



DIVISION OF  
CORPORATION FINANCE

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

April 12, 2012

Frederick Wertheim, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004-2498

**Re: In the Matter of Goldman, Sachs & Co.**  
**Release No. 34-66791**  
**Waiver Request under Regulation A and Rule 505 of Regulation D**

Dear Mr. Wertheim:

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.

You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 that may have arisen as a result of entry of an order today by the Securities and Exchange Commission in In the Matter of Goldman, Sachs & Co., Release No. 34-66791 (the "Order"). The Order, among other things, requires Goldman Sachs to pay a civil money penalty of \$22 million under Section 15(b)(4) of the Securities Exchange Act of 1934. In addition, the Order requires Goldman Sachs to comply with certain of its own undertakings in the Order. Inclusion of these remedies in the Order may be interpreted to result in disqualifications under Rule 262 and Rule 505 insofar as they result in Goldman Sachs' being subject to an order under Section 15(b) of the Securities Exchange Act.

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

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 Order. Accordingly, pursuant to delegated authority, on behalf of the Division of Corporation Finance, and without necessarily agreeing that any such disqualifications arose by reason of entry of the Order, relief is granted from any disqualifications from exemptions otherwise available under Regulation A and Rule 505 that arose as a result of entry of the Order.

Very truly yours,

A handwritten signature in cursive script that reads "Gerald J. Laporte".

Gerald J. Laporte  
Chief, Office of Small Business Policy

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Rule 262 of Regulation A, 17 C.F.R. § 230.262  
Rule 505 of Regulation D, 17 C.F.R. § 230.505(b)(2)(iii)(C)

April 12, 2012

Via E-Mail

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: In the Matter of Goldman, Sachs & Co.  
Administrative Proceeding File No. 3-14845  
Waiver Request under Regulation A and Rule 505 of Regulation D

Dear Mr. Laporte:

Our client, Goldman, Sachs & Co. (“Goldman Sachs” or the “Firm”), is the respondent in the above-referenced Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order issued by the Commission on April 12, 2012 (the “Order”). The Order relates to alleged violations of the federal securities laws by the Firm in connection with certain policies and procedures concerning its trading “huddle” program, as discussed in more detail below.

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 Rule

For discussion and settlement purposes only. Subject to FRE 408 and state law analogues. Confidential treatment requested by Goldman, Sachs & Co. pursuant to 17 C.F.R. § 200.83.

262 of 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 Order. The Firm requests that this waiver be granted with effect from the entry of the Order. It is our understanding that the Division of Enforcement does not object to the grant of the requested waiver.

### **BACKGROUND**

The Order settles the Commission's investigation relating to the Firm's huddle program—a practice where the Firm's equity research analysts allegedly provided their best trading ideas to firm traders and a select group of Goldman Sachs's top clients. The SEC has alleged that Goldman Sachs's huddle program created a serious and substantial risk that analysts would share material nonpublic information concerning their published research with clients of Goldman Sachs's Asymmetric Service Initiative and with firm traders. The SEC alleged that the Firm willfully violated Section 15(g) of the Securities Exchange Act of 1934 (the "Exchange Act") by failing establish, maintain, and enforce adequate policies and procedures to prevent such misuse in light of the risks arising from the huddles and ASI.<sup>1</sup> Without admitting or denying the violations (except as noted below), the Firm consented to the entry of the Order.<sup>2</sup>

Under the Order, the Firm (i) shall cease and desist from committing or causing any violations and any future violations of Section 15(g) of the Exchange Act; (ii) is censured; (iii) shall pay a total civil money penalty of \$22 million, \$11 million of which shall be deemed satisfied upon payment by the Firm of a \$11 million civil penalty to the Financial Industry Regulatory Authority in a related proceeding, and \$11 million of which shall be paid to the SEC, and (iv) shall comply with certain other undertakings, including a comprehensive review, including recommendations, of the policies, procedures and practices maintained and implemented by Goldman Sachs pursuant to

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<sup>1</sup> Concurrently with the Order, FINRA entered into a Letter of Acceptance, Waiver and Consent with the Firm (No. 2009019301201) making substantially similar findings (the "AWC"). The AWC is not addressed in this letter because it does not assert willful violations of Federal securities laws.

