.6** information which has already been published by the LME pursuant to clause 6.3.3.

#### **6.4 Duty and Tax Records**

**6.4.1** Each Warehouse must maintain records on the duty and tax status of each lot of metal.

**6.4.2** The Warehouse shall make the records specified in Clause 6.4.1, or information derived from such records, available on request and at no cost to Warrant holders and the Exchange.

### **7 Continuing Obligations**

#### **7.1 Insurance**

**7.1.1** Each Warehouse must maintain insurance in respect of all the types of risks marked with an asterisk in paragraph 9 of Schedule A at least at the levels from

time to time prescribed by the Exchange. Such insurance must be maintained at all times until the Warehouse is no longer listed.

- 7.1.2 The Warehouse shall procure that the Exchange receives annually at renewal and/or at such other time as requested by the Exchange a certificate (or such other document as the Exchange may from time to time prescribe) evidencing that all the risks marked with an asterisk in paragraph 9 of Schedule A are protected and citing the maximum limit of cover per occurrence and the policy number. Any changes affecting the insurance cover are to be automatically notified to the Exchange by the insurance company. The Warehouse must ensure that its policy shows the Exchange as a notifiable party for amendments and renewal confirmations.

## **7.2 Security**

- 7.2.1 The Warehouse must at least maintain the level of security measures referred to in its response(s) to Schedule B, Section (C) (as the same may be amended in writing between the Warehouse and the Exchange from time to time) at all its authorised warehouses and must keep them clean, dry (except outside storage areas as permitted by the LME), free from contaminants and in good repair. Without prejudice to the requirements of Clause 7.3, in the event of any material change in the details relating to its authorised warehouses as set out in its response(s) to Schedule B, Section (C), or in the event that the Warehouse otherwise fails to comply with this Clause 7.2.1, the Warehouse must notify the Exchange of such change or failure within 5 Business Days of becoming aware of the same. In the event of any material change in the details relating to the Warehouse's authorised warehouses which could in the Exchange's reasonable view result in a degradation in the level of security as set out in the Warehouse's' response(s) to Schedule B, Section (C), or in the event that the Warehouse otherwise fails to comply with this Clause 7.2.1, the Exchange may, at its sole discretion, direct that any metal stored under Warrant in the authorised warehouse in question be relocated to another authorised warehouse, whether or not with the same Warehouse.
- 7.2.2 Any costs arising from such relocation, including, but not limited to, costs relating to re-inspection and re-approval, shall be met by the Warehouse.
- 7.2.3 The power of the Exchange under this Clause is without prejudice to its other powers under this Agreement, including the powers set out under the Disciplinary Procedures.

## **7.3 Monitoring and supply of information**

- 7.3.1 Each Warehouse must notify the Exchange of any facts, events or changes which are material to their listing as Warehouses within 5 Business Days of becoming aware of the fact, event or change in question. This shall include, without limitation:
- 7.3.1.1 any changes that materially affect the information given by the Warehouse in connection with its application for listing as a Warehouse, or such other material information as it may have given to the Exchange in writing from time to time;

- 7.3.1.2 any changes affecting the Warehouse's ability to comply with its obligations hereunder or under the LMEsword Regulations.
- 7.3.2 A Warehouse shall not make any changes, and shall not allow any changes which are within its power to prevent being made to be made, to any of its authorised warehouses where such changes would involve a material change to any of the details provided in the answers given in Schedule B, without obtaining the Exchange's prior written approval in accordance with procedures published by the Exchange from time to time. In the event that the Warehouse becomes aware of such a change which is beyond its power to prevent, it must nonetheless notify the Exchange of such change immediately. The Exchange may, if it deems that the change materially affects the ability of the authorised warehouse(s) to operate, exercise its powers under this Agreement, including without limitation, those contained in Clause 9.2.
- 7.3.3 Each Warehouse shall provide to the Exchange on request such information from their storage records, Warrant records and/or stock records relating to the types of metals deliverable on the Exchange, as the Exchange may reasonably request from time to time in connection with any enquiries being made or to be made by the Exchange in accordance with the Rules. All such information so supplied shall be treated as confidential by the Exchange and shall be restricted to those authorised staff and officers within the Exchange responsible for conducting such enquiries in accordance with the Rules, the Exchange's professional advisors and other regulators with whom the Exchange has entered into memoranda of understanding relating to the sharing of information for regulatory purposes on a confidential basis or other person to whom the Exchange is required to disclose it by law or regulation. The Exchange shall not be entitled to have access to legally privileged documents. A list of those persons within the Exchange who are authorised to obtain information from Warehouses in accordance with this Clause 7.3.3 will be circulated to all Warehouses and will be updated from time to time.
- 7.3.4 Each Warehouse shall permit Exchange staff to conduct routine and other inspections of their premises used for the storage of LME metal, including access to each relevant authorised warehouse and their offices supporting the operating of such warehouses. Warehouses shall use reasonable endeavours to procure similar access to the offices of their London Agents supporting those operations. Each Warehouse shall co-operate with the Exchange in the conduct of such inspections and give all reasonable assistance to the Exchange.
- 7.3.5 The Exchange shall give reasonable notice of its intention to make inspections, except that no such notice will be required to be given where the Exchange deems it necessary or desirable in its absolute discretion for an immediate inspection to be undertaken by the Exchange or its appointed representatives.
- 7.3.6 Each Warehouse shall provide the Exchange with details of its officers and employees authorised to act as its authorised signatories for the purposes of this Agreement and keep such details up to date at all times, notifying the LME of any changes thereto promptly.

#### **7.4 Periodical inspections**

- 7.4.1 From time to time, and at least every 12 months, each Warehouse must carry out a visual inspection of all metal under Warrant in their authorised warehouses and of all supporting documentation. Each Warehouse shall make a notification to the Exchange without delay following the end of each calendar year, such notification to contain a record of all such inspections which have been carried out throughout the previous year.
- 7.4.2 Full records of such inspections must be kept, showing at least:
- 7.4.2.1 the details of all issued Warrants at the time of the inspection;
  - 7.4.2.2 the date of the inspection; and
  - 7.4.2.3 the name and job title of the person undertaking the inspection, who must also acknowledge that he has carried out the inspection and be of suitable seniority.

Without prejudice to the annual notification requirement in Clause 7.4.1, copies of such records will be made available to the Exchange at any time on request.

- 7.4.3 All weighing equipment used for weighing metal under Warrant must be checked for accuracy at least quarterly by an accredited and responsible institution which is not affiliated to the Warehouse and any material inaccuracies detected by such institution must be rectified by the Warehouse immediately. Written evidence of such inspections must be retained and made available to the Exchange on request.

#### **7.5 Compliance with law**

- 7.5.1 Each Warehouse shall at all times comply with all applicable law, including (without limitation) local port conditions, local and national customs, local anti-corruption laws, taxation and other rules and regulations (where the aforesaid are not in conflict with the requirements of either this Agreement or of the LMEsword Regulations or of the Operating Procedures).
- 7.5.2 The Warehouse shall immediately notify the Exchange when it becomes aware that such law, customs or regulations conflict, or are likely to conflict, with the requirements of this Agreement, the LMEsword Regulations or the Operating Procedures. In the event of any such conflict, the Exchange shall, without prejudice to its rights under this Agreement, assess whether, in its reasonable opinion, such conflict is reconcilable and shall determine in its absolute discretion what action (if any) to take. Where the Exchange is of the view that failure immediately to resolve the conflict will not materially prejudice the Warehouse's ability to comply with the requirements of this Agreement, the LMEsword Regulations or the Operating Procedures, it shall consult with the Warehouse as to the remedial action to be taken. In the event of a conflict between this Agreement and the LMEsword Regulations or Operating Procedures or any notice issued by the Exchange, the terms of this Agreement shall prevail.
- 7.5.3 The Warehouse will not, and nor will any of its officers, employees, shareholders, representatives or agents, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to

offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of this Agreement which (i) would violate any anti-corruption laws or regulations applicable to the Warehouse, (ii) is intended to, or does, influence or reward a person and acting in breach of an expectation of good faith, upholding or trust, or which it would otherwise be improper for the recipient to accept, or (iii) is made to a Public Official with the intention of influencing them and obtaining or retaining an exchange with conduct of terms ("**Corrupt Act**").

7.5.4 The Warehouse represents and warrants that it has not, and so far as it is aware its directors and officers have not:

- (i) engaged in, admitted to, or been found by a court in any jurisdiction to have engaged in any Corrupt Act; or
- (ii) been investigated by a regulatory or law enforcement agency in any jurisdiction as a suspect in connection with an investigation into the commission of any Corrupt Act.

7.5.5 The Warehouse further agrees and undertakes:

- (i) to properly and accurately record in its books and records all transactions which relate in any way to this Agreement; and
- (ii) to provide any such information as the Exchange may reasonably require by notice in writing in order to monitor the Warehouse's compliance with its obligations under Clauses 7.5.1 and 7.5.3 and 7.5.4; and
- (iii) to notify the Exchange immediately if, at any time, it becomes aware that any of the representations set out at under Clause 7.5.4 are no longer correct.

## 7.6 Principles of Conduct

The Warehouse shall adhere to the Principles of Conduct set out at Clause 11.

## 8 Enforcement and Discipline

The terms of the Exchange's handbook on enforcement and disciplinary procedures applicable to Warehouses, as amended by the Exchange from time to time and issued to Warehouses (the "Disciplinary Procedures") shall be deemed to be incorporated into this Agreement as if set out in full herein.

## 9 General

### 9.1 Fees

- 9.1.1 Each Warehouse shall pay the Exchange the fees and levies prescribed by the Exchange from time to time. The Exchange shall provide all Warehouses with reasonable notice of changes in its prescribed fees and levies.
- 9.1.2 Each Warehouse shall be responsible for the cost of inspections undertaken by the Exchange in accordance with the terms of this Agreement except where the inspection is specific to a single Warehouse and is initiated by the Exchange in which case the Exchange shall be responsible for the cost thereof (but without

prejudice to the power of the Exchange to recover any such costs from a Warehouse pursuant to a sanction imposed under the Disciplinary Procedures).

- 9.1.3 Each Warehouse shall pay the fees prescribed by the LMEsword Regulations and Operating Procedures.
- 9.1.4 The Exchange shall consult with Warehouses if any proposed changes in its prescribed fees and levies or in the fees prescribed by the LMEsword Regulations and Operating Procedures would result in a material increase in such fees and/or levies. For these purposes, a "material increase" shall be any increase in the previously prescribed fee or levy of more than the greater of (a) 10 per cent or (b) the percentage figure equal to the aggregate of (i) the percentage increase in the retail prices index ("RPI") as published by the Office for National Statistics calculated by comparing the level of RPI (all items) for the month in which the previously prescribed fee or levy was fixed and comparing it to the level of RPI (all items) for the month in which the Exchange gives notice of its proposed increase and (ii) 5 per cent.

## 9.2 **Withdrawal of right to store particular metal**

Without prejudice to the other powers of the Exchange, the Directors may require a Warehouse to cease to store a metal of a particular type by giving the Warehouse 90 days' prior notice, or such shorter period as the Directors may consider in their sole discretion justified in the circumstances.

## 9.3 **Liquidity**

- 9.3.1 The proper functioning of the market through the liquidity and elasticity of stocks of metal under Warrant should not be artificially or otherwise constrained by Warehouses giving exceptional inducements or imposing unreasonable charges for depositing or withdrawing metals, nor by Warehouses delaying unreasonably the receipt or despatch of metal, save where unavoidable due to force majeure.
- 9.3.2 The Exchange reserves the right to investigate all charges levied including, for example, those for loading and unloading metal for Warrant purposes. In the event that a Warehouse fails to meet minimum loading standards and requirements from time to time laid down by the Exchange without justification, except in the case of force majeure, the Disciplinary Procedures shall apply.
- 9.3.3 Each Warehouse shall provide to the Exchange on request such information from their records as the Exchange may reasonably request from time to time in connection with any investigation being made or to be made by the Exchange under this clause 9.3. All such information so supplied shall be treated as confidential by the Exchange and shall be restricted to those authorised staff and officers within the Exchange responsible for conducting such investigations, the Exchange's professional advisors and other regulators with whom the Exchange has entered into memoranda of understanding relating to the sharing of information for regulatory purposes on a confidential basis or other person to whom the Exchange is required to disclose it by law or regulation. The Exchange shall not be entitled to have access to legally privileged documents. A list of those persons within the Exchange who are authorised to obtain information from Warehouses in accordance with this

Clause 9.3.3 will be circulated to all Warehouses and will be updated from time to time.

- 9.3.4 The Exchange shall have the power to compel Warehouses to provide any information in accordance with Clause 9.3.3, including, without limitation, details of all inducements paid to attract the load-in of metal, and details of the provenance of loaded-in metal, including information about metal which may have been held previously in that Warehouse, or in another facility operated by the same Warehouse or member of the Warehouse's group. On the basis of such information, the Exchange may, at its discretion, impose additional load-out requirements on a Warehouse which the Exchange considers to have intentionally created or caused, or attempted to create or cause, a queue by the use of inducements or any other method.

#### 9.4 Termination

- 9.4.1 Without prejudice to the provisions of Clause 8, this Agreement may be terminated, and the Warehouse delisted on a permanent basis, with or without notice, if:
- 9.4.1.1 the Warehouse commits a serious breach of this Agreement, the LMEsword Regulations or the Operating Procedures;
  - 9.4.1.2 the Warehouse fails or ceases to satisfy the requirements of Clause 1.2 (capital) and/or becomes or is, in the opinion of the Exchange, likely to become insolvent;
  - 9.4.1.3 the Warehouse breaches Clause 7.5 (compliance with law);
  - 9.4.1.4 the Warehouse materially fails to meet any of its obligations to the holder for the time being of a Warrant and such obligations are not being disputed in good faith;
  - 9.4.1.5 the Warehouse fails to pay a sum of £10,000 or more when it becomes due, or a lesser sum within 7 Business Days of it becoming due, to the Exchange under Clause 9.1 or in respect of a fine imposed on it under the Disciplinary Procedures; or
  - 9.4.1.6 a Force Majeure occurs.

Any such termination and delisting will be effective upon by the Directors notifying the Warehouse accordingly. Without prejudice to Clause 9.4.1.5, and except in the case of a Force Majeure under Clause 9.4.1.6, the Exchange may at its discretion grant to the Warehouse 7 Business Days within which to remedy a default under this Clause 9.4.1.

- 9.4.2 The Exchange may by notice served on a Warehouse by no later than 1 October in any year delist the Warehouse with effect from the following 1 January where the Exchange reasonably believes that the Warehouse is no longer engaged in LME warehousing business.
- 9.4.3 Without prejudice to any other of the Exchange's powers, a Warehouse, or the Exchange, may terminate this Agreement and delist the Warehouse in question by the service of six months' prior notice (or such other period as they may agree or as provided under Clause 9.11) on the other. On the expiry of such

notice, this Agreement shall be terminated and the Warehouse delisted. Subject thereto and the other powers of the Exchange hereunder, this Agreement shall be for an indefinite term.

- 9.4.4 On and following termination of this Agreement and the delisting of a Warehouse, the Warehouse shall not be entitled to any rebate of fees paid to the Exchange but shall remain liable for all pre-existing liabilities to the Exchange. In addition, the Warehouse shall remain subject to the obligations imposed by this Agreement as if it were a Warehouse until a period of five years after delisting has elapsed but shall not be entitled to any of the benefits conferred hereunder, including the right to describe itself as an LME listed warehouse company, and may not issue any further Warrants.
- 9.4.5 On delisting, a Warehouse must, at its own expense, relocate all metal under Warrant to another Warehouse's authorised warehouse(s) and arrange for the cancellation of all of its issued and current Warrants. The Exchange's prior approval must be obtained before any relocation arrangements are finalised and in giving such approval (which may not be unreasonably withheld or delayed) the Exchange shall have all due regard to the reasonable instructions of the holders of the Warrants in question, to the extent known to it.

## 9.5 Notices

- 9.5.1 All notices and other communications shall be in writing and in the English language.
- 9.5.2 Subject to Clause 9.5.5, all notices and other communications required to be served under this Agreement shall be served by fax or by electronic messaging (i.e. e-mail). Service will be deemed effective:
- 9.5.2.1 in the case of notices sent by fax, on the date and time that transmission is received by an employee of the recipient in legible form or, if that date is not a Business Day or, if the fax is sent after normal working hours, the next following Business Day the burden of proving receipt to be met by a transmission report generated by the sender's facsimile machine; and
- 9.5.2.2 in the case of notices sent by electronic messaging, on the date and at the time that the sender receives a valid "read receipt".
- 9.5.3 All notices and other communication required to be served on the Warehouse shall be deemed to be validly served thereon if served on the Warehouse's London Agent. A copy of each such notice and communication shall also be sent to the registered office of the Warehouse but failure to send such a copy shall not affect valid service if the notice or other communication has been served on the Warehouse's London Agent.
- 9.5.4 In the event of difficulty in using fax or electronic messaging to send notices under this Agreement, notices and other communications may be served in person or by courier, with such service deemed effective on the date of receipt, unless that date is not a Business Day in which case the notice shall be deemed given and effective on the first following day that is a Business Day.

- 9.5.5 Notices and other communications shall only be validly served by a Warehouse if they are signed by an authorised signatory notified to the Exchange in accordance with Clause 7.3.6. For the avoidance of doubt, the effect of this Clause 9.5.5 is that, unless the Exchange otherwise prescribes, notices and other communications to be served by a Warehouse may not be served by electronic messaging.
- 9.5.6 The Exchange shall not be liable for any actions taken or omitted to be taken in good faith on the basis of any notice or other communication however served which purports to have been given by or on behalf of a Warehouse. The Exchange shall not be under any duty to verify the genuineness of any signature nor the authority of the person which purports to sign a notice or other communication on behalf of a Warehouse.
- 9.5.7 Each party shall respond promptly to the communications of the other party, where such communications require a response.

**9.6 Release**

Any liability to the Exchange under this Agreement may in whole or in part be released, compounded or compromised or time or indulgence given by the Exchange in its absolute discretion as regards any Warehouse under such liability without in any way prejudicing or affecting its rights against any other or others of the Warehouses under the same or a like liability, whether joint and several or otherwise provided that a Warehouse's liability shall not be increased by such action, nor shall its right to claim compensation or contribution from any person be thereby reduced.

**9.7 Waiver**

No failure of the Exchange to exercise, and no delay by it in exercising, any right, power or remedy in connection with this Agreement (each a "Right") will operate as a waiver thereof, nor will any single or partial exercise of any Right preclude any other or further exercise of such Right or the exercise of any other Right. The Rights provided in this Agreement are cumulative and not exclusive of any other Rights (whether provided by law or otherwise). Any express waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

**9.8 Invalidity**

If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

**9.9 Governing law and submission to the jurisdiction arbitration**

- 9.9.1 This Agreement shall be governed by and construed in accordance with English law.
- 9.9.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this Clause. The LCIA Court shall appoint a sole arbitrator. The

place of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.

- 9.9.3 If the Warehouse is not incorporated in England and Wales, it hereby appoints its London Agent as its agent for service of process.

#### **9.10 Exclusion of Liability**

Neither the Exchange nor any of its Directors nor other officers or members of its Warehousing Committee shall have any liability for any damage, loss, expense or liability of any nature which a Warehouse may suffer or incur in respect of any act or omissions in relation to the provision of warehouse services to Members or its activities or status as a listed Warehouse except to the extent of losses or expenses attributable to its fraud, negligence or wilful default. The terms of this Clause 9.10 shall take precedence over Regulation 11.8.1 insofar as that Regulation relates to Warehouses and the Exchange.

#### **9.11 Notices and Amendments**

- 9.11.1 The Exchange may issue notices from time to time concerning any matter relevant to the performance by a Warehouse of its obligations under this Agreement.
- 9.11.2 Each Warehouse shall comply with the terms of any such notice.
- 9.11.3 The Exchange may amend this Agreement from time to time. Unless it is considered to be an emergency and essential for the proper operation of the market, any such change shall, subject to Clause 9.11.4 below, only take effect after each Warehouse has been given 30 days' prior written notice of any proposed change.
- 9.11.4 In the event that any such proposed change, or any proposed change to the LMEsword Regulations or Operating Procedures, or any proposed notice under Clause 9.11.1, would have the effect of materially increasing the obligations of any Warehouse, it shall only take effect after the Warehouse has been given 90 days prior written notice thereof. The Exchange undertakes to consult with the affected Warehouses in relation to the proposed change, where practicable for a reasonable period and in reasonable time prior to the start of that 90 day period, and shall have reasonable regard to representations received. In the event that the Warehouse does not wish to be bound by any such proposed change which has the effect of materially increasing the obligations of the Warehouse, it may serve notice of termination of this Agreement at any time prior to the expiry of such notice period, in which event such change shall not at any time take effect with respect to the Warehouse in question and the Warehouse shall be delisted with effect from the date 90 days after the day the notice of termination is served.
- 9.11.5 Clauses 9.11.3 and 9.11.4 shall not apply to the Disciplinary Procedures

#### **9.12 No Assignment**

A Warehouse may not assign the benefit of this Agreement to any other person without the prior written consent of the Exchange.

### **9.13 Information Barriers**

Each Related Warehouse shall maintain effective information barriers between it and the relevant Trading Company as specified by the Exchange from time-to-time. The Related Warehouse shall engage a firm of professional accountants in public practice, the choice to be agreed with the Exchange, to assure that the information barriers it has in place meet the criteria specified by the Exchange, under such assurance standard(s) and in such manner as the Exchange may specify from time to time.

