



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

July 20, 2010

David B. Harms, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498

**Re: SEC v. Goldman Sachs & Co. and Fabrice Tourre , Civil Action No. 1:10-cv-03229
(S.D.N.Y. 2010)
Waiver Request under Regulation A and Rule 505 of Regulation D**

Dear Mr. Harms:

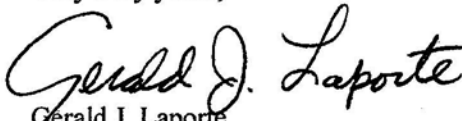
This responds to your letter dated today, written on behalf of Goldman Sachs & Co. ("Goldman Sachs"), and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933 (the "Securities Act").

You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 that arose by reason of the Final Judgment as to Goldman Sachs entered on July 20, 2010 by the United States District Court for the Southern District of New York in SEC v. Goldman Sachs & Co. and Fabrice Tourre, Civil Action No. 1:10-cv-03229 (the "Judgment"). The Judgment, among other things, permanently restrains and enjoins Goldman Sachs from violating section 17(a) of the Securities Act of 1933.

For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Judgment. We also have assumed that Goldman Sachs will comply with the Judgment.

On the basis of your letter, I have determined that you have made showings of good cause under Rule 262 and Rule 505 that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 by reason of entry of the Judgment against Goldman Sachs. Accordingly, pursuant to delegated authority, on behalf of the Division of Corporation Finance, I hereby grant relief from any disqualifications from exemptions otherwise available under Regulation A and Rule 505 that may have arisen by reason of entry of the Judgment against Goldman Sachs.

Very truly yours,


Gerald J. Laporte
Chief, Office of Small Business Policy

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July 20, 2010

Via Email

Gerald J. Laporte, Esq.,
Chief, Office of Small Business Policy,
Division of Corporation Finance,
Securities and Exchange Commission,
100 F Street, N.E.,
Washington, D.C. 20549.

Re: SEC v. Goldman, Sachs & Co. and
Fabrice Tourre (S.D.N.Y. 2010)

Dear Mr. Laporte:

Our client, Goldman, Sachs & Co. (the "Firm"), is a settling defendant in the above-captioned civil action (the "Action") brought by the Securities and Exchange Commission (the "Commission") in the United States District Court for the Southern District of New York (the "Court"). The Action relates to alleged violations of the federal securities laws by the Firm in connection with the sale of synthetic collateralized debt obligations to two institutional investors.

The Firm hereby requests, pursuant to Rule 262 of Regulation A and Rule 505 of Regulation D under the Securities Act of 1933 (the "Securities Act"), that the Commission grant a waiver of any disqualification from the exemptions provided by Regulation A and Rule 505 of Regulation D that may otherwise apply to the Firm, any of its affiliates or any issuer, offering participant or other persons as a result of the judgment entered by the Court in the Action on this date. It is our understanding that the Division of Enforcement does not object to the grant of the requested waiver.

BACKGROUND

The conduct of the Firm alleged in the complaint in the Action involved an offering of a synthetic collateralized debt obligation, which referenced a portfolio of synthetic residential mortgage-backed securities, by the Firm or its affiliates to qualified institutional buyers in reliance on the exemption from registration under the Securities

Act provided by Rule 144A thereunder and to non-U.S. persons in reliance on the safe harbor from registration provided by Regulation S thereunder. Specifically, the complaint alleged that the offering materials, in describing the Portfolio Selection Agent for the portfolio of synthetic residential mortgage-backed securities, should have disclosed that the hedge fund assuming the short side of the transaction had played a role in the selection process. In its consent to the judgment (described below), the Firm acknowledged that it was a mistake not to disclose the role of the hedge fund.

In connection with the above-captioned proceeding, the Firm and the Division of Enforcement reached an agreement in principle to settle the Action as described below, and the Firm has executed a consent to the entry of a judgment by the Court (the "Judgment") without admitting or denying the matters set forth in the Commission's complaint in the Action (except as to the jurisdiction of the Court).

In the Judgment, dated July 20, 2010, the Court permanently restrains and enjoins the Firm¹ from violating Section 17(a) of the Securities Act in the offer or sale of any security. The Judgment also decrees that the Firm is liable for disgorgement of \$15 million and a civil penalty in the amount of \$535 million. Finally, the Judgment requires the Firm to comply with certain undertakings relating to (i) the vetting and approval process for offerings of residential mortgage-related securities, (ii) review of marketing materials used in connection with residential mortgage-related securities offerings by the Firm's Legal Department and Compliance Department, (iii) annual internal audits of the review of such marketing materials, (iv) where the firm is the lead underwriter of an offering of residential mortgage-related securities and retains outside counsel to advise on the offering, review of the related offering materials by outside counsel and (v) education and training of persons involved in the structuring or marketing of residential mortgage-related securities offerings.