<sup>2</sup> Goldman Sachs did admit the SEC's jurisdiction over it, the subject matter of the proceedings, and those fact findings in the Order to the extent also contained in Section V of the Consent Order dated June 9, 2011, that the Firm entered into with the Commonwealth of Massachusetts Securities Division, Docket No. 2009-079 (the "Massachusetts Order").

Section 15(g) of the Exchange Act that relate to the findings of the Order. The undertakings are set forth in their entirety in Annex 1 to this letter.

### DISCUSSION

Rule 262 of 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 of Regulation D provide for disqualification from these exemptions if, among other things, any director, officer or general partner of the issuer, beneficial owner of 10 percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. *See* 17 C.F.R. §§ 230.262(b)(3), 230.505(b)(2)(iii). These Rules, however, also provide that this disqualification 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. §§ 230.262, 230.505(b)(2)(iii)(C).

The Firm understands that, unless relief is obtained, the entry of the Order disqualifies 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 is subject to an order under Section 15(b) of the Exchange Act. Pursuant to these regulations, the disqualification 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 disqualification.

The Firm requests that the Commission waive any disqualifying effects that the Order 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 described in the Order. The conduct of the Firm alleged by the Commission does not pertain to whether or not securities offerings were conducted in

compliance with the exemptions from registration provided by Regulation A and Rule 505. Rather, as noted above, the alleged conduct concerned the Firm's equity research activities in the specific context of huddles and ASI.

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 and 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 given that the Order and the agreed-upon relief reflect a negotiated resolution deemed to be a satisfactory conclusion of the matter by the staff of the Division of Enforcement. Under the Order the Firm is required to pay a total of \$18 million in civil money penalty.<sup>3</sup> The Firm also has undertaken to perform, and has already commenced, certain actions identified in the Order and described above that are intended to enhance the Firm's compliance practices relating to the matters that are the subject of the Order. Thus, the disqualification would result in an additional penalty beyond what the Order requires.

In light of the grounds for relief described above, we believe that disqualification is not necessary 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 Order.<sup>4</sup>

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<sup>3</sup> In addition to this civil money penalty, the Massachusetts Order involved the payment of a \$10 million civil penalty.

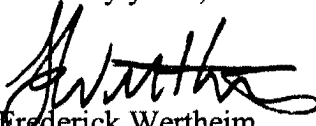
<sup>4</sup> We note that the staff of the Commission has granted relief under Regulation A and Regulation D for similar reasons in other instances. *See, e.g.*, Citigroup Inc., SEC No-Action Letter (pub. avail. Oct. 19, 2010); Goldman, Sachs & Co., SEC No-Action Letter (pub. avail. July 20, 2010); Investools 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

Gerald J. Laporte, Esq.

-5-

If you have any questions regarding this request, please contact the undersigned at (212) 558-4974.

Sincerely yours,



Frederick Wertheim

cc: Alexander Koch, Esq.  
Stacy Bogert, Esq.  
(Division of Enforcement)

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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).

While the staff has granted relief to the Firm on prior occasions noted above, the staff has also granted such relief to other firms 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).

## UNDERTAKINGS

*Following is an excerpt from the Order referred to in the preceding letter:*

Goldman has undertaken to, within ninety (90) days of the entry of this Order:

1. Goldman shall complete a comprehensive review, including recommendations, of the policies, procedures and practices maintained and implemented by the Respondent pursuant to Section 15(g) of the Exchange Act that relate to the findings of this Order;
2. Goldman shall adopt, implement and maintain practices and written policies and procedures pursuant to Section 15(g) of the Exchange Act that are consistent with the findings of this Order and the recommendations contained in the comprehensive review; and
3. Goldman shall submit a report, approved and signed by Goldman's Legal Department, to M. Alexander Koch, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-5041, which details the results of the review, the new policies, procedures and practices adopted pursuant to Section 15(g) of the Exchange Act, and the actions taken to implement the new policies and procedures.

Goldman shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to M. Alexander Koch, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street N.E., Washington, D.C. 20549-5041, with a copy to the Office of Chief Counsel of the Enforcement Division, Securities and Exchange Commission, no later than thirty (30) days from the date of the completion of the undertakings.