## **10 Interpretation**

### **10.1 Definitions**

In this Agreement, the following words and expressions shall, unless the context otherwise requires, bear the following meanings:

"Associated Party" has the meaning given in Clause 7.5.3;

"Amendable Details" has the meaning given in Clause 3.1.2;

"authorised warehouse" means a warehouse operated by a Warehouse and which has been approved by the Exchange for the purpose of this Agreement;

"Business Day" has the meaning given in the Rules;

"Contract" has the meaning given in the Rules;

"Corrupt Act" has the meaning given in Clause 7.5.3;

"Depository" means the person appointed by the Exchange from time to time to act as such for the purposes of LMEsword;

"Directors" means the directors of the Exchange from time to time;

"Disciplinary Procedures" has the meaning given in Clause 8;

"the Exchange" means The London Metal Exchange;

"Force Majeure" means an event which is beyond the reasonable control of the Warehouse and which is, in the opinion of the Exchange, likely to render the Warehouse unable to perform its obligations under this Agreement either permanently or for more than 30 days or such other period of time that would, in the Exchange's view, have such a serious effect on the Warehouse that in business terms it would be tantamount to a permanent cessation, including, without limitation, any act of war, terrorism, insurrection, revolution, act of God or the imposition of legal, regulatory or tax restrictions in any relevant location;

"LME" means The London Metal Exchange;

"London Agent" has the meaning given in Clause 1.3.1;

"Major Currency" has the meaning given in the Rules;

"Member" means a member of the Exchange;

"Operating Procedures" means the manual issued by the Exchange pursuant to the LMEsword Regulations setting out detailed procedures and information relating to the operation of LMEsword;

"person" includes an individual, partnership, unincorporated association and body corporate;

"Public Official" has the meaning given in Clause 7.5.5;

"Related Warehouse" means a Warehouse which is associated with a Trading Company. For the purpose of this definition, a Warehouse is associated with a Trading Company where the Warehouse is a subsidiary or holding company of a Trading Company, or a subsidiary or holding company of one of a Trading Company's subsidiaries or holding companies or otherwise has a Close Connection with a Trading Company. The terms "holding company" and "subsidiary" have the meanings given to them in section 1159 of the Companies Act 2006. A Warehouse shall have a "Close Connection" with a Trading Company if any person or company either directly or indirectly holds or otherwise effectively controls 20% or more of the shares or voting rights in both the Warehouse and the Trading Company;

"Rules" means the rules and regulations issued by the Exchange (and incorporating the LMEsword Regulations) governing the London Metal Exchange administered by the Exchange as the same may be amended in accordance with Article 58 of the Articles of Association of the Exchange and a reference to a Rule shall be construed accordingly;

"Secretary" means any person appointed to perform the duties of Secretary of the Exchange;

"Special Contract Rules for Metals" means Part 6 of the Rules as the same may be amended from time to time;

"LMEsword" means the system for, inter alia, the electronic transfer of title to Warrants governed and constituted by the LMEsword Regulations;

"LMEsword Regulations" means the regulations governing the operation of LMEsword issued by the Exchange as amended from time to time in accordance with the terms thereof;

"this Agreement" means the agreement between each Warehouse and the Exchange incorporating these terms and conditions as amended from time to time in accordance herewith and incorporating the Disciplinary Procedures in accordance with Clause 8 hereof;

"Trading Company" shall mean any Member or non-Member company that enters into Contracts or trades metal that is deliverable against a Contract;

"Warehouse" means a warehouse company which is party to this Agreement, accepted as such by the Exchange and listed in Appendix III of the Rules;

"Warrant" means a warehouse warrant issued by a Warehouse in accordance with this Agreement in respect of metal for the time being dealt in on the Exchange.

## **10.2 Interpretation**

**10.2.1** Where this Agreement refers to a document or thing being "prescribed", that shall mean prescribed by the Exchange from time to time in a notice issued by it to Warehouses.

**10.2.2** Words importing the singular shall, where the context permits, include the plural and vice versa. Words importing gender shall include each gender.

- 10.2.3 Where this Agreement refers to an act being undertaken by the Exchange, that act may be performed by the Exchange acting through the Directors of the Exchange or any duly authorised Committee of the Directors of the Exchange or duly authorised individual.

## 11 Principles of conduct

A Warehouse shall:

- 11.1 Conduct its business with due skill, care and diligence, observing high standards of conduct and safety, complying with the warehouse agreement, the LMEsword regulations, these principles, the common standards of working practice for warehouse companies, other requirements for warehouse companies set by the Exchange and relevant legislation.
- 11.2 At all times observe high standards of integrity and shall not enter into any arrangement or agreement that prohibits the provision of any information that the LME requests in its role as a Recognised Investment Exchange.
- 11.3 Maintain financial resources at or above the minimum level set by the LME to ensure continuity in the provision of services for owners of metal on LME warrant, and shall have in place a performance bond (if required by the Exchange) in the manner and of the amount prescribed by the Exchange.
- 11.4 Manage conflicts of interest fairly, both between itself and holders of metal on LME warrant and between holders of metal on LME warrant, ensuring fair and equitable treatment to all holders of metal on LME warrant at all times.
- 11.5 Ensure that all metal held on LME warrants is stored continuously in good delivery condition and that it is identified and stored so as to facilitate easy access and delivery without undue delay.
- 11.6 Deal with those placing metal on LME warrant, those holding LME warrants and those taking metal off LME warrant on a fair and equitable basis.
- 11.7 Organise and control its affairs in a responsible manner, keep proper records, have well-defined procedures for handling metal stored on LME warrant and for delivering it out expeditiously, and ensure that its employees or agents are suitable, adequately trained and properly supervised.
- 11.8 Pay due regard to the information needs of LME warrant holders by having transparency of: normal hours of work, all delivery in and delivery out charges, rent and rent payment dates, and total average daily delivery out volume rates by metal and mode of transport.
- 11.9 Arrange adequate protection for metal held on LME warrant by insuring it against unexplained losses and losses caused by error, negligence, or fraudulent actions of its servants or agents or its personnel.
- 11.10 Deal with the LME in an open and co-operative manner, keeping it informed promptly of anything concerning the suitability of its warehouses or its continued suitability as a warehouse company, or about metal stored with it or that it knows will be placed on or taken off LME warrant, that the LME, as a Recognised Investment Exchange, which

has responsibility for ensuring that its markets are proper and orderly and not subject to abuse, might reasonably expect to be disclosed to it.

# CONFLICT MANAGEMENT PROCEDURES BETWEEN METRO AND OTHER GS BUSINESSES AND PERSONNEL

**Policy Issued To: Global Commodities Sales and Trading, Global Commodities Principal Investments, Metro Board Members, Metro Management and Staff**

**Date of Issue: Friday 19<sup>th</sup> February 2010**

The Goldman Sachs Group Inc. and its affiliates ('GS') own and manage many different types of business in many different capacities. From time to time GS may own, operate or manage businesses which give rise to potential conflicts of interest and as such the firm needs to have appropriate procedures to ensure the conflict is managed and that confidential information that the firm receives is safeguarded from misuse, misappropriation, or improper dissemination.

One of the instances which potentially gives rise to such a conflict is the ownership of MITSU Holdings LLC ("Metro"), a global warehouse operator primarily engaged in the storage of non-ferrous metals and steel for customers of the London Metal Exchange ("LME") and the Goldman Commodity Sales and Trading business.

It is imperative from a regulatory, business principle and commercial perspective that Metro owned / acquired information is not shared inappropriately and therefore it is imperative that the below procedures are complied with.

The Commodities Compliance team and other Federation groups will conduct regular monitoring of all information sharing and interactions.

## *A. Background Information*

Metro is owned by the Goldman Commodity Principal Investments Group ("GCPI") which is a sub division of the Goldman Sachs Commodities business. For the purpose of their dealings with the management of this company the London GCPI team ("GCPIL") are permanently wall crossed on this entity. Refer Appendix 1 for details of relevant reporting structures.

This structure is designed to help ensure that Confidential and sensitive Information that GS receives as a result of its ownership of Metro does not come into the possession of those personnel engaged in trading activities on the London Metals Exchange ('LME'). Strict adherence by personnel in the handling of confidential and sensitive information and in the operation of the information barriers as set out in this procedure is therefore critical.

## *B. Metro Management Communications*

This policy sets out below the information "touch points" between Metro and other areas of GS and what can and cannot be shared between those groups.

# INFORMATION BARRIER POLICY: METRO AND OTHER GS BUSINESSES AND PERSONNEL

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**Effective Date: March 26, 2014**

Revision History, page 14

**For: Global Commodities Sales and Trading, Global Commodities Principal Investments, Metro Board Members, Metro Management and Staff**

This Policy should be read in conjunction with the London Metal Exchange ("LME") Notice reference 11/334 : A326 : W173 dated 17 November 2011 (the "Exchange Notice"), the wording of which is reproduced in Appendix 2, and Goldman Sachs' Policy regarding Safeguarding Confidential Information: The Chinese Wall and Other Information Barriers. Terms not defined in this Policy (including the term "Confidential Information") shall have the meaning given to them in the Exchange Notice.

The Goldman Sachs Group Inc. and its affiliates ("GS" or the "Firm") own and manage many different types of business in many different capacities. From time to time GS may own, operate or manage businesses which give rise to potential conflicts of interest and as such the Firm needs to have appropriate procedures to ensure the conflict is managed and that confidential information that the firm receives is safeguarded from misuse, misappropriation, or improper dissemination.

One of the instances which potentially gives rise to such a conflict is the Firm's ownership of MITSU Holdings LLC ("Metro"), a global warehouse operator primarily engaged in the storage of non-ferrous metals and steel for customers of the London Metal Exchange ("LME"), given that the Firm has a commodities sales and trading business ("Commodities Sales and Trading").

It is essential from a regulatory, business principle and commercial perspective that Confidential Information relating to Metro and its business is not shared inappropriately and therefore it is imperative that the below procedures are complied with.

Divisional Compliance and other Federation groups will conduct regular monitoring of information sharing and interactions.

## *A. Background Information*

Metro is owned by the Global Commodity Principal Investments Group ("GCPI"), which is a sub-division of the Commodities Business. In accordance with LME guidance and for the purpose of GCPI's dealings with the management of Metro, certain authorized individuals within the GCPI team (the "GCPIIL Individuals") are considered to be on the Metro side of the Chinese wall/information barrier that exists between Metro and the rest of the Firm (the "Information Barrier"). They will not however have free or unrestricted access to all Metro confidential information but instead will comply with the provisions of this policy. Refer to [Appendix 1](#) for details of relevant reporting structures and a list of the GCPIIL Individuals.

Permanent Subcommittee on Investigations

**EXHIBIT #38b**

CONFIDENTIAL

GSPLICOMMODS00004059

This structure is designed to help ensure that Confidential Information which GS receives as a result of its ownership of Metro is not shared with those individuals engaged in sales and trading activities on the LME or in the sale and trading of related products. Strict adherence by all personnel to the rules and requirements applicable to the handling of Confidential Information and the operation of the Information Barrier as set out in this Policy is therefore critical. These procedures apply to employees of both GS and Metro at all times, both during and outside of office hours.

**The "need to know" principle**

Overarching all of the procedures and requirements set out below is the "need to know" principle: Confidential Information may only be shared with those individuals who could not carry out their responsibilities without access to such Confidential Information, and only to the extent required to enable them to carry out those responsibilities. You should not ask for or make an effort to obtain Confidential Information if you do not need to know the information. You are responsible for considering what information needs to be shared, in what form and with what level of detail before sharing any Confidential Information. Confidential Information should not be shared with others simply because this Policy allows it to be shared.

For further guidance on the "need to know" principle and "need to know" policies, see relevant sections of Goldman Sachs' Policy regarding Safeguarding Confidential Information: The Chinese Wall and Other Information Barriers and/or the Metro employee handbook.

**Definitions**

*"Designated Individuals"* are individuals who work for GS who have some degree of responsibility over Metro including GCPI, Metro Board Members and relevant Senior Management within the Securities Division. Note this definition is different to the definition set out by the LME in the LME Notice (as per discussions with the exchange). These individuals should comply with the LME rules in relation to designated individuals.

*"GCPI"* or *"GCPI individuals"* A subset of GCPI (includes the London and Singapore teams only). Names provided in [Appendix 1](#).

*"Metro Employee"* means all staff (including full time consultants) who work for the Metro entity. It does not include GCPI (including GCPIIL) personnel and / or the Metro Board.

**B. Metro Management Communications**

This Policy sets out below the information "touch points" between Metro and other areas of GS and explains what information can and cannot be shared between them. If you are in any doubt as to what information can and cannot be shared or discussed please contact Divisional Compliance or Legal in the first instance, **before any information is shared**.

Metro's senior employee (as described in paragraph 21 of the Exchange Notice) (the "Senior Employee") is responsible for the implementation and operation of

confidentiality procedures at Metro. The Senior Employee will work with the Metro board of directors (the "Metro Board"), the Control Sub Working group of the Board and Divisional Compliance to achieve this. The name of the Senior Employee (see Appendix 1), and an alternate contact in their absence, should be formally communicated to the Metro Board Members at Metro Board meetings. In the event that Metro appoints a different individual from the person named in Appendix 1 to be Senior Employee, this should be clearly communicated to all Metro Board Members as soon as possible and in any event no later than the first Metro Board meeting following such appointment.

Divisional Compliance is responsible for the implementation and operation of confidentiality procedures at GS and for ensuring the effectiveness of such procedures.

### *C. GCPIL Access to Metro Information and Data*

The GCPIL Individuals are likely to have access to the most sensitive Metro data and, as noted above, are considered to be on the Metro side of the Information Barrier for the purposes of this policy. The restrictions and requirements of this Policy apply both to the extent of the information and data that the GCPIL Individuals may receive from Metro and to the way in which such information and data should be handled.

In order to preserve confidentiality and to ensure that Confidential Information cannot be accessed by unauthorized individuals, all Confidential Information relating to Metro that is sent to GCPIL Individuals must be appropriately password protected.

#### **1. Data Available**

The GCPIL Individuals will receive a monthly data package from Metro (the "Metro Data"). The data will be correct as at the last business day of the month and will be sent to GCPIL no earlier than 3 business days from that date. The package will include the following information:

- **Inventory Balances:** Inventory levels broken down by location and metal type including details on inflows, outflows, on-warrant inventory, off-warrant inventory and cancelled warrants
  
- **Deal book (pipeline):** Details of agreed and expected inbound deals including details such as freight incentives, tonnage, outstanding balance, warranted and unissued material. It should be noted that these numbers are used as a guide only, since they represent a snapshot at a specific point in time and are subject to change on a regular basis.
- **Company financials:** backward looking income statement, balance sheets and cash flow statements.
  
- **Financing deals/ Commitment Summary:** Financing deals i.e. Discounted rent agreements on a deal by deal basis including amounts, discounts, tenor etc. Commitment summary also includes freight incentive commitments for a specific month
  
- **Funding Requirements:** Detailed cash flow forecast and funding requirement estimate.

In addition GCPIL Individuals will be able to receive specific data on an ad hoc basis (not ongoing or systematic) in order to answer or prepare for any queries from the board of directors, the board's sub groups and or individual board directors. For this data the 3 business day rule should apply.

All information given to the GCPIL Individuals by Metro should be provided on an anonymised basis, i.e. client or metal owner names must not be disclosed.

Any exceptions to C.1. must be pre-approved by Divisional Compliance and an appropriate route of disclosure must be agreed upon.

## **2. Data Retention and Storage**

GCPIL are subject to the Firm's general procedures on handling confidential information when dealing with the Metro Data, and as such must comply with the following requirements:

- All electronic Metro Data and any other Confidential Information received electronically by any GCPIL Individual must only be stored on the GCPIL Individuals' segregated secure Metro shared drive, which cannot be accessed by anyone other than the GCPIL Individuals.
- All hard copy Metro Data and any other hard copy Confidential Information received by any GCPIL Individual must only be stored in a locked cabinet to which only the GCPIL Individuals have access.
- All Metro Data and any other Confidential Information received in accordance with this section of the Policy must be password protected when being sent by email to any individual who is not a GCPIL Individual but who is allowed to receive the information under the provisions of this policy.
- All conversations between GCPIL Individuals and Metro during which Confidential Information will or may be discussed, including live discussions or telephone conversations, must take place away from and out of earshot of the trading floor.
- All redundant paperwork must be discarded in secure confidential waste bins.

The GCPIL Individuals are responsible for fulfilling the Firm's record keeping obligations by ensuring that all Metro Data and other Confidential Information received from Metro is stored on the GCPIL Individuals' segregated secure Metro shared drive or (in the case of hard copy documents) in a locked cabinet to which only the GCPIL Individuals have access.

## **3. Data Usage**

The GCPIL Individuals are provided with Metro Data in order to support the supervisory role of the Metro Board and its directors.

The GCPIL Individuals are permitted to share Metro Data with GS Divisional Compliance and GS Controllers. In certain circumstances and with approval

of Divisional Compliance, Metro Data may be shared with GS Tax, GS Legal or GS Internal Audit to ensure oversight over financial reporting and / or discussion of legal and tax matters.

#### **4. Other Communications and Information Sharing**

GCPIL individuals are restricted to sharing Metro information in the manner described in this policy only. Formally the GCPIL reporting line is into Heads of Commodities Trading Globally. If any circumstance arises which requires the disclosure of Metro confidential information to a business supervisor for the purpose of escalation or decision making then this should be pre-approved by Divisional Compliance and the GCPIL reporting line should be redirected and therefore information shared with Securities Division Head directly and not with Commodities Trading management.

#### *D. Metro Board Members' Access to Metro Data and other Confidential Information*

Any information packs provided to members of the Metro Board (the "Board Information Pack") must not be passed on to anyone else without first obtaining the approval of Divisional Compliance. A list of current Metro Board Members is provided in [Appendix 1](#).

As part of their supervisory mandate Metro Board Members are only entitled to receive certain specific types of information in a pre-agreed format. The pre-agreed format limits the disclosure of forward looking information to a minimum and ensures that no market sensitive non public information is disclosed. Board Members, in their capacity as Board Members, do not have access to the same information as GCPIL Individuals.

##### **1. Board Information Packs**

Board Information Packs are prepared in advance of board meetings by GCPIL Individuals for submission to the Metro Board. The packs are prepared using month-end data as detailed under C.1. and ad-hoc data addressing specific agenda items. For all data the 3 days business days rule applies. Before Board Information Packs are sent to the Metro Board Members, they must be reviewed and approved by Divisional Compliance. If the Board Information Packs contain any data or issues which GCPIL feels would give rise to a conflict for any Board Member, Divisional Compliance should opine on exclusion of the Board Member from discussion.

Board Information Packs contain in general the following information:

- Inventory Levels: Historical and current on-warrant and off-warrant inventory levels broken down by location and metal type.
- Deal book: Aggregated forward looking projections on a \$ basis without details of metal movements, locations or freight incentives. If GCPIL Individuals have any concerns about the market sensitivity of the data provided (even on an aggregated basis) they should consult Divisional Compliance.
- Financing deals: Aggregated quantity of current and historical financing deals without details of dates or discounts

- Company Financials: Actual and projected income statements, balance sheets and cash flow statements
- Other data: Analysis and data addressing other agenda items. Other data should be discussed on a case by case basis with Divisional Compliance

The Metro Board may only be provided with market or price sensitive information that is not contained within the Board Information Pack if the provision of such information has first been approved by Divisional Compliance. Such approval may only be given in the following circumstances:

- a specific market or company event has arisen which requires Metro to react or to prepare itself;
- it is a one off request for the information (i.e. a snapshot of information will be provided and information will not be provided on an ongoing basis);
- the information is shared on a need-to-know basis only and is not broadly disseminated to all, in which case the list of recipients must first be approved by Divisional Compliance – it may be that, in the event of any conflict of interest involving one or more Metro Board Members, certain information is shared with only some, rather than all, Metro Board Members; if the GCPIL Individuals are concerned that there is or may be such a conflict, they should consult with Divisional Compliance who will consider the issue and advise as to the appropriate course of action; and
- the information is appropriately time-lagged, anonymised and aggregated as far as possible, and the content and format have been pre-approved by Divisional Compliance.

Metro Board Members are not permitted to disclose any information they receive in accordance with the procedures and requirements set out above to anyone who is not a member of the Metro Board. However, the Board Information Pack may be distributed to the following individuals, but only if and to the extent that such distribution has first been approved by Divisional Compliance:

- GS Management Committee members; and
- GS federation personnel.

Any such distribution should be conducted in line with the Firm's Policies Regarding the Safeguarding of Confidential Information: The Chinese Wall and Other Information Barriers.

Board Members should recuse themselves from any Board meeting or part of a Board meeting or issue if they feel they are in any way conflicted.

## **2. Board Interim Updates**

GCPIIL Individuals will provide Board Members with Interim Board updates. These may contain the same data as discussed above.

## **3. Data Retention and Storage**

All Metro-related information received by the Metro Board from GCPIIL must be stored only on designated, secure personal drives and must not be stored on any drive which can be accessed by any other team members or any other persons. All hard copy documents must be kept in locked cabinets to which only authorised staff have access.