DISCUSSION

Regulation A and Rule 505 of Regulation D provide exemptions from registration under the Securities Act for certain offerings of limited size. Rule 262 of Regulation A and Rule 505 provide for disqualification from these exemptions if, among other things, the issuer, any of its predecessors or any affiliated issuer, or any director, officer, general partner or 10% beneficial equity owner of the issuer, or any underwriter of the securities to be offered or any partner, director or officer of any such underwriter, in any such case is subject to any order, judgment or decree of any court of competent

¹ The injunction will also apply to the Firm's agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the Judgment.

jurisdiction temporarily or permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. *See* 17 C.F.R. §§262(a)(4) and (b)(2) and 505(b)(2)(iii). These Rules, however, also provide that these disqualifications shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemptions be denied. *See* 17 C.F.R. §§262 and 505(b)(2)(iii)(C).

The Firm understands that the Judgment could disqualify it and certain of its affiliates from participating in offerings as an issuer or underwriter in reliance upon the exemptions from registration under the Securities Act provided by Regulation A and Rule 505, insofar as the Firm would thereby be subject to a judicial order restraining or enjoining conduct in connection with the purchase or sale of any security. Pursuant to these regulations, the disqualifications could also apply to any issuer, underwriter or other person participating in such an offering with the Firm. As noted above, however, the Commission has the authority to waive the Regulation A and Rule 505 exemption disqualifications.

The Firm requests that the Commission waive any disqualifying effects that the Judgment may have under Regulation A and Rule 505 with respect to the Firm, its affiliates or any other persons, whether acting as issuer, underwriter or otherwise, for the following reasons:

1. The disqualification of the Firm from the exemptions under Regulation A and Rule 505 would be unduly and disproportionately severe given the nature of the conduct alleged in the complaint relating to the Action. The conduct of the Firm alleged in the complaint does not pertain to whether or not securities offerings were conducted in compliance with the exemptions from registration provided by Regulation A or Rule 505. Rather, as noted above, the alleged conduct involved an offering of a synthetic collateralized debt obligation, which referenced a portfolio of synthetic residential mortgage-backed securities, by the Firm or its affiliates to qualified institutional buyers in reliance on the exemption from Securities Act registration provided by Rule 144A and to non-U.S. persons in reliance on the safe harbor from registration provided by Regulation S.

2. In the future, issuers may wish to retain the Firm to participate in offerings of securities conducted in reliance on the exemption provided by Regulation A or Rule 505. Consequently, the disqualification of the Firm could adversely affect the Firm's business operations with regard to securities distribution and could adversely affect third parties that may wish, but because of the disqualification would be unable, to

retain the Firm or participate with it in connection with an offering conducted pursuant to these exemptions.

3. Finally, the disqualification of the Firm would be unduly and disproportionately severe because the Firm will be required under the Judgment to pay a total of \$550 million in disgorgement and civil money penalty. The Firm has also undertaken certain actions identified in the proposed Judgment and described above that are intended to enhance the Firm's compliance practices relating to the matters that are the subject of the Judgment. Thus, the disqualification would result in an additional penalty beyond what the Judgment requires.

In light of the grounds for relief described above, we believe that disqualification is not necessary under the circumstances, and that the Firm has shown good cause that relief should be granted. Accordingly, we respectfully request that the Commission waive the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent that they may otherwise apply to the Firm, any of its affiliates or any issuer, offering participant or other persons as a result of the entry of the Judgment.²

² We note that the Commission has granted relief under Regulation A and Regulation D for similar reasons in other instances. *See, e.g.*, Investools Inc. *et al.*, SEC No-Action Letter (pub. avail. Dec. 16, 2009); General Electric Company, SEC No-Action Letter (pub. avail. Aug. 11, 2009); Prudential Equity Group, LLC, SEC No-Action Letter (pub. avail. Aug. 28, 2006); Goldman, Sachs & Co., SEC No-Action Letter (pub. avail. Oct. 31, 2003); Merrill Lynch & Co., Inc., SEC No-Action Letter (pub. avail. March 17, 2003); Credit Suisse First Boston Corporation, S.E.C. No-Action Letter (pub. avail. Jan. 29, 2002); Dain Rauscher, Incorporated, S.E.C. No-Action Letter (pub. avail. Sept. 27, 2001); and Legg Mason Wood Walker, Incorporated, S.E.C. No-Action Letter (pub. avail. June 11, 2001).

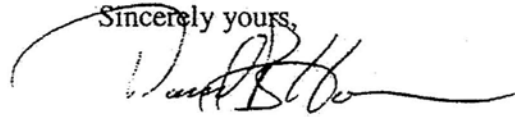
The Commission has also granted the requested relief to the same firm on more than one occasion. *See, e.g.*, In the matter of Certain Municipal Bank Refundings, SEC No-Action Letter (pub. avail. April 6, 2000).

Gerald J. Laporte, Esq.

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If you have any questions regarding this request, please contact the undersigned at (212) 558-3882.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David B. Harms", with a long, sweeping horizontal line extending to the right.

David B. Harms

cc: Kenneth R. Lench, Esq.
(Division of Enforcement)
Melissa E. Lamb, Esq.
(Division of Enforcement)