Trade Group Seeks to Have Bayou Award Thrown Out

BY SUSANNE CRAIG

The biggest Wall Street trade group urged a federal judge to throw out a $20.6 million arbitration award against **Goldman Sachs Group** Inc., which was accused by unsecured creditors of Bayou Group LLC of ignoring signs of fraud at the hedge-fund firm.

In a court filing Thursday, the Securities Industry and Financial Markets Association said the June award could paralyze the business of clearing trades on behalf of customers.

"If clearing firms were required to analyze trading in introduced accounts, or to make determinations concerning whether the records and documents in their possession regarding the activities of an introducing firm's customers indicated possible wrong-doing, the speed and efficiency demanded in the contemporary securities markets would not be possible," Henry F. Minnerop, a lawyer at **Sidley Austin** LLP who represents Sifma, wrote in the court filing.

The ruling by a three-person arbitration panel rattled securities firms throughout the industry. The $20.6 million award was the largest-ever arbitration ruling against Goldman. The panel's ruling didn't disclose the reasons for the decision, but lawyers for the Bayou creditors argued that Goldman failed to properly investigate red flags at Bayou, "through either gross negligence or a willful choice to ignore the signs of fraud."

Goldman cleared trades for Bayou before it collapsed in 2005. The firm's former chief executive, Samuel Israel III, is serving a 20-year prison term for fraud. He pleaded guilty to misrepresenting the value of Bayou's funds and defrauding clients out of more than $400 million. In 2008, Bayou's unsecured creditors' committee filed an arbitration claim against two Goldman units.

Ross Intelisano, a partner at New York law firm **Rich & Intelisano** LLP who represented the creditors, said he is hopeful that U.S. District Judge Jed S. Rakoff in New York will uphold the arbitration ruling. "We respect this sophisticated arbitration panel's decision," Mr. Intelisano said. "It was an 18-day trial with extensive closing arguments on the law and facts."

Goldman asked the judge last month to reject the arbitration panel's ruling. Courts rarely overturn arbitration awards but can do so in cases of "manifest disregard" of the law.

In its court filing, Goldman said that "the standard for vacating arbitration awards is high. But this is that rare situation."

Winning damages from clearing firms is particularly hard because firms are required to spell out their duties in advance, often limiting their liability to only those functions. During the Bayou arbitration proceedings, Goldman argued that the law "does not require clearing firms or prime brokers to monitor the suitability of the transactions they process or to investigate their account holders."