## **4. Other Communications and Information Sharing**

Metro Board meetings will be conducted in such a way as to enable Metro Board Members to meet their responsibilities, and will include discussions between Metro's management team and the Metro Board. However, management presentations and discussions between Metro's management team and the Metro Board must be limited and structured in such a way as to ensure that no market or price sensitive non-public Information is disclosed to Metro Board Members.

## **5. Sub Working Groups of the Board**

There are two sub working groups of the Board, the Commercial working group and the Control working group. These sub working groups will meet on an ad hoc basis when necessary to discuss and approve commercial decisions, in the case of the Commercial working group and control issues, in the case of the Control working group. Procedures under this policy apply equally to these sub working group.

Among others the Commercial working group approves large (above a set threshold) expenditures and deals. As part of this process the working group might receive (anonymous) deal information on a more granular and timely basis than contemplated under C and D. Such information should only be disclosed in relation to the deal being discussed at the working group and disclosure should be strictly limited to GCPIIL and the Commercial Working Group Members. Once a deal has been approved there is no certainty as to whether it will occur. Information about whether a deal has or has not occurred should not be communicated to GCPIIL individuals or Working Group Members unless required for the purpose of further sub working group discussions. Any such information sharing must be disclosed to Commodities Compliance.

The Control Working group retrospectively reviews incidents and issues of a control nature and will also work with the Senior Employee at Metro on the adherence to these information barrier procedures.

All Metro Board meetings and Sub Working group meetings must be conducted away from the GS trading floor.

### *E. Designated Individuals*

There are a small number of individuals within the Firm who have management or control responsibility both for Metro and for GS's metals sales and trading business ("Designated Individuals"). In addition there are a small number of individuals who have control oversight over Metro and who work with, to some degree, the GS metals sales and trading business. For the purpose of this policy and per discussions with the LME, these individuals will also be considered Designated Individuals. Designated Individuals may receive Confidential Information relating to Metro on a need-to-know basis. This information may only be shared in compliance of the terms of this policy. The level of information Designated Individuals are permitted to receive differs according to the individual and it should not be assumed that Designated Individuals have any specific rights to have access to Metro data. A record of Designated Individuals is maintained in Appendix 1, and will be updated on a regular basis. Designated Individuals are required to confirm in writing on an annual basis that they have complied with the requirements of paragraph 11 of the Exchange Notice by signing a declaration in the form set out in Appendix 3.

### *F. Metro Communication with Commodities Sales and Trading and Other GS Non-Exempt Personnel<sup>1</sup> (together the "Business")*

It is very important that the Information Barrier is maintained between Metro and the Business. Much of Metro's business information is confidential and sensitive to either the underlying metal market or Metro's clients. **Individuals within the Business are not entitled to receive any of this information.**

Metro may only discuss with individuals within the Business non-confidential information which it would routinely share with other third party clients. Permitted types of discussion include:

- discussions around warranting of metal on behalf of Commodities Sales and Trading;
- logistical information about the current environment; and
- logistical advice about moving or storing metal.

**It is strictly prohibited for Metro staff to disclose any information about pending metal deposits or withdrawals or to give any specific information relating to storage terms, client deals or financing transactions to individuals within the Business. It is also prohibited for Metro staff to share any information which is reported to or published by the LME ahead of publication to the market.**

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<sup>1</sup> Exempt personnel include GS Federation personnel who have been pre-approved by Divisional Compliance to receive information from Metro, GCPIL Individuals or the Metro Board

## ***G. Allowing Other GS Personnel Access to Confidential Information***

It is not envisaged that other GS personnel will require, or be given, access to Confidential Information relating to Metro. In the event that an exception to this rule is sought a written request must be sent to Divisional Compliance. Divisional Compliance will then evaluate the request by applying the 'need-to-know' standard and with consideration of the risks associated with sharing the information, and will decide whether or not to allow the individual or individuals in question to be given access to the Confidential Information. Confidential Information may only be shared in this way after written approval has been obtained from Divisional Compliance. In the event that such approval is obtained, the Confidential Information will be provided on a very limited, exceptional basis [as specified by Divisional Compliance]. Adequate training must be given to the individual(s) receiving the Confidential Information, and appropriate information barriers and procedures must be put in place. Appropriate records must also be kept setting out the nature of the Confidential Information, the individual(s) to whom it has been provided and the measures taken to ensure that the Confidential Information is protected (training, information barriers and procedures).

Commodities Compliance will have access to Metro Confidential Information to exercise supervision of the Information Barrier and controls as described in this policy.

## ***H. Separation of Personnel***

### **1. Metro Management**

All Metro management and staff (excluding Metro Board Members, who are subject to the controls set out in Section D above) ("Metro Operational Staff") are and must continue to be situated in office locations that are physically separate from those of GS management, Commodities Sales and Trading and the Business more generally, i.e. Metro Operational Staff must not be located within GS's offices. Metro Operational Staff must be treated as external visitors if they visit GS's offices – they may not be issued with employee security passes and must not come onto the GS trading floors. All meetings with Metro employees should be conducted in a conference room away from the trading floor. None of the management of Metro's day-to-day activities, including arranging financing deals, arranging contracts for metal and moving metal on and off warrant, should be conducted from GS premises.

GS staff and Metro Operational Staff may not share an office location. Any proposed exception to this rule must be referred to Divisional Compliance, who will review the proposal and consider what additional controls will need to be put in place to ensure that Confidential Information is protected.

### **2. GS Personnel**

A similar restriction applies to GS personnel, who must be located in premises that are physically separate from those of Metro Operational Staff. Should any GS employees need to visit Metro's offices, they must be accompanied by Metro management at all times during their visit. Any exception to this rule must be approved by Divisional Compliance.

The date of the visit and the arrival and departure times of any GS personnel who visit Metro's offices must be included in Metro's visitor log, and this information should be made available to Divisional Compliance on request, within a reasonable timeframe.

Within GS's offices it is equally important to ensure that there is appropriate segregation arrangements between GCPIL Individuals, the GS appointed Metro Board Members and Commodities Sales and Trading staff, and in particular those individuals who are involved in trading on the LME. The desk and office locations, dedicated printers, telephone set up changes, Metro related IT servers and distribution lists of GCPIL Individuals, Metro Board Members who are have interaction with the Global Commodities business and Commodities Sales and Trading staff should be discussed and agreed with Divisional Compliance ahead of any changes.

*The Metro Confidentiality Room ("the Confi Room") should be used by GCPIL individuals, Metro Board Members and Divisional Compliance to conduct meetings and phone calls which require the discussion of confidential information and when preparing the Board Information pack. In addition the room contains a locked cabinet for storage of sensitive Metro information and Metro confidential information. The Confi Room is controlled by key card access.*

### **3. Metro Board meetings**

Metro Board meetings will necessarily involve GS appointed Metro Board Members and Metro management being together in the same location at the same time. In order to minimise the risks involved, any Metro Board meetings that are held on GS premises should be held in a location that is physically remote from any trading floors. The minutes of such meetings should record details of the address and specific location of the meeting, as well as all attendees and invitees. This information should be made available to Divisional Compliance on request. Where appropriate, certain Designated Individuals and or Board Members should leave Metro Board meetings for the duration of discussions involving Confidential Information.

#### *I. Inadvertent Receipt or Disclosure of Confidential or Non-Public Information*

**In the event that an individual is inadvertently or erroneously given information which they are prohibited from receiving under the provisions of this Policy, it is the responsibility of both the individual who provided the information and the individual who received the information to inform a member of Divisional Compliance IMMEDIATELY.** An individual must not trade based on information received in contravention of this policy or the GS Market Abuse policies.

#### *J. Duty to Notify the LME*

Any breaches of the requirements of the Exchange Notice which lead to GS coming into possession of Confidential Information via an employee or any other

party, whether or not such Confidential Information originates from Metro, must be notified to the LME as soon as reasonably practicable.

### *K. Technology Controls*

All technology controls around Confidential Information within GS and Metro should be compliant with password best practices (i.e. passwords should be of an appropriate length and format complexity, should be changed on a regular basis, and must not be shared under any circumstances).

All changes to technology and systems that impact or potentially impact Metro Confidential Information should be tested ahead of rollout to ensure that security is not compromised and security measures remain in place.

### *L. Discounted LME Warrants*

As GS is both an LME trading member and the owner of a Related Warehouse Company (i.e. Metro), both Metro and GS are subject to the following provisions of the Exchange Notice:

26. *A Member with a Related Warehouse Company which operates a listed warehouse in a particular Location may not sell or offer to sell LME warrants issued in respect of other Warehouse Companies operating in the same location or within 250 mile radius of the Related Warehouse Company at a discount to the Related Warehouse Company's LME warrants, unless it can demonstrate that it would have offered the same discount even if it did not have a Related Warehouse Company.*

All trades by Commodities Sales and Trading which involve the sale of LME Warrants at Metro or within a 250 mile radius at a discount must therefore be approved by the Head of Metals Trading and Divisional Compliance in writing prior to execution.

27. *Subject to the proviso in Paragraph 26, a Member must not otherwise offer any incentive to customers to exchange or substitute LME warrants issued by a Related Warehouse Company for LME warrants issued by any other Warehouse Company's listed warehouse in the same location or within a 250 mile radius of the Related Warehouse Company. Any member or Warehouse Company which is aware of any such sale or offer must immediately inform the LME of that fact.*

Therefore in the event an individual at Metro or at GS becomes aware of such a situation it must be escalated immediately to Divisional Compliance.

### *M. Access to Warehouses*

GS employees with responsibilities for Metro may not inspect GS's metal held on LME warrant at another Warehouse Company (other than Metro).

All other GS employees must obtain pre-approval from Divisional Compliance before visiting any Warehouse Company (including Metro) to inspect GS's metal

held on LME warrant. Following a visit to any Warehouse, GS employees must confirm to Divisional Compliance that they did not receive any confidential information during their visit or escalate any potential receipt of confidential information immediately.

#### *N. Personal Account Dealing*

All Metro Board Members, GCPI Individuals and Metro staff and management are prohibited from executing any personal account trades in base metals contracts, physical base metals, contracts or derivatives with a base metal underlyer or any other base metals related investments.

#### *O. Disciplinary Sanctions*

Pursuant to the Exchange Notice, a breach of the procedures set out therein by either a Member or a Related Warehouse Company may be regarded as an act of misconduct and may result in disciplinary action and the imposition of a severe financial penalty.

All relevant personnel will therefore be provided with a copy of this Policy, and must familiarize themselves with both the terms of this Policy and the details of the Exchange Notice (see Appendix 2 – it is also available via the following website link: <http://www.lme.com/notices/12540.asp>). Such personnel must also sign a written acknowledgement confirming their understanding of and adherence to this Policy and the Exchange Notice in the form set out in Appendix 3.

GS takes any misuse, misappropriation, or improper dissemination of confidential information very seriously. Misuse and misappropriation of confidential information may violate contractual obligations, as well as the laws, rules and/or regulations of various jurisdictions in which the Firm does business. It may also give rise to both civil liabilities and criminal penalties for the Firm and for individual employees. In addition, even just the suggestion of misuse or misappropriation of confidential information can lead to serious reputational damage to the Firm. Violations of this Policy and/or the Exchange Notice by employees may lead to disciplinary action, including dismissal, and any such violations may also need to be reported to regulatory or legal authorities and/or future employers. GS reserves the right to take steps to vet any Related Warehouse Company personnel for their fitness and propriety to hold Confidential Information in accordance with *[procedures required]*.

#### *P. Complaints and Dispute Resolutions*

Customer complaints should be escalated to Divisional Compliance and Legal and handled in accordance with normal complaint and dispute procedures. Details of the dispute or complaint should not be discussed with any other parties until the dispute or complaint has been reviewed by Divisional Compliance and Legal.

### *Q. Gifts and Entertainment*

Designated Individuals do not require approval to provide or receive gifts or entertainment to or from Metro providing the offer is in accordance with GS's Gifts and Entertainment Policy. If an offer falls outside of GS's Gifts and Entertainment Policy, Designated Individuals must obtain pre-approval from Divisional Compliance.

All other GS employees must obtain PMD pre-approval to provide or receive any gifts or entertainment to or from Metro and any offer must be provided in accordance with GS's Gifts and Entertainment Policy. If an offer falls outside of GS's Gifts and Entertainment Policy, pre-approval from Divisional Compliance must be obtained.

In all cases regard must be given to any potential conflicts of interest that could be seen to arise as a result of GS and Metro's relationship and/or the nature of the gift or entertainment.

### *R. Third Party Assurance of Information Barriers*

Pursuant to the Exchange Notice, Metro is required to engage a Practitioner to provide regular assurance that the information barriers it has in place are compliant with the requirements set out in the Exchange Notice. Such assurance must be given in accordance with the International Standards on Assurance Engagement 3000: Assurance Engagements other than Audits or Reviews of Historical Information issued by the International Auditing & Assurance Standards Board, or such other standards as are notified by the Exchange for time-to-time. The review must be carried out and the assurance given on an annual basis by Metro's auditors or any other person who meets the requirements set out in the Exchange Notice, as agreed between Metro and the LME. The report should comply with the requirements of the Exchange Notice and must be provided to both Metro and the LME. Metro is not permitted to share the report with other parties other than:

- (a) as required by the Exchange Notice;
- (b) confidentially with its own professional advisors and affiliates (except any Trading Company, i.e. GS);
- (c) as required by law or regulatory authority; or
- (d) as directed by a court or other regulatory body of competent jurisdiction.

All requests to disclose this report to a third party other must be reviewed and approved by Divisional Compliance and Legal before the report is disclosed to the third party.

The report can be shared with all Metro Board Members in their capacity as a Metro Board Member. Metro Board Members may only receive and use the report for the purpose of fulfilling their role on the Metro Board. The report cannot be shared with GS in any other capacity.

Any remedial actions arising from the report should be addressed in accordance with the Exchange Notice.

*S. Serious breaches of these procedures may be regarded as an act of misconduct and may result in disciplinary action.*

**Revision History**

- 26 March 2014 (current; replaced FSA with FCA)
- 23 July 2012
- 19 February 2010 (original; *Conflict Management Procedures Between Metro and Other GS Businesses and Personnel*)

**APPENDIX 1 – GS INDIVIDUALS RESPONSIBLE UNDER  
THE TERMS OF THIS POLICY**

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**APPENDIX 2 – LME NOTICE 11/334 : A326 : W173  
ISSUED ON 17 NOVEMBER 2011**

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London Metal  
Exchange for Inf...

## **APPENDIX 3 – ANNUAL CERTIFICATION**

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Chadbourne & Parke LLP  
1200 New Hampshire Avenue, NW  
Washington, DC 20036  
telephone: (202) 974-5600

Abbe David Lowell  
direct tel (202) 974-5605  
adlowell@chadbourne.com

September 17, 2014

**By E-mail**

Mr. Tyler Gellasch  
Permanent Subcommittee on Investigations  
Homeland Security & Governmental Affairs Committee  
United States Senate  
199 Russell Senate Office Building  
1st & Constitution, N.E.  
Washington, D.C. 20510

Re: Follow-Up Requests

Dear Mr. Gellasch:

I write on behalf of The Goldman Sachs Group, Inc. (“Goldman Sachs” or the “Firm”) in connection with the efforts of the Permanent Subcommittee on Investigations (the “Subcommittee”) to better understand the nature and scope of activities of U.S. banks in physical commodities.<sup>1</sup> Goldman Sachs responds to the last remaining requests set forth in your email dated August 22, 2014, which we reproduce below for your convenience.

**Request No. 4: Please provide the average freight incentive per tonne of aluminum offered by Metro for each month during the period beginning February 1, 2010 through June 2014. For each calendar year from 2010 through 2013, please provide the total amount of incentives paid by Metro for aluminum and indicate what portion, if any, was paid to Goldman.**

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<sup>1</sup> The Goldman Sachs Group, Inc. is the Firm’s publicly-held parent company. Information relevant to the Subcommittee’s requests involves the activities of affiliates controlled by the Firm operating both inside and outside the United States.

PSI-GoldmanSachs-15-000001

Permanent Subcommittee on Investigations

**EXHIBIT #39**

## PSI Submission, Goldman Sachs - 9.17.14

## Exhibit A

Year	Total Annual Freight Allowance Paid by Metro	Annual Freight Allowance Paid by Metro to J. Aron*
2010	\$ 36,886,081.53	\$ 4,833,782.97
2011	\$ 78,705,509.76	\$ 42,837,549.73
2012	\$ 102,810,074.24	\$ 21,239,974.82
2013	\$ 128,841,024.47	\$ 19,115,351.31

\* The spread that J. Aron earned on the trade constituted a very small portion — approximately 2% — of the actual freight allowance that J. Aron received from Metro.

CHADBOURNE  
& PARKE LLP

Abbe David Lowell  
direct tel (202) 974-5605  
adlowell@chadbourne.com

August 15, 2014

**By E-mail**

Mr. Joe Bryan  
Permanent Subcommittee on Investigations  
Homeland Security & Governmental Affairs Committee  
United States Senate  
199 Russell Senate Office Building  
1st & Constitution, N.E.  
Washington, D.C. 20510

Re: **Follow-Up Requests**

Dear Mr. Bryan:

I write on behalf of The Goldman Sachs Group, Inc. ("Goldman Sachs" or the "Firm") in connection with the efforts of the Permanent Subcommittee on Investigations (the "Subcommittee") to better understand the nature and scope of activities of U.S. banks in physical commodities.<sup>1</sup> Goldman Sachs responds to all the remaining requests contained in your emails dated July 22, 2014 and July 29, 2014, which we reproduce below for your convenience.

**Request No. 6: Describe Goldman Sachs's business relationship with Alcoa and provide the value as of the end of 2013 of Goldman Sachs's holdings in Alcoa debt and stock, respectively.**

As of December 31, 2013, Goldman Sachs' position in Alcoa's equity was 1,707,113 physical shares representing approximately 0.1596% of common stock outstanding and a market value of \$18,146,610. These shares were held by Goldman Sachs in its capacity as a prime

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<sup>1</sup> The Goldman Sachs Group, Inc. is the Firm's publicly-held parent company. Information relevant to the Subcommittee's requests involves the activities of affiliates controlled by the Firm operating both inside and outside the United States.

PSI Submission, Goldman Sachs - 8.15.14  
Exhibit A

Employee	Department Name	Status	From Date	To Date
Agran, Greg	Global Commodities	Board Member	9/25/2009	12/1/2011
Attwood Scott, Victoria (Left GS)	Securities Div Compliance	Board Member	2/1/2010	11/16/2012
Bulk, Maxwell (Left GS)	Global Deriv Ops Mgmt	Board Member	12/1/2009	7/1/2014
Ciardi, Francesco (Left GS)	Assetco	GCPIL	9/21/2009	4/11/2011
Ealet, Isabelle	Securities Divisional Mgmt	Senior Management	4/1/2012	CURRENT
Gabillon, Jacques	Assetco	Board Member; GCPIL	9/21/2009	CURRENT
Grebien, Ingmar	Assetco	GCPIL	9/21/2009	CURRENT
Haynes, Oliver (Left GS)	Securities Div Compliance	Board Member	10/30/2012	4/1/2014
Holzer, Philip	EQ PIPG Sales	Board Member	2/15/2010	3/1/2014
Ken Murphy	Archon	Board Member	3/1/2010	5/1/2011
Lau, Carlson (Left GS)	Assetco	GCPIL	4/11/2013	6/8/2013
Leo, Chen-ryung	Assetco	GCPIL	9/21/2009	CURRENT
Lourenco, Tiago (Left GS)	Assetco	GCPIL	9/3/2012	2/7/2014
Mancini, Robert (Left GS)	Assetco	Board Member	9/25/2009	12/1/2012
McDonogh, Dermot	Controllers' Admin	Board Member	3/1/2010	CURRENT
Stewart, Richard	Media Relations	Board Member	10/1/2012	CURRENT
Stromberg, David (Left GS)	Assetco	GCPIL	9/19/2011	4/12/2013
Stuart-Grant, Alan (Left GS)	Assetco	GCPIL	8/25/2010	6/6/2013
Weiss, Michael	Securities Div Compliance	Board Member	1/23/2013	CURRENT
West, Owen	Natural Gas Trading	Board Member	11/28/2011	CURRENT
Yu, Audrey	Assetco	GCPIL	5/9/2013	CURRENT

Employee	Department Name	From Date	To Date
Ahern, Daniel	FICC Product Control	11/11/2012	CURRENT
Allebest, Jared	ECommunications Compliance	7/22/2014	CURRENT
Bakkar, Imane (Left GS)	MRMA - Market Risk Analysis	10/30/2012	4/22/2014
Bardlett, Meg	Litigation-Regulatory	5/29/2014	CURRENT
Bhatt, Nilimp	MRMA - Market Risk Analysis	10/30/2012	4/22/2014
Broeckel, Janet	Litigation-Regulatory	5/29/2014	CURRENT
Brown, Aaron	Corporate Treasury	11/14/2012	4/22/2014
Bunkin, Steven	Derivatives & Commodities	10/30/2012	CURRENT
Campbell, Ian	Internal Audit - Securities	9/6/2010	4/24/2014
Carman, Jeff	FICC Product Control	10/15/2012	CURRENT
Chong, Yoon (Left GS)	Internal Audit - Securities	9/17/2010	11/9/2010
Clifford, Raymond	Internal Audit - Securities	10/30/2012	4/22/2014
Crompton, Sinead	Securities Div Compliance	10/30/2012	CURRENT
Donaeva, Zali (Left GS)	Internal Audit - Securities	9/6/2010	11/9/2010
Duval, Marie-lucile	MRMA - Market Risk Analysis	10/30/2012	4/22/2014
Felt, Norman	Litigation-Regulatory	5/29/2014	CURRENT
Fredman, Sheara	FICC Product Control	3/1/2013	CURRENT
Herrmann, David	Securities Div Compliance	10/30/2012	8/6/2014
Heyworth, Christopher	Corporate Accounting	10/15/2012	CURRENT
Hughes, Jon	MRMA - Market Risk Analysis	10/30/2012	11/20/2012
Javaid, Faisal (Left GS)	MRMA - Market Risk Analysis	10/30/2012	9/6/2013
Jutton, Robert	Corporate Accounting	1/31/2013	CURRENT
LaHaie, Michael	Accounting Policy	11/11/2012	CURRENT
Lim-Maibouf, Olga	Tax Compliance - Salt	10/15/2012	CURRENT
Lippincott, Eric (Left GS)	ECommunications Compliance	11/9/2012	3/7/2014
Lynn, Samuel (Left GS)	Accounting Policy	11/11/2012	2/14/2014
Maddonald, Malcolm	Internal Audit - Securities	9/6/2010	11/9/2010
Ramakrishnan, Jayachandran (Left GS)	Internal Audit - Technology	11/11/2012	2/28/2014
Riggs, Tom	Derivatives & Commodities	5/29/2014	CURRENT
Schorr, Jonathan	Litigation-Regulatory	5/29/2014	CURRENT
Siva, Gnanarajah (Left GS)	Tax Compliance - Federal	4/5/2013	4/18/2014
Smith, Tyler	ECommunications Compliance	3/20/2014	CURRENT
Snowden, Richard (Left GS)	Corporate Accounting	10/15/2012	10/15/2012
Verducci, Rory	Internal Audit - Securities	10/30/2012	4/22/2014
Wade, Kimberly	Tax Compliance - Salt	10/16/2013	CURRENT
Wilson, John	Tax Reporting And Analysis	11/14/2012	CURRENT
Yang, Stephanie	Tax Compliance - Salt	10/15/2012	CURRENT

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Global Commodities Overview

Simon Greenshields – Co-Head Global Commodities

Colin Bryce – Co-Head Global Commodities

May 7, 2009

Permanent Subcommittee on Investigations

EXHIBIT #41

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FRB-99-81-618889

# Agenda

- Executive Summary
- Timeline
- Organization Structure
- Business Lines
- Revenue and Balance Sheet Metrics
- Business Model & Key Revenue Contributors
- Business Initiatives
- Disclosures

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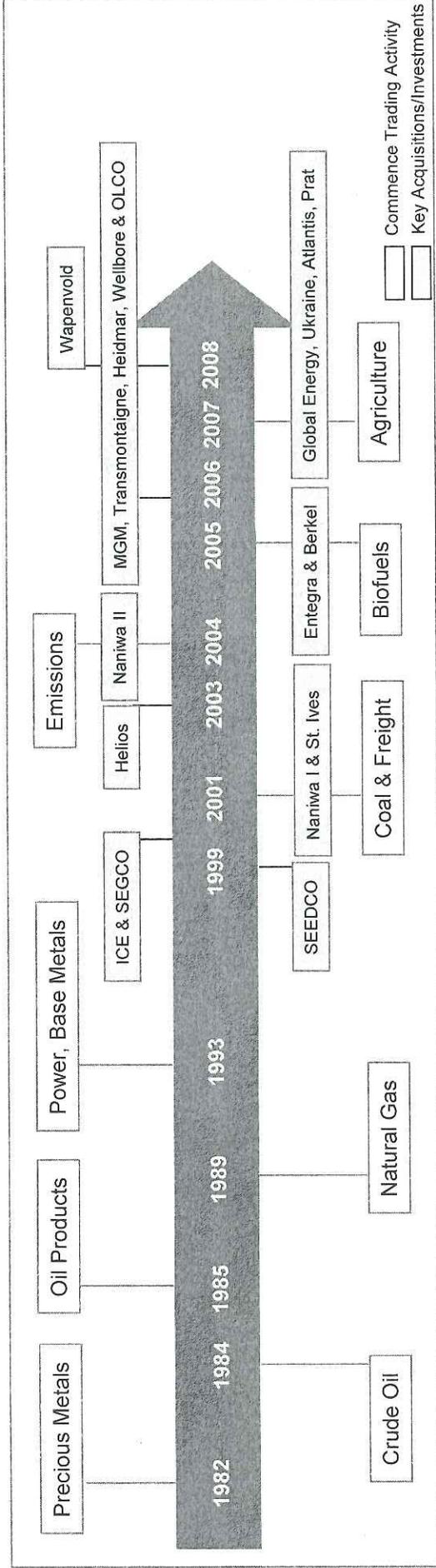
## Executive Summary

- Business Overview
  - The Commodities Division has considerable experience and a long history of successful earnings and risk management performance
  - 25 year old franchise, generating consistently high revenues per headcount
  - Posted positive quarterly earnings for 100 consecutive quarters
  - Maintains a diversified geographic footprint and product base
  - Efficient balance sheet utilization with low overall asset levels
  - 22% and 26% Compound Annual Growth Rates for revenues and Profit Before Tax, respectively
  - Provides diversification benefit to portfolio risk of Morgan Stanley (MS)

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# Commodities Timeline





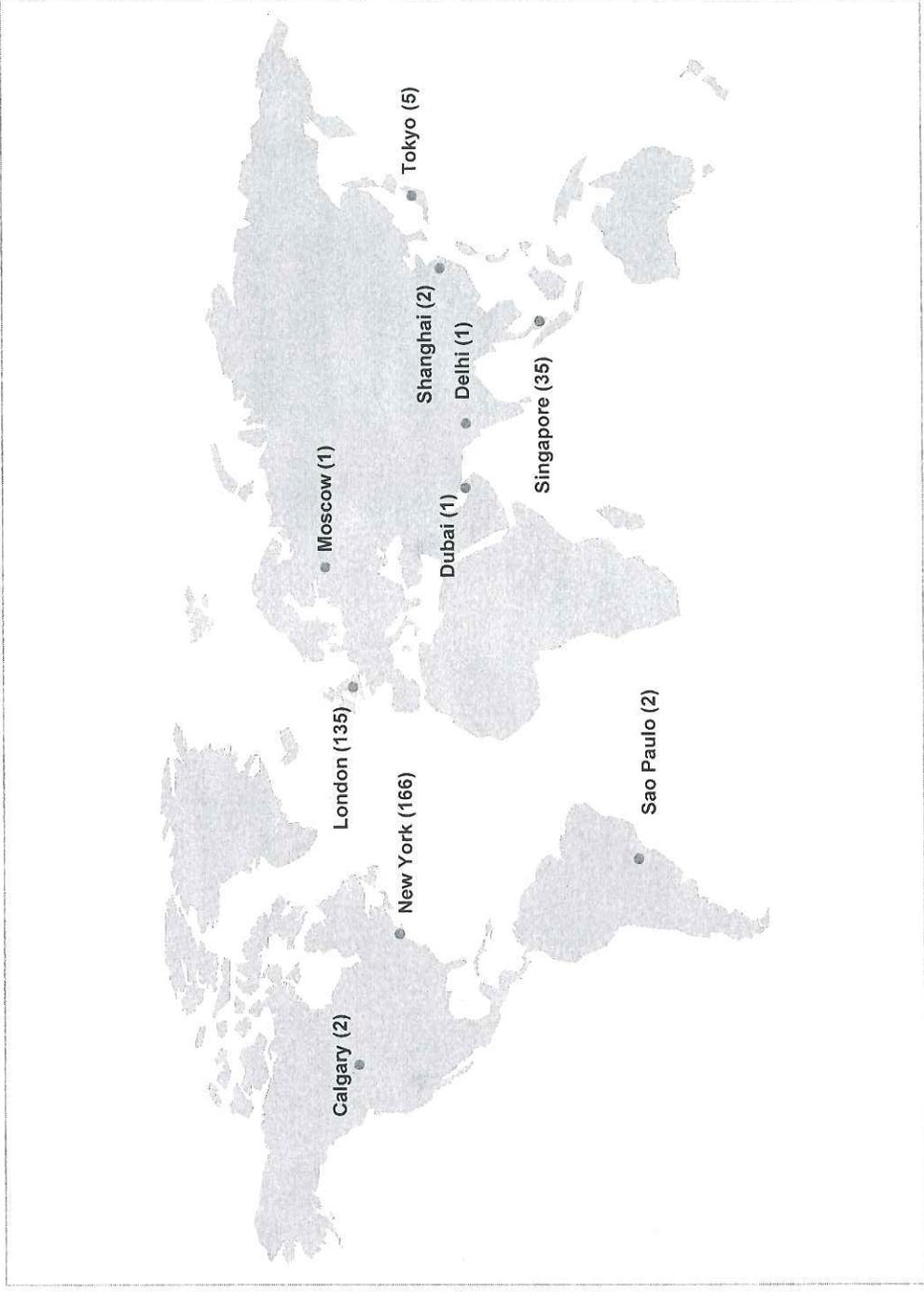
# Commodities Management Experience

## Commodities Management Committee

<u>Area of Responsibility</u>	<u>Business Head</u>	<u>MS Experience</u>	<u>Industry</u>
Co-Head Global Commodities	Simon Greenshields	25	26
Co-Head Global Commodities	Colin Bryce	22	30
Commodities Chief Operating Officer	Robert Kinney	20	23
Commodities Chief Risk Officer	Richard Shelton	18	27
Vice Chairman	Marc Mourre	22	29
Global Oil & Head of Europe	Goran Trapp	18	22
North American Oil	Richard Seto	20	20
Global Marketing	Boris Shrayner	12	17
Global Metals	Ben Cross	14	22
North America Power & Gas	Peter Sherk	9	14
Co-European Power & Gas	Charles Rankin	14	21
Co-European Power & Gas	John Woodley	14	25

# Global Coverage

- Global presence with major offices in London, New York, and Singapore and 350 professionals
- Major offices contain regional expertise across a diverse product base
- Satellite Marketing offices reside in Brazil, China, Russia, India, and Japan
- Calgary office focuses on sour crude trading
- Shanghai office trades base metals
- Excludes employees of TMG and other Principal Investments



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# Balance Sheet, VaR and Headcount Metrics

**Key Points:**

- Low balance sheet utilization, with derivative contracts representing the largest component
- Oil Liquids accounts for approximately 50% of balance sheet; primary driver of Physical Inventory and Receivable balances
- Small headcount requirements to generate \$3Bn in revenues
- Commodities VaR provides diversification benefits to the Firm as a whole.

BU Headcount	March 31, 2009
--------------	----------------

Trading	166
Marketing	59
Origination	19
Traffic/Scheduling	71
Administration	34.5

Total

350

Asset Category	March 31, 2009 (MM's)
----------------	-----------------------

Derivative Contracts	
Physical Inventory	
Initial Margin	
Customer Receivables	
Principal Investments	
Fixed Assets	
Other	

Total

\$29,764

VaR - March 31, 2009

\$21

— = Redacted by the Permanent Subcommittee on Investigations

# Business Model & Key Revenue Contributors

## Business Model

Utilize specialist expertise to provide intermediation for counterparties who need to transfer, transform or acquire commodity price risk. Traders assume measured principal risk positions in physical and financial markets that enhance the returns from counterparty flow.

## Key Revenue Contributors

- Counterparty Flow – 38%
- Physical Supply, Distribution, and Arbitrage – 18%
- Structured Transactions – 10%
- Principal Trading – 22%
- Asset/Principal Investments – 12%

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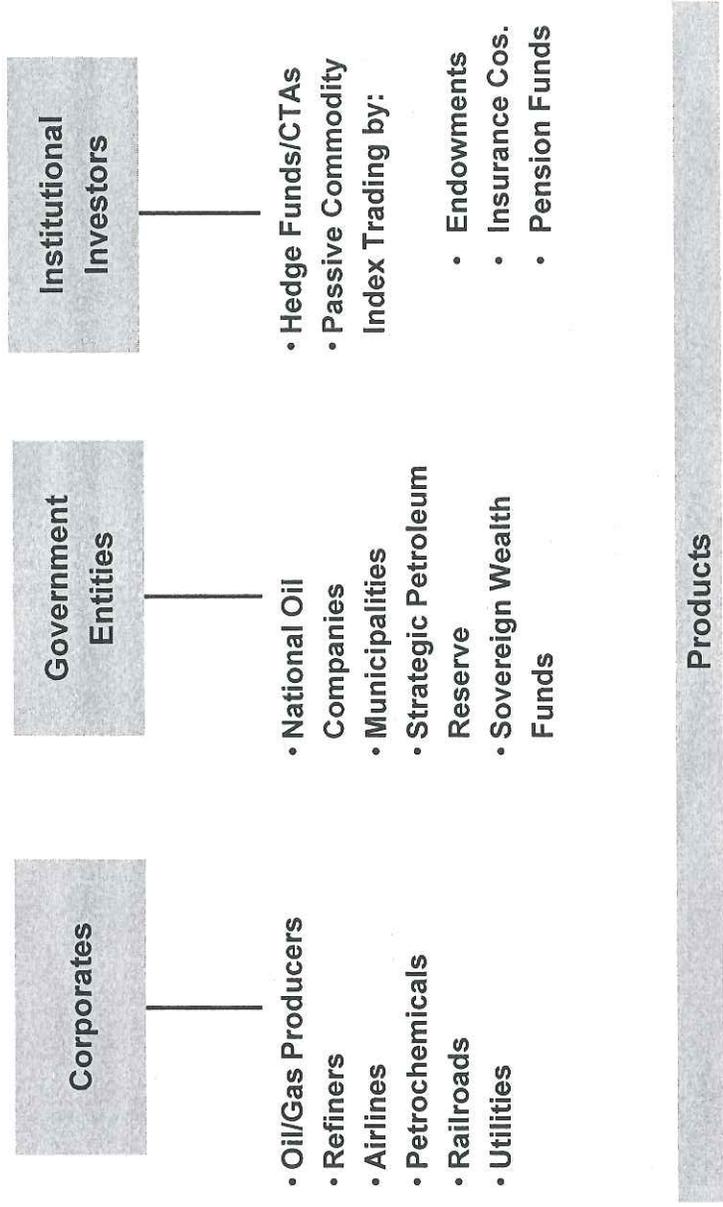
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# Client Flow – Customer Base



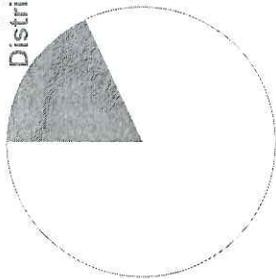
- Consistently generates approximately 1/3 of Commodities annual revenues
- Breadth and depth of product expertise provides unique risk management vehicles to Corporations with embedded commodity market risks
- Institutional Investor segment overlaps other divisions of the Firm
- Tailor risk management products by combining relatively simple instruments with diverse underliers



- Products**
- Swaps
  - Options
  - Indexes
  - Physical Supply/Oftake

# Physical Supply, Distribution and Arbitrage

Physical Supply,  
Distribution & Arbitrage  
18%



## Oil/Refined Products

- Blending to capture value relationships between grades
- Capturing distribution margin in the wholesale sector, TMG
- Storage economics during periods of favorable market structure

## Power/Coal/Natural Gas/Fuel Oil/LNG

- Capturing margin between power and underlying fuel source
- Providing ancillary services to support the power grid
- Optimize optionality in fuel sources

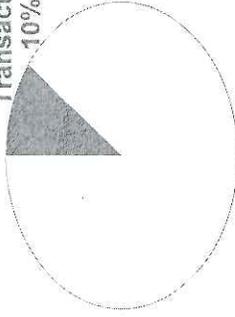
## Freight

- Provides certainty of logistics capacity
- Provides origin/destination flexibility to take advantage of locational value relationships
- Allows for purchase in bulk and sale in parcel

- Anchor to the provision of liquidity to financial market counterparts
- Enables MS to service physical needs of airlines, shipping companies, and other consumers

# Structured Transactions

Structured Transactions  
10%



- Refinery Supply Arrangements – MSCG provides commodity services to support refining operations of specific companies
- Crude and Product Monetization – MSCG provides price risk management and physical offtake in conjunction with counterparty note offering
- Overriding Royalty Interests – MSCG purchased Volumetric Production Payments (“VPP) related to two offshore acquisitions
- Electricity Capacity Purchases – Long-term purchase of capacity, firm energy and certain ancillary services from a power facility in McKittrick, California
- Jet Fuel Supply Contracts – MSCG supplies most of its U.S. jet fuel requirements (125 MBD) on a delivered basis to a specific airline company.
- Tolling Agreements – Obtain the right to supply fuel and market electricity from physical electricity generation. Agreements can be physical or financial.

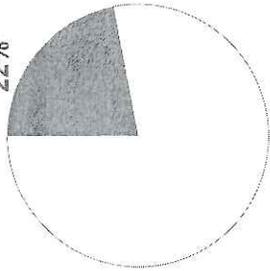
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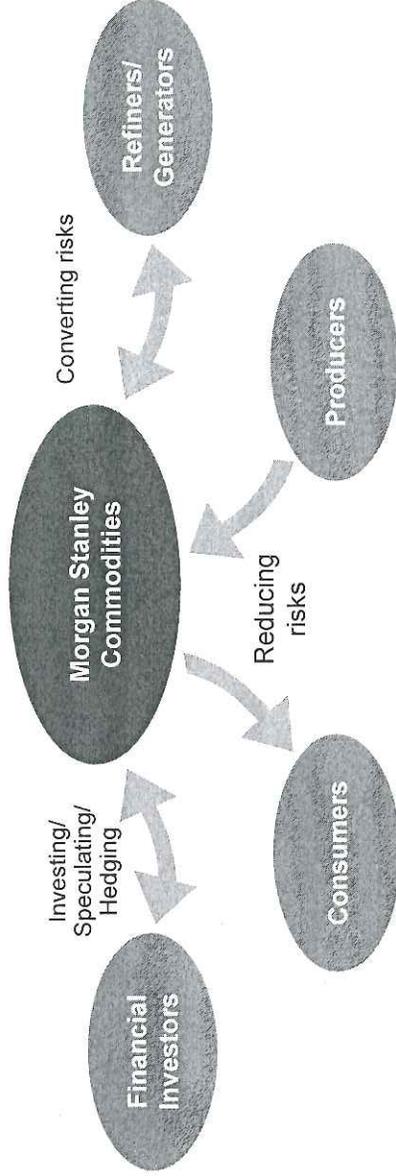
# Principal Trading Role

Interplay Between Principal Trading, Counterparty Flow, Physical Trading and Structured Transactions

Principal Trading  
22%



The Commodities Group acts as principal, continually warehousing and managing risks on its own balance sheet on behalf of counterparties



### Morgan Stanley's Unique Position

- Extensive and diverse counterparty base
- Principal trading and arbitrage capabilities
- Physical supply and off-take
- Structured & principal transactions

### Morgan Stanley's Unique Offering

- Matching of counterparties with complementary needs
- Sophisticated pricing tools
- Highly competitive pricing
- Comprehensive view of the market

# Relative Value Trading

- Focused on taking positions based on fundamental assessment of markets and, when possible, capitalize on market inefficiencies

## Relative Value vs. Outright

- Relative Value trades make up the majority of our proprietary trading and are used across product areas and geographies
- Outright trades are often used in conjunction with the relative value trading book to achieve a desired risk profile—occasionally to anticipate market moves

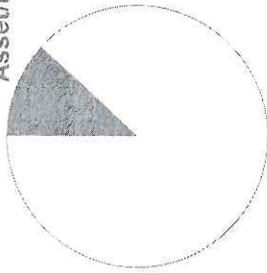
## Example: Oil

### Trading Matrix

- **Quality**—WTI, Brent, Dubai, Gasoline and Jet Fuel
- **Location**—U.S. Gulf, NY Harbor, Mediterranean, Singapore
- **Time**—September, December, 2009, 2010
- **Volatility**—ATM, Out-of-the-Money, December, 2010

# Asset/Principal Investment Themes

Asset/Principal Investment  
12%



Type	Description
Trading	Investments driven by MSCG's ability to inject risk management expertise or human capital to optimize commercial opportunity around assets
Relative Value	Investments designed to extract value from inefficiencies between commodity markets and asset/capital markets
Network Extension/Critical Mass	Investments that allow MSCG to enter a new market or expand an existing business
Market Transformation	Investments driven by potential fundamental changes in commodity markets

# Principal Investments

Participation in unique interactions across many diverse commodity markets uncover opportunities for key strategic investments.

## Production

- Helios Fund—Operated Producing Properties
- Gold Royalty Trust—Australian gold reserves
- Wellbore Exploration—Undeveloped oil and natural gas properties

## Conversion

- Lion Oil—TMG oil refinery investment
- Generation—three U.S. power plants, three European power plants

## Infrastructure

- TransMontaigne—Refined product terminaling and distribution
- Heidmar Shipping—Tanker pool, trans-shipment
- Global Energy—Bunkering and marine logistics

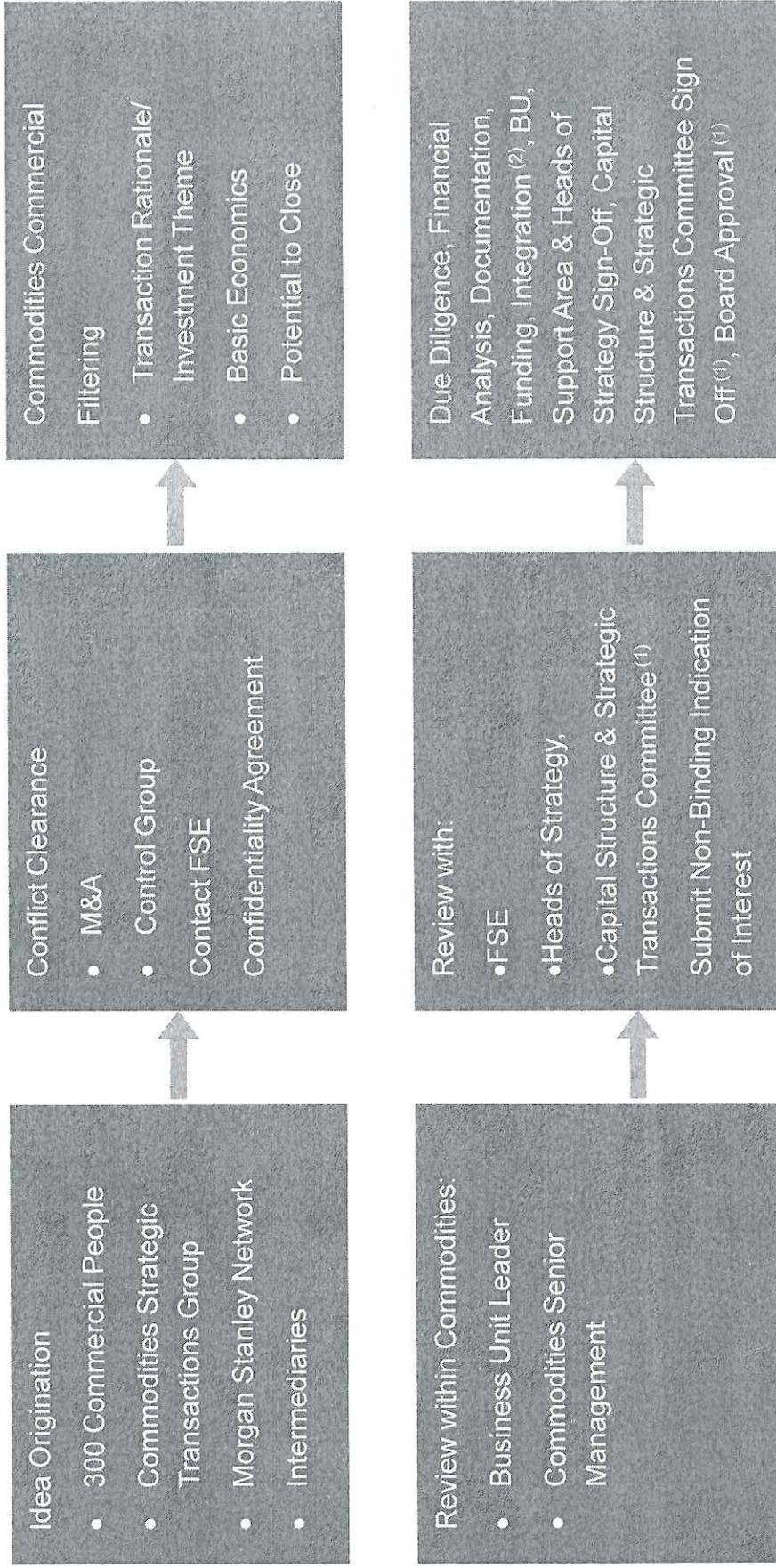
## Exchanges

- ICE—Electronic Trading
- Dubai Mercantile Exchange
- The Green Exchange

## Alternatives

- Range Fuels—Cellulosic ethanol
- Atlantis—Tidal energy
- MGM

# Transaction Process



(1) Size dependent.  
(2) If applicable.

Include compliance

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**FRB-PSI-618906**

## Business Initiatives

- Physical Oil – Continue global physical oil expansion, both geographically and product lines.
- European Electricity and Natural Gas – Broaden existing platform with expansion into new markets. Strengthen presence/market share in established businesses and commodity products.
- Agriculturals – Build on current agriculture business by executing proven commodities’ strategy, which includes creation of physical business coupled with new product expansion – commodities, locations, and deal structures. Leverage existing Dry Freight business in development process.
- Metals – Integrate current client flow dominated business with expanded risk taking. Increase presence in Chinese and Indian markets with a focus on principal trading. Pursue asset plays which will provide additional trading opportunities.
- Asia – Promote autonomous management behavior by focusing on independent development and execution of business ideas, while maintaining current synergies within established business lines. Increase productivity of existing personnel by advocating an Asian centric entrepreneurial spirit, hiring key risk takers, and expansion into more regional markets. Iron ore, metals, physical oil are primary target areas.
- Global Commodities – Opportunistically participate in distressed asset and portfolio sales as competitors exit business.
- Diversify counterparty flow base to reduce concentration risk
- Execute current plan for creation of Private Equity Fund
- Implement Global Treasury function
- Explore franchise defining acquisitions

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# Disclosures

## FRB, OCC and FDIC Disclosure

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## SEC Disclosure

Please note that the information and materials that we are providing are highly sensitive, confidential information of Morgan Stanley, its subsidiaries and affiliates. The Documents are protected from disclosure by Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), and may be protected from disclosure by other pertinent provisions of law because these materials constitute i) examination, inspection, or condition reports prepared by, on behalf of, or for the use of the Securities and Exchange Commission. Morgan Stanley hereby requests that the information and materials submitted hereto be treated accordingly and not be disclosed in response to a request under the Freedom of Information Act. Morgan Stanley has numerous competitors and disclosure of this information or materials would likely result in substantial competitive injury. In the event there are any requests for public disclosure of this information or materials, including any segregable portion of this information or materials after deletion of the portions which are exempt under 5 U.S.C. 552 (b) (8) and 12 CFR 4.12 (b), we would expect to be notified in advance and to have the opportunity to substantiate our claim of confidentiality.

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Morgan Stanley Commodities

Business Overview

February 11, 2013

Morgan Stanley

Confidential Treatment Requested by Morgan Stanley

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Contents

Section 1: General Business Overview

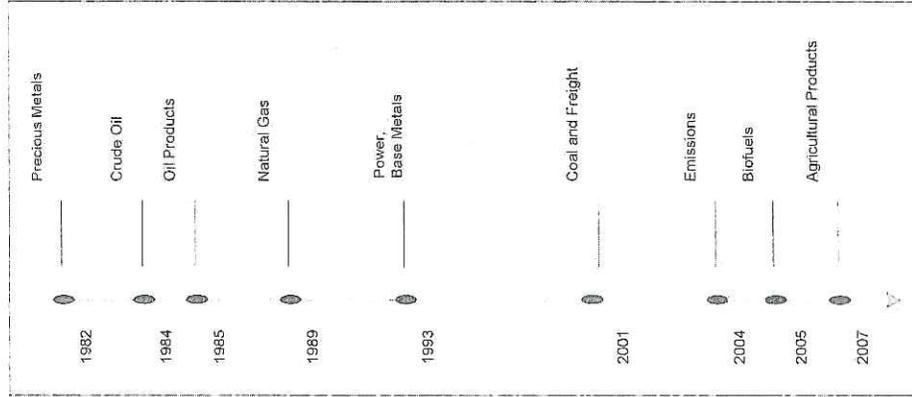
Section 2: Business Line Segments

Section 1

General Business Overview

**BUSINESS OVERVIEW**

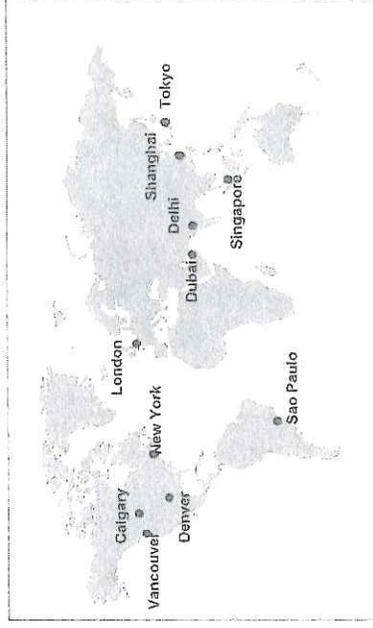
# Morgan Stanley Commodities at a Glance



## Background

- Since 1982, Morgan Stanley Commodities has been trading physical and financial commodities providing intermediation for counterparties who need to transfer, transform, or acquire commodity price risk.
- As of 2010, MS Commodities' global financial network of physical assets connected 2,000+ counterparties across the full commodity complex from power and oil to metals.
- Headquartered in Westchester, New York, MS Commodities has 365 dedicated front office employees and over 1,000 total employees, from 30+ different nationalities, covering markets 24 hours per day.

## Global Coverage



## Morgan Stanley Commodities Activities

- Morgan Stanley Commodities is a significant participant in the energy markets, with substantial activity (both physical and financial) in crude oil and refined products, as well as natural gas, coal, and power.
- Morgan Stanley Commodities also participates in commodity markets for some industrial and precious metals, particularly gold and silver.
- Morgan Stanley Commodities is not a key participant in the agricultural commodity markets and has, at most, de minimus physical holdings in the agricultural commodities listed in the Subcommittee's January 11, 2013 Questionnaire.

**BUSINESS OVERVIEW**

# Business Model

Integrated Financial and Physical Business Model

We utilize specialist expertise to provide intermediation for counterparties who need to transfer, transform, or acquire commodity price risk. Traders assume *measured principal risk* positions in physical and financial markets to enhance ability to service customer flow.

**Tactical Liquidity Provision**

- Liquidity to corporates for risk management and hedging
- Liquidity to investors for risk management and investment

**Strategic Liquidity Provision**

- Risk management and hedging of long term cash flows

**Physical Liquidity Provision**

- Active physical merchandising
- Significant logistical supply operations

**Interlocking Dependencies**

- Risk intermediation, merchandising, and position taking

Provide value-added, innovative risk management solutions to help energy producers and consumers invest in and grow their businesses profitably.

**Critical Components**

Detailed understanding of markets, especially depth and liquidity, gained through active trading

Portfolio of assets, long-term contracts, and industry relationships allow best in class market-making and active management of risk

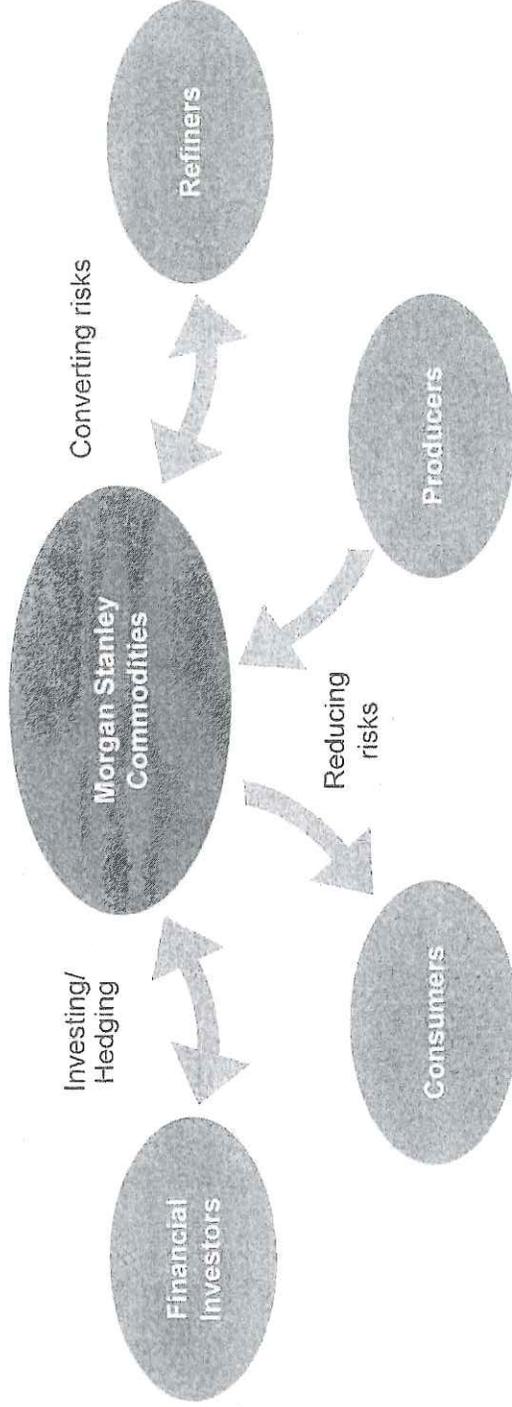
Trading platform includes highly experienced traders, risk managers and support structure, including technology and operations teams

Deal structuring team comprised of regional market experts with decades of specific experience and industry relationships

## Principal Trading Role

Interplay Between Principal Trading, Counterparty Flow, Physical Trading, and Structured Transactions

The Commodities Group acts as principal, continually managing risks on its own balance sheet on behalf of counterparties



### Morgan Stanley's Position

- Extensive and diverse counterparty base
- Principal trading and arbitrage capabilities
- Physical supply and off-take
- Structured and principal transactions

### Morgan Stanley's Offering

- Matching of counterparties with complementary needs
- Sophisticated pricing tools
- Highly competitive pricing
- Comprehensive view of the market

## Physical Capabilities

### Crude Oil/Products

- Long-term storage capacity worldwide (leased and owned)
  - ~50 million bbl of leased oil liquids storage capacity
- ~ 100 vessels on average under time and spot charter

### Power/Natural Gas/Coal

- North American power wholesaler
- Contract monetisation and tolling arrangements in the independent power producer market worldwide
- Physical transmission positions and trading in the congestion market

### Assets and Investments

- Power plants (4 power plants, 3 in North America, 1 in Europe)
- Upstream (Wellbore)
- Midstream (Transmontaigne)
- Shipping Logistics (Heidmar Group, Global Energy—minority stake)

### Bespoke Structured Transactions

- Supply and off-take agreements
- Working capital facilities and credit enhancement
- Volumetric production payments

**BUSINESS OVERVIEW**

**Commodities Division Revenue**

Global Commodities Division Net Revenue (USD Millions)\*

	2008	2009	2010	2011	2012
Desk					
Agriculturals					
AP EU Electric/Nat Gas					
Credit					
Investor Business					
Metals					
MS CVA MNE					
NA Electric/Nat Gas					
Oil Liquids					
Other					
Total	3,018	1,964	1,506	1,301	912

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Global Commodities Division Net Revenue as a Percent of Firm Net Revenue\*

	2008	2009	2010	2011	2012
Desk					
Agriculturals					
AP EU Electric/Nat Gas					
Commodities Other					
Credit					
Investor Business					
Metals					
MS CVA MNE					
NA Electric/Nat Gas					
Oil Liquids					
Total	13.65%	8.45%	4.80%	4.02%	3.50%

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## Benefits to the Economy

- **Integrated Solutions for Innovative Businesses:** Morgan Stanley helped a private buyer purchase three struggling U.S. refineries in late 2010 and mid-2011. The private buyer needed working capital along with logistical expertise to supply crude oil at one Ohio refinery and offtake the refined products at two other refineries located in New Jersey and Delaware.
- **Lowering Costs for Businesses Facing Economic Challenges:** Morgan Stanley helped a leading U.S. airline under Chapter 11 restructuring to reduce its operating costs, working capital requirements, and balance sheet associated with jet fuel supply. Morgan Stanley provided the airline a long-term contract for delivery of jet fuel, typically one day prior to the airline's daily need to service its fleet. Morgan Stanley also provided logistical support and sold the airline jet fuel at a lower price than it was previously paying, lowering the airline's operating expenses and reducing the size of its balance sheet and interest expenses.
- **Facilitating Capital Investment, Spurring Economic Recovery:** Morgan Stanley has helped domestic natural gas producers price hedge on future production during the recent domestic shale gas boom, facilitating expansion of operations and development of new fields. The increase in the gas supply during that period led to record low prices in natural gas, benefitting the U.S. economy as a whole.

BUSINESS OVERVIEW

# Business Unit Segmentation

Organization by Product

## Morgan Stanley Commodities

Oil Liquids      NA Electricity / Natural Gas      EU / AP Electricity / Natural Gas      Metals      Other

- Crude
- Distillate
- Light Ends
- Oil Flow
- Freight

- Power / Electricity
- Transmission
- Gas
- Power Options
- Emissions
- Asset Management
- Solar Development

- Power / Electricity
- Natural Gas
- Coal
- Dry Freight
- Emissions

- Gold
- Copper
- Aluminum
- Silver

- Agriculture
- Credit
- Investor Business
- Other

Section 2

Business Line Segments

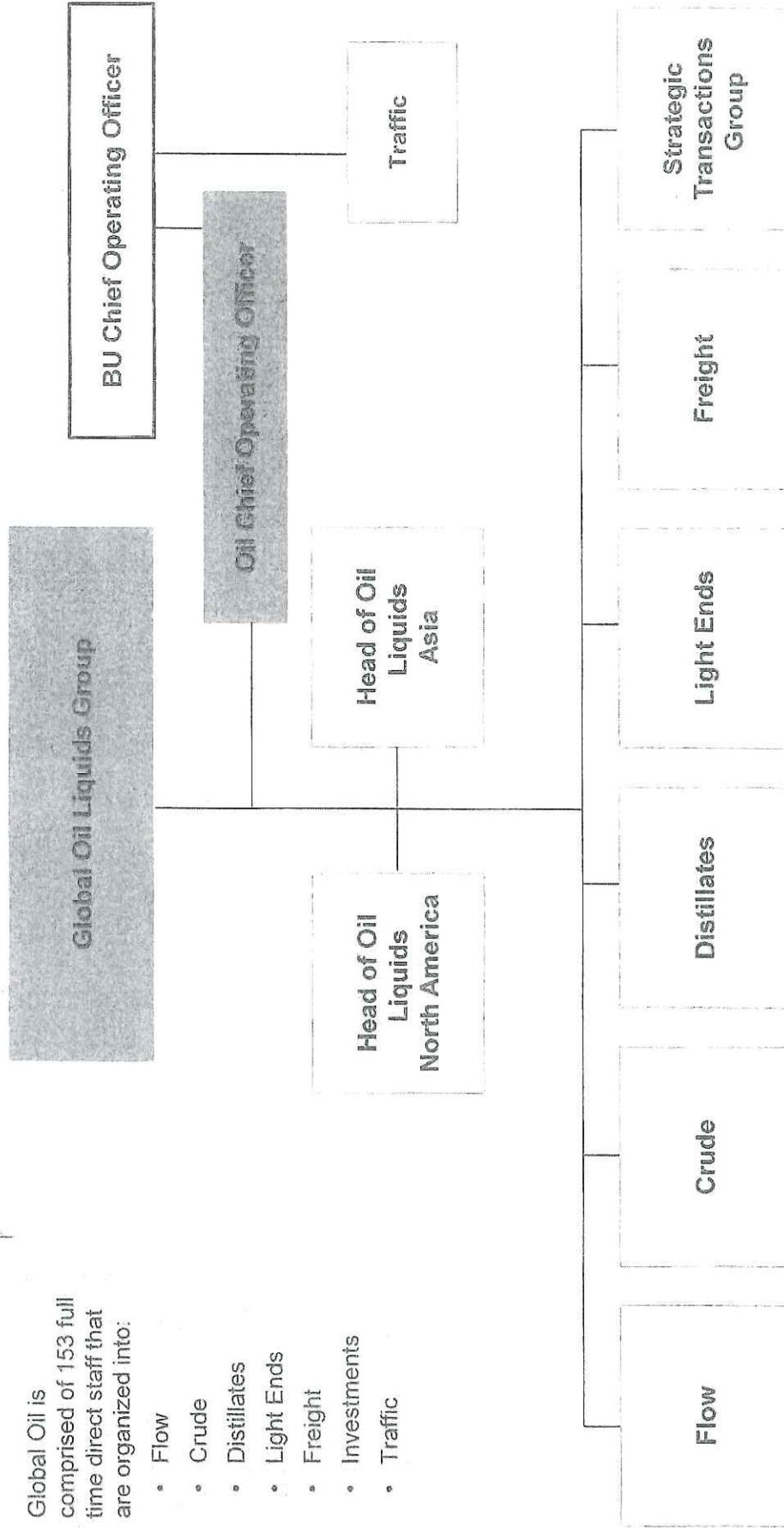
# Oil Liquids

BUSINESS LINE SEGMENTS

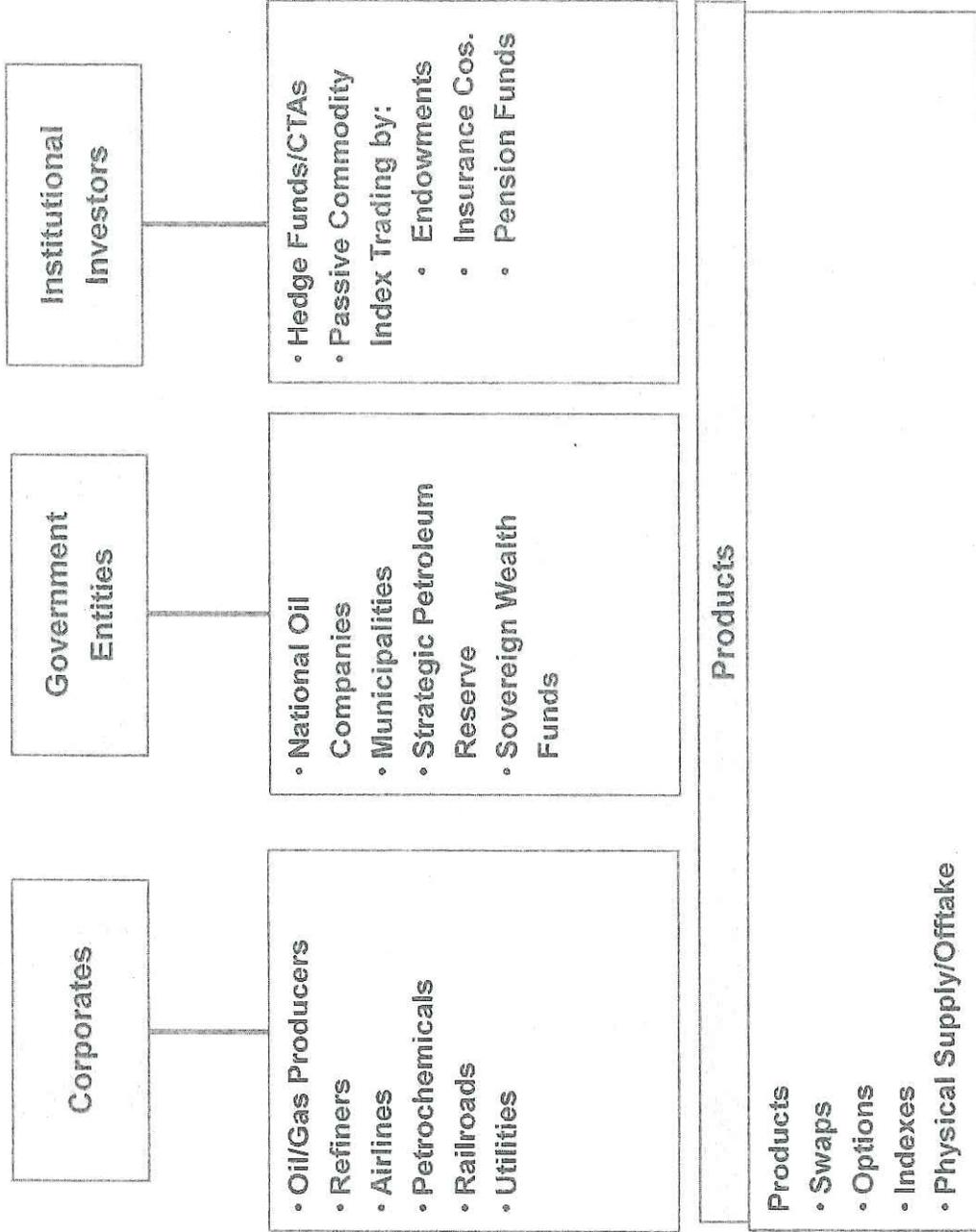
# Oil Liquids Management Organization

- Global Oil is comprised of 153 full time direct staff that are organized into:

- Flow
- Crude
- Distillates
- Light Ends
- Freight
- Investments
- Traffic



# Counterparty Flow



- Breadth and depth of product expertise provides unique risk management vehicles to corporations and government entities with embedded commodity market risks
- Institutional Investor segment overlaps other divisions of the Firm
- Tailor risk management products by combining relatively simple instruments with diverse underliers
- *Southwest Airlines 2011Q1 10Q*: "Because jet fuel is not widely traded on an organized futures exchange, there are limited opportunities to hedge directly in jet fuel. However, the Company has found that financial derivative instruments in other commodities, such as crude oil, and refined products, such as heating oil and unleaded gasoline, can be useful in decreasing its exposure to jet fuel price volatility."

## Physical Supply, Distribution, and Arbitrage

Enables MS to service physical needs of airlines, shipping companies, and other consumers

### Oil/Refined Products

- Blending to reflect value relationships between grades
- Capturing distribution margin in the wholesale sector, TMG
- Storage capacity provides flexibility in varying market conditions

### Freight

- Provides certainty of logistics capacity
- Provides origin/destination flexibility to take advantage of locational value relationships
- Allows for purchase in bulk and sale in parcel

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## Global Metals

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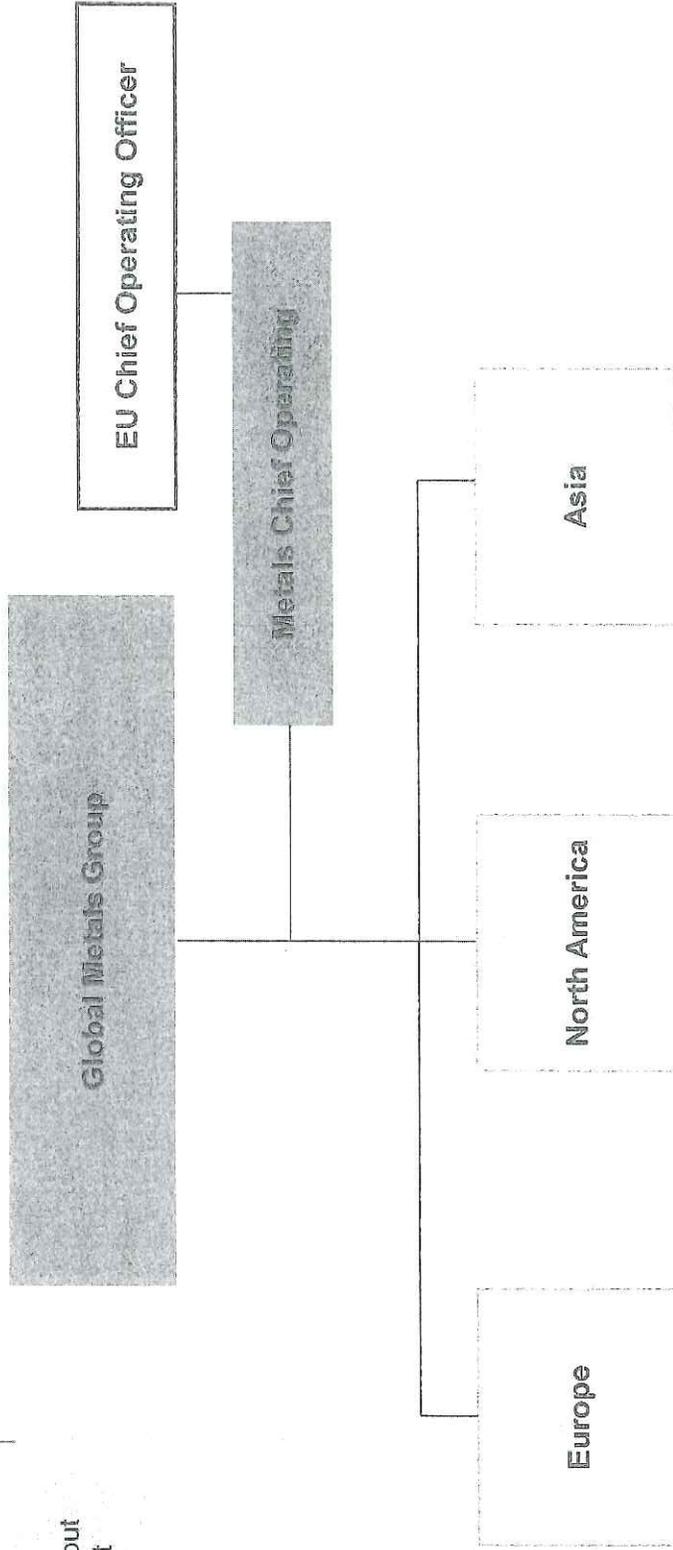
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BUSINESS LINE SEGMENTS

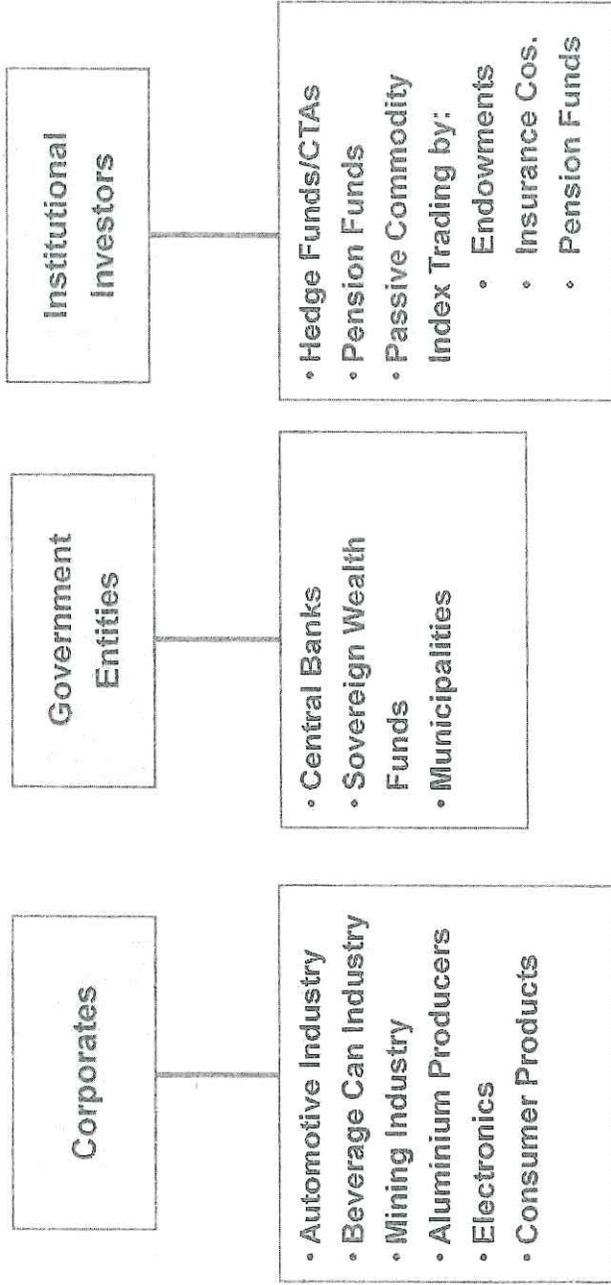
# Metals Management Organization

- Global Metals is comprised of about 16 full time direct staff.



# Counterparty Flow

- Breadth and depth of product expertise provides unique risk managements and government corporations and government entities with embedded commodity market risks
- Institutional investor segment overlaps other divisions of the Firm
- Tailor risk management products by combining relatively simple instruments with diverse underliers



Products
• Forwards
• Swaps
• Options
• Indexes

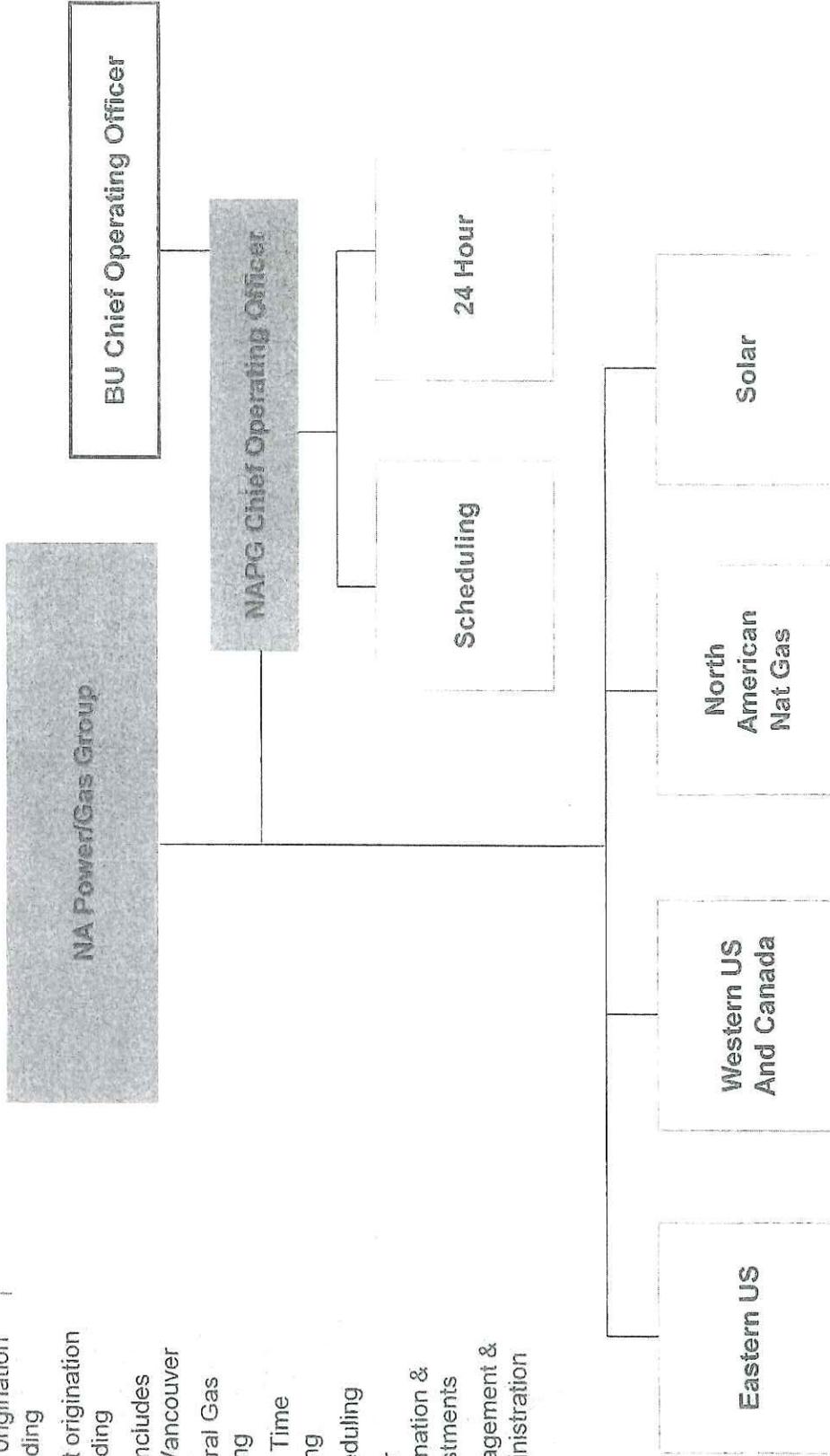
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# North America Power & Gas

**BUSINESS LINE SEGMENTS**

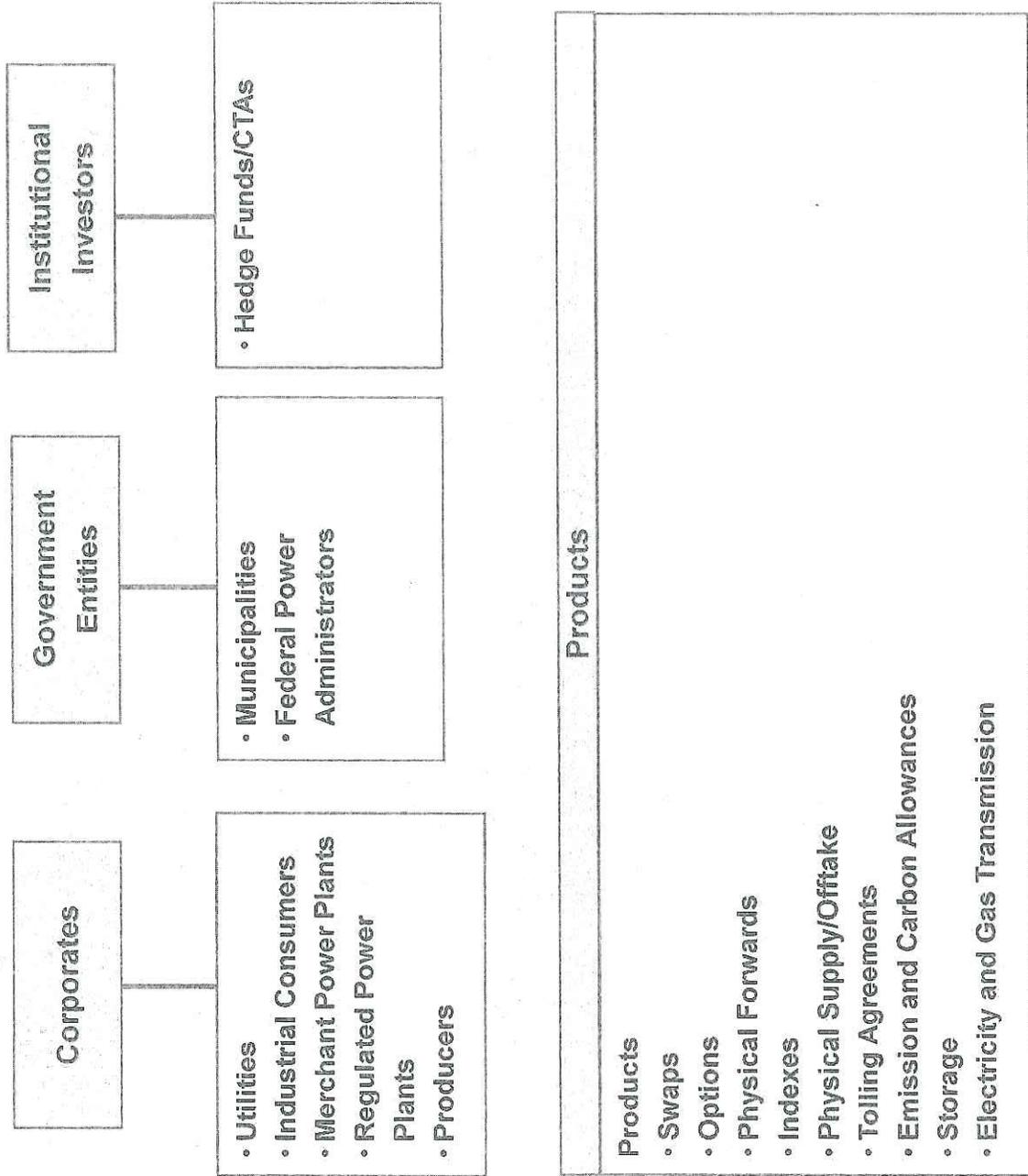
# NA Power/Gas Management Organization

- NAPG is comprised of about 72 full time direct staff that are organized into:
  - East origination & trading
  - West origination & trading
    - Includes Vancouver
  - Natural Gas trading
  - Real Time trading
  - Scheduling
  - Solar Origination & Investments
  - Management & Administration



# Counterparty Flow

- Breadth and depth of product expertise provides unique risk management vehicles to corporations and government entities with embedded commodity market risks
- Institutional Investor segment overlaps other divisions of the Firm
- Tailored risk management products by combining relatively simple instruments with diverse underliers



## Physical Supply, Distribution, and Arbitrage

### Power/Natural Gas

- Providing ancillary services to support the power grid
- Provide optional fuel source and pricing
- Provide pricing certainty for carbon and emissions
- Optimizing gas/power transmission paths and storage

### Physical Power Plants

- Provide capacity to end user and power grid
- Provide certainty of supply to long term end users
- Provide daily option to delivery based upon market signals

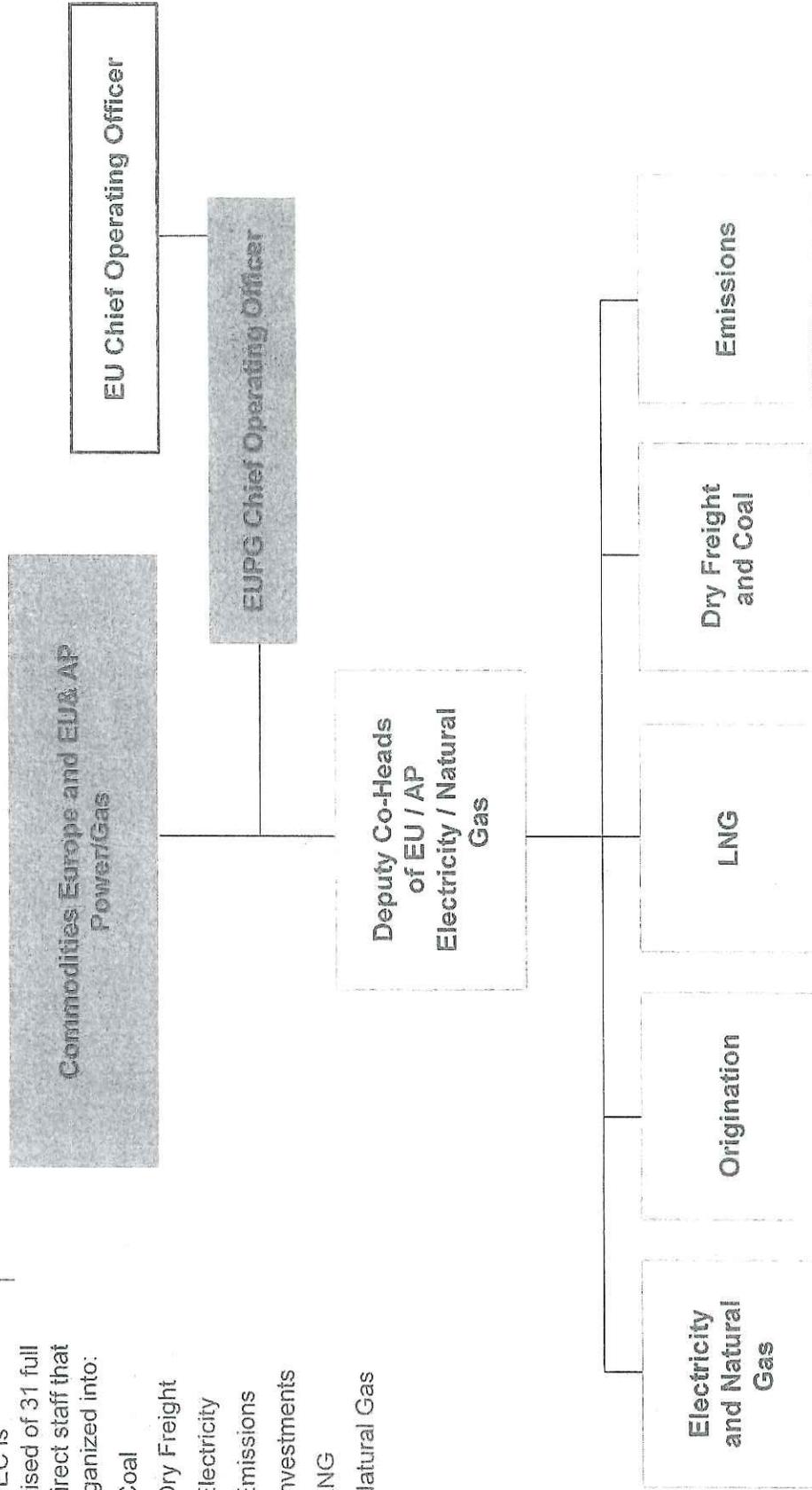
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## EU/AP Power & Gas

BUSINESS LINE SEGMENTS

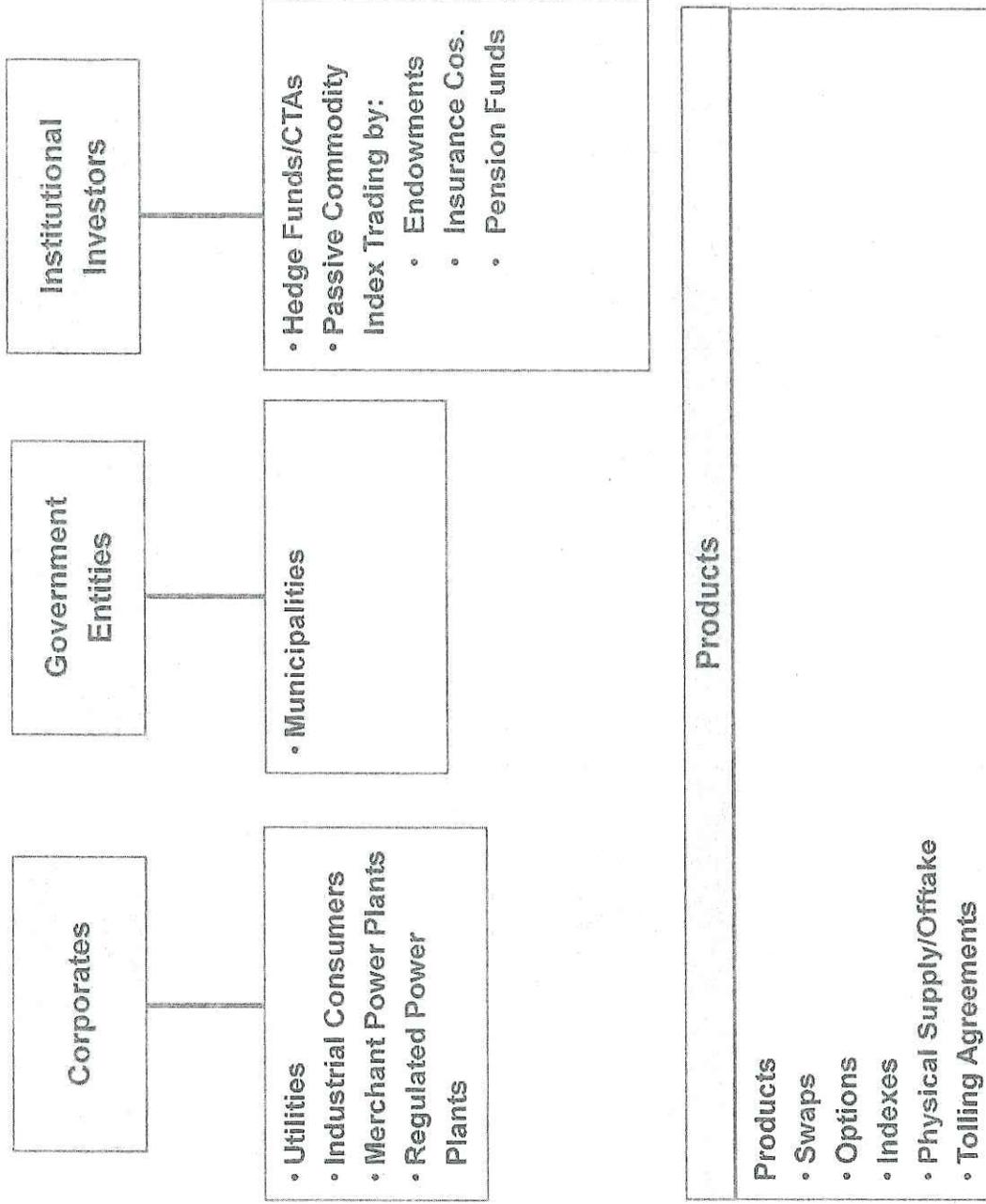
# EU Power/Gas Management Organization

- European and Asia GOSPEC is comprised of 31 full time direct staff that are organized into:
  - Coal
  - Dry Freight
  - Electricity
  - Emissions
  - Investments
  - LNG
  - Natural Gas



# Counterparty Flow

- Breadth and depth of product expertise provides unique risk management vehicles to corporations and government entities with embedded commodity market risks
- Institutional Investor segment overlaps other divisions of the firm
- Tailor risk management products by combining relatively simple instruments with diverse underliers



## Physical Supply, Distribution, and Arbitrage

### Power/Natural Gas

- Gas storage and transportation capacity across Europe
- Providing ancillary services to support the power grid
- Optimize optionality in fuel sources
- Provide optionality for supply and capacity sales related to Physical Power Plants

### Thermal Coal

- Physical optimisation and trading that gives optionality on location, quality, quantity, and timing
- Combine flexible term thermal supply coal contracts out of the US Gulf, Colombia, Indonesia, and South Africa with flexible sales contracts, particularly into Hawaii, UK, South Korea, and Taiwan
- Location flexibility in our coal portfolio and the internal requirement to move cargoes, complements our dry freight business

### Dry Freight

- We move third party cargoes of other bulk commodities, particularly iron ore shipments from Brazil or Australia to China and grain shipments out of the Americas

### LNG

- Alleviating shortages by redistributing product from areas of abundance to areas of limited supply
- Market presence in a number of locations: China, Korea, UK, Greece, Turkey, Kuwait, Portugal, Brazil, Japan, Spain, and Argentina

Board of Governors of the Federal Reserve System



# Consolidated Holding Company Report of Equity Investments in Nonfinancial Companies—FR Y-12

Report at the close of business as of the last calendar day of the reporting period.

This report is required by law: Section 5(c) of the Bank Holding Company Act (12 U.S.C. § 1844(c)) and Section 10 of the Home Owners Loan Act (12 U.S.C. § 1467a(b)).

the instructions provided by the Federal Reserve System. The Federal Reserve may not conduct or sponsor and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The *Consolidated Holding Company Report of Equity Investments in Nonfinancial Companies* is to be prepared in accordance with

NOTE: The *Consolidated Holding Company Report of Equity Investments in Nonfinancial Companies* must be signed and attested by an Executive Officer of the reporting holding company.

Date of Report: June 30, 2014  
Month / Day / Year (BHEI 9999)

I, the undersigned Executive Officer of the named holding company, attest that the *Consolidated Holding Company Report of Equity Investments in Nonfinancial Companies* for this report date has been prepared in conformance with the instructions issued by the Federal Reserve System and is true and correct to the best of my knowledge and belief.

Sergio Lupetin  
Printed Name of Executive Officer at Holding Company (BHEI C490)

MORGAN STANLEY  
Legal Name of Holding Company (TEXT 9010)

Managing Director  
Title of Executive Officer of Holding Company (BHEI C491)

1585 BROADWAY  
(Mailing Address of Holding Company) Street / P.O. Box (TEXT 9110)

\_\_\_\_\_  
Signature of Executive Officer of Holding Company

NEW YORK                      NY                      10036  
City (TEXT 9130)                      State (TEXT 9200)                      Zip Code (TEXT 9220)

08/04/2014  
Date of Signature (MM/DD/YYYY) (BHEI J196)

Person to whom questions about this report should be directed:

\_\_\_\_\_  
Name / Title (TEXT 8901)

\_\_\_\_\_  
Area Code / Phone Number (TEXT 8902)

\_\_\_\_\_  
Area Code / FAX Number (TEXT 9116)

\_\_\_\_\_  
E-mail Address (TEXT 4086)

<b>For Federal Reserve Bank Use Only</b>	
RSSD ID _____	
C.I. _____	S.F. _____

Public reporting burden for this information collection is estimated to average 16.5 hours per response, including time to gather and maintain data in the required form and to review instructions and complete the information collection. Comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing the burden, may be sent to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, and to the Office of Management and Budget, Paperwork Reduction Project (7100-0300), Washington, DC 20503.

**Permanent Subcommittee on Investigations**  
**EXHIBIT #43**

**FRB-PSI-80009** 03/2013  
PSI-FRB-12-000012

MORGAN STANLEY  
Legal Name of Holding Company

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RSSD ID \_\_\_\_\_

C.I. \_\_\_\_\_

FR Y-12  
Page 2 of 4

June 30, 2014

As-of Date

**Schedule A: Type of Investments**

(If no activity or if the following section does not apply, please enter zero "0".)

	(Column A) Acquisition Cost			(Column B) Net Unrealized Holding Gains Not Recognized as Income			(Column C) Carrying Value			(Column D) Publicly Quoted Value				
	BHEI	Bl	Mil	BHEI	Bl	Mil	BHEI	Bl	Mil	BHEI	Bl	Mil		
Dollar Amounts in Millions														
1. Direct investments in public entities .....	C088		961	C089		0	C090		891	C091		891		1.
2. Direct investments in nonpublic entities .....	C093	4	217	C094		0	C095	2	815					2.
3. All indirect investments .....	C097	5	847	C098		0	C099	6	325					3.
4. Total portfolio (sum of items 1, 2, and 3) .....	C101	11	025	C102		0	C103	10	031					4.

**Memoranda**

	Number of Companies				
	BHEI	1-10	11-25	26-100	
1. Total portfolio .....	C100			100	

	(Column A) Acquisition Cost			(Column B) Net Unrealized Holding Gains Not Recognized as Income			(Column C) Carrying Value				
	BHEI	Bl	Mil	BHEI	Bl	Mil	BHEI	Bl	Mil		
Dollar Amounts in Millions											
<b>Financial holding companies only</b>											
2. Investments held under Merchant Banking (GLBA) authority .....	C104	5	156	C105		0	C106	4	471		M.2.

	Income Amount			
	BHEI	Bl	Mil	
Dollar Amounts in Millions				
<b>Only for holding companies filing FR Y-9C</b>				
3. Pre-tax impact on net income from items 1, 2, and 3 above .....	B498		281	M.3.

	Off-Balance-Sheet Amount			
	BHEI	Bl	Mil	
Dollar Amounts in Millions				
<b>For all holding companies</b>				
4. Investments managed for others .....	C716	538	942	M.4.

	Income Amount			
	BHEI	Bl	Mil	
Dollar Amounts in Millions				
<b>Only for holding companies filing FR Y-9C</b>				
5. Pre-tax impact of management fee income (from item M4 above) .....	J443	1	794	M.5.

MORGAN STANLEY  
Legal Name of Holding Company

June 30, 2014

As-of Date

**Schedule B: Type of Security**

	(Column A) Acquisition Cost			(Column B) Carrying Value			
	BHEI	Bil	Mil	BHEI	Bil	Mil	
Dollar Amounts in Millions							
1. Common stock .....	C107	1	676	C108	1	453	1.
2. Convertible debt and convertible preferred stock .....	C109		152	C110		68	2.
3. Other equity instruments .....	C111	9	197	C112	8	510	3.
4. Total portfolio (sum of items 1, 2, and 3) .....	C113	11	025	C114	10	031	4.

	Off-Balance-Sheet Amount			
	BHEI	Bil	Mil	
Dollar Amounts in Millions				
<b>Memoranda</b>				
1. Unused equity commitments .....	C115		386	M.1.

	Warrants			
	0=No	BHEI		
2. Does the holding company hold any warrants or similar instruments received in connection with equity investment activity? (Enter "1" for yes; enter "0" for no.) .....	1=Yes	C717	1	M.2.

**Schedule C: Type of Entity within the Banking Organization**

	(Column A) Acquisition Cost			(Column B) Net Unrealized Holding Gains Not Recognized as Income			(Column C) Carrying Value			
	BHEI	Bil	Mil	BHEI	Bil	Mil	BHEI	Bil	Mil	
Dollar Amounts in Millions										
1. Depository institutions:										
a. SBICs .....	C117		0	C718		0	C118		0	1.a.
b. Edge and agreement corporations .....	C121		0	C719		0	C122		0	1.b.
c. All other .....	C126		0	C720		0	C127		0	1.c.
2. Parent holding and other nonbank subsidiaries:										
a. SBICs .....	C136		0	C721		0	C137		0	2.a.
b. Edge and agreement corporations .....	C722		0	C723		0	C724		0	2.b.
c. Broker/Dealers .....	C131		541	C725		0	C132		435	2.c.
d. Private equity subsidiaries .....	C726		543	C727		0	C728		946	2.d.
e. All other .....	C145	9	941	C729		0	C146	8	650	2.e.
3. Total portfolio (sum of items 1.a through 2.e) .....	C150	11	025	C730		0	C151	10	031	3.

<b>Memoranda</b>										
1. Domestic investments .....	C155	8	022	C749		0	C156	7	769	M.1.
2. Foreign investments .....	C157	3	003	C750		0	C158	2	262	M.2.

MORGAN STANLEY

Legal Name of Holding Company

June 30, 2014

As-of Date

Schedule D: Nonfinancial Investment Transactions During Reporting Period

Type of Transaction	Direct Public Investments						Direct Nonpublic Investments						Indirect (Fund) Investments					
	(Column A) Acquisition Cost		(Column B) Carrying Value				(Column C) Acquisition Cost		(Column D) Carrying Value				(Column E) Acquisition Cost		(Column F) Carrying Value			
	BHEI	Bil	Mil	BHEI	Bil	Mil	BHEI	Bil	Mil	BHEI	Bil	Mil	BHEI	Bil	Mil	BHEI	Bil	Mil
Dollar Amounts in Millions																		
1. Purchases .....	C731		120	C732		120	J434		37	J435		37	C733		106	C734		106
2. Less: return of capital .....	C735		83	C736		77	J436		55	J437		61	C737		413	C738		417
3. Net valuation changes .....				C739		20				J438		-34				C740		511
4. Other .....	C741		0	C742		0	J439		-21	J440		-20	C743		1	C744		-1
5. Total transactions (sum of items 1 through 4) .....	C745		37	C746		63	J441		-39	J442		-78	C747		1	C748		-1

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PSI-FRB-12-000015

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Permanent Subcommittee on Investigations

**EXHIBIT #44**

Federal Reserve Bank of New York

# Morgan Stanley Infrastructure Platform Review

September 11, 2013

**EXCERPT**

Morgan Stanley

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FRB-PSI-400321

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Federal Reserve Bank of New  
York

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Appendix

MSI Accounting Policies

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Section 1

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# Strategy and Business Mix

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## Overview of Infrastructure Investment Activities

Morgan Stanley

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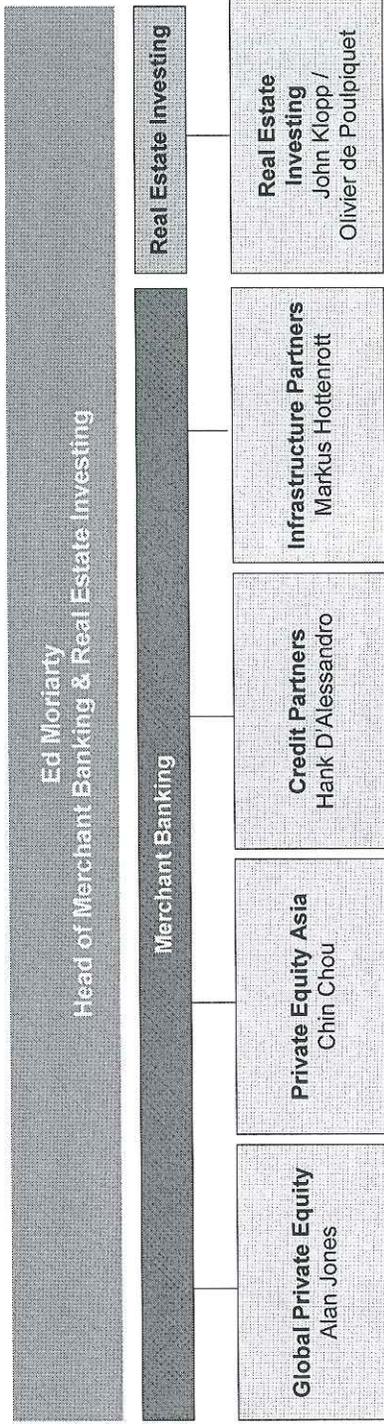
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OVERVIEW OF INFRASTRUCTURE INVESTMENT ACTIVITIES

# Merchant Banking & Real Estate Investing

As of June 30, 2013



AUM (\$Bn)	\$2	\$3	\$1	\$3	\$20
Number of Funds <sup>(1)</sup>	9	5	1	1	17
Active Funds	MSCP V MSEC	PEA III PEA IV RMB Fund	Credit Partners	MSIP I	MSREF G7 PRIME PROPERTY
Active Investments	44	26	14	14	476
Capital Deployed (\$MM) - 2012	247	225	138	731	2,017
Employees	50	63	11	41	247

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OVERVIEW OF INFRASTRUCTURE INVESTMENT ACTIVITIES

# Product Description – What Defines Infrastructure

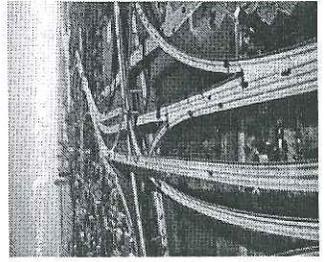
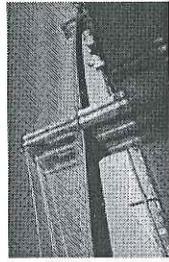
- Infrastructure refers to large-scale systems, services and facilities that provide goods and services that serve as the underlying basis for broader economic activity
- Infrastructure investments tend to be asset or system specific, with a dedicated function, and in many cases are regulated as a result of their monopolistic or oligopolistic characteristics
- Morgan Stanley Infrastructure (“MSI”) seeks investments that ideally have defining characteristics shown to the left

## Defining Characteristics of Infrastructure Investments

- Essential underlying product or service to broader economic activity
- Long, useful lives
- High barriers to entry
- Operate in regulated environments and/or exhibit reduced business cyclicalty
- Low demand elasticity
- Cash flow stability and predictability
- Linkage to inflation with appropriate pass through mechanics
- Difficult to replicate due to high construction costs, zoning and scarcity of resources

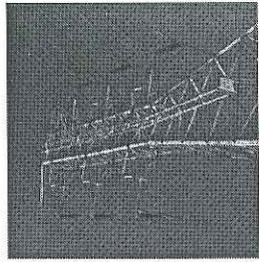
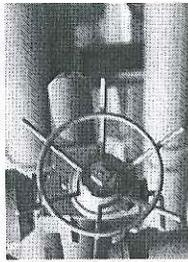
**Transportation Assets**

- Toll roads
- Bridges
- Tunnels
- Airports
- Ports
- Municipal Parking



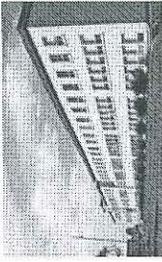
**Energy and Utilities**

- Oil and gas pipelines
- Regulated electricity assets
- Transmission and distribution systems
- Water distribution and treatment



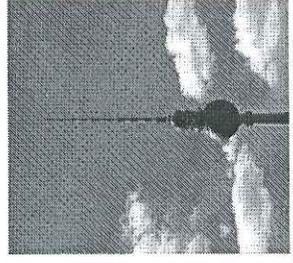
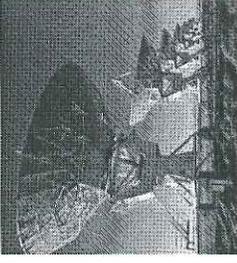
**Social Infrastructure**

- Education facilities
- Healthcare facilities



**Communications**

- Communication towers
- Satellite systems



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OVERVIEW OF INFRASTRUCTURE INVESTMENT ACTIVITIES

Client Base

MSIP I - Final Fund Size—\$4Bn (2)

Investors by Region (1)

Investors by Type (1)

Institutional

- Total investors: 49

Redacted by the Permanent Subcommittee on Investigations

Wealth Management

- Total investors: 202

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Morgan Stanley Commitment

- Morgan Stanley as a GPLP committed ~10% of MSIP I's total capital commitments
- Morgan Stanley pays no management fee and no carried interest on this amount

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- Predominantly pension funds

Notes

1. Excludes Morgan Stanley Commitment
2. Includes Morgan Stanley and team Leveraged Co-Investment Partner

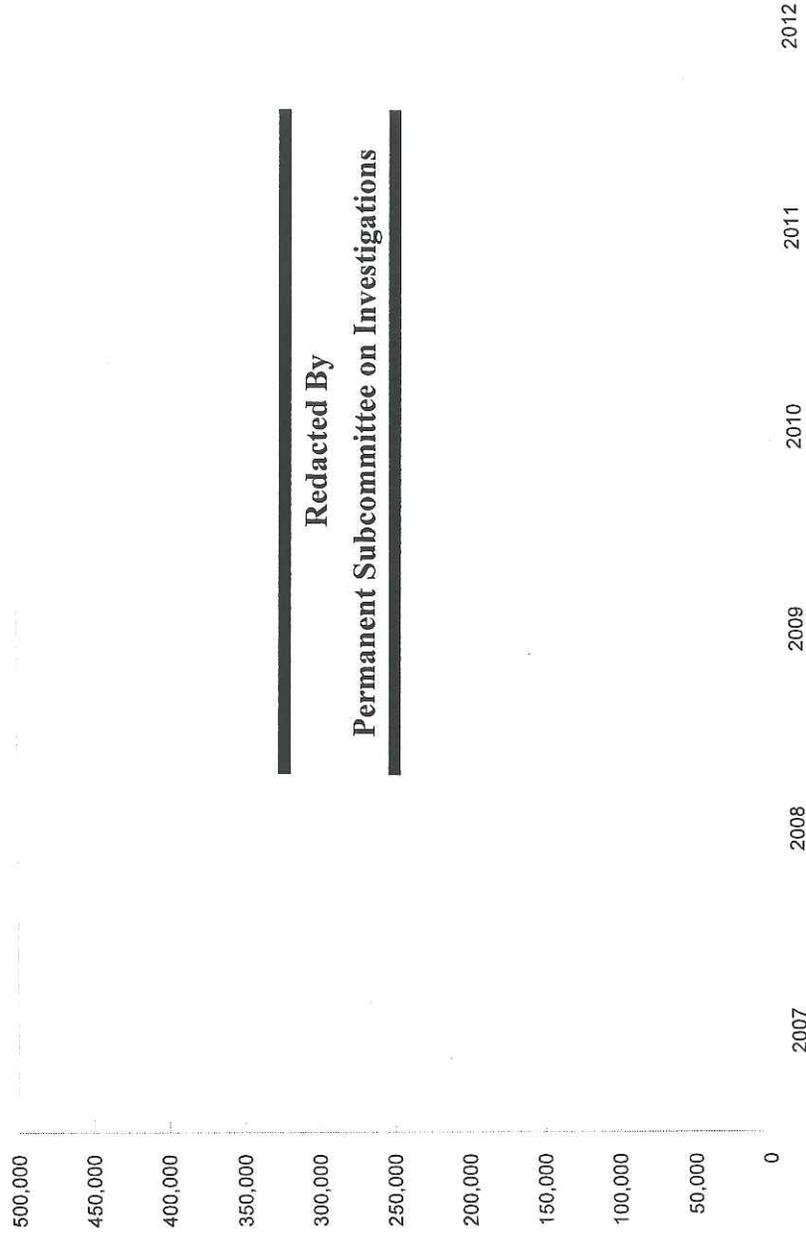
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OVERVIEW OF INFRASTRUCTURE INVESTMENT ACTIVITIES

# Revenues

MSIP I - GAAP Financial Reporting Summary – Annual Revenues

Total Revenues  
\$ Values in Thousands



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Source MSIP I Financial Statements

- MSIP I deployed \$4.1 billion in investments during the fund's Commitment Period, which ran from May 2007 through May 2013
- MSIP I deployed the majority of its capital in 2010 following the Global Financial Crisis

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OVERVIEW OF INFRASTRUCTURE INVESTMENT ACTIVITIES

# Business Outlook and Number of Funds

MSI's Existing, In Process and Contemplated Funds

- MSI's platform is scalable to accommodate the management of additional infrastructure related equity and debt funds

Current Business Outlook

Fund	Existing		In Process		Contemplated	
	MSIP I	MSIP II	Emerging Markets Infrastructure Fund	Infrastructure Debt Fund	Infrastructure Debt Fund	Infrastructure Debt Fund
<b>Strategy</b>	Infrastructure Core Plus Investment Mandate	Infrastructure Core Plus Investment Mandate				
<b>Region</b>	Global	Global				
<b>Focus Sectors</b>	Energy, utilities and transportation	Energy, utilities and transportation				
<b>Size</b>	\$4.0 Bn (Closed)	\$4.0 Bn (Target)				
<b>Term</b>	15 years	12 years				
<b>Targeted Investors</b>	<ul style="list-style-type: none"> <li>Pensions, Financial Institutions</li> <li>Insurance Companies</li> <li>Government Agencies</li> <li>Sovereign Wealth Funds</li> <li>Corporations</li> <li>Endowments</li> <li>Individuals</li> </ul>	<ul style="list-style-type: none"> <li>Pensions, Financial Institutions</li> <li>Insurance Companies</li> <li>Government Agencies</li> <li>Sovereign Wealth Funds</li> <li>Corporations</li> <li>Endowments</li> <li>Individuals</li> </ul>				

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OVERVIEW OF INFRASTRUCTURE INVESTMENT ACTIVITIES

## MSI Fund Overview

Current Carry Value, Capital Raised and Invested, Unfunded Commitments and Firm Commitments

MSIP 1 – (Established) <sup>1</sup> \$ Values in Millions	May 2007	MSIP 2 – (In Process / Fundraising) \$ Values in Millions	Q4'2013 (Anticipated)
1 <sup>st</sup> Closing:		1 <sup>st</sup> Closing:	12 Year
Term:	1.5 Year	Term:	\$4,000
Fund Size:	\$4,003	Fund Size:	N/A
Total Capital Deployed:	\$4,100	Total Capital Deployed:	N/A
Capital Returned to Investors <sup>2</sup> :	█	Capital Returned to Investors:	N/A
Current NAV:	█	Current NAV:	N/A
Morgan Stanley Commitment <sup>3</sup> :	\$417	Morgan Stanley Commitment:	Up to 3%
Unfunded Commitments:	█	Unfunded Commitments:	N/A
Number of Investments:	█	Number of Investments:	12 to 15 (Anticipated)
Total Uplift:	█	Total Uplift:	N/A
Gross IRR:	12.1%	Gross IRR:	12% to 15% target
Value of Accrued Carry:	█	Value of Accrued Carry:	N/A

█ = Redacted by the Permanent Subcommittee on Investigations

Notes

1. Performance figures as of March 31, 2013.
2. Includes all cash distributions (return of capital, realized gain / (loss) and total cash distributions).
3. Includes amounts from Morgan Stanley employees.

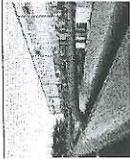
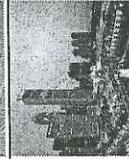
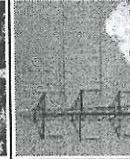
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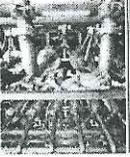
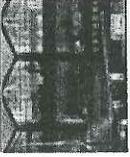
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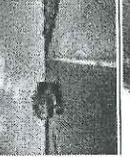
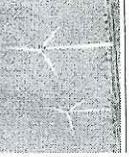
OVERVIEW OF INFRASTRUCTURE INVESTMENT ACTIVITIES

Capital Invested

MSIP I Portfolio Investments - \$4.1 billion of gross capital deployed<sup>1</sup>

Americas	
<b>Gross Capital Invested: \$2,185MM</b>	
	<b>Mid-West</b> Southern Star \$435MM Gas transmission and storage facility provider for Midwestern U.S.
	<b>Chicago</b> Chicago Parking Meters Third-largest metered parking system in the U.S.
	<b>Boston</b> MATEP Tri-generation facility providing heating, cooling, and electricity
	<b>Montreal</b> Montreal Gateway Terminals Largest operator at Port of Montreal, the 3rd largest container port on the NE coast
	<b>Chicago</b> Chicago Loop Parking Largest underground parking system in the U.S.
	<b>Chile</b> SAESA Group Third-largest electricity distributor in Chile; realized (Nov. '11)

Europe	
<b>Gross Capital Invested: \$1,293MM</b>	
	<b>Spain</b> Madriena Red de Gas First stand-alone natural gas distribution company in Spain
	<b>United Kingdom</b> Affinity Water Largest regulated water-only company in the U.K., providing water to over 3.5 million people
	<b>United Kingdom</b> Eversholt Rail Group Leading rolling stock company in U.K.
	<b>Italy</b> Agorà Investimenti S.r.l. Shareholder in Venice and Treviso airports
	<b>United Kingdom</b> Sapphire Holdings BV Purchase of BAA subordinated debt; realized (Nov. '09)

Asia	
<b>Gross Capital Invested: \$646MM</b>	
	<b>India</b> Indus Concessions Toll Roadway developer, constructing three highway projects in India
	<b>China</b> Zhaoheng Hydropower Ltd. Leading operator of small-and medium-sized hydropower plants in China
	<b>India</b> Asian Genco Developer of clean power generation assets, with majority interests in a 4,000MW portfolio
	<b>India</b> PASGIC/SVB India's largest Build-Operate-Transfer bridge project
	<b>India</b> Continuum Wind Energy Wind power generation asset operator and developer

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Note: Capital figure for each asset represents gross capital invested.  
 1. MSIP I's Commitment Period extended from May 2009 to December 2011. MSIP I was authorized to reinvest proceeds from investments realized during the Commitment Period.

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INFRASTRUCTURE INVESTOR NEEDS

# Process for Introducing New Funds

MSIP II – Estimated Timeline to Fund Raise

- MSI formally launched MSIP II in May 2013 with initial distribution of Private Placement Memorandum (“PPM”)
- Team will be meeting with prospective investors around the world over the next several months, with the goal of reaching a first fund close in Q4’13

2Q13	3Q13	4Q13	2014
<ul style="list-style-type: none"> <li>• Global distribution of MSIP II PPM</li> <li>• Commence global roadshows</li> </ul>	<ul style="list-style-type: none"> <li>• Continue roadshows</li> <li>• Draft Limited Partnership Agreement</li> <li>• Standard Due Diligence Questionnaire and Dataroom available to prospective investors</li> </ul>	<ul style="list-style-type: none"> <li>• Continue roadshows</li> <li>• Diligence days held with prospective investors at MSI's offices in NY and London</li> <li>• Negotiate side letter agreements and finalize subscription documentation</li> <li>• Achieve first fund closing in Q4</li> </ul>	<ul style="list-style-type: none"> <li>• Additional fund closings</li> <li>• Continue roadshows</li> <li>• Ongoing diligence performance by prospective investors</li> <li>• Expected final close in 2014 or early 2015</li> </ul>

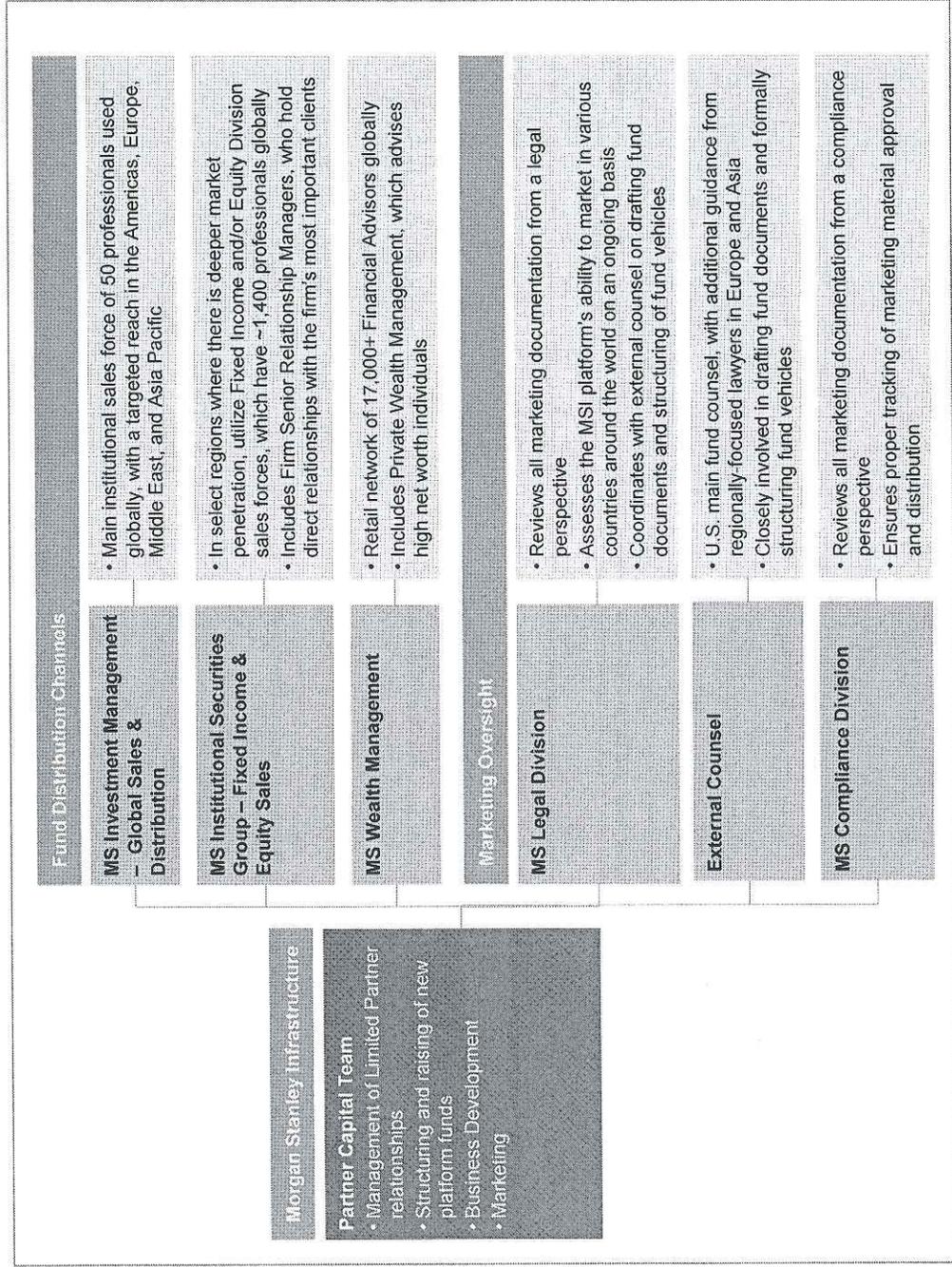
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MS COMPARATIVE ADVANTAGE FOR INFRASTRUCTURE

## Marketing Channels

MSI utilizes Morgan Stanley's institutional and wealth management distribution networks

- In addition to leveraging its own relationships with investors in the asset class, the Partner Capital Team works through three sales channels of Morgan Stanley to source commitments from new investors, including:
  - Investment Management Sales & Distribution (institutional)
  - Institutional Securities Group's Fixed Income & Equity Sales (institutional)
  - Wealth Management (retail)
- Furthermore, the Partner Capital Team utilizes Morgan Stanley's Legal and Compliance divisions, as well as external counsel, for review and oversight of marketing activities



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- US transaction flow continues to be robust on a "go forward" basis
- MSI expects that energy-related infrastructure will constitute a majority of the deal flow in MSIP II
- Concession-based transportation infrastructure will constitute a minority, but still important part of the opportunity set
- PPP deal flow, while not a "flood", has improved relative to prior years

MSI COMPARATIVE ADVANTAGE FOR INFRASTRUCTURE

# Key Industries and Areas of Focus

Americas

<p><b>Role of Shale in U.S. Energy Supply</b></p>	<ul style="list-style-type: none"> <li>• Shale opportunities continue to be "transformational" in U.S. energy supply picture. Key gas-related opportunities are:                         <ul style="list-style-type: none"> <li>– Gathering and processing</li> <li>– Storage</li> <li>– LNG terminals converting to export</li> </ul> </li> <li>• Shale oil opportunities are primarily transportation and storage related</li> <li>• Potential for water remediation and storage</li> </ul>
<p><b>Continued Renewables Build Out</b></p>	<ul style="list-style-type: none"> <li>• Majority of the opportunity will continue to be in wind and solar</li> <li>• Solar has been advancing relative to wind as panel prices drive solar closer towards grid parity</li> <li>• Distributed generation (DG) is an increasingly more important part of the picture, but "scale" still limits opportunities in the DG space</li> <li>• Smaller developers are taking projects to a given stage, but lack resources to complete, providing a market for larger developers/aggregators who in turn require capital</li> </ul>
<p><b>Conventional</b></p>	<ul style="list-style-type: none"> <li>• New construction of efficient, gas-fired CCGT's is more of an intermediate-term, rather than a "short-term", phenomena</li> <li>• Driven by coal plant retirements, and need for redundant "back-up" system to support renewables</li> <li>• Secondary opportunities will involve plants requiring commercial optimization</li> </ul>
<p><b>State / Municipal Budget Shortfalls</b></p>	<ul style="list-style-type: none"> <li>• Continued shortfalls at state and municipal levels will encourage transportation PPPs</li> <li>• Several states (Ohio, New York, Pennsylvania, Florida, and Puerto Rico etc.) continue to move forward</li> <li>• With the success of Ohio State University Parking, other universities are contemplating</li> </ul>

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IMPACT OF REGULATORY AND ACCOUNTING DEVELOPMENTS ON BUSINESS

External Factors and Regulatory Bodies Impacting Portfolio Companies

MSIP I - Transportation



- Inflation – parking rates 100% indexed to inflation
- Parking demand
- Demand elasticity
- GDP-linked asset
- Debt financing environment



- Fleet re-letting risk
- Cost of newly built trains
- Inflation – while there is no explicit inflation protection, ERG's capital rents typically implicitly price-in inflation expectations
- Debt financing environment



- Global GDP – demand impacts on maritime shipping
- Diesel fuel pricing
- Trade tariffs
- Rail rates – impacts competitiveness of the port
- Labor rates – unionized labor
- Inflation – component of labor rates and container handling rates
- Debt financing environment



- Italian Airport passenger tariffs
- Global GDP – demand driven related to airline passenger travel
- Through new Contratto di Programma, tariffs implicitly linked to inflation, as tariff increases are tied to cost of aviation and services



- India Regional GDP – demand driven aspects related to vehicular traffic
- Demand elasticity
- Toll Rates - determined pursuant to formula related to local inflation and foreign exchange (USD / INR)
- Debt financing environment



- India Regional GDP – demand driven aspects related to vehicular traffic
- Demand elasticity
- Toll Rates - determined pursuant to formula related to local inflation, volumes and minimum annual increases
- Acquisition of Rights of Way
- Construction
- Debt financing environment

External Factors

Regulatory Bodies

- Concession governed investment
- City of Chicago City Counsel (indirectly)

- UK Department for Transport ("DfT")
- UK Office of Rail Regulation ("ORR")

- None
- Indirect – related to Port of Montreal as Lessor

- Ente Nazionale per l'Aviazione Civile – "ENAC" (Italian Civil Aviation Authority)

- National Highways Authority of India

- National Highways Authority of India

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IMPACT OF REGULATORY AND ACCOUNTING DEVELOPMENTS ON BUSINESS

External Factors and Regulatory Bodies Impacting Portfolio Companies

MSIP I - Energy & Utilities



Madriñeña  
RED DE GAS



MATEP



ASAHI SEISAKU



ZHAOZHENG HYDROPOWER



Affinity Water



CONTINUUM

External Factors

- Customer demand
- Natural gas pricing
- Inflation – implicit inflation linkage through FERC rate case (indirectly linked to inflation and interest rates)
- Cost of capital environment (debt and equity)

- Inflation – parametric tariff formula reflects ~70% of inflation in annual revenue adjustments
- Housing growth and increased conversion from electric to gas leads to more connection points
- Debt financing environment

- Natural gas prices – impact efficiency and ability to generate peak revenues
- Weather – steam and chilled water volumes are directly impacted by weather
- Local utility distribution tariffs – primary component of contract rates charged to customers

- Power prices impact electricity tariffs
- Weather and rain impact hydro powered facilities
- Project / Construction delays
- Debt financing environment

- Inflation – implicit inflation link in power tariffs, which are set by individual provincial governments
- Local hydrology
- Acquisition environment – growth partially predicated on acquisition of facilities
- Debt financing environment

- Inflation – water tariffs are adjusted by RPI on an annual basis
- Local hydrology – watershed volumes
- Cost of capital environment (debt and equity)

- Wind resource – level of long-term wind resource has direct impact on CWE's ability to provide energy
- Equipment cost
- Project / Construction delays
- Debt financing environment
- New entrant equity appetite

Regulatory Bodies

- Federal Energy Regulatory Commission (direct)
- Environmental Protection Agency (indirect)
- Local Public Utility Commissions (indirect)

- Spanish Ministry of Industry, Tourism, and Commerce

- Federal Energy Regulatory Commission
- New England Independent System Operator

- India Ministry of Energy
- Government of Sikkim (local)
- India Ministry of Environment and Forest

- Chinese Provincial Governments serve as separate regulatory bodies

- UK - Department for Environment, Food, and Rural Affairs
- UK - OFWAT
- UK - DWI
- UK - Environment Agency
- UK - Consumer Council for Water

- India Ministry of Energy
- Individual municipalities where have specific regulatory bodies for land acquisition and power off-take agreements